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LAW UPDATE

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Abu Dhabi Al Sila Tower, 26th Floor, Abu Dhabi Global Market Square, Al Maryah Island, PO Box 44046, AD, UAE T: +971 2 813 0444 F: +971 2 813 0445 infoabudhabi@tamimi.com

Dubai Internet City Building No.5, G 08, PO Box 500188, Dubai, UAE T: +971 4 391 2444 F: +971 4 391 6864 infodic@tamimi.com

Dubai International Financial Centre Sheikh Zayed Road, 6th Floor, Building 4 East, PO Box 9275, Dubai, UAE T: +971 4 3641 641 F: +971 4 3641 777 info@tamimi.com

Ras Al Khaimah Julphar Office Towers, 39th Floor, Al Jisser Street, PO Box 34053, RAK, UAE T: +971 7 233 3841 F: +971 7 233 3845 inforak@tamimi.com

Sharjah Al Hind Tower, 30th Floor, Al Khan Corniche Street Near Al Qasba Canal, PO Box 5099 Sharjah UAE T: +971 6 572 7255 F: +971 6 572 7258 infosharjah@tamimi.com

The MAZE Tower, Dubai 15th Floor, Sheikh Zayed Road, PO Box 9275, Dubai, UAE T: +971 4 331 7161 F: +971 4 331 3089 info@tamimi.com

Bahrain

Manama Bahrain Financial Harbour Building 1459, Block 346, West Tower, 13th floor, Suite 1304, Office 13B King Faisal Highway T: +973 3 607 0909 infobahrain@tamimi.com

Egypt

Cairo Star Capital Tower (Building No. 5&7) 10th Floor, Geziret El Arab Street, Mohandseen Agouza Giza, Cairo, Egypt T: +20 2 3368 1000 F: +20 2 3368 1002 infoegypt@tamimi.com

Al Tamimi & Company is associated with Nour & Selim providing legal services in Egypt.

Iraq

Baghdad Al Harthiya, Kindi St., Dist 213 Building no. 106, PO Box 6051, Baghdad, Iraq T: +964 780 029 2929 F: +964 1 542 0598 infoiraq@tamimi.com

Erbil Villa no. 130, English Village, Gulan Street, Erbil, Iraq M: +964 0 780 588 7848 M: +964 0 750 445 2154 infoiraq@tamimi.com

Jordan

Amman 6th Circle, Emaar Towers A, PO Box 18055, Amman, Jordan, Zip 11195 T: +962 6 577 7415 F: +962 6 577 7425 infojordan@tamimi.com

Kuwait

Kuwait City Khaled Bin Al Waleed Street Sharq, Al Dhow Tower, 16th Floor, PO Box 29927, Safat 13160, Kuwait T: +965 2 246 2253 F: +965 2 246 2258 infokuwait@tamimi.com

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

Oman *Al Tamimi & Company is a registered trade mark in Oman & Kuwait*

Muscat Al Assalah Towers Building 223, Block 237 Office 409, Street 3701 Ghubrah South Muscat, Oman infooman@tamimi.com

Qatar

Doha Adv. Mohammed Al Marri in association with Al Tamimi & Company, Al Jazeera Tower, 7th floor, PO Box 23443, Qatar T: +974 4457 2777 F: +974 4360 921 infoqatar@tamimi.com

Saudi Arabia

Al Khobar Level 21, Khobar Gate Tower (Al Shaikh Tower) King Fahd Road, PO Box 32348 Al Khobar 31952, Saudi Arabia T: +966 13 330 8433 F: +966 13 845 4369 infoalkhobar@tamimi.com

Jeddah Level 9, Jameel Square, Corner of Tahlia and Al Andalus Streets, PO Box 40538 , Postal Code 21511 Jeddah, Saudi Arabia T:+966 12 263 8900 F:+966 12 263 8900 infojeddah@tamimi.com

Riyadh 2nd Floor, Sky Tower (South Tower S.2.A) King Fahad Rd. Al Olaia Area, PO Box 300400 Riyadh, Saudi Arabia T: +966 11 416 966 F: +966 11 416 9555 inforiyadh@tamimi.com

LAW UPDATE Online

Legal Editing Team

Robert Karrar- Lewsley
Senior Counsel
Arbitration
r.lewsley@tamimi.com

Gordon Barr
Partner
Employment
g.barr@tamimi.com

Muhammad Mahmood
Associate
DIFC Litigation
m.mahmood@tamimi.com

Robert Maxwell Marsh
Associate
DIFC Litigation
r.maxwellmarsh@tamimi.com

Christina Sochacki
Associate
Healthcare
c.sochacki@tamimi.com

Ronette Druskovich
Senior Associate
Property
r.druskovich@tamimi.com

@Al Tamimi & Company

@AlTamimiCompany

Production
Angela Maglieri
a.maglieri@tamimi.com

Graphic Design
Noura Haggag
n.haggag@tamimi.com

Federal Gazettes
Zane Anani
z.anani@tamimi.com

Translation
Vincent Percival
v.percival@tamimi.com

Images
shutterstock.com

For information on Law Update
info@tamimi.com

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Congratulations to the UAE Team for winning ***National Law Firm of the Year****; and the Kuwait Team for winning* ***Debt & Equity-Linked Deal of the Year*** *at the 2016 IFLR Middle East awards.*

In this Issue

Welcome to the November edition of *Law Update*, the third Healthcare special edition published by Al Tamimi & Company.

The healthcare market is growing across our region and as a result, laws and regulations are continuing to be developed. To ensure our clients are on top of the changes, our Medical Malpractice team looks at an example of a recent change, with an analysis of the New UAE Medical Liability Law which can be found on page 40.

Intellectual Property matters are important in the healthcare sector, particularly in pharmaceuticals. Big brand companies invest millions of dollars each year to develop new and innovative drugs and invest significant resources in registering their developments as patents. On page 48, our IP team takes a look at non-convential trademarks for pharmaceuticals in the UAE. The team also consider the Egyptian government's strategy to protect consumers in the advertisement of non-prescription pharmaceutical products in the country on page 56.

Are cosmetics considered pharmaceutical products? In Qatar there are no specific rules or regulations concerning the importation, distribution or advertisement of cosmetic products so the Drug department must take charge – read more about this on page 60. Meanwhile the Bahrain government has recently updated its classifications of health products and medicines in the Kingdom making the rules clearer for importers and manufacturers. This article features on page 54.

We also cover a number of other healthcare-related issues including distribution of pharmaceutical products in the GCC (page 37), investing in Dubai's healthcare sector through a clinic or polyclinic (page 50) and employee transfers in the UAE healthcare sector (page 52).

There are many other topics of interest this month, from new corporate governance rules in the UAE to a review of requirements for tenancy agreements to the litigation, arbitration and enforcement of awards.

Please enjoy the content we've prepared for you and, as always, if there's any feedback, I'd be delighted to hear from you.

All the best

Husam Hourani
h.hourani@tamimi.com

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*

Zane Anani
Head of Knowledge Management
Dubai, UAE
z.anani@tamimi.com

Robert Karrar-Lewsley
Senior Counsel
Dubai, UAE
r.lewsley@tamimi.com

The Res Judicata Effect of an Arbitral Award in Dubai

The Dubai Court of Cassation recently clarified when an arbitral award has res judicata effect. In a judgment dated 21 August 2016 (Commercial Appeal 199 of 2014), the Court held that an award has res judicata effect from the moment it is issued, and will only cease to have that effect if and when it is annulled. The fact that an award was under review by the local court did not mean that the award lacked res judicata effect, or that it would only gain res judicata effect once it had been upheld. This meant that an application to the court for the appointment of a Tribunal was to be rejected whilst there was an extant arbitral award dealing with the issues in dispute.

The Facts of the Case

The Claimant entered into a contract with the Respondent for the supply of work.

The contract contained an ambiguous arbitration clause that did not specify a method for appointing the Tribunal, nor the appointing authority. When a dispute arose between the parties over the outstanding debt, the Claimant approached the Dubai International Arbitration Centre (DIAC) to appoint an arbitrator. The dispute was heard by the arbitrator and an arbitral award was issued disposing of the dispute.

Following the issuance of the arbitral award, the Respondent filed Civil Action No. 652 of 2012 to set it aside while the Claimant filed Civil Action No. 584 of 2012 to confirm the award. The Respondent also filed a claim (Commercial Action No. 597-2013) before the Dubai Courts for the appointment of an arbitrator, on the basis that the previous award was invalid and it was for the court to appoint the tribunal, not DIAC. The Claimant argued that this action was beyond the limits of the courts' jurisdiction as the dispute had previously been determined by the arbitral award.

Court of First Instance

The Court of First Instance dismissed the Respondent's application for an arbitrator to be appointed because an arbitral award existed that had already resolved the dispute matter.

Court of Appeal

The Court of Appeal upheld the decision of the Court of First Instance.

Court of Cassation

The Court of Cassation upheld the decision of the Court of Appeal.

The Court explained that it was well established by the Court of Cassation that arbitral awards become res judicata upon issuance, although their enforcement is subject to a confirmation procedure. The parties therefore have no recourse to the courts to resolve the dispute once the award has been issued. This is so even if there is new factual evidence or legal arguments.

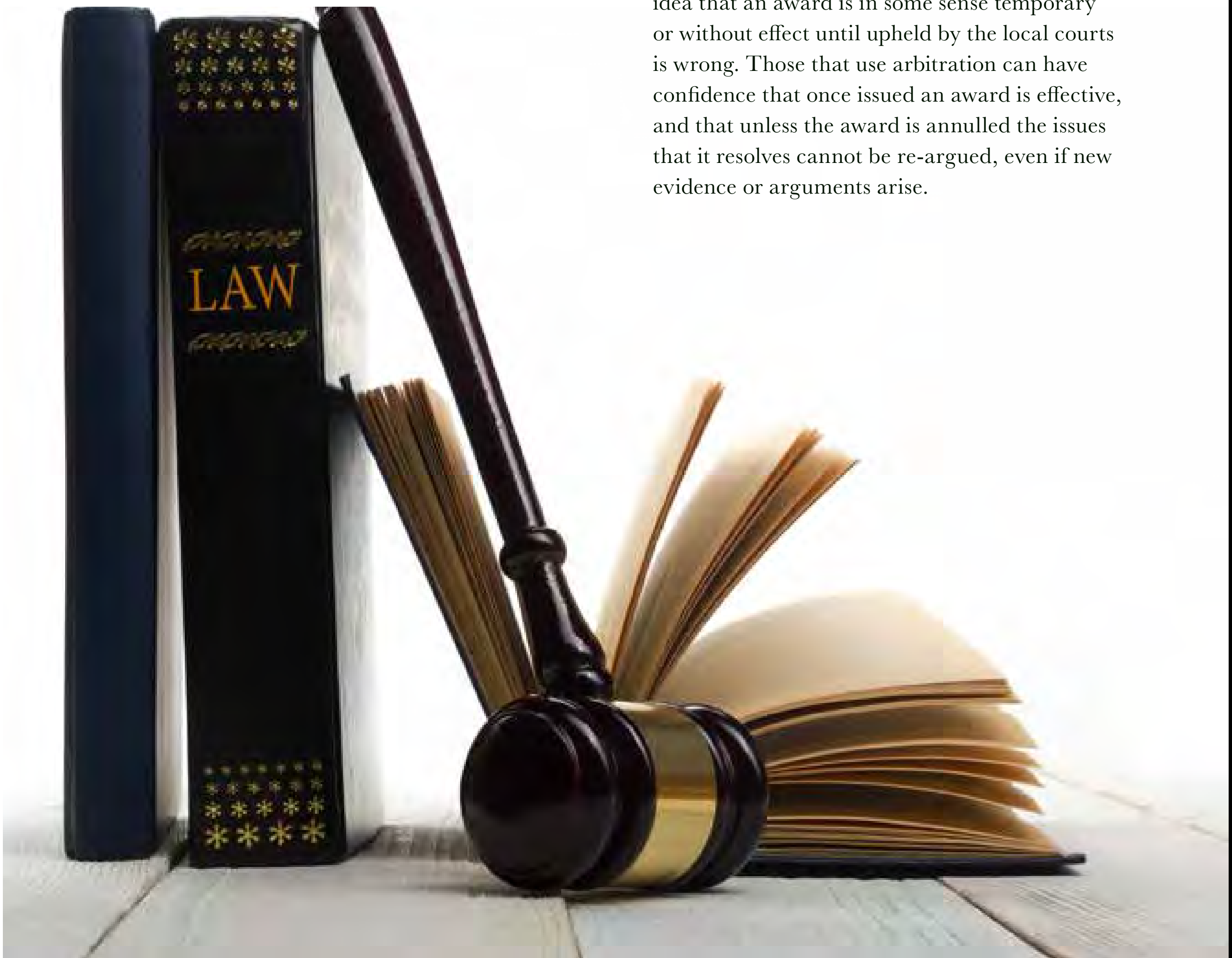
In issuing the award, the arbitrator disposes of the issues pursuant to the arbitration clause. The purpose of the arbitration clause is therefore fulfilled irrespective of whether the court then proceeds to confirm the award or set it aside for any reason (including a procedural one). The dispute cannot be brought before the same arbitrator or a different one except in accordance with a new agreement between the parties.

An arbitral award does not have res judicata effect only upon confirmation by a final and conclusive decision of the competent court. The situation is similar to the way that court rulings have res judicata effect even if challenged by way of an appeal to the Court of Cassation.

As to the contention that DIAC was not competent to appoint the Tribunal, this was rejected because the Respondent had acknowledged and agreed to DIAC arbitration. The action to set aside the arbitral award was dismissed on this basis.

Comment

This judgment is important because it puts beyond doubt that arbitral awards have res judicata effect once issued, and that this remains the case even if the award is being challenged in the courts. The idea that an award is in some sense temporary or without effect until upheld by the local courts is wrong. Those that use arbitration can have confidence that once issued an award is effective, and that unless the award is annulled the issues that it resolves cannot be re-argued, even if new evidence or arguments arise.





Hassan Arab
Partner &
Co-Head of Litigation
Dubai, UAE
h.arab@tamimi.com

John Gaffney
Senior Associate
Abu Dhabi, UAE
j.gaffney@tamimi.com

Malak Nasreddine
Paralegal
Abu Dhabi, UAE
m.nasreddine@tamimi.com

Enforcing an ICC Arbitral Award in the UAE: Fluor Transworld Services vs. Petrixo Oil

This case involved an application to the Dubai Court of First Instance to recognise and enforce an ICC arbitral award issued in the UK pursuant to the New York Convention. This article will summarise the four court judgments obtained by the parties and will also address the courts' approach towards the foreign arbitral award.

Background

On 11 November 2012, Fluor Transworld Services, a US based firm, and Petrixo Oil, a UAE company owned by prominent Dubai businessman, entered into a Technical Service Agreement, where Fluor Transworld Services provided Petrixo Oil with technical and consulting services in relation to two projects in Fujairah.

Fluor Transworld Services (Claimant) provided Petrixo Oil (Defendant) with the consulting technical services as agreed and the latter became liable to pay US$ 11,894,782.15. The Defendant abstained from paying the dues without any justifiable reasons. The Claimant issued arbitration proceedings against the Defendant pursuant to the Rules of Arbitration of the International Chamber of Commerce (ICC). The ICC arbitration was seated in the United Kingdom (UK). After obtaining an arbitral award in 2015, the Claimant filed Commercial Case No.1223-2015 against the Defendant before the Dubai Court of First Instance to recognize and enforce the ICC arbitral award.

The Claimant filed the case to obtain enforcement of the arbitral award to obtain payment of the principal amount of US$ 10,205,004.21 (AED 37,452,365.45), and the accrued simple interest on the amount for a total sum of US$ 650,768.92 (AED 20,388,321.93), the expenses and legal fees totaling GBP 55,192.2 (AED 312,939.77), other arbitration fees incurred by the Claimant amounting to US$ 125,500 (AED 460,585), and simple interest of 3.25% on the amount as of the date of ruling until the full payment, and validating and enforcing a precautionary attachment no. 314 of 2015 (Commercial).

In response, the Respondent requested the court to dismiss the arbitration award, not to recognize the award and to invalidate the provisional attachment and declare it void. The Respondent argued that (a) the signatory to the agreement had no right to agree on the arbitration, and the memorandum of association did not confer on it such a right, (b) the record was devoid of UK rules on the enforcement of a UAE award, (c) the award was not final or subject to compulsory enforcement, (d) the Defendant was not given proper notice of the appointment of the arbitrator and of the arbitration proceedings and was unable to present its case, (e) the arbitral tribunal was not appointed in the manner agreed upon by the parties or in accordance with ICC Rules of Arbitration, (f) the terms of reference were not submitted to the Court for approval in accordance with Article 23.1(c) of the ICC Rules of Arbitration, (g) the arbitrator breached Article 3 of the ICC Rules of Arbitration by failing to mention that the Secretariat had received any copies or had been sent a copy of any notification or communication from the arbitral tribunal to the parties. The Respondent also argued that the arbitrator breached Article 33 of the ICC Rules of Arbitration by not submitting the award in draft form, before signing it, to the court for approval, and the Claimant violated the arbitration procedure agreed upon with the arbitrator by not delivering documents by hand and only sent them by email.

Court of First Instance

At the hearing dated 30 December 2015, the Court of First Instance dismissed the case on the basis that there was no evidence of the court mentioned in Article 1 of the ICC Rules of Arbitration (i.e. International Court of Arbitration) approving the award as to its form, which it considered to be a breach of Article 33 of the ICC Rules of Arbitration (which states that no award shall be rendered until it has been approved by the ICC court as to its form). The Court of First Instance held that there was a breach of the arbitration procedure set out in the ICC Rules and ruled that the Claimant's action was without merit.

Court of Appeal

The Claimant appealed the ruling pursuant to Commercial Case no. 52-2016. On 30 March 2016, the Court of Appeal dismissed the appeal on the basis that in order for the award to be enforceable in the UAE, both the UAE and the UK would have to be parties to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) or to the Geneva Convention on the execution of foreign arbitral awards (Geneva Convention) in order to enforce the arbitral award. The Court of Appeal stated that there was no proof on record to indicate that the UAE and the UK were parties to "one convention".

Court of Cassation

The Claimant appealed to the Court of Cassation under Commercial Appeal No. 384-2016. The Court of Cassation held that Article 238 of the Civil Procedure Law (CPC) indicates that international conventions signed between the UAE and other countries, which have been ratified by the UAE, applies to the enforcement of foreign court judgments, orders and arbitral awards. Article III of the New York Convention states that each contracting country must recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the country where the award is relied upon. The UK ratified the New York Convention on 24 September 1975 and the UAE acceded to the New York Convention by Federal Decree No. (43) of 2006. This means that the country where the arbitral award was issued and the country where it is to be enforced are both contracting parties to the New York Convention, which therefore applies to the issue at stake. The Court of Cassation overturned the Court of Appeal's ruling with remand for a new decision.

Court of Appeal (on remand)

The portion of the ruling which was objected to was quashed and remanded back to the Court of Appeal for a reassessment of the facts. On remand, the Court of Appeal stated that challenges raised by a party against the arbitral award concerning the arbitrator's judgment or the validity or sufficiency of the justification for his award would be unacceptable, as the court must not address its substantive aspects and the extent of its conformity with the law and facts, according to Articles 212 and 216 of the CPC. An arbitral award may be set aside only in the circumstances specified in Article 216 of the CPC. The Court of Appeal concluded that the previous court rulings were clearly erroneous as a matter of law and are quashed, and has ruled that the ICC arbitral award is confirmed.

Commentary

Since 2010, the UAE has enforced foreign arbitral awards pursuant to the New York Convention. However, with no system of binding precedent in the UAE, the Court of Appeal's decision contrasted from the recent judgments of enforcing foreign awards and made a contradictory decision on its own motion (it had not been raised in the Defendant's counterclaim). The Court of Appeal's decision came as a surprise when it ruled that there was "no evidence" that the UK and the UAE were parties to the New York Convention, without fully acknowledging UAE's commitments under the New York Convention. Although the decisions by the Court of Cassation and the Court of Appeal (on remand) are in line with the recent trend, it is believed that the courts have missed the important fact that the UAE acceded to the New York Convention without any reservation. This means that the UAE is obliged to enforce all foreign awards, even if the country where the award was issued is not a signatory to the New York Convention.

In respect to foreign arbitral awards, the local courts are to apply the relevant convention's rules in order to enforce all foreign arbitral awards. In this case, Article III of the New York Convention applied, stating that each contracting country must recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the country where the award is relied upon.

In the recent years, Dubai has made substantial progress and improvements in supporting arbitration as a means of dispute resolution and in applying the New York Convention; the Court of Appeal's erroneous judgment should not detract from the achieved growth.

The Claimant was represented by Al Tamimi & Company in the Dubai Court of Cassation Decision, and Al Tamimi & Company supported the Claimant in overturning the incorrect ruling pursuant to the New York Convention.

Yousef Al Amly
Associate
Dubai, UAE
y.alamly@tamimi.com

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

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

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

New provisions were also introduced under the New Governance Rules, that did not exist under the Repealed Governance Rules, such as the provisions related to Insiders Register, Confidentiality of Data & Information, Conflict of Interest, Register of Related Parties, General Assembly Meetings, Capital Increase, Dividends Distribution, Investors Relation, and Obligations of the Auditor.

The purpose of this article is to compare the New and Repealed Governance Rules and highlight some of the provisions that we consider would benefit from clarification from SCA.

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

Formation of the Board of Directors

There is no material difference between the New and Repealed Governance Rules since both stipulate that the articles of association shall decide on the method of formation, number of members and tenure of membership of the Board of Directors. However, the New Governance Rules reiterate Article 148 of the CCL which states that if a Government owns 5% or more of a Company's shares, the said Government may then appoint a representative in the Company's Board of Directors pro rata to its shareholding or at least one Board Member if the shareholding percentage required to elect such member is less than the shareholding of the said Government. The Government's right to vote shall expire with respect to the shares utilized to appoint its board representative unless there are remaining shares still to be utilized (other than those already utilized to appoint the Board Members representing the Government).

In accordance with Article 151 of the CCL, the condition to have the Chairman and majority of the Board Members to be UAE nationals continue to be in effect in the New Governance Rules without prejudice to the treaties and agreements entered into by the State (such as the treaties entered with the GCC States).

Regulations of Candidature to Board Membership

Both rules provided for women's representation in the Board of Directors and to disclose in the Company's annual report the reasons for not having a woman Board Member if there are no women that are members. However, the difference is that the Repealed Governance Rules stipulate a requirement to have at least one female Board Member while the New Governance Rules set a minimum percentage of 20% of the Board of Directors to be represented by women with an obligation to disclose the percentage of women represented in the Board of Directors.

The New Governance Rules further sets the rules for board membership candidature, such as having the process of candidature open for at least ten days (fourteen days in the Repealed Governance Rules), publishing the details of the board candidates in the Company's website two days utmost (five days in the Repealed Governance Rules) prior to the general assembly meeting day, prohibiting assigning candidature after closing the candidature process (did not exist in the Repealed Governance Rules), and providing SCA and the Market with the details of the candidates on the day following the closure of the candidature process (no timeline for providing such details existed in the Repealed Governance Rules).

Conditions for Board Membership

The New Governance Rules referred to the CCL which stipulates that a Board Member must not be a Board Member in more than five companies, or to be a Chairman or Vice Chairman in more than two companies, or to be the managing director in more than one company.

The New Governance Rules, in addition to the aforementioned prohibition of the CCL, stipulates that a Board Member must not (i) have been convicted with a crime of honor or honesty unless pardoned (such prohibition existed in Article 97 of the Old Companies Law No. (8) of 1984 but do not exist anymore in the CCL); (ii) have at least five years of experience in the activity carried out by the Company that he he/she is applying for its board membership; (iii) hold a clean record before SCA that no disciplinary action has been taken against him, no court order is issued to dismiss/remove him/her from his/her position as a Board Member, and no outstanding proceedings before the Public Prosecution office in relation to honesty and integrity; and (iv) any other conditions stipulated in the Company's articles of association.

The New Governance Rules also lists the documents required to be submitted by candidates for board membership.

Obligations and Duties of the Board of Directors

The New Governance Rules expanded the duties and obligations of the Board of Directors in Article 43 thereof to ensure its involvement in each and every aspect of the Company's management and operations. The New Governance Rules further provides under Article 11 (did not exist under the Repealed Governance Rules) for the duties and obligations of the Board Members which basically obligate Board Members to (i) preserve the Company's rights and act as a prudent person; (ii) act with honesty and integrity and in accordance with the applicable laws and regulations and the Company's articles of association; (iii) disclose being a Chairman, Board Member or a member of the Senior Executive Management of a company other than the Company itself; and (iv) dedicate sufficient time for his/her duties and obligations toward the Company.

> "the New Governance Rules set a minimum percentage of 20% of the Board of Directors to be represented by women with an obligation to disclose the percentage of women represented in the Board of Directors"

Board Members Lack of Independency

More or less the provisions whereby the Board Member will lack independency are same in both rules. However, two additional conditions were added to the New Governance Rules that needs to be taken into consideration.

The first is that the New Governance Rules has added that a Board Member will lack independency if such Board Member or any of his/her Relatives work or has worked in the Senior Executive Management of the Company or a Subsidiary during the last two years preceding the date of being Board Member candidate.

The second condition is that a Board Member will also be conflicted if such Board Member or any of his/her Relatives has a direct or indirect interest in one or more Deal concluded with the Company or a Subsidiary during the last two years and the aggregate value of such Deals exceeds 5% of the Company paid up share capital or AED 5 million or their equivalent in foreign currency whichever is less unless the Deals fall within the normal course of the Company's activities and there are no preferential conditions whatsoever and that they have been entered on an arms' length basis.

It is worth mentioning that the New Governance Rules also added that a Board Member shall not lack independency for just being an employee of the Parent Company or a Subsidiary if such Parent Company or a Subsidiary is a Government or is a Company or a Subsidiary that is at least 75% owned by a Government.

Unfortunately, the New Governance Rules are silent in respect to the procedures to be taken if a Board Member lacks independency and just mention the conditions under which a Board Member is conflicted. However, we believe that disclosure obligation under Clause 11(c) of the New Governance Rules is applicable in this regard; i.e. the conflicted Board Member will have an obligation to inform the Board and the Board shall then decide on the action to be taken in this regard.

Chairman of the Board of Directors

The New Governance Rules added new provisions that did not exist in the Repealed Governance Rules regarding the election of the Chairman from amongst the Board Members (by way of cumulative voting), prohibition to combine between the position of the Chairman and General Manager, the right to elect the General Manager from amongst the Board Members and the right to form committees from amongst the Board Members to monitor the progress of the Company's operations and to ensure the implementation of the Board's resolutions.

Vacancy of Board Member Position

The key difference is that the wordings of the New Governance Rules provides that in case 25% or more of the Board Member positions are vacant, then the remaining Board Members have to call for a general assembly meeting within 30 (thirty) days (no more than three months in the Repealed Governance Rules) to elect the members to occupy the vacant positions as per Article 145 of the CCL.

The New Governance Rules has also added a clause regarding the representatives of juristic persons or Governments (did not exist in the Repealed Governance Rules) who can be changed by way of an official letter addressed to the Company and the new representative shall complete his/her predecessor's tenure.

The New Governance Rules further lists the circumstances under which a position of a Board Member shall be vacant. This also did not exist under the Repealed Governance Rules.

Dismissal of Board or Executive Management Members

The Repealed Governance Rules just referred to the Old Companies Law No. (8) of 1984 and accordingly is silent on this matter.

Even though Article 168 of the CCL provides for the circumstances under which a Board Member may be dismissed, the New Governance Rules further stipulates that a Board Member or a member of the Company's executive management shall not continue in his/her position if a court order is issued against him/her with a penalty of imprisonment and/or fine with the dismissal of such member from his position. Such Board Member may not be a member again of the Board of Directors or the Company's executive management at least a year from the date the court order is issued.

Board Members Remuneration

The New Governance Rules provided same as the Repealed Governance Rules that the remuneration of the Board Members shall not exceed 10% of the Company's net profit for the relevant financial year. However, the three key differences between the New and Repealed Governance Rules as per Article 169 of the CCL is that (i) Board Members' remuneration under the New Governance Rules is not subject to the distribution of a minimum percentage of dividends and therefore it is impliedly stated that the general assembly of a Company may resolve that the Board Members shall receive their remuneration even if it is decided that no dividends will be distributed to the shareholders for the relevant financial year but this is subject to the Company generating net profits for such year. The Repealed Governance Rules on the other hand provided that Board Members remuneration shall be subject to the distribution of at least 5% of the net profits to the shareholders which is not the case any more; (ii) the New Governance Rules further provides that (did not exist under the Repealed Governance Rules) the Company may pay additional expenses, fees or monthly salaries to the extent determined by the Board of Directors to any Board Member if such member works in any committee, makes special efforts or performs additional works to serve the Company beside his ordinary duties as a Board Member. Having said this, no attendance allowance may be paid to the Chairman or Board Member in respect of the board meetings; and (iii) the New Governance Rules additionally provides that (also did not exist under the Repealed Governance Rules) fines imposed on the Company because of the Board of Directors' violation of the applicable laws or the Company's articles of association shall be deducted from the remuneration of the Board of Directors. Having said this, the general assembly meeting of the Company may not deduct all or some of such fines if such fines are not a result of the Board of Directors fault or negligence.

Board Meeting

The Repealed Governance Rules stipulated that the Board of Directors has to meet at least once every two months; i.e. at least six times a year and that no board meeting shall be valid unless attended by the majority of its members and all its resolutions has to be passed by a simple majority voting of the Board Members present at the meeting.

The New Governance Rules on the other hand provides that, in accordance with Article 156 of the CCL, the Board of Directors has to meet at least four times a year and all board resolutions has to be passed by a simple majority voting of the Board Members present at the meeting. As for the quorum required to construe the board meeting being valid, the New Governance Rules is silent referring this matter to the CCL and likewise the Repealed Governance Rules requires the attendance of the majority of the Board Members.

Both rules provide that the Chairman shall have a casting vote.

The New Governance Rules has added additional clauses in relation to:

i. the obligation to convene the board meeting calling for a general assembly 30 days prior to the general assembly date (21 days under the Old Companies Law No. (8) of 1984);
ii. having the board meeting to be held in the Company's headquarter unless the Board believes there is a necessity to convene the meeting in another place;
iii. having a secretary to the Board of Directors who shall not be a Board Member;
iv. delegating other Board Members to attend a board meeting provided that no Board Member shall act as a proxy for more than one Board Member; and
v. prohibiting any voting by way of correspondence.

Participation in Board Meetings via Modern Technology

Article 6 of the New Governance Rules has provided for the conditions to have a board meeting using modern technology in accordance with Article 156 of the CCL subject to stipulating in the Company's articles of association for using such means to convene a board meeting.

Board Resolutions by way of Circulation

The critical difference between the two rules in this regard is that the Repealed Governance Rules has stipulated that the Board of Directors shall pass no more than four resolutions per year by way of circulation.

The New Governance Rules on the other hand did not set a ceiling to the maximum number of resolutions that can be passed by way of circulation (unless provided otherwise in the Company's articles of association) and provided that (same as stipulated in the Repealed Governance Rules) the Board Members agree by way of simple majority that the circumstances requires the resolution to be passed by way of circulation and that the resolutions are ratified in the next physical board meeting.

Minutes of Board Meetings

No material difference between the two rules in this regard except that the New Governance Rules are more comprehensive and lists the standards to be taken into consideration when recording the minutes of meeting such as listing the date, venue, attendees, absent board members, date of the invitations sent regarding the meeting, proxies and including the phrase "*Signatories of this minutes shall be responsible of the validity of the date included therein*" in the minutes of meeting.

Board Committees, Internal Control and Compliance Officer

There is no difference between the New and the Repealed Governance Rules in this regard except that the New Governance Rules are more comprehensive in terms of the duties of the audit committee and the elements to be included in the internal control annual revision report.

Corporate Governance Report

The New Governance Rules have expanded the details that should be included in the Corporate Governance Report which has to be as follows:

i. A statement of the details and reasons of any compensations and allowances paid to every Board Member and the members of the Board committees during the fiscal year;
ii. A statement of the Company's Board Members and first and second line officers as per the Company organizational structure as well as their positions, appointment dates, salary details, the benefits paid to each of them and any compensation paid to them by the Company and the reason of such compensations; and
iii. Remuneration of the Board Members and all the members of the Company management team including the compensations and any motivational programs associated with the securities issued or guaranteed by the Company.

The New Governance Rules is silent on the obligation to mention the violations committed during the financial year in the report (such obligation existed in the Repealed Governance Rules). We believe that the report still has to mention the violations committed even if the New Governance Rules are silent on this matter since this is a crucial purpose for issuing the report and presenting it to the shareholders.

The obligation to have the report available to the shareholders before submitting the application to approve convening the annual general assembly meeting still continue to be enforceable under the New Governance Rules.

James MacCallum
Partner
Abu Dhabi, UAE
j.maccallum@tamimi.com

Mergers in the UAE: Opportunities to Rationalise and to Reduce Costs

Mergers on the Rise:

Mergers of companies in the UAE have become increasingly common in recent years. Among the more highly publicised were Emirates Bank's merger with National Bank of Dubai in 2007 to form Emirates NBD, and Aldar's merger with Sorouh in 2013. Then, in July 2016, the boards of First Gulf Bank and National Bank of Abu Dhabi approved a merger of FGB and NBAD to form what is likely to produce the largest bank in the MENA region. Subsequent to this, it has been announced that Abu Dhabi's Mubadala Development Company will merge with the Abu Dhabi International Petroleum Investment Company (IPIC) and, in just the last few days (at the time of writing), it has been announced that each of Khalifa University of Science, Technology and Research, the Abu Dhabi Petroleum Institute and the Masdar Institute will merge.

Means of Implementing Mergers:

It is symptomatic of times when economic conditions appear favourable to business growth that businesses expand rapidly, but not necessarily in the most cost-effective and streamlined manner. When economic conditions change and become less favourable, as during present times, it becomes more important for businesses to operate in a more cost-effective and efficient manner in order to maximise profit margins and under-cut their competition by reducing their costs base. An important tool in the drive to rationalise and reduce costs is the merger of operations, where circumstances allow and where benefits can be gained. This can assist to cull the profligate and inefficient corporate structuring that often flourishes when businesses are focusing more on keeping up with burgeoning and evolving client demand, rather than on optimal corporate structure planning.

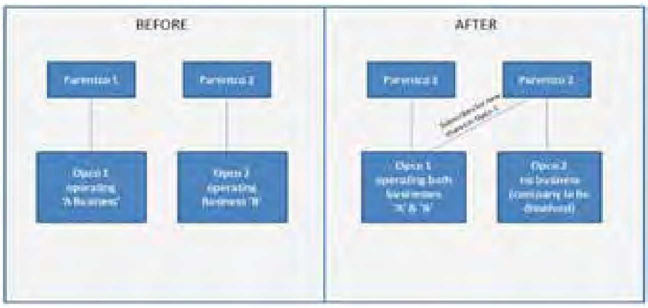
There are a myriad of different means by which companies or organisations can merge with one another. Each different mechanism will be selected for particular reasons and will produce a different outcome. The three classic means of effecting a merger of corporate entities are as follows:

1. Common Holding Company

This would involve bringing different companies/businesses together under a common holding or parent company. This can assist in slimming down the management structure, facilitating the sharing of resources and support functions as well as enabling the uniform implementation of policies and procedures across a merged group, together with aiding access to finance for the companies and businesses brought together by the merger.

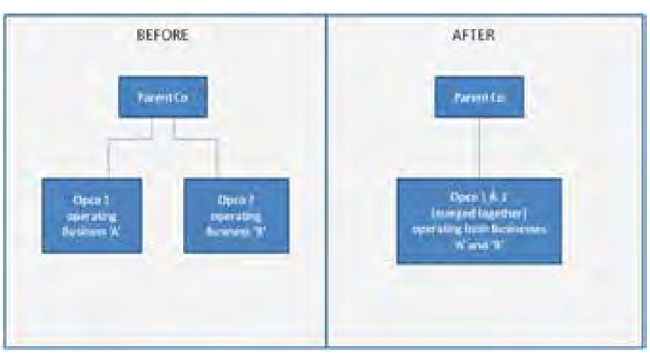
2. Business and Assets Transfer

Such a transaction involves transferring a business, assets and personnel from one or more companies into another company, thereby merging the businesses of the two or more companies into a single company structure ("Business Transfer"). This may engender each of the advantages described under 1. above as well as reducing the number of companies within a group, further allowing for synergies between business-streams to be exploited and offering a greater opportunity to reduce management, support personnel and infrastructure (such as office space, workshops, machinery and so on). Typically, the company or companies that transfer their businesses, assets and personnel to another will in due course be wound-up and dissolved.



3. Legal Merger

A legal merger pursuant to the UAE Commercial Companies Law No. 2 of 2015 ("CCL") ("Legal Merger") enables different companies to be fused together to become one. All of the businesses, contracts, other assets and liabilities, as well as personnel will come together within the sole surviving merged company. This procedure, which is made possible by articles 283 to 291 of the CCL, may engender all the advantages under 1 and 2 above, but without the need (as under 2.) to seek the consent of each and every customer, supplier and employee of the businesses to be brought together and to effect transfers of each of them.



Furthermore, under 2. above, given that the UAE does not have a regime similar to the European Transfer of Undertakings regulations, whereby personnel working within a particular business will transfer with that business when a merger occurs, in the UAE there will in effect be a negotiation with each and every employee, who needs to agree to terminate their current employment contract and enter into a new one with the company that survives the merger.

A Legal Merger can therefore make for a much cleaner and neater solution and can substantially reduce the costs and timeframe of implementing a merger.

If properly planned, a Legal Merger of businesses previously operating within separate companies can bring benefits in terms of operational cost-savings through reducing expensive management, support functions, and auditing requirements; simplifying corporate governance; affording other reductions by eliminating duplicated personnel and resources, and licensing and compliance costs; enabling synergies of ideas, technology, intellectual property, expertise, and the common utilisation of other assets and infrastructure; as well as significantly reducing the time, costs and effort in implementing the merger itself.

The former UAE Commercial Companies Law No. 8 of 1984 also provided for corporate mergers, but the new 2015 law addresses them in much more detail and offers further assurances and opportunities.

Comparison of Merger Mechanisms - Legal Merger vs. Business Transfer:

When determining which of these two types of merger mechanism will offer the optimal structuring route to achieve the desired end result, a number of key issues fall to be considered. There follows an outline description of certain key features distinguishing a Legal Merger from a Business Transfer.

Documentation: Under a Legal Merger, all of the assets of the merging companies will automatically be brought together within the surviving company without the need for them to be individually identified and transferred, so full and clear title to each asset on a transfer to the surviving company should be achieved without anything being left behind. Under a Business Transfer, it is necessary to identify each and every asset of the businesses being transferred, so that steps can be taken to ensure that each of them is effectively moved across, which will in all likelihood involve a complex series of enquiries and a certain amount of transfer documentation.

Steps involved: The CCL requires that shareholders holding at least 75 per cent of each company involved must pass resolutions to approve a Legal Merger. This is interesting, because it means that shareholders holding up to 24.9' per cent of the shares in non-surviving companies can be forced to accept the exchange of their interests in the share capital of such companies for shares in the surviving company. This contrasts markedly with the well-recognised lack of a 'squeeze-out' mechanism in a normal corporate acquisition or tender offer scenario in the UAE, where any small minority of shareholders opposed to a sale of all the shares in a company can frustrate such a sale by digging in their heels and refusing to cooperate.

Therefore, on approval by a 75 per cent majority of the shareholders of each company involved and a green-light from each of the relevant supervising governmental authorities, a Legal Merger will result in all shareholders of the non-surviving company automatically becoming shareholders in the surviving company.

Conversely, in a Business Transfer, the cooperation of each shareholder is required, because for them to acquire new shares in the surviving company simultaneously with a transfer of assets out of the non-surviving company, the shareholders would each individually need to consent and subscribe for new shares in the surviving company. Further, rather than the business, assets and personnel automatically transferring into the surviving company, they need painstakingly to be identified and transferred, if not by simple delivery, then by whatever legal and documentary process applies to them. Furthermore, the non-surviving entity will need separately to be wound-up and dissolved, requiring it to be placed into liquidation, the appointment of a liquidator and the various procedures to be complied with to bring about its ultimate dissolution. Typically, it will only be when the non-surviving company has relatively few assets and contracts, which can easily be shifted to the surviving company, that it may be faster and more convenient to undertake a Business Transfer instead of a Legal Merger.

In terms of timing, for a Legal Merger, once shareholder resolutions have been adopted and relevant governmental approvals have been obtained (and assuming no qualifying objections are raised to hinder the merger), then the merger will be effective immediately following its date of registration in the relevant commercial register. Whereas, for a Business Transfer, the timeframe will depend on the nature of the assets and

contracts to be transferred. Typically, for the negotiation and novation of all key contracts, the identification and transfer of all relevant assets, for the revision of the licence of the surviving company with approvals from each relevant supervising authority, and for the winding-up and dissolution of the non-surviving companies, the process overall can be expected to take significantly longer.

Third party consents: For a Legal Merger, third party consents will be required only for contracts specifically stating consent requirements in case of a corporate restructuring (which are likely to be few in number). Whereas, in a Business Transfer, there will likely be a need to obtain many more third party consents to the transfers of assets and the novation of business contracts, because every customer, supplier and financier will need to agree (either explicitly or impliedly) to the termination of its contract with each non-surviving company and its entry into a fresh contract with the surviving company. It is worthy of note that in a Legal Merger, the CCL enables creditors and other interested third parties to petition the court within 30 days if they oppose a proposed Legal Merger. In considering the petition, the court will look to see whether the petitioning parties would likely be unfairly prejudiced by the implementation of the merger.

Transfer of employees: One very significant area in which a Legal Merger scores over a Business Transfer relates to human capital arrangements. In a Legal Merger, it is possible for personnel of merging companies simply to be brought together with merely an amendment being made to the files of the labour and immigration authorities, rather than the tedious and costly cancellation of work permits and visas by the non-surviving company and the grant of new ones by the surviving company as their new employer and sponsor. Accordingly, the cost-saving potential of a Legal Merger in this respect can be very significant for businesses with substantial numbers of employees.

Accounting: Other potential advantages arising out of a Legal Merger, that are not available when effecting a merger by way of a Business Transfer, include the merging of profit and loss, and balance sheet statements. For instance, it can be possible for the surviving company to utilise the profits and losses on the financial statements of the non-surviving company to its advantage, which is not possible where the non-surviving company will remain separate and simply be wound-up and dissolved.

Further, in a Legal Merger, the share capital of each of the companies involved will be merged resulting in the merged company going forwards with an enhanced paid-up share capital. In most jurisdictions, where taxation is a key feature of planning corporate transactions, an assessment of the tax effects of either merger mechanism will be critical. Due to the scant nature of the UAE taxation regime, tax will likely be of little significance, but in most of the other jurisdictions of the GCC and Middle East region, tax planning will feature in designing a successful merger.

Closing Comments:

The new CCL opens the door further for companies to reap the benefits of effecting corporate mergers to rationalise business operations at less cost. From a legal perspective, a Legal Merger, whereby one surviving company remains following the merger of two or more companies, often represents a particularly attractive route. This is due to the various reasons summarised above, but in essence the time, effort, disruption to business and impact on relations with third parties (customers, suppliers and financiers) will be significantly reduced, as typically will be the costs of proceeding with a Legal Merger.

Ultimately, when preparing for a merger structure, it is important to consider the optimal transaction structure. This article deals briefly with just a few of the key issues pertinent to planning and implementing a merger transaction, but its principal aim is to highlight the opportunities for the rationalisation of resources and cost-savings that mergers, and the implementation of them by different means, can bring about. Accordingly, it is important to assess the steps, features and timeframes applicable to a Legal Merger, a Business Transfer or another form of merger, taking account of the nature and extent of the assets, contracts and consents involved, in order to identify which structure is preferable in the context of a particular business amalgamation.

Dean O' Leary
Partner
Dubai, UAE
d.oleary@tamimi.com

Litigating and Arbitrating Construction Disputes in Dubai

Non-lawyers who find themselves involved with construction disputes may benefit from a basic understanding of how they are formally resolved in Dubai. This article provides a general overview of litigation, ad hoc arbitration and institutional arbitration in the context of construction disputes.

Litigation

Dubai is no different to any other jurisdiction in that an aggrieved party has a constitutional right to have its grievances heard in the local courts. What makes Dubai different is that it has two distinct court systems operating (some might say competing) within the same Emirate.

On the one hand there are the traditional local courts in what is known as 'onshore' Dubai. Whilst on the other hand there is the separate legal jurisdiction, known as 'offshore' Dubai, which is found within the geographical free zone district known as the Dubai International Financial Centre ('DIFC") and which has its own courts, i.e. the DIFC Courts.[1]

The onshore courts apply local laws, including the UAE Civil Code and UAE Civil Procedures Laws, both of which are influenced by the sharia. All advocates are required to be Emirati and all proceedings (written and oral) are conducted in Arabic.

The offshore DIFC Courts, however, are modelled on the English Commercial Court and the substantive laws which apply in the DIFC closely resemble English common law (indeed, the latter acts as a default source of law). Its procedural rules are based on the English Civil Procedure Rules, proceedings are conducted in English and there is a system of binding precedent.

For the purposes of this article, only litigation in the local (non-DIFC) courts is considered.

In terms of court structure, there is a Court of First Instance, Court of Appeal and a Court of Cassation. There is no system of binding precedent, but relevant Court of Cassation judgments are highly persuasive. There are no specialist construction courts or judges.

Proceedings are started by filing a claim (Memorandum) along with payment of a court fee. The claimant will include the documents it relies on and is not obliged to disclose documents which are adverse to its own case. If not already in Arabic, these documents will need to be translated before being filed with the court.

Next, the court will fix a hearing date (normally within a month) and serve the claim on the defendant.

At this first hearing the legal representatives of both parties will present their respective Powers of Attorney. Once the Powers of Attorney have been presented the courts will fix a date for the defendant to file its defence (a period of 2-3 weeks is normally allowed for this). The defendant can file a counterclaim with its defence.

As proceedings continue it is not unusual for there to be numerous exchanges of documents and each party asking the court for time to respond to such disclosure.

At some point the judge will take the view that the parties have sufficiently presented their respective cases and reserve the case for judgment. At this juncture, and if the judge decides that the case is sufficiently complex, a court appointed expert may be appointed (occasionally, this appointment may be made much earlier, especially in the case of urgent matters).

Whilst it is highly unlikely that the local courts will hear evidence from party-appointed experts in construction disputes, it is possible (sometimes necessary) that their reports will be used in the presentation of a party's case in front of the court appointed expert. Therefore, it is crucial that a party engages an experienced construction litigator in the local courts who knows what level of detail will be required in preparing and presenting a case before the court appointed expert.

Upon receipt of the court appointed expert's report the court will fix a date for judgment. If an expert is involved the whole process can take up 2 years from the filing of the claim until a Court of First Instance judgment is delivered.

Any appeal from the Court of First Instance must be made within 30 days of the date of judgment and appeals can relate to both fact and law, which effectively means a rehearing. Any appeal from the Court of Appeal must again be made within 30 days but can only be made on the basis of a point of law. Interestingly, no permission is needed because there is an automatic right of appeal.

Whilst it is possible for the local courts to make an award of inter partes legal costs in favour of the winning party for its attorney's fees, such an award will be minimal.

In terms of evidence, the local courts will very rarely entertain live witness testimony. The proceedings are generally conducted on a 'documents only' basis with submissions on law made by the local advocates. Importantly, the 'without prejudice' rule does not apply in 'onshore' Dubai.

Once a judgment has been handed down the winning party will then seek to enforce its entitlement if the losing party doesn't pay and this is normally done by way of obtaining an attachment (which operates similar to the common law injunction known as a 'freezing order') and execution via the execution court. Other than attachment orders there is no system of interim injunctive relief in the local courts, i.e. there is no summary judgment (except for some very special and limited circumstances), which can cause problems in terms of enforcing mediated settlement agreements of DAB decisions.

Ad Hoc Arbitration

For an ad hoc arbitration to work best there needs to be: (i) cooperation between both parties and their respective lawyers; (ii) the parties' lawyers need to be familiar with the arbitral process; and (iii) there should be a comprehensive arbitration law.

Before commencing an arbitration the validity of the arbitration agreement and the authority of those who agreed to it should be carefully checked. In Dubai it is advisable that a Special Power of Attorney be obtained so as to be able to agree to arbitrate and to represent a party in the proceedings (Article 58 UAE Civil Procedures Law).

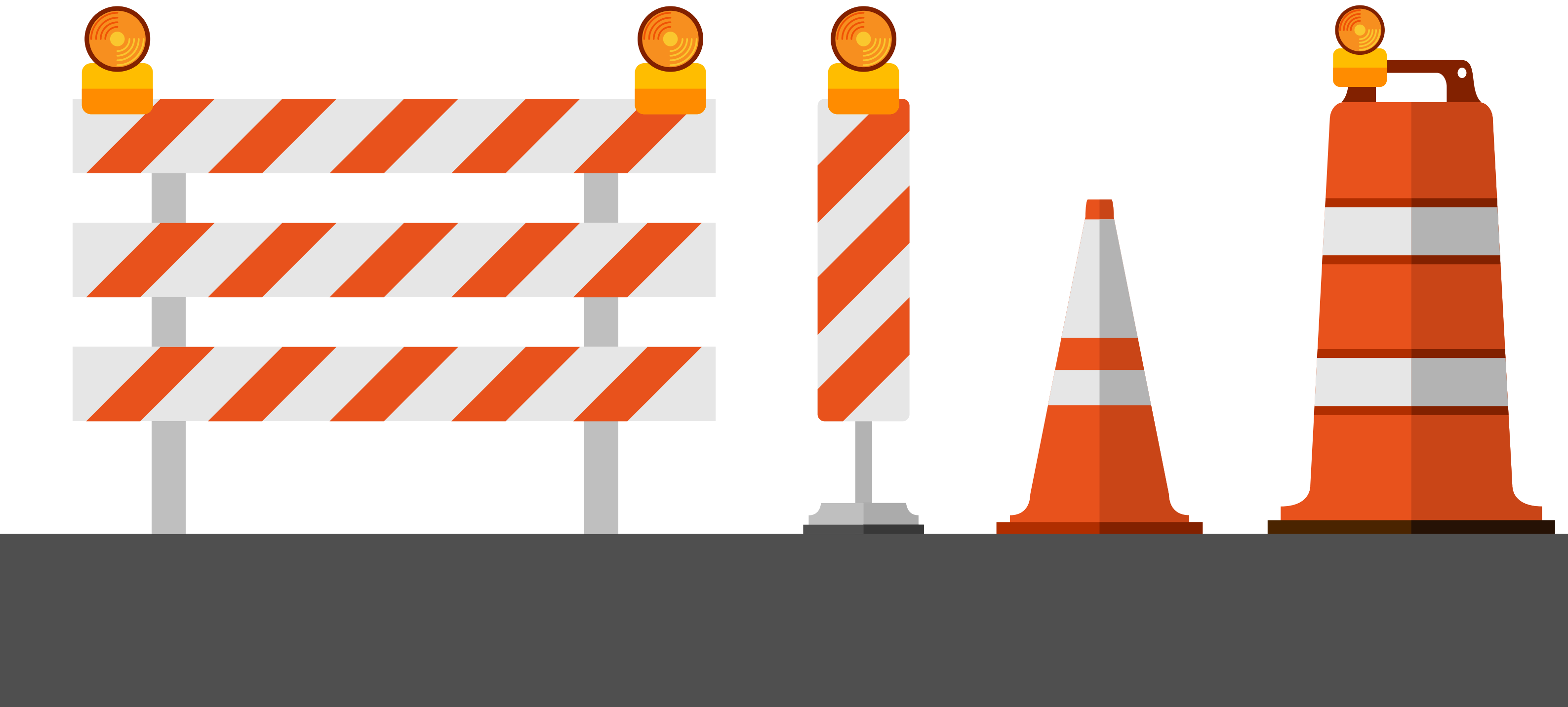
Arbitral proceedings are commenced when one party (the Claimant) serves a Notice to Arbitrate on the other party (the Respondent). Ordinarily, there is no requirement in an ad hoc arbitration for a responding party to file an Answer.

The UAE's arbitration law is silent on how many arbitrators will make up the Tribunal, other than it must be an odd number. In terms of complex construction disputes it is usual to agree on a 3-person Tribunal. Unless such matters can be agreed, there is a risk that the local courts will decide that a sole arbitrator is to be appointed and who that person will be, which would defeat one of the benefits of party autonomy.

Unlike an institutional arbitration, in an ad hoc arbitration the parties will generally enter into direct contracts with the members of the Tribunal by way of Terms of Appointment.

Within 30 days of being constituted the Tribunal will be required to notify the parties of the date for the first hearing.

One of the most crucial documents in any arbitration in Dubai is the Terms of Reference. This document, which is required to be signed by all relevant parties, will set out the details of the arbitration and what the Tribunal is being asked to decide.



At the first hearing (or shortly thereafter) the Tribunal will usually issue a Procedural Directions Timetable.

Because the Tribunal will have only been provided with the details of the dispute stated in the Notice to Arbitrate it will want both parties to state (i.e. plead) their respective cases in writing. This is normally done by way of a:

i. Statement of Claim;

ii. Defence and Counterclaim;

iii. Reply and Defence;

iv. Rejoinder;

As in any jurisdiction, the primary source of evidence in arbitrations in Dubai will be contemporaneous documents. However, unlike litigation in the local courts, witness evidence is the norm in an arbitration.

Depending on the issues involved, it is not unusual to see delay and quantum experts involved in construction disputes. Occasionally, there may also be a requirement for technical, property valuation and/or forensic accounting experts.

A recent trend in Dubai has been for Tribunal's to request that all evidence (documentary, witness of fact and expert evidence) be filed with the pleadings (known as 'memorial' style pleadings). Whilst this may work well in general commercial arbitrations where the volume of documentation and scope of issues in dispute are minimal compared to construction, this method of pleading is extremely burdensome, time consuming and costly in complex construction arbitrations. This is a reason why it is important that the selection of the members of the Tribunal (including the chairman) be carefully made because a Tribunal not experienced in construction disputes may have little or no experience of what is entailed in preparing and presenting such a case, which means both parties may be disadvantaged by possibly being ordered to comply with unreasonable and unrealistic deadlines.

The proceedings will culminate in an evidentiary hearing. The purpose of this final hearing is to allow both parties to present their respective cases and allow the other side and/or the Tribunal to ask questions. Immediately prior to and after the hearing both parties will normally be required to make written submissions.

During the evidentiary hearing the witnesses are excluded from hearing the evidence of others, though this rule is generally relaxed for the experts by way of an agreement between the parties. All witnesses are required to give their evidence under oath. Importantly, a Tribunal may continue with the proceedings in the absence of a non-participating party.

According to the UAE's arbitration law, the final award must be made within 6 months of the first hearing. However, it is quite usual for the Tribunal to approach the parties for their consent to grant an extension to this six-month period.

In complex construction arbitrations it can take between 18 to 24 months, sometimes longer, from the commencement of proceedings through to the issuance of a final award.

As with an institutional arbitration, it is imperative that the arbitrators sign every page of the final award, that it be dated and state the place where it was issued (i.e. state the juridical seat). The final award should include the facts of the dispute and the legal basis for reaching its conclusions and the arbitration agreement should be included. Unless the parties have agreed otherwise, the final award should be issued in Arabic; hence, the importance of setting down the language of the arbitration in the arbitration clause.

There is no legal basis for appealing against a final award. However, losing parties often deploy arguments to try and annul (i.e. set aside) a final award when a winning party attempts to have the award enforced in the local courts.

The UAE's arbitration law does not cater for the award of inter partes legal costs, so, unless the same was made an express issue for the Tribunal to decide upon in the Terms of Reference, there would be no legal basis for the Tribunal to make an award of legal costs.

Institutional Arbitration – Dubai International Arbitration Centre ('DIAC')

Parties are at liberty to use any institution to administer the arbitral process. The most commonly used institution in Dubai is the Dubai International Arbitration Centre and the DIAC Arbitration Rules 2007.

In order to commence arbitration, a party must file a Request for Arbitration and pay a registration fee. The Request must contain, amongst other things, a description of the nature and circumstances of the dispute, a statement of the relief sought, comments concerning the number of arbitrators and the name of any nominated arbitrator.

DIAC will be responsible for serving the Request on the Respondent.

The Respondent has 30 days from the date of receipt of the Request to file an Answer along with its counterclaim (if any), though this date can be extended. In the unusual event that the Respondent fails to file an Answer the proceedings will continue.

The next step is for DIAC to fix an advance on costs. The advance on costs is an amount that DIAC considers will cover the fees and expenses of the Tribunal and DIAC's administrative costs. DIAC will request payment of an advance on costs from the parties in equal shares; however, if one party fails to pay its share the other party must pay the full amount of the advance in order for proceedings to continue. The advance on costs will ultimately form part of the costs of arbitration.

In terms of the number of arbitrators, the DIAC Rules default to a sole arbitrator in case of no agreement otherwise.

The arbitral file will be sent to the Tribunal as soon as it is constituted, provided that the advance on costs has been paid.

Although not expressly referred to in the DIAC Rules, upon receipt of the file the Tribunal will usually draw up the Terms of

Reference, which will govern the scope of the arbitration. The Terms of Reference are usually discussed at the preliminary meeting along with a Procedural Directions Timetable (which sets out what needs to be done going forward, including dates for filing pleadings, the submission of witness statements, and a date for the evidentiary hearing).

If the parties did not file detailed Statements of Case with their Request or Answer then they may be required to file a Statement of Claim or Defence (and Counterclaim) in as short a period as 30 and 60 days respectively of the Tribunal's constitution, though experienced counsel and arbitrators will usually agree to extend these periods for complex construction disputes (it should be remembered that the DIAC Rules were not drafted specifically for construction disputes).

Unless the parties agree to hold a hearing on the papers (which would be highly unusual for a complex construction dispute), it is usual for an evidentiary hearing to be scheduled. The length of the hearing will be determined by the complexity of the case, the volume of documents and the number of witnesses (factual and expert). Generally, witness statements stand as evidence-in-chief. Witnesses are required to attend the hearing and provide their evidence under oath.

The final award should be rendered within 6 months from the date when the Tribunal received the file, but this time limit may be extended upon application to DIAC by the Tribunal, or by agreement with the parties. As with an ad hoc arbitration, it usually takes up to 18-24 months (possibly longer depending on the complexity of the case and any interim matters that arise) to obtain a final award. Again as with an ad hoc arbitration, it is imperative that the Tribunal sign every page of the Final Award, that it be dated and state where it was issued. Unusually, the DIAC Rules do not specify that the Tribunal has power to award legal costs, so as with ad hoc arbitration, the Tribunal cannot award these unless an explicit agreement between the parties is reached on the issue.

If the losing party fails to comply with the orders directed in the final award, the winning party will be compelled to commence proceedings in the local courts to have the final award enforced.

As is the case with an ad hoc arbitration, it is now possible to take onshore arbitral awards to the offshore DIFC Courts for ratification purposes in an attempt to avoid the legal grounds for challenge in the local courts. However, the losing party in the arbitration may still simultaneously commence challenge proceedings in the onshore Dubai courts. This enforcement issue, and the question of which court has jurisdiction over the matter, remains very much a hot topic and a developing area of law in Dubai.

Summary

The following table attempts to summarise the foregoing.

	Litigation	Arbitration
Advantages	• Can be quick, especially if no expert is involved • Pleadings can be relatively brief compared to common law court litigation and arbitration which saves on time and cost • Possible to make urgent applications • Less risk in being required to disclose documents which could be adverse to your own case • Little risk in having to provide oral testimony • No need to use foreign counsel • Finality of judgment • Tends to be cheaper because venue and judge need not be paid for • Little risk of a substantial adverse costs order	• Can select which law will apply to the proceedings • Can select the applicable arbitral rules • Can select the venue (neutrality) • Can select the arbitrators who should be chosen based on their specialist skills in light of the nature of the dispute • Proceedings are confidential • Allows for detailed analysis of claims and defences • Allows for a party's case to be tested and scrutinised by way of cross examination • Usually parties can request disclosure of documents • Parties are free to choose their own experts • Parties are free to use international lawyers/advocates • Usually *inter partes* legal costs can be recovered, which can be quite substantial • If they are international, awards can be enforced around the world (New York Convention)

John Gaffney
Senior Associate
Abu Dhabi, UAE
j.gaffney@tamimi.com

Malak Nasreddine
Paralegal
Abu Dhabi, UAE
m.nasreddine@tamimi.com

The Enforceability of DIAC Arbitral Awards by the DIFC Courts is Confirmed: The DRA and DIAC Join Forces

Two years ago, in the case of Banyan Tree v Meydan Group, an arbitral award rendered outside the Dubai International Financial Centre (DIFC) was enforced by the DIFC courts in circumstances where neither party was based nor had assets in the DIFC. The case demonstrated the willingness of the DIFC's courts to enforce awards rendered ian Dubai (so called "onshore awards"), but still there remained uncertainty regarding the enforceability of such onshore awards. That uncertainty appears to have been removed, at least as far as awards rendered under the rules of arbitration of the Dubai International Arbitration Centre (DIAC) are concerned.

On 20 September 2016, the DIFC Dispute Resolution Authority (DRA), a body that administers dispute resolution within the DIFC, signed a Memorandum of Understanding (MoU) with DIAC, an institution that provides dispute resolution and commercial arbitration services in Dubai, which is to facilitate the recognition, ratification and enforcement of DIAC arbitral awards in the DIFC.

The DRA was established pursuant to Law No. (7) of 2014 amending Law No. (9) of 2004 concerning the DIFC; it compromises of the DIFC Courts, DIFC Arbitration Institute, DIFC Wills and Probate Registry, and the DIFC Academy of Law. DIAC is an autonomous arbitration institution, which was established in Dubai in 2003 and is based at the Dubai Chamber of Commerce & Industry.

The DRA and DIAC have entered into the MoU with the primary objective to cooperate and exchange information for the purpose of enhancing the expedited recognition, ratification and/or enforcement of DIAC arbitral awards by the DIFC Courts. The MoU promises to be a strategic opportunity for the onshore and offshore bodies, with the express intention to create "closer ties" and achieve mutual interests. Indeed, following the signing of the MoU, DIAC launched a new office in the DIFC on 27 September 2016, further strengthening its cooperation with the DRA.

The MoU represents a significant step in Dubai's efforts to market itself as a leading arbitration hub in the region, as the onshore and offshore entities join forces for their mutual benefit. The MoU lists as one of its objectives, the revision of applicable laws, regulations and rules, and development of programmes for the "benefit of the legal community in the Middle East". The DRA and DIAC plan to further take steps to create awareness about each other and to provide insights into their respective rules and procedures. The parties also intend to explore engaging in joint marketing, joint training and joint legal community knowledge sharing. The presence of the new DIAC office in the DIFC manifests in a highly visible way the strategic collaboration between the DRA and DIAC.

As the MoU marks another step forward for Dubai as a leading regional and international arbitration hub, it remains to be seen whether Abu Dhabi will follow in its footsteps. Will Abu Dhabi Global Market (ADGM), the newly established UAE arbitral seat, follow the DIFC's lead in facilitating closer ties with onshore arbitration centres for strategic mutual benefit or take a different route altogether?

Interesting times indeed for arbitration in the UAE.

See MoU between DIAC/DRA: http://difccourts.ae/wp-content/uploads/2016/09/MoU-between-DRA-and-DIAC-20-September-2016.pdf

*This article first appeared in the Kluwer Arbitration Blog on 28 October 2016.

Aruna Mukherji
Associate
Dubai, UAE
a.mukherji@tamimi.com

Registration of Short Term Tenancy Contracts in the UAE: Part II

In Part 1 of this series published in September 2016 of Law Update, we examined the registration requirements of short term leases in Dubai, Abu Dhabi and Sharjah. Continuing on with the series, in Part II, we will go over the registration requirements of short term leases in Northern Emirates namely, Ras Al Khaimah, Umm Al Quwain, Ajman and Fujairah.

No.	Description	Ras Al Khaimah	Umm Al Quwain	Ajman	Fujairah
1.	Applicable Tenancy Laws	The Emirate of Ras Al Khaimah currently does not have a law to regulate landlord and tenant relationships. Therefore, the provisions of the UAE Civil Transactions Law No. 5 of 1985 apply to lease agreements in Ras Al Khaimah.	Umm Al Quwain Law no. (3) of 2008 regulating the Relationship between Landlords and Tenants in the Emirate of Umm Al Quwain as amended by Law No. 2 of 2011	Ajman Emiri Decree No. 3 of 2009 as amended by Emiri Decree No. 8 of 2014 promulgating the Amended Real Estate Leasing Law in the Emirate of Ajman	Fujairah Law No. 1 of 2011 concerning leases of premises in the Emirate of Fujairah
2.	Dispute Resolution Authority	Real Estate and Rental Dispute Settlement Committee deals with tenancy disputes between master developers affiliated with the Government of Ras Al Khaimah and third party tenant pursuant to RAK Emiri Decree No. 2 of 2012. For all other tenancy disputes, the matter is referred to the Courts of Ras Al Khaimah.	Rent Dispute Settlement Committee formed pursuant to Law No. 3 of 2008 Amending Law No. 1 of 2006 Regulating Relationship Between Landlords and Tenants in the Emirate of Umm Al Quwain	Rent Dispute Settlement Committee formed pursuant to Emiri Decree No. 3 of 2009 on the Promulgation of Amended Real Estate Rent Law in Ajman	Committee for Resolution of Lease Disputes formed pursuant to Law No. 1 of 2011 concerning leases of premises in the Emirate of Fujairah

3.	Leases that can be registered	Based on our discussions with the competent authorities, we have been informed that there is no prescribed tenure for short term leases in Ras Al Khaimah.	Based on our discussions with the competent authorities that whilst there is no prescribed tenure for lease agreements in Umm Al Quwain, the lease agreement for residential use are usually between 1 to 5 years. All commercial lease agreements do not exceed 1 year in tenure.	Based on our discussions with the competent authorities, we have been informed that all short term lease agreements (i.e. for residential or commercial purposes) in Ajman do not exceed 12 months in tenure.	Based on our discussions with the competent authorities, we have been informed that all short term (i.e. residential, commercial or industrial) leases not exceeding 10 years in tenure can be registered.
4.	Registration Fees	Based on our discussions with the competent authorities, we have been informed that 1% of the total rent value is payable for residential lease agreement with a minimum fee of AED 300; and 5% of the total rent value is payable for commercial lease agreements.	Based on our discussions with the competent authorities, we have been informed that a registration fee of 2% of the rent contract value is payable in cases of residential lease agreement; 10% of the rent contract value per annum is payable in cases of commercial lease agreement.	Based on our discussions with the competent authorities, we have been informed that 1% of the annual rent value is payable in cases of residential lease agreements; 10% of the annual rent value is payable for commercial lease agreements.	Based on our discussions with the competent authorities, we have been informed that if the rent amount is in the range of AED 1 to AED 15,000, then the registration fee payable is AED 300. For rent amount exceeding AED 15,000, the registration fee is 2% of the total rental value.
5.	Fees to obtain the standard contract documentation	AED 50	AED 50	Available free of cost at Ajman Municipality	AED 50
6.	Where to register?	RAK Municipality	Umm Al Quwain Municipality register the residential lease agreements. Department of Economic Affairs in Umm Al Quwain register the commercial lease agreements.	Ajman Municipality	Fujairah Municipality
7.	Effects of non registration	Based on our discussions with the competent authorities, we have been informed that non registration does not affect the validity of the lease. However, without registration a tenant is likely to face practical problems for example when renewing trade licenses, visa sponsorships and utility connections.	Article 3 of Law No. 2 of 2011 states that the government departments and institutions shall not accept any lease contract in any transaction which requires submitting a copy of the lease contract unless such lease contract is issued and approved by the Umm Al Quwain Municipality and it is valid. The current policy of the Umm Al Quwain Municipality provides for imposition of a penalty for non registration in an amount of 1% of rent value in addition to the 2% registration fees.	Article 4.1 of Emiri Decree No. 8 of 2014 provides that non registration of lease contracts will attract a fine equal to three times the contract attestation fee upon the landlord. The tenant is likely to face practical problems for example when renewing trade licenses, visa sponsorships and utility connections.	Article 4 (3) of Law No. 1 of 2011 provides that non registration of Fujairah leases would result in that none of the government or local department or institution in Fujairah would accept the tenancy contract without the registration with the Fujairah Municipality. The Fujairah Municipality would accept the lease registration by recording the date of the tenancy contract in its contract authentication register maintained by the Municipality.

Given that majority of the lease registration fee requirements is based on policies of the competent authorities in the respective Emirate, we recommend to verify with the competent authority prior to undertaking any lease registration.

David Bowman
Senior Associate
Abu Dhabi, UAE
d.bowman@tamimi.com

Maha Dahoui
Associate
Abu Dhabi, UAE
m.dahoui@tamimi.com

Tenancy Contract Registration in Abu Dhabi

Abu Dhabi Judicial Department has recently announced that with effect from 1 January 2017 tenants in Abu Dhabi will need to ensure that their tenancy contracts are correctly registered in order to be protected in the event of a rental scam.

Abu Dhabi Executive Council Resolution on the Rules and Procedures of Registration of Tenancy Contracts in the Emirate of Abu Dhabi (Chairman of the Executive Council Resolution No. 4 of 2011) created an obligation on landlords and tenants with tenancy contracts with terms of less than 4 years to register their tenancy contracts with the Tawtheeq department at the relevant Municipality in the Emirate (Abu Dhabi Municipality, Al Ain Municipality or the Western Region Municipality, as applicable). Tawtheeq carries out cross-checks with the land registration records held by the Municipalities to ensure that landlords leasing properties are the legal owners of those properties and therefore registration of tenancy contracts should ensure that there are fewer rental fraud cases.

The Abu Dhabi Judicial Department have reported that they continue to see many cases where tenants are defrauded by bogus landlords who lease properties to numerous parties, collect advance rent and then disappear before the scam is uncovered.

The primary responsibility for checking a landlord's title to a property and its capacity to lease the property remains with tenants. It is recommended that all tenants request a copy of the landlord's title deed or sale and purchase agreement (SPA) to the property and the landlord's passport copy or Emirates ID before signing any tenancy contract or handing over a rent cheque. Since the introduction of the law on the Regulation of the Real Estate Sector in the Emirate of Abu Dhabi (Law No. 3 of 2015) earlier this year, tenants should also check that the real estate broker they are dealing with has been correctly licensed and registered with Abu Dhabi Municipality ("ADM") and the Department of Economic Development ("DED"). The tenant should ask the broker for a copy of the real estate brokerage licence issued by ADM, trade licence for the real estate brokerage company issued by DED and a copy of his or her individual licence to operate as a real estate broker in Abu Dhabi issued by ADM. If a broker is unable to produce these licences then that should be a red flag to a potential tenant that the broker is operating illegally and is not a reputable business.

Tawtheeq registration also protects a tenant from the possibility that the property they wish to lease is an illegally sub-divided unit. Apartments created from the illegal sub-division of villas will not be accepted for registration by Tawtheeq. Without a correctly registered Tawtheeq tenancy contract a tenant will face many difficulties when dealing with government departments or utility providers. A Tawtheeq tenancy contract is required for water, electricity, telephone and internet connections, Mawaqif parking permits and for the sponsorship of family members.

It is primarily the responsibility of the landlord to register with Tawtheeq however if the landlord refuses to register then the tenant can complain to the Abu Dhabi Rent Dispute Committee which can order that the tenancy contract must be registered.

Edward Brown
Senior Associate
Dubai, UAE
e.brown@tamimi.com

Margaret Elder
Associate
Dubai, UAE
m.elder@tamimi.com

Regulatory Updates in the DIFC

This article is a summary of some key financial services regulatory developments that have been implemented in the Dubai International Financial Centre ("DIFC") in recent months. There have been several amendments to the Dubai Financial Services Authority ("DFSA") Rules in 2016. In this article we highlight some of the more recent changes in the DIFC and to the DFSA Rulebook that may be of interest to some of our clients who are either already present in the DIFC or who are looking to establish a presence in the DIFC.

New Intermediate SPV Vehicles

The DFSA and DIFC held a joint seminar on 31 October on structuring and the new 'Intermediate SPV' regime with the focus being on fund structuring. ('Intermediate' referring to such vehicles sitting in an intermediate position in a structure).

The Intermediate SPV is a recent development by the DIFC Authority which provides a cost effective option for establishing SPVs in the DIFC (i.e., only US$1,000) not just in respect of fund structures but across the board.

There has been the option to establish Special Purpose Companies in the DIFC previously, and this option remains, but these are comparatively expensive and process-heavy to set up. The new Intermediate SPVs will be cheaper and easier to establish. No change of law or rules has occurred as yet, but the entities are available now through standardised waivers which will apply when an application is made to the DIFC Authority.

However, the Intermediate SPVs will only be available to entities that already have a substantive presence in the DIFC (i.e., fund managers, asset managers, family offices etc).

This development is a step closer to what the ADGM offers by way of SPVs and will make life easier and cheaper as far as structuring options go for existing DIFC entities, but doesn't go quite as far as the ADGM regime due to the requirement to already have a substantive DIFC presence.

Amendments to DFSA Legislation

On 22 June 2016, the DFSA published a notice of amendments to the DFSA Rulebook based on the changes proposed in consultation paper 103 and consultation paper 105. This includes changes to the insurance regime, the AML Annual Return deadline and stipulations for communications with the DFSA. These amendments came into effect on 1 August 2016.

Changes to the insurance regime

The recent amendments have provided for the below changes to the DFSA's insurance regime:

a. Clarification that Insurers Effecting Contracts of Insurance can give advice and undertake Insurance Intermediation activities relating to their own products and those of Group members.

b. The definition of Insurance Intermediation has been expanded to cover operators of aggregation sites.
c. The exclusions to Insurance Intermediation and Insurance Management have been amended to cover various activities which are not intended to regulated as financial services.
d. Removal of the overlap between Insurance Intermediation and Insurance Management.
e. Introduction of the new defined terms 'Insurance Agents' and 'Insurance Brokers'.
f. Clarification around the application of the Conduct of Business requirements to reinsurance activities.
g. More clarity around disclosure requirement in relation to conflicts of interests arising from ownership links.
h. The Expenditure Based Capital Minimum requirement applicable to Insurance Intermediaries handling Insurance Monies has been lowered from 18 weeks of operational expenditure to 9 weeks of operational expenditure.
i. Requirements for Insurance Managers to give some additional declarations in their annual return.
j. The introduction of new reporting requirements for Insurers, including branches, and also for Insurance Managers which conduct underwriting activities.

Online Applications and Submission of Data to the DFSA

The legislative changes that were set out in Consultation Paper No.105 have now been implemented. Essentially the DFSA intend to increase the range of transactions, and interactions, which can take place online. The DFSA will introduce an online portal that will allow entities and individuals to submit electronic data directly to the DFSA. The portal will be accessible from the DFSA website, in the same way as is currently the case for the Electronic Prudential Reporting System.

In the first phase of work, which is intend to be complete by the end of 2016, various DFSA authorization application forms and the Annual AML return will be made available through the online portal.

Additionally, the timing of submission of the annual AML return has changed. Instead of being due four months' after the end of the Relevant Person's financial year, this return will in future be due by the end of September each year and the report must cover the period from August of the previous year up to and including July of the lodgement year.

Regulatory Actions

Authorised Firm conducting prohibited insurance activity in the UAE

On the 21 September 2016 the DFSA issued a Decision Notice and imposed a fine of USD 85,191 on an Authorised Firm, who is licensed to provide the Financial Service of Insurance Intermediation. The fine was imposed following a DFSA investigation conducted in collaboration with the United Arab Emirates Insurance Authority.

Under the DFSA Rulebook Authorised Firms are prohibited from intermediating a Contract of Insurance for a risk situated in the UAE unless:

a. the risk is situated in the DIFC; or
b. the contract is one of re-insurance.

The DFSA's investigation identified that the Authorised Firm intermediated contracts of Insurance for customers with risks situated in the UAE and outside the DIFC, which were not contracts of re-insurance in breach of the abovementioned DFSA Rules. The Authorised Firm also and failed to have adequate systems and controls in place to detect, monitor and prevent such activities from occurring.

DFSA concerns over Authorised Firm's AML systems and licensed activities

On the 18 of October 2016 the DFSA accepted an Enforceable Undertaking from an Authorised Firm as a result of the DFSA concerns about the firm's anti-money laundering systems and controls, and about whether it had carried out the Financial Service of Providing Custody to its clients without being licensed to do so. Although the firm did not agree with the DFSA's findings, it acknowledges the DFSA's concerns and agrees to engage an independent expert to ensure that the concerns are remedied.

The firm also agreed to pay a financial penalty of USD 60,000 to the DFSA of which USD 30,000 is payable on or by 17 November 2016. The remaining USD 30,000 is suspended indefinitely and becomes payable if the firm fails to comply with the Enforceable Undertaking.

Future Amendments to DFSA Legislation

To complete our summary of regulatory updates in the DIFC, we also feel is of importance to mention the following proposed amendments to the DFSA Rulebook that have been addressed in the below listed consultation papers. Please note all three of these consultation papers have finished their consultation period and the proposed amendments to the DFSA Rulebook will be implemented when the relevant Rulemaking instruments are issued by the DFSA. Below is a summary of the changes that each Consultation paper has proposed.

Please note the proposed changes will not come into force until the relevant Rulemaking instrument has been published by the DFSA and please also be aware that the proposals contained within the consultation papers may change. Therefore ultimately only the text of the amended Rulebook and/or Law as published in the Rulemaking instrument can be relied upon.

Consultation paper 106

The DFSA issued Consultation paper 106 due to what they felt was a lack of clarity in some areas of regulation. Therefore Consultation paper 106 proposes to provide greater clarity to the meaning and scope of 'arranging' related Financial Services, Operating a Representative Office and the Financial Promotions regime.

In summary, the Consultation paper proposes to make the following changes:

a. combine arranging and advising activities relating to credit into a new separate Financial Service of 'Arranging and Advising on Credit';

b. provide clarity on how arranging activities can be distinguished from the Financial Service or financial product to which that activity relates, such as the distinction between:

(i) 'Arranging Deals in Investments' and 'Dealing in Investments as Agent'; and

(ii) 'Arranging Custody' and 'Providing Custody'.

c. introduce clarifications about what Financial Services an Insurance Broker and an Insurance Agent require;

d. provide for some changes to the activities excluded from regulation under arranging and advising;

e. provide guidance to create clarity about the intended scope of a Representative Office licence;

f. remove the application of the Client Asset provisions to firms 'Arranging Custody'; and

g. refine the Financial Promotions regime to minimise the risk of abuse of that regime.

In light of the above proposals, when they come in force, some Authorised Firms may need Licences for a different type of activity than they currently hold. It is proposed that the DFSA would generally allow a period of six months for the firms to complete the necessary formalities to obtain the right type of Licence. Representative Offices and persons carrying out Financial Promotions which act beyond the scope of their Licences or of the DFSA Rules, as would be clarified under these proposals, would need to cease such activities immediately.

Consultation paper 107

In consultation paper 107, the DFSA is proposing changes to the Anti-Money Laundering, Counter-Terrorist Financing and Sanctions Module ('AML Module') in order to make sure that the regime remains up-to-date in light of the 2012 Financial Action Task Force Recommendations and the recent amendments made to the UAE Federal Law No.4 of 2002 and other UAE AML Legislation.

In summary, the Consultation paper proposes to make the following changes in the AML Module:

a. Amend various definitions in order to reflect updates to the UAE Federal AML Laws.

b. Provide further clarity in relation to applying a Risk Based Approach.

c. updates relating to the prohibition on dealing with Shell Banks and opening anonymous accounts.

d. Provide further guidance on what measures should be taken to understand a client's source of wealth and source of funds and when identifying ultimate beneficial owners.

e. Amend the guidance regarding outsourcing customer due diligence.

f. Amend the application of the 'Sanctions and other international obligations', the 'Money Laundering Reporting Officer' and the 'Suspicious Activity Reports' Chapters to apply to all persons that the AML Module applies to.

g. Provide guidance about the application of United Nations Security Council resolutions.

h. Provide guidance around the DFSA's processes in relation to freezing of funds or assets.

i. Provide further guidance around what activities are captured under the current Designated Non-Financial Business or Professions definition.

Consultation paper 108

In consultation paper 108 the DFSA is proposing amendments to the capital requirements for managers of collective investment funds and amendments to the rules regarding reporting suspicions of market abuse.

In relation to capital requirements for managers of collective investment funds, it is proposed to leave the required expenditure based capital minimum as it is. However the DFSA proposes to reduce the Base Capital Requirement for: a) managers of Public Funds to USD 140,000; and b) managers of Exempt Funds and QIFs to USD 70,000.

An obligation to report suspicions of market abuse to the DFSA is currently imposed on market operators (i.e. Operators of Authorised Market Institutions and of Alternative Trading Systems). However there is not an explicit obligation on Authorised Firms to report suspicions of market abuse by others for whom the firm may be acting. Therefore the DFSA proposes to amend the DFSA Rulebook so that Authorised Firms and Recognised Members are under an explicit obligation to report suspicions of market abuse to the DFSA.

Nick O'Connell
Partner
Dubai, UAE
n.oconnell@tamimi.com

Sana Saleem
Associate
Dubai, UAE
s.saleeml@tamimi.com

Rights of Data Subjects in DIFC, ADGM and QFC

While not identical, many similarities can be found in the data protection laws and regulations of the Dubai International Financial Centre ('DIFC'), the Abu Dhabi Global Market ('ADGM') (each being financial services free zones in the United Arab Emirates) and the Qatar Financial Centre ('QFC') (being a financial services licensing authority in Qatar). In this article, we focus on obligations to provide information to data subjects when gathering personal data, and the rights of data subjects to object to the processing of personal data relating to them.

Information obligations

Data controllers need to provide data subjects with certain information to ensure that the processing of such data subjects' personal data is fair and legitimate. This needs to be considered when preparing or reviewing privacy policies intended to serve as formal notification to data subjects of such personal data processing activities.

In a data protection context, a 'data controller' can broadly be understood as someone (usually a corporate entity) who determines the purposes for which personal data is processed. 'Personal data' can generally be understood as data relating to an identifiable natural person, and a 'data subject' can be understood as the identifiable natural person to whom such personal data relates. The concept of 'processing' is very broad, and can include the collection, recording, organization, storage, adaption or alteration, retrieval, consultation, use, disclosure, transmission, dissemination, combination, erasure or destruction of personal data.

Whether or not personal data is collected directly from data subjects, in each of the relevant jurisdictions data subjects must be informed of the identity of the data controller, the purposes of the intended processing of personal data, and any further information necessary to guarantee fair processing in relation to the data subject; having regard to the specific circumstances in which the personal data is collected. The latter may include:

- the recipients or categories of recipients of the personal data;
- the existence of the right of access to and the right to rectify the personal data;
- whether the personal data will be used for direct marketing purposes; and
- whether the transfer of personal data or processing of sensitive personal data is necessary to uphold the legitimate interests of the data controller recognized in the international financial markets.

Where personal data is collected directly from the data subject, information on whether replies to questions are obligatory or voluntary, as well as the possible consequences of failure to reply, should also be communicated to the data subject to ensure fair processing. Where personal data is not collected directly from the data subject, information on the category of personal data concerned should also be communicated to the data subject to ensure fair processing.

The data controller need not provide information that the data controller reasonably expects the data subject already has. Additionally, in the case of personal data not collected directly from the data subject, the provision of the information contemplated above is not required if it proves impossible to do so or would involve a disproportionate effort.

The manner in which such information is communicated to the data subject is not prescribed, although it needs to be consistent with the general obligation to process personal data fairly.

Right to access; right to rectify

In addition to the right to be provided with certain information as outlined above, the data protection laws and regulations in the DIFC, ADGM and QFC also provide data subjects with certain other rights with regard to access to, and rectification, erasure or blocking of, personal data, as well as a right to object to processing.

A data subject has the right to obtain from the data controller upon request, at reasonable intervals and without excessive delay or expense:

- Confirmation in writing as to whether or not personal data relating to the data subject is being processed and, at a minimum, the purpose of processing, the categories of personal data concerned, and the recipients or categories of recipients to whom the personal data will be disclosed;
- Communication to the data subject, in an intelligible form, of the personal data undergoing processing and of any available information as to its source; and
- As appropriate, the rectification, erasure or blocking of personal data, the processing of which does not comply with the provisions of the applicable law or regulations.

Data controllers need to provide data subjects with certain information to ensure that the processing of such data subjects' personal data is fair and legitimate.

A data subject also has the right to object to the processing of personal data at any time on reasonable grounds relating to the data subject's particular situation; and the right to be informed before personal data is disclosed for the first time to third parties or used for the purposes of direct marketing, and to be expressly offered the right to object to such disclosures or uses.

Data subject access rights do not apply to the actions of the various regulators, authorities and companies' registrars in the relevant jurisdictions if the application of such provisions would be likely to prejudice the proper discharge of the powers and functions of these entities, in so far as those powers and functions are designed to protect members of the public against dishonesty, malpractice or other seriously improper conduct.

Data controllers operating in the DIFC, ADGM and QFC need to be aware of their obligations with regard to properly informing data subjects of personal data processing involving such data subjects' personal data, and addressing legitimate data subject access requests.

Al Tamimi & Company's Technology, Media & Telecommunications team regularly advises on data and data protection issues throughout the Middle East. For further information please contact Nick O'Connell (n.oconnell@tamimi.com) or Sana Saleem (s.saleem@tamimi.com).

A Focus on Healthcare

This special edition of Law Update focuses on topics relating to healthcare, an industry which continues to flourish across the Middle East. With the prevalence of 'life-style diseases' continuing to rise, the growth in population, and the spread of mandatory health insurance, the demand for medical services will continue to increase in the region. In the GCC alone, the healthcare market is projected to grow from $40.3 billion in 2015 to $71.3 billion in 2020. The UAE healthcare market, in particular, is projected to reach $19.5 billion by 2020 through an annual average growth of 12.7 per cent, according to Alpen Capital.

Consequently, numerous organisations are seeking to take advantage of opportunities in this growing market. On page 50, our Corporate Structuring team discusses opportunities for investing in the Dubai healthcare sector by establishing a healthcare clinic.

Under government initiatives – such as UAE Vision 2021, Saudi Vision 2030, and Oman Health Vision 2050 – healthcare is identified as a key area of development. Consequently, various initiatives have arisen leading to new healthcare laws and new private public partnership opportunities to advance these goals. On page 40, our Medical Malpractice team examines one of these new laws, the new UAE Medical Liability Law. Further, on page 58, lawyers from our Oman office examine recent legislation that will affect foreign investor ownership of pharmacies in Oman.

As the healthcare market in the GCC grows, pharmaceutical companies continue to seek market share and expand their offerings. On page 34, we take a look at how pharmaceutical certificates of origin are defined across the GCC. Further, on page 48, our Intellectual Property team examines pharmaceutical trade dress protection; on page 54, our Bahrain Corporate Commercial team examines the classification of pharmaceutical products in Bahrain; and on page 60, our Qatar team looks at the treatment of cosmetics under the health authority in Qatar.

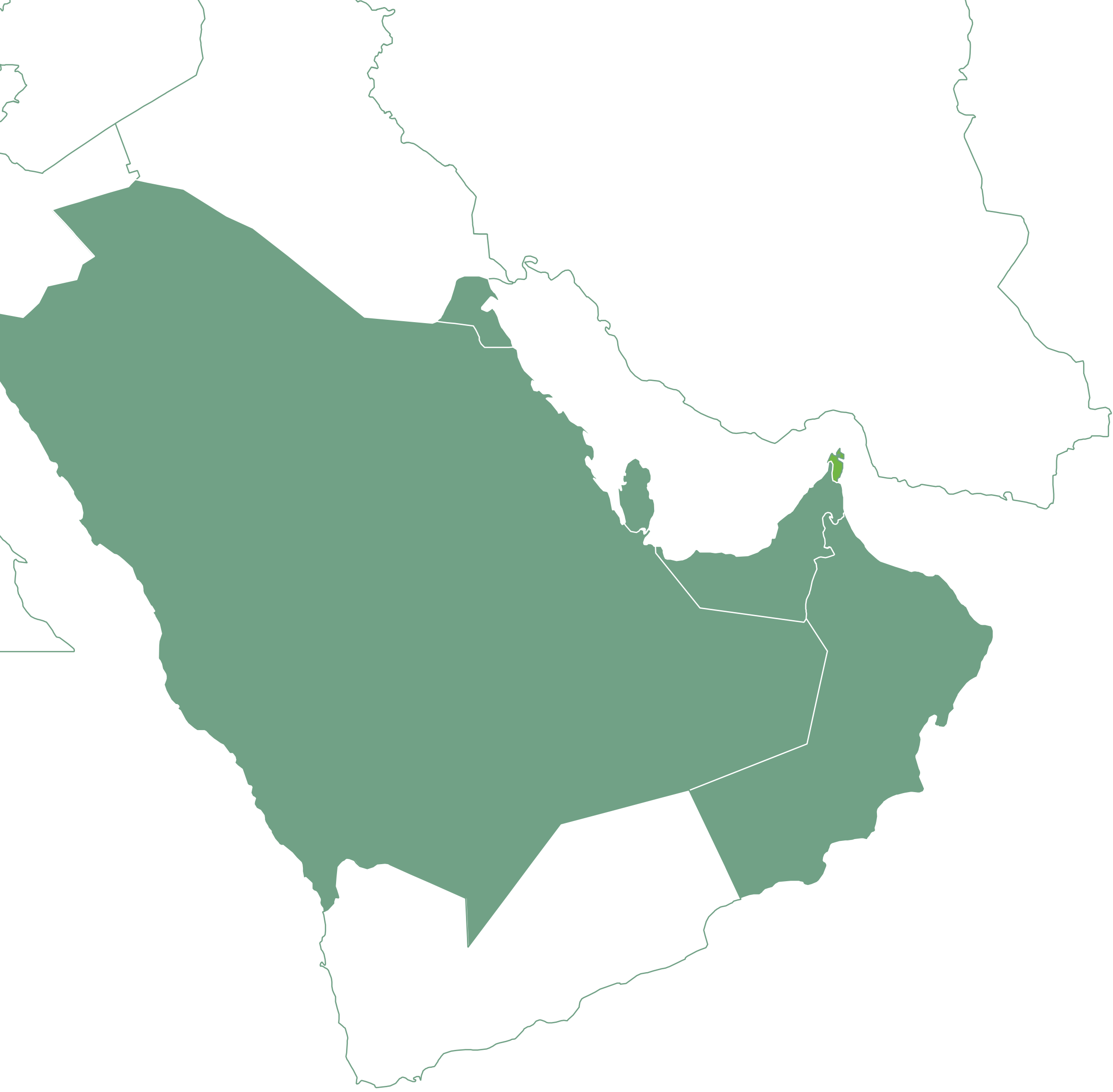
Due to the potential for false or misleading information in the healthcare industry to cause serious health issues for misled consumers, the regulators are seeking to address this issue through various controls on healthcare information. On page 45, our Technology Media and Telecommunications team examines the UAE position on testimonials and sponsorship in healthcare advertising. Further, lawyers from our Egypt office examine the advertisement of non-prescription pharmaceuticals in Egypt.

As mergers and joint ventures continue to thrive in the GCC, our Corporate Commercial team takes a look at options for re-structuring through different types of mergers on page 14. As a result of such transactions, numerous employee considerations arise. Thus, on page 52, our Employment team considers key considerations for employee transfers in the UAE.

In keeping up-to-date with the expanding regulatory environment, Al Tamimi & Company's Healthcare Sector Group continues to provide sector-specific advice through each of our specialist departments across our 17 offices in nine countries. Al Tamimi has a wealth of experience advising major medical facilities, regulators, insurance providers, private equity firms, private and public developers of healthcare facilities, medical research institutes, and medical practitioners. We look forward to continuing to serve our healthcare clients and to assist them to fulfil their business objectives in the MENA region in 2017 and beyond. We hope you will find this special healthcare edition of Law Update both interesting and enlightening; please do reach out to us if we can provide further information.

James MacCallum
Partner & Head of Healthcare
Abu Dhabi, UAE
j.maccallum@tamimi.com

Andrea Tithecott
Partner & Head of Regulatory Practice
Dubai, UAE
a.tithecott@tamimi.com



Andrea Tithecott
Partner & Head of
Regulatory Practice
Dubai, UAE
a.tithecott@tamimi.com

Pharmaceutical Certificates of Origin Required in the GCC

The importation of pharmaceutical products into Gulf Corporation Council ('GCC') states can be complicated. In previous Law Update articles, we have written extensively on the topic of obtaining product registration approvals. In this article we address the requirement to have a certificate of origin ('COO') and examine the variations in practice across GCC states.

A significant percentage of the pharmaceutical products imported into the GCC come from Europe and comply with the European requirement to have a COO. In Europe, the country of origin is determined by applying European Directive No. 952/2013 ('**European Code**') as follows:

- goods, the production of which involves more than one country or territory shall be deemed to originate in the country or territory where they underwent their last, substantial, economically-justified processing or working, in an undertaking equipped for that purpose, resulting in the manufacture of a new product or representing an important stage of manufacture;

The accepted methodology to determine the foregoing is the 'last/final customs tariff code change along the entire value chain of a certain product'. For pharmaceutical products, the last customs tariff code change is a change occurring on a bulk drug product level.

So the question is, could a European product, which already carries a COO, be sufficient to comply with the equivalent GCC requirements? The answer is both 'yes' and 'no', depending upon the local requirements of the country of import. In the GCC, some states follow the European approach, but insert a few unique differences. Unfamiliarity with these differences in either law, procedure, interpretation, or local approach can lead to products being held at customs and, in some cases, being returned to the home port.

GCC Common Customs Law

Customs procedures in the GCC states follow a regional common customs law. The Common Customs Law of the GCC Member States ('GCC Common Customs Law') was adopted by the Supreme Council at the 20th Session (Riyadh, 27-29 November 1999) and implemented only as a reference law for one year from the date adopted by the Supreme Council. It was intended to be revised in the light of the comments received by the Secretariat General from each member state in an attempt to have the law compulsorily implemented by all the customs administrations of the GCC. The GCC Common Customs Law was re-published in 2008, with the only substantive changes being made to the introductory narrative.

According to Article 25 of the GCC Common Customs Law, '[i]mported goods are subject to the proof of origin according to the rules of origin adopted within the framework of the international and regional economic agreements in force'. The phrase, 'within the framework of the international and regional economic agreements', references the rules of origin requirements found in Annex K, Chapter 1 of the Revised Kyoto Convention on the Harmonisation and Standardisation of Customs Procedures, as amended ('Revised Kyoto Convention'), which prescribes that where two or more countries have taken part in the production of the goods, the origin of the goods should be determined according to the substantial transformation criterion. Therefore, both the European Code and the GCC Common Customs Law follow the same basic principles.

A number of states in the GCC (and wider region) are signatories to the Revised Kyoto Convention, which aims to standardise customs procedures and ensure that they are consistent with the practices of international trade, including the United Arab Emirates ('UAE'), Kingdom of Saudi Arabia ('KSA'), Qatar, Oman, and Bahrain. With regard to these countries, the rules regarding COO should be the same as for the European Code; however, this is not the case. (Kuwait is not a signatory to this convention.)

The Revised Kyoto Convention prescribes that where two or more countries have taken part in the production of goods, the origin of the goods should be determined according to the substantial transformation criterion. In applying the substantial transformation criterion, use should be made of the World Customs Organisation's International Convention on the Harmonized Commodity Description and Coding System ('Harmonised System'). Each signatory state should follow the methodology set out in the Harmonised System when examining what constitutes a substantial transformation of goods. The recommended practice detailed by the Revised Kyoto Convention, Annex K, Chapter 1, is as follows:

> 'operations which do not contribute, or which contribute to only a small extent, to the essential characteristics or properties of the goods, and in particular operations confined to one or more of those listed below, should not be regarded as constituting substantial manufacturing or processing:
>
> - operations necessary for the preservation of goods during transportation or storage;
> - operations to improve the packaging or the marketable quality of the goods or to prepare them for shipment, such as breaking bulk, grouping of packages, sorting and grading, repacking;
> - simple assembly operations; and
> - mixing of goods of different origin, provided that the characteristics of the resulting product are not essentially different from the characteristics of the goods which have been mixed.'

GCC customs authorities should also accept COO forms in the format and of the size laid out in the Revised Kyoto Convention. The following table confirms how the law is currently applied across the GCC states.

Other Matters to Consider

The balance of power – imports and distributor arrangements:

Once the issue of COO is resolved, each importing GCC state will then only permit imports from a company which is duly authorised to bring the products into the country. As a general rule, in order to import and

GCC State	GCC Common Customs Law	Revised Kyoto Convention	Variation
UAE	✓	Instrument of accession	Local variation of procedure may affect imports into various Free Zones.
KSA	✓	Instrument of accession	None
QATAR	✓	Instrument of accession	None
OMAN	✓	Signatory	None
KUWAIT	✓	N/A	The applicable Kuwaiti laws provide that the site of production is part of the product licence. If the production site is changed, the licence has to be updated or it is no longer valid. Therefore, in Kuwait, the COO is linked to the site of the manufacturer.
BAHRAIN	✓	Instrument of accession	The country of origin is the country in which the Certificate of Pharmaceutical Products ('CPP') has been issued. The CPP should be legalised from the batch releaser country, which is considered the country of origin even if the bulk pharmaceutical active ingredients were manufactured elsewhere and only packed in the batch releaser country.

distribute medical products in any of the GCC states, the importing company must be a locally established company. It is possible for a company owned by both a local shareholder and a foreign shareholder to apply for registration to import and distribute products. However, foreign producers with no established corporate presence will need to either establish a company with the necessary licence, or engage a distributor, or agent, which is already registered with the various competent authorities in the country into which the products are to be imported.

Conclusion

The importation procedures and the price of many pharmaceutical products are controlled at both the GCC and local member state. It remains the case across the GCC that local ministries of health (the bodies which register the products), typically permit only one distributor per product to be registered. This stringent and often lengthy process of product registration – including product evaluation, establishing pharmacovigilance systems, obtaining product labelling and COO compliance, and other matters - assists the regulator in tracking products being brought in-country, which, in-turn, reduces the risk of counterfeit products finding their way onto the shelves or parallel imports flooding the market. It also prevents and minimizes the risk of fraud and abuse within the supply-chain by those companies engaged in anti-competitive practices. These control mechanisms are expected to strengthen over time.

Christina Sochacki
Associate
Dubai, UAE
c.sochacki@tamimi.com

Robert Roberts
Associate
Dubai, UAE
r.roberts@tamimi.com

Distribution of Pharmaceutical Products in the GCC

The Gulf Cooperation Council ("**GCC**") is one of the fastest growing markets for pharmaceutical products and one that still has significant further potential for the industry. As a result, foreign pharmaceutical manufacturers continue to seek access to the GCC healthcare markets.

In order to legitimately commercialise pharmaceutical products in the GCC, a foreign manufacture would need to either (i) establish a local presence in the relevant country, or (ii) appoint a local agent for that country. In our experience, most foreign pharmaceutical companies will not have a legal presence in the territory that is authorised to undertake distribution. There are obviously separate considerations to be born in mind in the event that a foreign manufacturer does wish to establish a local presence, such as foreign ownership restrictions and sponsorship arrangements, but these fall outside the scope of this article.

Consequently, where a foreign manufacturer does not have a local presence, it cannot directly obtain the product registration required in the country, or any other of the necessary approvals for importing, distributing, or advertising its pharmaceutical products without the use of a local partner. As a result, many pharmaceutical companies will call upon the services of a local (appropriately licensed) agent as an alternate means to procure all necessary approvals and distribute its pharmaceutical products in the country. This is a very popular, and relatively simple, method of facilitating the distribution of pharmaceutical products throughout the GCC and can provide a foreign manufacturer with valuable local knowledge and resource, allowing it to benefit from associations and sale channels that an agent may have forged over a number of years.

Nevertheless, whilst these types of arrangement can be very beneficial to a foreign manufacturer it is important that a foreign manufacturer considers the local regulatory and local law issues that could affect the pharmaceutical products on route to market. What follows is a brief overview of such considerations, but specific advice should, of course, be sought before entering a new market to ensure compliance with local laws and regulations and to obtain further insight into local law considerations that could impact on the proposed arrangement. This is certainly the case in respect of the distribution of pharmaceutical products in the GCC.

Regulatory Background – UAE Pharmaceuticals

Under United Arab Emirates ("**UAE**") federal law, no medicine or pharmaceutical preparation may be put into circulation except after registration of the product with the Ministry of Health and Prevention ("**Ministry**"). In order to register a pharmaceutical with the Ministry, a new drug application must be submitted, accompanied by various supporting documents. Specifically, the application must be made by the market authorisation holder from the country of origin, jointly with the local authorised representative. The local authorised representative must be explicitly designated by the foreign manufacturer to act in the UAE, on behalf of the manufacturer, with regard to the manufacturer's legal obligations and responsibilities.

The local authorised representative may be the licensed distributor of the product or a separate authorised representative. If the local distributor is to act as the local authorised representative as well, the distributor must show evidence of its ability to effectively fulfil the regulatory responsibilities required by the Ministry. For example, the local authorised representative is fully responsible for the product and the post-market plan for handling complaints or recall. Further, the local authorised representative is responsible for fully complying with the requirements of the Ministry after placing the product on the market.

Regarding the local agent, in order to import pharmaceuticals (and this also applies to medical devices) into the UAE, the importing company must be an individual or entity established in the UAE and licensed to import medical products. With regards to an individual, only UAE nationals may apply in their individual capacity to be a registered importer of pharmaceuticals. While in the past only companies wholly owned by UAE nationals could apply for a licence to import medical products, currently companies owned by both a UAE shareholder and a foreign shareholder may also apply for such a licence, subject to foreign ownership restrictions. However, companies with 100% foreign ownership cannot yet apply for a pharmaceutical importation licence. Therefore, for companies wishing to import pharmaceuticals into the UAE, there are two options: 1) incorporate a UAE entity in which they are a shareholder jointly with a UAE national, and undertake the licensing process with the Ministry or 2) engage a distributor agent which is already licensed through the Ministry.

UAE Commercial Agency

Typically, pharmaceutical companies will call upon the services of a locally licensed agent to distribute its pharmaceutical products in the country. Consequently, a foreign pharmaceutical company should be aware of local laws that could have application to the distribution arrangement.

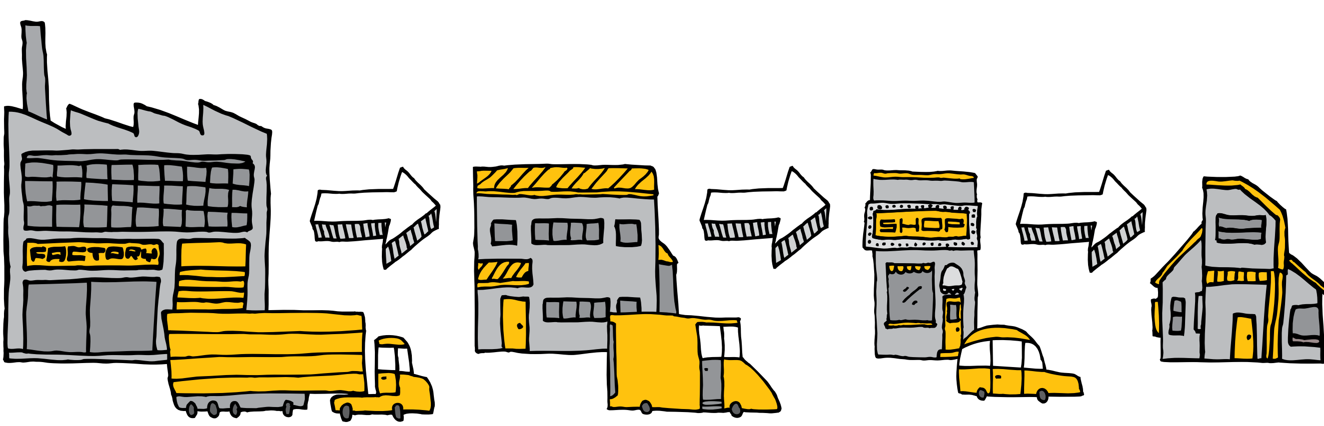
In respect of the UAE, the registration of a distribution agreement at the Ministry of Economy ("**MOE**") (more specifically the commercial agencies register) under Federal Law No. 18 of 1981 Concerning the Organisation of Trade Agencies, as amended ("**Agency Law**")) has been covered numerous times in previous Law Update articles, and is an important consideration for a foreign manufacturer to consider.

In order to qualify for registration at the MOE, the local agent must meet certain qualification criteria, which can be briefly summarised as follows:

- the agent must be a UAE national or a UAE entity 100% owned by UAE nationals;
- exclusivity must be granted for one or more of the emirates; and
- technically, an agreement also must be notarized and in Arabic (and recently the MOE has been requiring a letter, from the foreign manufacturer, confirming it has no objection to registration), though we are aware that in circumstances where these formalities have not been carried out (i.e. no Arabic version/letter of consent not provided) it is possible for an agent to approach the MOE or local courts to seek an order for registration (provided they can show that they meet the prerequisite registration criteria).

There is sometimes a misunderstanding between the requirement for a local agent to be registered as the local authorised distributor with the Ministry, as referred to above, and a requirement for the local agent to be registered with the MOE.

In practical terms, the Ministry will only allow one distributor of pharmaceutical products in the UAE as a result of local pharmacovigilance and drug safety requirements (e.g. it is much easier to deal with one local agent who is recognised as the distributor for the pharmaceutical product in respect of, say, a recall). Generally speaking, we find that it is not unusual for a local agent to insist on being granted express "exclusivity" in the distribution agreement as a result of the fact that it will be ultimately responsible for the product in UAE (i.e. given this responsibility, it would want to control the distribution of the products itself and



would not want to be responsible for the acts of other agents, notwithstanding, as mentioned above, that the Ministry will technically only permit one distributor for a pharmaceutical product to be registered with it).

Notwithstanding the commercial benefits to the local agent of exclusivity, a primary motive for an agent wanting an express grant of exclusivity under the relevant distribution agreement may be, as highlighted above, that it is one of the prerequisite criteria to effecting registration at the MOE. In the event the local agent is a UAE national or an entity wholly owned by UAE nationals, then the two principle requirements to achieve registration at the MOE would be satisfied and, in such circumstances, it would be unusual if a local agent did not try to register the agreement at the MOE given the significant protections it could benefit from under the Agency Law. Therefore, the ownership structure of the local agent is also a consideration in the event that exclusivity is being insisted upon by a local agent.

In the event that the local agent did obtain registered agent status at the MOE in respect of the pharmaceutical products listed under its relevant distribution agreement, then the local agent would be able to avail itself of the benefits afforded to registered agents under the Agency Law including:

- the agent will have exclusivity to import and distribute the relevant pharmaceutical products in the agent's registered territory (either part or the whole of the UAE subject to the definition of territory under the relevant distribution agreement);
- the agent can block third parties from importing the relevant products into its registered territory, whilst it remains the registered agent of those products at the MOE;
- the agent will be entitled to commission on every sale of the relevant products made in the agents territory, notwithstanding the fact that they may not have had any involvement in the transaction;
- the agent will be in a strong position to seek compensation upon termination; and
- the agent can only be terminated by the foreign principal by either (i) mutual consent of the parties or (ii) for "material reasons", which are not further defined under the Agency Law and which the applicable local judicial bodies have interpreted narrowly (the result being that, notwithstanding any express right to terminate the agent under the relevant distribution agreement, the foreign principal may be unable to unilaterally terminate the local agent; essentially meaning that the local agent and foreign principal remain bound, regardless of the terms of the distribution agreement, until such time as the local agent is deregistered at the MOE).

Whilst the above are all significant consideration for a foreign manufacturer to bear in mind, the two key consequences of registration that predominantly concern a foreign manufacturer are (i) the right of the local agent to claim compensation upon termination of the arrangement and (ii) the ability of the local agent to block the pharmaceutical products for which it is a registered commercial agent at the MOE. The latter especially could have a significant impact on the foreign manufacturer's ability to exploit the UAE as a market.

GCC Commercial Agency

Similarly, there are commercial agency regimes in place throughout the GCC countries that extend similar rights to the local agents, though not all afford the local agent the right to block imports of the pharmaceutical products or, where such a right to request a block on importation exists, the relevant authorities may not be as willing to grant such a request. For example, in Qatar, a registered commercial agent is entitled to submit, without notice to the foreign manufacturer, a request to the Ministry of Economy and Commerce ("**MEC**") to ban the importation of the products as a result of the termination or non-renewal of an agency agreement. However, it is our current understanding that such applications are usually declined by the MEC and we are not aware of such a ban being imposed on the importation of goods in Qatar since 2007. Notwithstanding this, there is obviously no guarantee that such an importation ban request, if submitted, would be denied by the MEC, so it is important that a foreign manufacturer take local law advice in order to minimise the potential post termination or non-renewal consequences that it could face. This again highlights the need for a foreign manufacturer to obtain local law advice in order to familiarise itself with local laws considerations and the potential impact of such on the ability to distribute its products in the region.

The above represents a general overview of the impact that commercial agency laws can have on these types of agency arrangements in respect of pharmaceutical products in the GCC and hopefully highlights the importance of obtaining local law advice in order to obtain knowledge of (i) local market practices and applicable regulatory regime, (ii) the benefits and pitfalls that a party may face upon termination or non-renewal of a commercial agency relationship, and (iii) the impact of any local laws -before any issues arise.

Ahmed Allouz
Partner & Head of Litigation - Dubai
Dubai, UAE
a.allouz@tamimi.com

Al Misbah Sabiel
Senior Associate
Dubai, UAE
a.sabiel@tamimi.com

Hiam Al Muhtadi
Associate
Dubai, UAE
h.almuhtadi@tamimi.com

The New UAE Medical Liability Law: An Analysis

The new United Arab Emirates ('UAE') Federal Law on Medical Liability (Law No. 4 of 2016) (the 'New Law') was published in the UAE Official Gazette on 15 August 2016 and has brought several changes to the previous Medical Liability Law (Federal Law No. 10 of 2008) (the 'Former Law').

These changes include the permissibility of: natural death in cases of terminally ill patients; gender re-assignment procedures, subject to certain conditions; and settlements between patients and healthcare professionals in gross medical negligence cases.

The New Law also requires all medical malpractice claims to be referred to a new medical liability committee ('Medical Liability Committee') before they are reviewed by the judicial authorities in the UAE. Further, the law also affords protection and relief to doctors in criminal proceedings by prohibiting their arrest, imprisonment, and investigation before the concerned authorities until the Medical Liability Committee issues a final report. The New Law also introduces stringent penalties against medical practitioners who commit grave medical errors and other key changes, which will be discussed in this article.

Natural Death

The New Law permits healthcare professionals to allow natural death by refraining from performing cardiopulmonary resuscitation ('CPR') on terminally ill or dying patients who are sufferings from incurable illnesses, provided that the following conditions are met:

1. the patient suffers from an irremediable medical condition;
2. all the treatment methods have been exhausted;
3. the treatment is proven to be useless in such medical condition;
4. the treating doctor advises not to provide CPR to the patient; and
5. at least three consulting doctors decide that the patient's interests require that the natural death is allowed and that CPR should not be provided (In this case, the consent of the patient, his guardian or custodian is not required).

However, resuscitation may not be denied if the patient expressly requests to be resuscitated even if resuscitation is useless for the treatment.

Gender Re-Assignment Surgery

The New Law also introduces the permissibility of gender-reassignment surgeries in cases where the person's sexual orientation is ambiguous and his/her sexual features are different from their physiological, biological, and genetic characteristics. Such permissibility is conditional on the requirement that these facts are confirmed by medical reports and the re-assignment procedure is approved by a medical committee formed by the health authority. This medical committee must also refer the individual to a psychologist to carry out the necessary mental adaptations.

Consent

Save for emergency cases that require necessary and immediate surgical intervention to save the life of a patient or fetus, and to avoid dangerous complications, the New Law introduces a provision which permits surgical intervention in cases where the consent of a patient or his/her spouse or family members, up to the fourth degree, cannot be obtained. Such consent is permitted on the condition that a report from the treating doctor, another doctor from the same hospital, and the director of the hospital is obtained confirming the need for the surgery. This provision only applies in situations where the consent of the patient or his/her spouse or family members, up to the fourth degree, cannot be obtained and will not be applicable if the patient is fully competent.

Disclosure

Provisions pertaining to disclosure were also amended by the New Law to permit the disclosure of patient information upon the request of the health authority for the purpose of protecting public health (subject to the terms and conditions set by the Executive Regulations of the New Law) and if the disclosure was made by the physician in self-defence before the investigation authority or any judicial authority.

The New Law permits healthcare professionals to disclose a patient's medical records to support their defence in legal claims and will safeguard doctors from any liabilities in the event a patient raises arguments pertaining to the prohibition against the disclosure of confidential patient information.

Medical Liability Committee

The New Law states that the new Medical Liability Committee of doctors specialised in all fields of medicine will be formed upon a resolution to be issued by the Minister of Health and Prevention or the health authority. The Medical Liability Committee will be responsible for reviewing medical complaints referred by the health authority, the Public Prosecution, or the courts, and will determine whether or not a medical error has been committed and the seriousness of such error. In cases of several liable parties, the Medical Liability Committee will determine the percentage of every person's contribution to such error and provide the basis

The changes in the New Law safeguard the legal interests of both patients and doctors. Consequently, the New Law is expected to enhance the quality and delivery of healthcare in the UAE and the manner in which medical malpractice cases are managed before the judicial authorities.

for its decision. The Medical Liability Committee will also determine the damages incurred by such errors, the causal link between the error and the damage, and the percentage of disability of the affected organ, if any. The committee may also seek the assistance of other experts and of whomever it deems fit to perform such duties. This Medical Liability Committee will be subject to the provisions of Federal Law No. 7 of 2012 (Regulating the Profession of Experts before the Judicial Authorities) provided that they do not conflict with the provisions of the New Law. The Executive Regulations that will be issued within six months from the date the New Law came into force will provide information on the formation of the Medical Liability Committee and the rules and procedures of its work.

The Higher Committee for Medical Liability ('Higher Committee') established under the Former Law will continue to review medical malpractice claims referred to it by the authorities until the Medical Liability Committee is formed.

Civil Claims

The New Law provides that civil claims filed due to medical malpractice will not be accepted unless the

medical claim has been referred to the Medical Liability Committee. Hence, patients can only pursue civil claims for monetary compensation after their medical claims have been brought before the appropriate health authority, referred to the Medical Liability Committee, and a final report is issued.

Under the Former Law, patients who filed claims for monetary compensation directly before the court, without going through the health authority, had their cases heard by the court without any restrictions or prior requirement for the medical claims to be filed at the health authority and reviewed by a medical committee.

It is not clear whether this new mandate extends to the filing of claims before the Settlement Centre of the Dubai Courts for the appointment of medical experts. However, we are of the view that such required referral to the Medical Liability Committee is only limited to compensation claims before the civil courts.

Criminal Medical Negligence Claims

The New Law permits patients to file medical malpractice complaints before the Public Prosecution and requires the prosecution to refer medical malpractice complaints directly to the competent health authority to take the necessary actions. The New Law also prohibits the investigation of healthcare professionals, and their arrest or temporary imprisonment, until the health authority provides a final medical report confirming gross medical error on the part of the involved physician.

This provision affords protection to doctors in criminal proceedings and will ensure that they are not taken into custody, questioned, investigated, and arrested unless it has been determined through a final report issued by the Medical Liability Committee or the Supreme Committee, defined herein, that they committed a gross medical error. In addition, this provision appears to be limited to cases where doctors commit grave professional errors which amount to criminal offences under UAE law and does not extend to civil liability for medical malpractice. Hence, if the Supreme Committee or Medical Liability Committee determines that a doctor is not liable for gross medical negligence, then the involved medical professional may not be held liable for criminal medical negligence.

Referral of Medical Complaints to Health Authorities

The New Law requires all medical malpractice complaints to be referred to the relevant health authority and the authority will assign the complaints to the Medical Liability Committee. The Medical Liability Committee will issue its opinion in all medical malpractice cases following its review of the facts, medical files, investigations, and other facts and information available to the Medical Liability Committee. The Medical Liability Committee will provide the health authority with its opinion within 30 days from the referral date. Such period may be extended to a similar period(s) subject to the approval of the health authority following the Medical Liability Committee's request.

It is pertinent to mention that, prior to the enactment of the New Law, patients had the right to pursue medical malpractice complaints before either the appropriate healthcare authorities or the judicial authorities at any time; however the New Law strictly requires all medical malpractice claims to be referred to the Medical Liability Committee before they are reviewed by the judicial authorities. In this respect, patients must first file medical complaints before the relevant health authority and the authority will in turn assign the complaints to the Medical Liability Committee.

We are of the view that these provisions could expedite the duration of medical malpractice cases before the judicial authorities and possibly discourage patients from proceeding with legal proceedings against healthcare professionals if the Medical Liability Committee finds that the involved physician(s) did not commit medical malpractice.

Grievances Before the Medical Liability Committee

Healthcare professionals and complainants are permitted to challenge the report of the Medical Liability Committee before the appropriate health authority within 30 days from the date they are notified of the committee's decision. The health authority will refer the grievance, the committee's report, and all relevant documents related to the complaint to the Supreme Committee for Medical Liability (the 'Supreme Committee').

The Medical Liability Committee's decision will be deemed final if no grievances are filed within the above mentioned time-frame of 30 days, after which the parties will not have the opportunity to challenge the committee's report before any other authority.

Supreme Committee for Medical Liability

The New Law sets out the formation of a new Supreme Committee responsible for reviewing grievances filed by healthcare professionals and patients against reports issued by the Medical Liability Committee. The Supreme Committee's tasks will be set out in the resolution to be issued by the Minister of Health and Prevention.

The Supreme Committee's findings are deemed final and will not be subject to any appeals or grievances before any authority.

Under the Former Law, the Higher Committee was established to provide its technical opinion in medical malpractice cases upon the request of the Public Prosecution, the UAE courts, or the health authorities. Healthcare professionals and patients also had the right to request the court or the Public Prosecution to refer medical malpractice cases to the Higher Committee in legal proceedings. However, the position under the New Law has changed by introducing the new Medical Liability Committee to review and opine on medical malpractice cases before they are heard by the judicial authorities, and a Supreme Committee whose role is primarily to review grievances filed by both patients and healthcare professionals.

Penalties

The New Law also introduced penalties against physicians who commit the following offences:

- a prison sentence of not less than 3 years and not more than 10 years to any physician who conducts sex-change procedures on patients.
- physicians who refrain from treating patients in emergency cases or interrupt their treatment, if the violation affects the safety of the patient's body, will be subject to a fine of not less than

AED 10,000. The same penalty is also applicable to doctors who conduct unnecessary medical or surgical procedures on patients without their informed consent.

- imprisonment for a period of not more than one year and/or a fine of not more than AED 200,000 to medical practitioners who commit gross medical errors. If the gross medical error results in death, the penalty will be imprisonment for not more than two years and /or a fine of not more than AED 500,000, and can extend to imprisonment of not more than two years and a fine of not more than AED 1,000,000 if the gross medical error was committed under the influence of alcohol or drugs.

These penalties will supersede the ones set out in any other legislation following the publication of the New Law. However, the disciplinary penalties found in other laws shall apply to violations for which no penalty is set under the New Law.

Settlement

The New Law permits patients, their heirs, or attorneys to settle with medical practitioners before the health authority in cases where gross medical errors are committed, and the authority will refer the agreed settlement to the Public Prosecution. In addition, the agreed settlement can also be filed or submitted before the Public Prosecution, and at any stage of the complaint, regardless of the status of the action, and after a judgment becomes final.

The settlement between the parties will result in the forfeiture of the criminal action and suspension of the penalty, even in circumstances where reconciliation is reached during the execution of the penalty. However, the reconciliation between both parties will not prejudice the victim's right to resort to the civil courts to claim compensation.

This settlement provision introduced a drastic change to the Former Law where no such settlement mechanism was available. In the past, even if the patient and the medical practitioner settled the case between them, the Public Prosecutor could still move forward with a criminal charge on the basis of public interest.

The reconciliation provision will encourage patients, or their family members, to settle with doctors in medical malpractice claims and may safeguard doctors from being subjected to criminal liability for committing gross medical negligence. The reconciliation between the parties even extends to cases where final verdicts have been issued by the criminal court and penalties have been imposed against healthcare professionals. The effect of the reconciliation will result in the withdrawal of the criminal case against the implicated healthcare professional.

Nonetheless, the settlement between the parties before the health authority or in criminal proceedings will not prevent the victim from pursuing civil proceedings for compensation against the healthcare professional. Despite the above mentioned reference in the New Law, the parties can agree on settlement terms which extend to the waiver of civil actions against the involved healthcare professional.

The Previous Medical Liability Law

The Former Law will be repealed by the New Law while the Cabinet Resolution No. 33 of 2009, regarding the Executive Regulations of the Former Law, and the resolutions issued by virtue of the said law will remain in force until the Executive Regulations of the New Law are issued, without prejudice to the provisions thereof.

Conclusion

The procedures established in the New Law will ensure that healthcare professionals accused of malpractice are not prosecuted until the Medical Liability Committee or the Supreme Committee issues a final report, and will mandate that patients submit their claims to the health authority to be reviewed by the Medical Liability Committee in order for civil claims for compensation to be admissible to the courts. The New Law also clarifies the events under which CPR may be withheld, gives patients the right to undergo gender-reassignment procedures (subject to certain conditions), and prohibits physicians from undertaking unnecessary medical or surgical procedures on patients without their informed consent. The Law also provides a grievance process that protects both patients and doctors by affording them with the right to have their appeals thoroughly reviewed by the Supreme Committee.

The changes in the New Law safeguard the legal interests of both patients and doctors. Consequently, the New Law is expected to enhance the quality and delivery of healthcare in the UAE and the manner in which medical malpractice cases are managed before the judicial authorities.

Fiona Robertson
Senior Associate
Dubai, UAE
f.robertson@tamimi.com

"... I Lost Ten Pounds in 5 Weeks ...": The Legal Position Of Testimonials and Sponsorships Within Medical Advertising in the UAE

The UAE has a strong regulatory regime in relation to advertising content. The National Media Council has released guidelines which all advertisers are expected to understand when promoting their products to the public. When discussing promotional content with advertisers, we emphasise the content of *National Media Council Resolution 35 of 2012 on Advertising Standards*. For advertising that relies on testimonials or on links to a celebrity, we refer particularly to the terms of Article 5.

Conditions to be applied in advertising:

1. Advertising shall not be ambiguous or obscure or void of any clear indications.
2. It shall not include any false or misleading claims or resort to exagerations, intimidation, or claim to be unique while contempting competitors, and it shall not resort to fraud and deception.
3. The advertisement shall not include images that are falsified or imitated or images of which they don't have the rights to use.
4. The advertisement shall be real and unexaggerated, not leading to confusion or ambiguity with other products or activities.

…

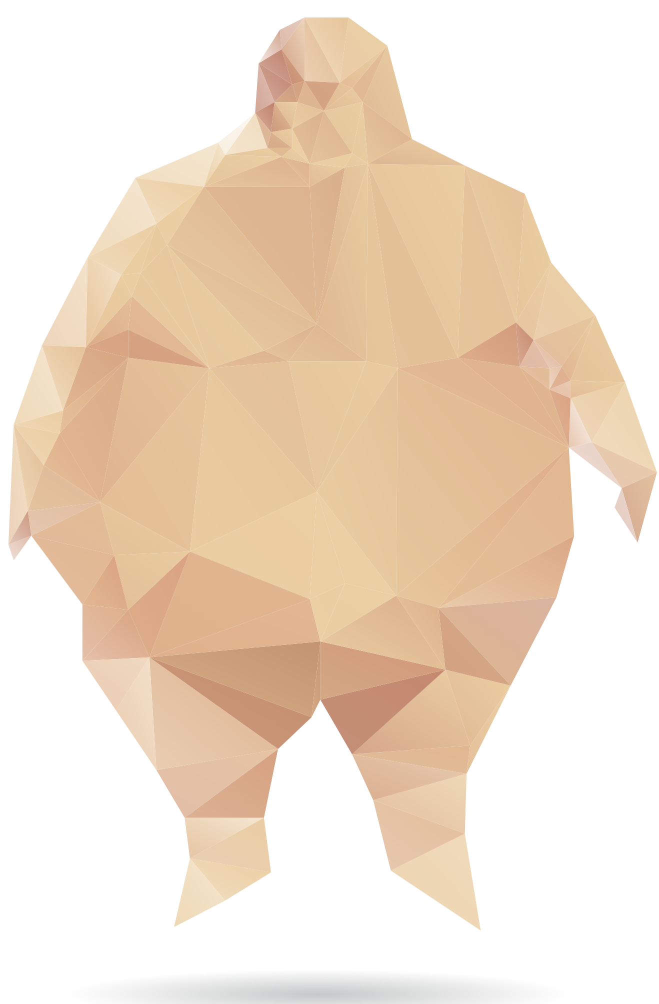
7. The advertising identity shall be clearly determined, and it shall appear as unique and separate from other editorial or media material, and there shall be limits separating the advertisement from any other material in addition to time lapses in case of radio or television broadcasting.

These days, the use of testimonials (praise received from customers that have used the product or service) and brand ambassadors (by way of the use of influencers) is becoming more common than before. Not only do advertisers understand that consumers currently have a higher level of trust in 'word of mouth' advertising but social media outlets now make it easier than ever to create and circulate such content. It's credible. It's effective. But it is also clear that, when creating and distributing testimonial advertising, advertisers must comply, at the very least, with Article 5.

When creating testimonial content generally, the terms of sub article 7 are important to keep in mind. This sub article notes that advertising material must appear as '*separate and unique*' from editorial material. This is not going to be problematic where the testimonials are contained within the advertising material itself as perhaps a boxed segment in a paid print commercial, as it is clear that it is part of the commercial itself. However, where the paid content takes the form of a 140 character Tweet within numerous other editorial or opinion tweets, then it becomes significantly more difficult to keep it clear and unique. Our view is that Tweets that are paid advertising content should be noted as such; however we note that the industry is not yet doing that as standard practice in the region at this stage.

In addition to the usual regulations for advertising, when the product is a medical service or device, then the advertiser must be more cautious. Extra regulations apply under the Health Advertisements Regulations (Ministerial Resolution 430 of 2007) (the "Regulations"). When it comes to testimonials, Article 4 (25) of the Regulations specifically states that, in any medical advertising that is produced for use within the UAE "*the evidences and certificates must be authenticated and true, not misleading, explaining the typical cases only and not obtained through illegal means*". In the UAE, as with many jurisdictions around the world, the use of false testimonials is prohibited by law. This is not singular to the UAE legal landscape and indeed some countries have much stricter regulations about the use of testimonials in relation to healthcare products or services.

The USA, always proactive when it comes to regulating consumer matters, has been watching the activities of testimonials in advertising in the medical field for some time. The Federal Trade Commission in the



USA (FTC) has issued guidelines and regularly initiates court action. A 2016 case involved the very successful prosecution of a company that was using fake news websites with phony celebrity endorsements (including false endorsements from Oprah Winfrey) alongside unsupported claims about the product's efficiency in order to promote a weight-loss product. In this matter the FTC was successful in the case and was able to claim the assets of the company as well as some assets of the shareholders.

There is no doubt that if an advertiser undertook similar practices in the UAE, they could be prosecuted by both the National Media Council and pursuant to the Resolution. Looking at the elements of Article 4 (25) in particular ("*must be authenticated and true, not misleading, explaining the typical cases only and not obtained through illegal means*"), it is clear that an advertising campaign that uses false endorsements from a celebrity and claims amazing results for everyone 'even whilst you sleep' (as was the case in the above matter) could easily be prosecuted in this country as well, under Article 4 (25).

It is important to note that this does not prevent healthcare advertisers from including endorsements if they are genuine consumer reviews – these are not prohibited – and have been properly approved as advertising material under the appropriate regime in the UAE. In addition this will not, in our opinion, stop the circulation of unpaid and unsought reviews about healthcare products and services. People will always want to 'like' and 'share' information as they choose. The fact that these may comprise positive unpaid reviews of a healthcare product or service does not mean that they should be treated as testimonials.

Figures released in the UAE indicate that a significant percentage of the penalties imposed for breaching the Resolution are arising, surprisingly, within social media and indeed a vast number arise in Twitter. Because of this, we recommend that healthcare advertisers exercise caution when engaging with anyone that will endorse their brand, including the now ubiquitous social media influencers.

When it comes to social media influencers, we recommend that advertisers take an active role in guiding them in relation to content. Many companies are developing influencer guidelines to assist with this and we recommend that these be added to a services contract that is provided to the influencer in order to ensure that the influencer understands what can and cannot be said, what will require approval from the advertiser and what needs prior approval from the regulator. Most importantly though, this will assist companies in enforceability within the jurisdiction if anything does go wrong.

The International Consumer Protection Enforcement Network (ICPEN) has this year consolidated regulations from over 60 countries into helpful documents for stakeholders wishing to undertake endorsement-style advertising. Their tips include:

- Endorsements must be truthful and not misleading;
- Material connections between an endorser and marketer of a product or service that would affect how people evaluate the endorsement must be disclosed clearly and conspicuously;
- Allow influencers to be open about other commercial relationships that might be relevant to the content;
- Disclose clearly and prominently whether content has been paid for; and
- Allow influencers to give genuine views on markets, businesses, goods or services.

Al Tamimi & Company's Technology, Media & Telecommunications team regularly advises companies on their advertising and marketing practices in the region. For further information please contact Fiona Robertson (f.robertson@tamimi.com).

Sadaf Nakhaei
Senior Associate
Dubai, UAE
s.nakhaei@tamimi.com

The Little Blue Pill: A Look at Nonconventional Trademarks for Pharmaceuticals in the UAE

It is an uncontested fact that prescription drugs are big business; brand name pharmaceutical companies invest millions of dollars each year to develop new and innovative drugs. In order to protect their new and innovative findings, pharmaceutical companies invest significant resources into registering their newly developed drugs as patents. In this regard, patent protection provides a period of market exclusivity to the owner of the patent and is an efficient tool to prevent third parties, including generic drug companies, from entering the market. However, once the patent protection period ends, the demand for brand name drugs drastically reduces as generic drug companies start manufacturing the same product at a significantly lower cost. As such, pharmaceutical companies may turn to other forms of IP protection in order to retain their market share after their patent and market exclusivity expires.

The debate over pharmaceutical trade dress protection is heated. From one standpoint, generic companies argue that brand name pharmaceutical companies are hiding under the auspices of trade dress rights for products that are no longer subject to patent protection and should be considered part of the public domain. On the other side of argument, brand name pharmaceutical companies argue that, for the period of the patent protection, usually 20 years, they have had market share of the product, therefore, they should be allowed to extend the longevity of their protection through other forms of intellectual property ('IP') and to maintain the goodwill already associated with their product.

It is common knowledge that a trademark is a name of or logo associated to a company which allows consumers to identify the product. Trade dress rights, on the other hand, can be identified as any material quality of a product or its physical appearance that serves as a brand identifier. Such physical aspects of the products can include its shape, colors and even textures. It can be argued that trade dress rights, in general, protects the overall appearance of an object when the object is intended as source identifier. Although the term 'trade dress' is not defined in the UAE trademark law, the definition of trademarks in the UAE law broadly includes certain elements qualifying such as trade dress. These include sounds, colours and shapes. In practice, trade dress rights in the UAE are commonly referred to as nonconventional trademarks. In order to be able to secure a trade dress or nonconventional trademark protection for pharmaceuticals, the applicant must demonstrate that consumers have come to associate the physical attributes of the pharmaceutical, such as colour, size and shape, with the manufacturer. Trade dress, or nonconventional trademarks, do not, however, protect functional elements. A product feature is considered functional if the product would not work properly without that element or if that element affects the cost or quality of the product.

As it applies to the pharmaceutical industry, legal protection extending beyond patents is even more important especially amid increasing concerns about counterfeit drugs which copy the appearance, packaging and name of brand name pharmaceuticals. It can be further argued that the protection allowed through trade dress, or nonconventional trademarks, serves as a public function meant to protect consumers from deception by the producers of look-a-like drugs.

In addition to the threats of counterfeit pharmaceuticals and the need to enforce nonconventional trademarks with regards to such products, there is also the argument that consumers need to be able to identify the brand by the appearance of the pills. One of the first drugs to be promoted heavily to consumers based on the unique colour and shape of the drug was Viagra produced by Pfizer. Pfizer widely advertised the appearance of the pill, which served to identify Viagra by both the pale blue colour and the diamond shape of the tablets. Given Pfizer's continued and long term efforts in advertising the appearance of the Viagra pill, consumers over the years have recognised and commonly referred to the product as 'the little blue pill'. Due to Pfizer's marketing campaign and the massive publicity surrounding the product, Pfizer was able to establish before the registering authority that consumers were able to identify Viagra as one being produced by Pfizer by the pale blue color and diamond shape of the pill. The massive advertising of the product and the product awareness amongst consumers made it easier for Pfizer to claim that the look of the pill was protectable. In view of Pfizer's registrations, generic drug makers are prevented from using the appearance of the Viagra pill (diamond shape in combination with the pale blue color) for their generic products. It can be further argued that the color, shape and size of a pill are directly related to the drug's potency, as such, maintaining a constant color and size between the actual product versus the generic product would promote patient safety.

In conclusion, to satisfy that there is trade dress right, a manufacturer must demonstrate that the color and shape of the product can be linked to the manufacturer of the tablets. As a practical matter, pharmaceutical manufacturers desiring trade dress protection for their products must carefully select and cultivate that trade dress. As discussed above, one way to attain this threshold is by investing in promotional campaigns that will cause consumers to associate the look of the pill with the particular source. In fact, given the increase in the trend of patient-directed advertising, many companies are investing a significant part of their budget on creative marketing campaigns, which can help to establish trade dress rights.

Mamoon Ashraf
Associate
Dubai, UAE
m.ashraf@tamimi.com

Investing in Dubai's Healthcare Sector through a Clinic/Polyclinic

Dubai and the other Emirates of the UAE have witnessed a population surge and it is not surprising to see that the UAE is one of the international leaders in population growth. What is particularly striking is that the country's population back in 1971 was approximately 300,000 people and that by the end of 2012, the number of residents in Dubai surpassed 2 million, which is in line with an overall population growth rate of 5 - 8 per cent per year.

It is precisely this population growth, as well as growing wealth, that offers both operators and investors desirous of tapping into the healthcare market with a potential lucrative proposition as rapid urbanization and fast paced lifestyles have contributed to a spike in chronic diseases like heart disease, diabetes and stroke. It is a fact that Dubai, in comparison with countries like the US, UK and Germany, has a low ratio of doctors, nurses and beds per 1,000 population, which may explain why in the last 5 years or so, a number of international players in healthcare have entered this market and stepped up competition.

This article provides a brief insight on how an investor that intends to invest in the healthcare segment can do so by establishing a medical clinic/polyclinic in Dubai.

Regulation of the Health System in Dubai

The Dubai Health Authority ('DHA') was formed in 2007 and is the supervisory authority tasked with regulatory oversight of the health system in Dubai. It is responsible for licensing and regulating medical professionals and healthcare facilities including hospitals, medical clinics and pharmacies. On the other hand, the Ministry of Health and Prevention oversees the licensing of drug stores.

Setting up a Clinic/Polyclinic

The process of establishing a clinic/polyclinic in Dubai is as follows:

Step 1 – Reservation of Trade Name

In order to start the formal licencing process of setting up a clinic in Dubai, a name for the limited liability company through which the clinic will operate is reserved through the Dubai Department of Economic Development ('DED'). This is completed online via the DED portal with payment of the applicable fee. Once a name is reserved, the applicant may proceed to obtain an initial approval from the DED for incorporating the clinic as a limited liability company with the relevant activity of 'family medicine clinic'.

Step 2 – Initial Approval from the DED

The initial approval stage will involve submission of the main DED application form, together with various documents such as the passport and UAE visa page of the individual (for a non UAE national) and the manager, to the DED . Upon initial approval from the DED being granted, the intended use of the premises or facility for the clinic shall require a further approval from the planning department of the DED (the approval will normally take one working day). This process will involve the submission of further documents which will include the draft lease agreement for the proposed facility together with a detailed design layout and floor plan that is approved by the Dubai Municipality.

Step 3 - Initial Approval by the DHA

Once the above steps are completed, the applicant must obtain an approval from the DHA and this process again will entail the submission of various documents, including a proposal letter or feasibility report of the proposed clinic, to the licencing section of the DHA

Step 4 - Execution of Documents

The applicant will, for the purposes of formal registration of the clinic, execute both the memorandum of association of the proposed limited liability company and the lease agreement.

Step 5 - Final Approval from the DED Planning Department and Issue of DED Licence

After registration of the executed lease agreement with the Real Estate Regulatory Agency and issuance of the mandatory Ejari certificate, the applicant will submit further documents including a copy of the executed lease agreement, Ejari certificate, DED licence application form and initial approval from the DED, with the planning department of the DED for its formal approval. The applicant can now start the process of requesting the final licence from the DED. In order for the DED to issue the final licence for the facility, the following documents would be required:

a. copy of the signed and notarized memorandum of association;
b. copy of the initial approval from the DED;
c. copy of the lease agreement;
d. copy of the Ejari certificate;
e. copy of the final approval from the planning department of the DED for use of the facility as a clinic; and
f. copy of the initial approval by the DHA.

Step 6 – DHA Application and Final Approval/Licence by the DHA

For the issuance of the licence by the DHA, the applicant is required to register on the DHA's online portal to obtain a user login from the DHA website. Once a user ID is created, the applicant can begin the formal application process for acquiring the DHA licence, which involves uploading certain documents relative to the previous steps including a request letter for final approval and licence, copy of passport, UAE visa page and Emirates ID card of the Medical Director and a copy of schematic design drawings showing the proposed floor layout with room measurements for each room/area and labelled in accordance with the clinic's services, to the DHA portal.

The final stage of the licensing process with the DHA will involve the applicant requesting a final inspection whereafter an onsite pre-operational assessment of the completed facility will be conducted by DHA inspectors.

In order for the DHA licence to be issued, certain preconditions must be fulfilled including:

- all medical equipment required for provision of the clinic's services must be installed and operational in accordance with manufacturer specifications; and
- the appointment
  - of a medical director;
  - qualified and licensed consultants/specialist physicians; and
  - other healthcare professionals,

  in sufficient numbers to satisfy the clinic's proposed functional program and to meet patient needs for all provided services and procedures.

If all DHA guidelines and requirements are met, a final approval by the DHA is given which results in a licence being issued.

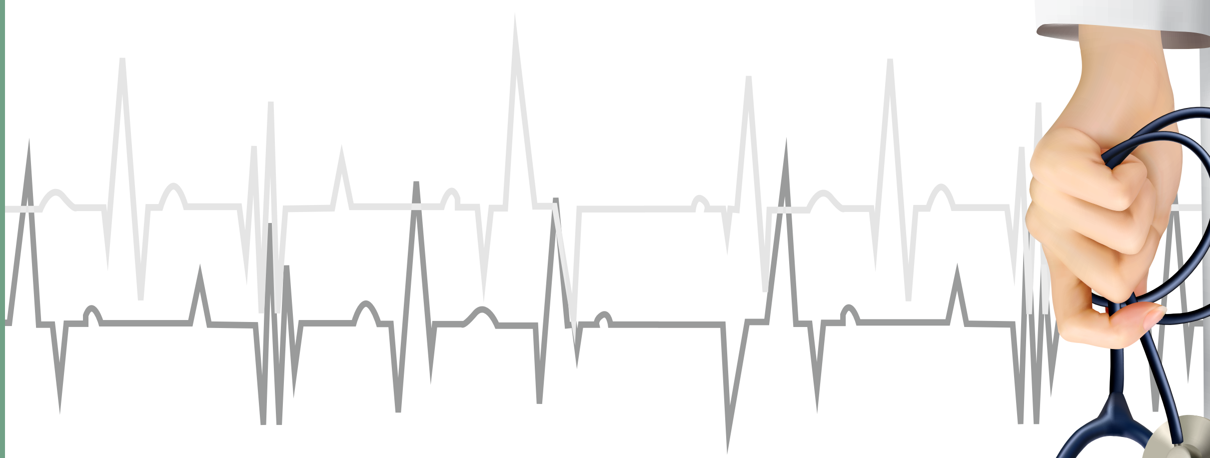
Conclusion

The Dubai Government is strongly focused on the development of the healthcare sector which is evidenced by the establishment of Dubai Healthcare City Free Zone which is committed:

- to creating a health and wellness destination; and
- to attract investment and promote medical tourism.

It has recently introduced a 10 year plan to introduce three new medical colleges and five nursing schools to meet its healthcare needs in the coming years.

The advent of mandatory health insurance has increased usage of public and private medical facilities, this together with urbanization has paved the way for investment opportunities for the private sector as we have recently witnessed in a number of M&A deals where private equity firms have entered the healthcare market.



Mandeep Kalsi
Senior Associate
Dubai, UAE
m.kalsi@tamimi.com

Aisha Khokhar
Associate
Dubai, UAE
a.khokhar@tamimi.com

UAE Healthcare Sector: Employee Transfers

Whilst the economy in the UAE (and GCC) continues to weather the storm of low oil prices and an uncertain geo-political climate, certain sectors, in particular healthcare, continue to forge ahead with heightened activity, growth and expansion.

This is not entirely surprising, given that the sector itself is a very much consumption-led industry and is thriving elsewhere with Sanofi's agreement to a 22.8 billion-euro ($25.1 billion) asset swap with Germany's Boehringer Ingelheim GmbH being an obvious example.

Notable UAE activity in the sector includes Mediclinic International combining with Al Noor Hospitals Group, to create an enlarged Mediclinic group – the third largest international hospital provider outside the United States; American Hospital Dubai's collaboration with the Mayo Clinic Care Network; and the NMC and Dr. Michael Fakih IVF merger.

This recent spate of activity lends further credence to the rising buoyancy of the overall healthcare sector in the UAE. Against this backdrop, key employment considerations can arise in the context of employee transfers between healthcare providers which this article considers in further detail.

For illustrative purposes, we use the example of Company A being in the process of reorganising its business with the result that its healthcare divisional arm will be acquired by another pharma company, Company B. As a result of the reorganisation, it is proposed that Company A's employees will be transferred to Company B, who has agreed as part of the sale to offer employment to Company A's employees. In the context of this business asset sale arrangement between the two UAE companies, we consider the framework relating to the transfer of employees, their benefits and overall status.

Legal framework

By way of background, unlike other foreign jurisdictions there are no transfer (automatic or otherwise) regulations in the UAE by which employees can seamlessly migrate from one entity to another.

Accordingly, on any business asset transfer, the employment with the first employer (in this case, Company A) is treated as having been terminated and the transferring employees will require to enter into new employment contracts with the second employer (in this case, Company B). There will also need to be a cancellation of the residency visa and employment permit with Company A and an application for new visas and permits with Company B. This may be done by way of a transfer of sponsorship and payment of a fee, depending upon where the two entities are based.

On termination of employment, an employee is entitled to an end of service gratuity payment, provided that they have worked for their employer for at least one year. This is calculated with reference to length of service, and an employee receives 21 calendar days' basic pay (based on the last basic salary payment an employee receives prior to termination of employment) for each year of service, for the first five years of service, and 30 calendar days' basic pay for each year of service thereafter. Any incomplete year is calculated on a pro-rated basis. The maximum payment an employee can receive is a payment equivalent to two years' salary.

Therefore, from a legal perspective, on the transfer of employment from one entity to another, the employees will be entitled to be paid for their gratuity accrued to date. However, as noted above, gratuity is based on length of service and therefore there are various disadvantages to an employee who is paid their gratuity on leaving Company A rather than rolling that service over to Company B.

In the light of this, some companies agree with their employees that they will not receive their gratuity at the point of transfer, but instead the liability will be rolled over into their new contract, so that although the employee does not receive an immediate payment, their continuity of service is intact. This can only be done with the co-operation of the employee. In practice, though, as the arrangement is advantageous to the employee, consent is usually readily obtained.

Where gratuity is to be rolled over, a tri-party agreement is entered into, between the two employing entities and the employee, confirming the agreed arrangements.

Under the UAE Labour Law, an employee is entitled to notice, which is at least 30 days in the case of an unlimited term contract, or such longer period as may be stated in the employment contract. As notice cannot be waived or reduced, appropriate notice should be given to an employee of the termination of their employment (with an explanation of the transfer to the second entity) in plenty of time prior to the transfer, so that notice is correctly given. Alternatively a waiver of notice could be agreed with the employee, although strictly in the event that an employee is unhappy with the agreement and complained to the UAE Courts, the agreement to waive notice would be void. However, in practice, as with gratuity, the transferring employees are unlikely to complain about the notice if they know that they are being offered employment with the new employer on the same or similar terms.

Finally, in addition to notice, an employee is also entitled to be paid for accrued but untaken benefits as at the termination date with Company A, such as accrued annual leave. The two entities could consider allowing the annual leave to roll into the new employment (although again, the entities may want to come to an agreement on cost), or alternatively, the employees should be paid in lieu for the accrued benefits upon termination of employment with Company A. Furthermore, the issue of any loans or advances that are owed by any transferring employees to Company A and how these will be dealt with would need to be considered.

Other considerations include the possibility of labour bans being applied on employees (although this has been increasingly liberalised), and the extent to which the transferring employee is a national of a country facing difficulties in securing UAE residency visas.

Concluding remarks

It is important for both the purchaser and the seller to be aware of the specific issues and matters which arise in respect of the transfer of employees in the context of a business asset sale, ensuring that, prior to the transfer, all relevant documentation is prepared and ready to issue to the transferring employees (for example, tri-party agreements), visa cancellation/transfer arrangements have been made and appropriate internal discussions have been undertaken with the "transferring" employees in order that expectations are managed effectively and the process has been transparently communicated.

Raj Pahuja
Head of Corporate Commercial - Bahrain
Manama, Bahrain
r.pahuja@tamimi.com

Diana Al Adel
Associate
Manama, Bahrain
d.aladel@tamimi.com

Update on the Classification of Pharmaceutical Products in Bahrain

The National Health Regulatory Authority in Bahrain ('NHRA') was established in accordance with Federal Law No. 38 of 2009 and was granted the role of regulating healthcare in Bahrain. This was considered an important step towards achieving the goals of the Bahrain Government's Economic Vision 2030.

NHRA's scope includes regulating healthcare professionals, facilities, equipment, and pharmaceutical products, in addition to setting related guidelines in line with international standards.

According to Decree No. 9 of 2016 in relation to Classifying Pharmaceutical Products and Health Products ('Decree 9 of 2016'), a pharmaceutical product is classified as either a health product or a medicine, based on the Pharmaceutical Product Classification Guideline annexed to the decree ('PPC Guidelines'). Health products include: herbal products; products containing vitamins; products containing minerals; and other products that contain specific substances such as amino acids, charcoal lipids such as omega 3 and certain antiseptics ('Health Products').

The PPC Guidelines attempt to provide clear definitions for what are considered Medicines (as defined herein) and Health Products, in addition to providing detailed information to be used as a basis for pharmaceutical products classification.

The basis used by NHRA for classification, as explained by the PPC Guidelines, includes a number of factors, mainly: the composition of a product; medical claims made in relation to a product; its concentration; its method of consumption; and the potential for any medical interference (e.g. adverse interactions with other medicines).

Composition

The PPC Guidelines provides a list of more than one hundred substances and preparation techniques of such substances, which cannot be included in an herbal product. Any product containing any of these substances, or which uses certain preparation techniques, will be classified as a medicine ('Medicine'). Some examples of herbal products considered to be a Medicine are: Aconitum napellus L, Berberis aristata and Ginkgo biloba L. Products may also be classified as Health Products if they include substances produced by or obtained from bees (including royal jelly, bee pollen and propolis), natural enzyme products, crude or refined coal tars, and certain antiseptics.

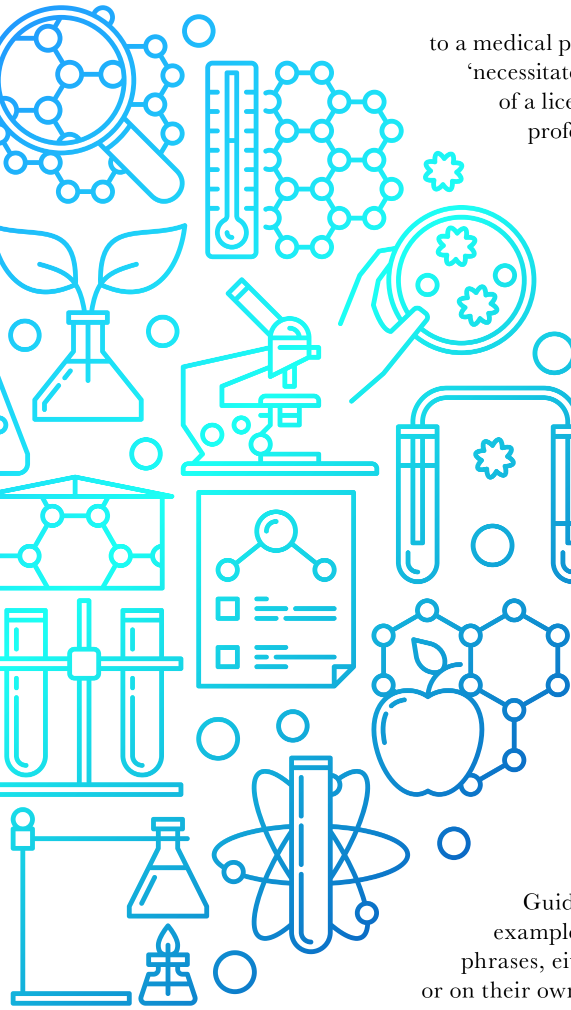
Concentration

Whether vitamins and mineral-containing products will be classified as a Health Product or Medicine depends on the concentration amount of the vitamins and minerals in the given product.

The PPC Guidelines provides a table for lower and upper concentration limits for vitamins and minerals.

Method of Consumption and Medical Interference

Generally, pharmaceutical products which state any of the following characteristics are classified as a Medicines and cannot be classified as a Health Product: 'be sterile', 'be administered by injection', 'be subject



to a medical prescription', and 'necessitate the intervention of a licensed healthcare professional'.

Medical claims

The classification methodology for Health Products described above will only apply if no medical claims are made in association with the product, as the inclusion of a medical claim would likely cause the product to be classified as a Medicine.

The PPC Guidelines provides examples of words or phrases, either used together or on their own that could be considered as making medical claims in relation to a product and whether they are considered as medicinal/medical. These include: 'alleviates', 'avoids', 'boosts immune system', 'burns fat', 'calms', 'can benefit those who suffer from', 'clears', 'clinical trials evidence suggests', 'clinical trials suggest', 'clinically proven to', 'combats', 'controls', 'counteracts', 'cures', 'eliminates', 'fights', 'maintains a normal . . . e.g. water balance, mood, etc.', 'helps', 'lowers cholesterol', 'protects against', and 'strengthens the immune system'.

The foregoing is not exhaustive and each statement or the use of certain words in combination or on their own needs to be considered carefully in its context and in relation to the product. The use of limited generic terms are less likely to be considered as making medical claims although it is recommended that the use of any of the mentioned terms of phrases are considered carefully or are avoided in relation to Health Products.

There is, however, an exception for medical claims or indications that are made in relation to products classified as Health Products (not Medicines), if such claims or indications are suitable for self-diagnosis and self-treatment, do not require the intervention of a licensed healthcare professional, and if these claims are consistent with supporting evidence regarding the safety and traditional use of those products.

Other Considerations

When classifying a new product, NHRA takes into consideration previous classifications to ensure that closely related products will be similarly classified.

If any product contains a substance with a known pharmacological affect, it will be classified as a Medicine by NHRA, irrespective of the presence or absence of any claims contained in the product packaging or literature.

Any product containing two or more regulated components that are physically, chemically, or otherwise combined or mixed and produced as a single product will be regulated in accordance with the highest regulatory standards, e.g. a product containing both a steroid and herbal substance would be regulated as a Medicine and not as a Health Product.

Official Fees

A new decree was published in the official gazette of 18 August 2016 under Law No. 17 of 2016, introducing new official fees for licences granted by NHRA.

The decree also confirmed that the licence renewal must be submitted at least one month before the expiration of the licence.

In relation to the point of sale of certain products, all products requiring a prescription can only be sold in pharmacies. The classification of a product as a Medicine or a Health Product as well as its composition, concentration, and medical use will determine if a prescription is needed for that product. Another function of NHRA is to determine the prices of Medicines and provide a formal list of such prices. NHRA does not, however, determine the prices of Health Products.

Summary

Decree 9 of 2016 has helped to clarify the classification of Health Products and Medicines in Bahrain and attempts to bring these into line with international standards. The classification and registration regime implemented by NHRA has made matters clearer for importers and manufacturers but challenges will no doubt arise in relation to new products that enter the Bahrain market. It is suggested that before the sale or importation of any Health Products or Medicines in Bahrain, clear regulatory advice is obtained.

Rana Hegazi
Associate
Cairo, Egypt
r.hegazi@tamimi.com

Practical Conditions for the Advertisement of Non-Prescription Pharmaceutical Products in Egypt

Advertising and marketing are one of the main pillars from which companies and institutions derive their profits, reputation, and success. The Egyptian government seeks to balance such activities with the protection of consumers from false or misleading advertising. This is of particular importance in the pharmaceutical industry. Consequently, the Egyptian government has prioritised stronger regulations for the pharmaceutical industry.

In 2016, several laws and decrees have been issued regarding the regulation of pharmaceutical related products and activities. However, to date, there is limited legislative text governing the advertisement of non-prescription pharmaceutical products. Existing laws do not cover all parameters and the implementation of the rules are left to practice and interpretation of the competent authority.

Advertising of non-prescription pharmaceuticals is generally regulated the Ministry of Health and Population ('Ministry'). The competent administration within the Ministry is the Central Administration for Pharmaceutical Affairs ('CAPA'), which regulates the advertisement of pharmaceutical products and grants approvals for promotional activities related to non-prescription pharmaceuticals. In addition, CAPA undertakes assessment and monitoring activities for human and veterinary medicines, food supplements, insecticides, medical devices, and cosmetics to evaluate their compliance with the applicable standards in order to ensure safe, effective, affordable, and secure access to the consumer.

The marketing and advertisement of medical products and supplies are regulated under numerous pieces of legislation in Egypt. The most notable legislation of which is the Pharmacy Law No. 127 of 1955) (the 'Pharmacy Law'), and its executive decrees.

I- The Technical Committee's approval: a crucial prior condition

The Pharmacy Law prohibits any advertisement of prescription pharmaceutical products (excluding authorised vaccines). However, a non-prescription pharmaceutical product is excluded from such prohibition if it has a valid marketing authorisation licence (registration licence) granted by CAPA. The advertisement of non-prescription pharmaceuticals must comply with article 63 of the Pharmacy Law, which states:

> The data mentioned on the pharmaceutical products' cards and any bulletin or advertisement distributed therefore shall be consistent with the material these products actually contain as well as their remedial characteristics. These data shall not contain any phrases that contradict with the public morals or mislead the public. The approval of the Technical Committee for Medicines Supervision on the text of such data, bulletins or advertisements must be obtained prior to their publication. (emphasis added)

On the basis of the aforementioned article, numerous ministerial decrees regulating the registration and advertising of pharmaceutical products have been issued, the most important and significant of which is Decree No. 76 of 2000 regulating the Advertisement of Drugs Pharmaceutical Products and Dietary Supplements (the 'Decree'). The Decree confirms that pharmaceutical companies wishing to advertise any non-prescription pharmaceuticals, whether in newspapers, magazines, or any other advertising medium, must obtain the approval of the Technical Committee at the Ministry in advance of publication. The Technical Committee proceeded to issue Decree No. 106, dated 20 November 2008, as one of the complementary decrees implementing article 63 of the Pharmacy Law. This decree stipulates that:

> A company may not publish or issue any advertising materials for any products without the approval of the Central Administration for Pharmaceutical Affairs, and all data submitted shall be in conformity with the certified data of the product's registration as reflected in the Administration's records.

Accordingly, the approval of CAPA to proceed with the advertisement must be secured before undertaking the advertisement.

The Decree further provides for the applicable penalties in the event of breach of its provisions. Under such provisions, if a breach of the Decree occurs, a written notice will be sent by CAPA and addressed to the breaching entity ordering the ceasing of the advertisement or rectifying of the falsified data. Penalties for such breach may include the withdrawal of the product from the market and the cancellation of its registration. Such withdrawn products may not be re-registered prior to the lapse of at least one year from the date of cancellation of the registration.

II- Scientific Office requirements: additional prerequisite

The aforementioned article 63 of the Pharmacy Law stipulates that obtaining the Technical Committee's approval is the sole prerequisite to lawfully advertise non-prescription pharmaceuticals. However, in practice, the Technical Committee only provides advertisement permits to pharmaceutical companies having or contracting with a Scientific Office (as defined herein), despite there being no legal basis for this restriction.

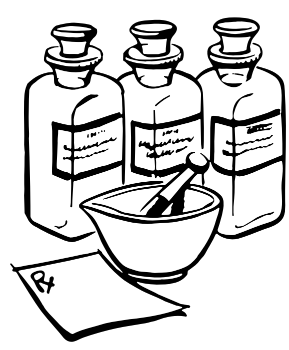
Scientific offices are regulated in accordance with Decree No. 429 of 1976, issued by the Ministry. The main objective of a scientific office ('Scientific Office') is to market pharmaceutical products, medical supplies, and pharmaceutical chemicals. Each Scientific Office must obtain a licence from the Ministry. A Scientific Office may keep product samples but is not permitted to sell pharmaceutical products directly. A Scientific Office is required to preserve pharmaceutical samples in accordance with the technical specifications provided in the Pharmacy Law and its executive decrees, hold registered samples as sealed by CAPA, provide CAPA with a monthly report on its distribution of samples, and release samples only to persons authorised to be granted samples according to the Pharmacy Law.

III- Rules governing the advertisement of a pharmaceutical product

CAPA has outlined a set of general guidelines for the advertising of pharmaceutical products. For example, CAPA requires promotional materials to comply with the locally accepted customary practices, ethical rules, and religious directions, and that such materials should not be misleading or unrealistic. Most importantly, CAPA declares that promotional materials must represent a 'fair balance' between claims regarding the efficacy of the product and its safety so that healthcare professionals and consumers receive complete and accurate information in order to properly evaluate the appropriateness of the product for a particular patient's care.

Conclusion

Pharmaceutical promotion may lead to misinformed treatment choices that may damage public health and increase health care costs. Egyptian authorities continue to exert their endless efforts to strictly regulate and supervise the diverse parameters of the Egyptian pharmaceutical market. Consequently, those wishing to advertise pharmaceutical products should take a careful look at the applicable regulations and ensure full compliance with the same.



Arif Mawany
Senior Associate
Muscat, Oman
a.mawany@tamimi.com

Pharmacy Practice in Oman

The Government of Oman, through Royal Decree 35 of 2015, recently passed legislation which will affect foreign investor owners of pharmacies in Oman. The new Royal Decree repeals Royal Decree 41 of 1996, which had until recently governed the pharmaceutical profession and licensing regime.

Key issues arising under the new law

The key provisions of the new law require that all Omani companies which have been granted licences to conduct pharmaceutical activities must now restructure to include an Omani pharmacist into their shareholder structure. The consequence of this legislative requirement is that existing foreign owned Omani pharmacies may need to either reduce the equity held by the non-Gulf Corporation Council ('GCC') national shareholder or their current Omani sponsor. Applications to open new pharmacies must comply with this rule immediately, whereas existing pharmacies have a short period of time to comply.

Other notable issues

Other areas covered by the law, which will affect the larger pharmacy chains in Oman, are as follows:

- Pharmacist licence: medicines may only be dispensed by a licensed pharmacist, which is a person holding a bachelors degree from a recognised university. Licences are granted for up to two years and are capable of being renewed;
- Multiple pharmacies: owners of a branded pharmacy are not permitted to hold ownership interests in other brands of pharmacy chains. This is likely to improve consumer choice and maintain price competition;
- Pharmacy licence: licences are now granted for a period of two years. Previously, licences were available for up to five years;
- Number of branches: draft regulations are being considered by the Ministry of Health which will have the effect of limiting the

> "Companies licensed to conduct pharmaceutical activities must now restructure to introduce an Omani pharmacist into their shareholder structure."

number of branches capable of being operated and managed by each pharmacy brand. The regulations are currently being discussed by the legislative bodies;

- Sharing funds: agreements made between pharmacists and physicians in relation to sharing funds from prescription drug charges are prohibited. This may assist with reducing unethical practices in the profession; and
- Omanisation: the Ministry of Health has kept open the possibility of Omanising the pharmaceutical sector over the next 10 years.

Impact

The law is likely to have a greater effect on businesses that hold doctors' practices, hospitals, and pharmacies under one Omani company. In this situation, a new company should be created to hold the pharmaceutical business separately from the other businesses. It will be necessary to move existing pharmacy branch registrations over to the new company. This will delay new pharmacy registrations but the process of transferring branches can usually be carried out in a short period of time, minimising the delay.

Businesses can also benefit from new Ministry of Commerce practice that no longer requires investors to produce physical evidence of the availability of the start up share capital in an Omani bank account. While the capital will eventually need to be deposited into the new company, the new practice means the capital obligation is spread out over the first financial year.

Seem Maleh
Associate
Doha, Qatar
s.maleh@tamimi.com

Treating Cosmetics as Pharmaceuticals in Qatar: Time For A Makeover?

In Qatar, there are no specific laws or regulations concerning the importation, distribution, or advertisement of cosmetic products. There are, however, general guidelines partially available from the Ministry of Public Health.

Despite the absence of formal regulations, the Pharmacy and Drug Control Department at the Ministry of Public Health (the 'Drug Control Department') has in place an approval process for the importation and sale of certain cosmetic products. Since there are no clear guidelines for the classification and registration of these products, the Drug Control Department makes its decision on a case-by-case basis, based on the category of the product, its function, and composition. Whilst there is no regulation to support such classification procedures, the Qatar Customs Authority will usually not permit the importation of cosmetic products without the Drug Control Department's approval.

Products are considered to be 'cosmetics'

The Drug Control Department considers some products that are intended to be used or applied to the human body as cosmetic. While an official list is not available, products classified as cosmetics requiring registration with the Drug Control Department include: non-medicated shampoos; soaps; sanitary products; contact lens solutions; perfumes; non-medicated skin moisturisers; nail polishes; makeup; and toothpaste.

The process for registration of cosmetics

The Drug Control Department has put in place an application process that requires the completion of a form which, in part, requires: the identification of the country of origin of the product; list of ingredients; instructions on how the product should be used and stored; details of any side effects or warnings; and a sample of each product to be imported.

Following the submission of the application form, a committee at the Drug Control Department (the 'Committee') will determine whether the product falls under a particular classification, or does not require registration, and issue a report reflecting the same. Depending on the classification and the ingredients of the products, additional approvals or laboratory tests may be required. The Committee does not usually perform laboratory tests on the samples provided by the applicant; however, it may request the same if it suspects that the products may contain certain ingredients that are not permitted in Qatar (e.g. pork derivatives).

A foreign company can register and sell their cosmetic products in Qatar by importation through a local agent who is registered and entitled under the laws of Qatar to import such products, or directly by establishing a legal presence in the country.

Non-compliance

Since there are no specific laws or regulations organising the importation and distribution of cosmetic products in Qatar, there are also no specific penalties prescribed for non-compliance. However, as indicated above, in order for the products to clear customs, the importer will have to provide the Customs Authority with a copy of an approval by the Drug Control Department permitting the concerned products to be imported into the country. In some cases (e.g. shampoos), the product is required to be accompanied by a certificate of compliance from an accredited laboratory showing the product's conformity to the relevant Gulf Standardisation Organisation standards.

In addition to the Drug Control Department's role in approving and classifying cosmetic products, the Drug Control Department, with the Consumer Protection Department, also regulate the display of products in the market to ensure compliance with the applicable regulations relating to, among other things, labelling requirements and that no changes to the product's details were made since the approval of the Drug Control Department was obtained. Ministry of Public Health officials, from time to time, investigate non-compliance issues (especially where a complaint is made or there is a general concern) by entering into shops or distributors' facilities and collecting random samples to be tested. If non-compliance is found, the products may be withdrawn from the market.

Conclusion

The Ministry of Public Health is considering regulating the importation of cosmetics more comprehensively. However, whilst such regulations are not in place, the regulatory requirements and process for cosmetics importation and sale in Qatar will be subject to the Drug Control Department's discretion. Importers and suppliers will need to make enquiries with the Drug Control Department on a case by case basis to ensure that all requirements are met and that there will be no problems when products attempt to clear customs.

Saeed Saad Al Qahtani
Associate
Riyadh, Saudi Arabia
s.alqahtani@tamimi.com

Cyber Crimes Committed by Social Media Users in Saudi Arabia

Obtaining access to social media has never been easier than it is today. Who doesn't have an account on Facebook, Twitter, Snapchat, Instagram or WhatsApp? I believe the answer would be "no one." Many of us have expressed our own opinions through Facebook or Twitter and, unfortunately, have also experienced someone defaming us personally.

The growth of social media has resulted in an increase in online crimes or "cyber crimes" such as blackmail, embezzlement, defamation, hacking of accounts etc...

Social media users may find themselves committing so-called "cyber crimes" without knowing that they are committing a crime or that they could be jailed or fined for their actions. On the other hand, some social media users know that what they are doing constitutes illegal use of social media, but think that the authorities can't or won't trace them.

There have been many reports of arrests and prosecutions of social media users (including many social media celebrities) for cyber crimes involving the use of social media. Consequently, it is important to understand the cyber crimes that most commonly land social media users in trouble and how victims and the authorities are able to take action in response to such cyber crimes when they occur.

Cyber crime can be simply defined as 'a crime committed by using a computer or the internet.' Many actions may be considered a cyber crime, including gaining unauthorized access through the internet to someone else's information or credit card data, supporting terrorist organizations or defaming someone. The Saudi Anti-Cyber Crime Law sets out all cyber crimes and their associated penalties.

The Saudi Anti-Cyber Crime Law aims to secure the safe exchange of data, protect the rights of users of the computers and the internet, and to protect the public interest and morals as well as people's privacy.

We will address in this article only the cyber crimes that may be committed by using social media as well as the penalties for each of these crimes in accordance with the Saudi Anti-Cyber Crime Law.

A cyber crime can occur as a main crime (e.g. by transmitting illegal content) or it may be associated with another crime (e.g. transmitting content evidencing drug procession or use). A number of cyber crimes can be committed by using social media and each of these has a penalty.

The following is a list of the main cyber crimes which are committed by use of social media, set out together with their associated penalties and the procedures for making a complaint. These have been grouped into three categories according to the seriousness of their associated penalties.

Group A:

1. **Gaining Illegal Access to a Computer to threaten or blackmail a natural or legal person to force him/ her to do or abstain from a certain action.**

   There have been reports of people who have been threatened or blackmailed by someone through Twitter or WhatsApp after the perpetrator has obtained unauthorized access to the victim's computer.

2. **Defamation of a Natural or Legal Person through Social Media.**

   Many of us express our attitudes, opinions or comments on events or news. Sometimes we may agree or disagree with someone else's opinion or thought. We may face a person who insults or defames us just because he or she disagrees with us. Defamation by social media constitutes a crime subject to penalties under the Saudi Anti-Cyber Crime Law.

3. **Breaching the Privacy of a Natural Person by Taking Pictures or Recording Videos using Cell Phone.**

   Privacy is protected under the Saudi Anti-Cyber Crime Law and the taking of an unauthorized picture or recording by a camera-equipped mobile 'phone can constitute a crime under the Saudi Anti–Cyber Crime Law.

Penalties:

Whoever commits any one of the above cyber crimes shall be punished by imprisonment for a term not exceeding one year and or a fine not exceeding SAR 500,000.

Procedure for Filing a Complaint:

Anyone who is a victim of one of these cyber crimes and wishes to file a complaint against the perpetrator must do so by the following procedure:

- Report the crime at the nearest police station.
- The Police station shall forward the crime report to the Saudi Bureau of Investigation and Public Prosecution (BIPP) to investigate the crime.
- The BIPP shall investigate the identity of the suspect in cooperation with other authorities.
- After the suspect is identified, the BIPP will order the suspect to appear for interrogation.
- The BIPP will prepare a charge sheet and forward the case file to the Criminal Court.
- The victim can join the public prosecution's case to demand damages or compensation.

As an aside, there has been a controversy between the Criminal Court and the Electronic and Audiovisual Publishing Disputes Committee about which tribunal has jurisdiction over this kind of case. During the course of this controversy a number of cases in the categories listed above were dismissed by the Criminal Court due to a perceived lack of jurisdiction. The Saudi Supreme Judicial Council has, however, settled this debate and has recognised that the jurisdiction in these cases belongs to the Criminal Court.

Group B:

1. **Hacking a Social Media Account.**

   There have been numerous reports of Twitter accounts and Instagram accounts being hacked with the result that the owner of the account is not able to access his or her account, sometimes losing many followers.

Penalties:

Whoever obtains unauthorised access to a user's account and prevents or obstructs access to it shall be punished by imprisonment for a term not exceeding four years and or a fine not exceeding SAR 3,000,000.

Procedure for Filing a Complaint:

The procedure for filing a complaint is the same as set out above.

Group C:

1. **Transmission, Publication or Storage of Material that is Inconsistent with Public Order or Morality, Religious Values or which Breaches the Privacy of a Natural Person.**

   Social media users daily transmit, post or tweet news, pictures and videos through social media without knowing that such acts might result in imprisonment and or fines if the transmitted content is of an objectionable nature (e.g. content that violates public order or morality). In a notable case, one Snapchat celebrity was arrested for "snapping" rumours. In fact, he went beyond that and starting insulting the Saudi Government, which was held to be an offence against public order.

   In another widely reported recent case, a Younow user was arrested for transmitting content to the public, which was considered to be inconsistent with public morality.

2. **Publishing Pornography.**

   Pornography is forbidden in Saudi Arabia. It is a cyber crime to publish or transmit any material of a pornographic nature through social media.

3. **Promotion or Facilitation of the Use or Distribution of Narcotics or Psychotropic Substances.**

   Use of narcotics and psychotropic substances is itself a crime in Saudi Arabia, but using social media to promote or facilitate their use is a crime in its own right that may be prosecuted in conjunction with the main offence. There are reports from time to time of social media users being prosecuted for this cyber crime after being arrested by the anti-drug authorities. In a recent case, an individual was arrested for publishing on the internet material having the purpose of promoting and facilitating drug use.

Penalties:

Whoever commits any of the above crimes shall be punished by imprisonment for a term not exceeding five years and or a fine not exceeding SAR 3,000,000.

Procedure for Filing a Complaint:

Different procedures apply in relation to the cyber crimes in this last group. Only the related authorities at the Ministry of Internal Affaires may report to the BIPP a case in relation to these cyber crimes and no one can join any such case seeking damages, since the crime itself typically doesn't affect a particular natural or legal person, but rather violates public order, morality and health.

Conclusion

From the foregoing it is clear that social media users should take care when using social media and should be mindful at all times of their rights and obligations under the Saudi Anti-Cyber Crime Law. The social media providers have lofty goals to make life, and communions between people from different countries, cultures, and faiths, easier. We just addressed in this article the illegal use (bad behaviour of same users) of the social media.

Mohammed Ali
Associate
Dubai, UAE
m.ali@tamimi.com

Procedural Changes for Trademark Oppositions and Official Fees Increase in Saudi Arabia

Following the Saudi Arabia Ministry of Commerce and Industry (Ministry) Decree approving the Implementing Regulations of the GCC Trademark Law, the Ministry has introduced a number of substantial procedural changes related to trademark oppositions coupled with significant increases in the official fees for trademark registration related matters.

Trademark Opposition

The main changes in the opposition process are as follows:

- The opposition period has been modified. The period within which an interested third party can submit an opposition against the registration of a published trademark will be set as 60 days from the date of publication, instead of the existing 90 days from the date of publication. This change is based on Article 12 of the Implementing Regulations, bringing the procedure more in line with international standards. An extension of the above time period will not be possible.
- The opposition will be an administrative procedure. Under the new system, an opposition will no longer be a legal proceeding; rather it will be an administrative procedure. Previously, the opposition was to be handled only by the Board of Grievances (BOG) or the Court of First Instance. Pursuant to the new regulations, oppositions will be handled by a newly-established Trademark Board which is an administrative body under the Ministry.
- Pursuant to Articles 12 and 13 of the Implementing Regulations, the Trademark Board will notify the trademark applicant of the opposition within 30 days from the date of filing of the opposition. Thereafter, the applicant has to submit a written counter statement to the opposition within 60 days from the date of notification. The period for filing a counter statement is non-extendable. The Trademark Board will then schedule a hearing for submission of oral arguments and documentary evidence by both the opponent and the applicant. The Trademark Board will then issue a decision on the opposition within 90 days from the date of hearing.

The Official Fees Increase

The Ministerial Decree has also announced an increase in the official fee for registration of trademarks in the Kingdom.

It is understood that the fees increase will apply to official fees for registration as well as renewal of trademarks. The official fees for filing the application, publication of the mark and availability searches will remain unchanged. The trademark registration in Saudi Arabia is already an expensive affair and with the current increase of the official registration as well the renewal fees to almost double will no doubt make it more expensive.

Details Of Increase

Action	Current Fees		New Fees	
	SAR	**USD**	**SAR**	**USD**
Registration Fee	3,000	822	5,000	1,370
Renewal Fee	3,000	822	5,500	1,467
Filing appeal before Trademark Board	-	-	1,000	274
Filing opposition before Trademark Board against published TM	-	-	2,000	548
Request to assign a hearing	-	-	1,000	274
Recordal of license agreement	1,000	274	2,000	548

The increased official fees came into effect as of 1 October, 2016.

It is remain to be seen if the increased fees will be applied to the existing applications which were filed prior to the effective date of increase or the issuance of the Ministerial Decree.

Zahir Qayum
Senior Associate
Al Khobar, Saudi Arabia
z.qayum@tamimi.com

Minority Rights in the KSA: Does Positive Discrimination Work for Saudi Workers?

Positive discrimination is institutionalised in employment in the Kingdom of Saudi Arabia, as it is in all of the GCC states. However, as the most populous of the Gulf states and with more than half of its population under the age of 25, an educated but underutilised female workforce, and a private sector dominated by expatriate workers, Saudi Arabia faces a unique set of problems in maintaining a competitive economy and workforce in the face of the plummeted oil price.

Introduction

The Saudi government is under a tremendous amount of pressure which is unprecedented in its remarkable recent history. In an age of austerity with the days of oil prices commanding upwards of $150 per barrel long gone, Saudi Arabia is grappling with a new reality and vision for its future. The National Transformation Plan and Vision 2030 are the buzz words for an ambitious programme that seeks to marshal all of the Kingdom's resources to steer it away from its dependency on its most significant asset. To be successful, Saudi Arabia is looking for its minority workers in the private sector to step up to the fore and be counted in increasing numbers.

Who are the Minorities?

In spite of the fact that expatriates comprise roughly one third of the country's total population, they nevertheless significantly outnumber Saudi nationals working in the private sector. The vast number of jobs outside of the public sector are low skilled and poorly paid and do not match the expectations of most Saudis; yet performance of these roles remain vital to a proper functioning economy. At the other end of the spectrum, an ambitious and eager Saudi female graduate base is effectively locked out of the jobs market largely as a consequence of a society that draws its identity and social mores from a conservative branch of Islam. There is also a sizeable minority of disabled citizens who the government is keen to take up employment in the private sector.

The Saudi government is seeking to unleash the potential of its national workforce with a raft of positive discrimination measures to increase the number of Saudi nationals employed in the private sector and legislation to prohibit discrimination of disabled workers. These measures are discussed below.

Positively Saudi

The Saudi Labour Law issued by Royal Decree No. M/51 dated 23 Sha'ban 1426 (the "Labour Law") positively discriminates in favour of Saudi nationals in that it requires "all firms in all fields, and regardless of number of workers, shall work to attract and employ Saudis, provide conditions to keep them on the job and avail them of an opportunity to prove their suitability for the job by guiding, training and qualifying them for their assigned jobs" (Article 26(1)). Further, Article 26(2) stipulates that the percentage of Saudi workers employed shall not be less than 75 per cent of the total workforce of the employer. This requirement has been diluted by successive iterations of the government's Saudisation programme and by its recent incarnation, *Nitaqat*, which means 'ranges' in Arabic and assigns percentage quotas for employers based on the economic activity they perform and their size in terms of employee numbers. Employers who comply with or exceed the quotas are placed in the 'Green' and 'Platinum' categories respectively and afforded preferential treatment in the allocation of new visa for foreign workers and renewal of existing workers. Employers who are failing or have not complied with their Saudisation quotas are placed in the 'Yellow' and 'Red' categories and are penalised through the denial of visas and licence being given to their employees to change employers without their consent and take up employment with Green or Platinum category employers. The government has taken a number of steps since unveiling its Vision 2030 plan earlier this year to improve the effectiveness of its Saudisation policies, as follows:

i. Compulsory registration with *Taqat*

Article 25 of the Labour Law has always required that employers should send to the labour office a list of vacant and new jobs within 15 days of a vacancy arising or a new post being created. Additionally, Article 33 set out that the conditions for granting work permits for foreign workers including the requirement that the foreign worker possess the professional and academic qualifications which the country needs and which are not possessed by citizens or there are an insufficient number of suitably qualified citizens available to meet the needs of the employer. In the past, the Saudi authorities granted employers their request for block visas for the recruitment of foreign workers with little scrutiny; however, there is now a requirement for all employers seeking to recruit a foreign worker to justify their recruitment by first registering the vacancy with the national jobs portal called *Taqat* and thereby giving an opportunity to Saudi nationals to be appointed to the role.

It is unclear as to how long the position must be kept open in *Taqat* and whether employers need to evidence that applications have been received and considered, or that Saudi candidates have been interviewed and have been found wanting, or that there have been an insufficient number of candidates. Early indications on anecdotal evidence do not suggest a curtailment in the number of visas being issued to employers.

ii. Total Saudisation

In a dramatic move designed to increase employment opportunities for Saudi nationals, the government completed its total Saudisation of the mobile phone sector in September 2016 and is considering proposals to Saudise the automobile and healthcare sectors. To what extent, if at all, these proposals come to fruition in these other sectors will likely depend on the impact of Saudisation in the mobile phone sector.

iii. Localised *Nitaqat*

Due to be introduced in early December 2016, localised *Nitaqat* or '*Mausun*' will seek to raise the standards of employment for Saudi nationals in terms of pay and roles available to them. Employers compliance with *Mausun* will be judged on the following criteria:

1) the number of Saudi nationals employed in the business; 2) the average salary of Saudi employees; 3) the percentage of Saudi women employees; 4) retention rates of Saudi nationals in employment; and 5) the percentage of Saudi employees in the top 25 per cent of highly paid roles in the business. Employers will be rewarded for their compliance with *Mausun* through the award of points for the number of Saudi nationals employed, the average salary paid to Saudi nationals, the number of Saudi female employees, the average retention period of Saudi employees, and the percentage of Saudi employees in the top 25 per cent of highly paid roles. As the government seeks to raise the number of Saudi nationals employed in the private sector, the medium category of employer under *Nitaqat* will also be revised into three sub-categories of 50 to 99 employees, 100 to 199 employees and 200 to 499 employees.

iv. 'Secondment' of Saudi nationals from the public to the private sector

The Ministry of Labour issued a decision in October 2016 permitting the employment of public sector employees on a temporary basis by private sector employers to enable the latter to boost their Saudisation quotas. The objective appears to be to incentivise the private sector to take on some of the burden of the payroll for the bloated public sector.

v. Proposal for older expatriate workers to count double

The Saudi government is currently considering introducing a change in the law to discourage the recruitment and retention of foreign workers aged 60 years or older. The proposed law would not go so far as prohibiting the employment of foreign workers aged 60 and above but would penalise the employer by having one of these workers count as two foreign workers for the purposes of Nitaqat.

Protection for the Disabled

There is no specific law in Saudi Arabia against discrimination in the workplace. Traditionally, the principal protected category of workers was Saudi nationals; however, earlier this year disabled workers gained an elevated position with regard to protection under the law in recruitment and retention in employment through the implementation of the Executive Regulations of the Labour Law issued by Ministerial Resolution No. (1982) dated 28/6/1437 AH (the "Regulations").

Employers with 25 or more employees who can provide work that can be performed by a disabled person are already obligated by Article 28 of the Labour Law to ensure that 4 per cent of their workforce is comprised of disabled employees. The Regulations now go further and define a disabled person as someone who is suffering from one or more of the following permanent disabilities:

> *'vision/hearing/mental/physical/motion disability, learning difficulties, speech difficulties, behavioural disorders, emotional disorders, autism or any other disability requiring any form of facilitating arrangements and services.'*

The Regulations also require employers to modify and adapt the work conditions and physical environment for their disabled staff. More significantly, the Regulations afford disabled employees the same rights and privileges as other workers. Discrimination because of disability has been made unlawful and disability may not itself be a reason for the refusal to employ or promote workers with a disability or to not allow them to benefit from vocational training programs if they have the ability to work.

Women's Work

Saudi women have remained on the periphery of the national workforce for a long period of time, not helped by a deeply conservative society which seeks to segregate the sexes both in and outside of the workplace, and a unique ban on driving. An inaccessible workplace and a paucity of real job opportunities have limited the impact of women workers in the economy. However, the government cannot continue to neglect a growing and significant national resource in women workers who are graduating in increasing numbers from its universities and, in doing so, are challenging the social norm and perceived wisdom regarding their role in the wider society. The government is seeking through Vision 2030 to increase female participation to 30 per cent of the workforce.

To encourage Saudi women into employment in the private sector, the government took the step last year to amend the Labour Law and increase maternity leave entitlements and to make them more flexible. The law was also amended to increase entitlement to bereavement leave to the full Iddah period of 4 months and 10 days for Muslim female employees. Since then, the government has flirted again with telecommuting work for women to overcome transportation issues and has sought to encourage women only mobile phone retail outlets. Beyond this, the government has shown little initiative to progress greater participation of women in the workplace.

Conclusion

If the Saudi government is to realise its plan and vision to transform the economy and diversify it away from oil dependency then it will need a vibrant private sector that does not feel burdened or restricted by the employment of Saudi nationals. Where the Saudisation measures inhibit the private sector from recruiting the best qualified candidates then this will always create tension between the needs of the business and the cost of employing Saudi nationals. Until the national workforce is able to compete on its own merits with expatriates, the Saudi economy will continue to depend on foreign labour much as it is likely to continue to depend on oil for the foreseeable future.

Seem Maleh
Associate
Doha, Qatar
s.maleh@tamimi.com

The Enforceability of Bank Facility Agreements in Qatar

It is common for courts to order one of the parties in a facility agreement to specifically perform their obligations under the facility. However, it is rare for courts to impose daily fines until the breaching party performs their obligations.

In a recent judgment, the court of first instance in Qatar ordered the borrower (or, the defendant) to specifically perform their contractual obligation under a facility agreement by depositing with the lending bank (the lender) a specific amount as a guarantee against the facility given by the lender. The court also imposed a daily fine of QAR 5,000 (approximately $1, 370) against the borrower until the borrower deposits the agreed sum upon guarantee with the lender. The lender was an international bank represented by Al Tamimi & Company.

The facility agreement concluded between the lender and the borrower included a clause obliging the borrower, at any time upon the lender's request, to guarantee the facility amount by placing a deposit with the lender in the same amount as the facility. In 2013, the lender requested the borrower to provide a deposit amounting to 100% of the amount provided under the facility. The borrower agreed by signing an undertaking to this effect. The borrower's beneficiary requested the lender to encash the facility or extend its duration. Before extending the facility, the lender requested the borrower to pay the amount of the undertaking.

However, the borrower failed to adhere to its undertaking and did not deposit the amount.

The lender filed a claim against the borrower requesting: (i) specific performance; (ii) a fine until the amount is paid; and (iii) compensation for delay in the borrower's performance of its obligations. The court upheld the lender's requests except for the compensation.

The court reconfirmed the principle set out in article 171 (1) of the Qatari Civil Code. This provides that the contract is the law of the parties that cannot be altered or amended except by the parties' mutual agreement or as provided for in the law.

In levying the fine, the court referred to article 255 (1) of the Qatari Civil Code which entitles the court to impose a fine where the obligation cannot be performed by someone other than the obligor (the borrower in this case).

The outcome of this judgment should give some level of confidence to the lending banks in Qatar that banks can enforce the provisions in the facility agreements, provided the provisions do not contravene public policy or mandatory provisions of Qatari laws. It should also encourage borrowers to perform their obligations in due course to avoid the application of fines.

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Karim Marouny
Senior Associate
Kuwait City, Kuwait
k.marouny@tamimi.com

The Responsibility for Payment of Demurrage According to Kuwaiti Law

As the quickest and safest way to transport the cargo around the world, containers are undoubtedly the principal industry in transportation. As such, shipping carriers rely on the profits realised from the container handling services they provide.

All shipping lines have contracts of carriage, called 'Bills of Lading' which govern the relation between the shipper, carrier, and the consignee. Due to the fact that in some cases neither the shipper nor the consignee complies with their obligations to provide the shipping carrier with the containers back empty, a specific condition concerning 'demurrage' applies to the merchant (shipper/consignee) who will be charged due to his direct fault or negligence if he fails to give containers back empty to the carrier, since such malpractice can cause enormous losses to the carrier who will be unable to make use of his containers.

The Essential Role of the Bill of Lading

Legal precedents and jurists agree that the Bill of Lading is the contract of carriage which documents the obligations between the shipper, the carrier and the consignee, as well as the document upon which the port and the customs authorities refer to for cargo inspections if needed.

If a dispute arises on the occasion of the transportation of goods by the sea, the information and the conditions of the Bill of Lading shall apply to all the parties to the contract and shall determine the responsibility and the liability of the parties arising in this issue.

According to the Kuwaiti Maritime Trade Law, Law No. 28 for the year 1980 (the "Maritime Law"), the Bill of Lading shall be made in writing and has three important roles between the carrier, the consignee and in respect of third parties;

i. to prove the shipment's contents;
ii. to prove the transportation; and
iii. to represent the goods as a proof in establishment of the information therein.

The shipping carrier issues the Bill of Lading upon the shipper's request and in accordance with the information provided to him from the shipper, which is stated in the Shipping Order. When the consignee submits the original of the Bill of Lading to the shipping carrier or his agent, it obtains the Delivery Order, which enables it to start the customs procedures to deliver the cargo.

Furthermore, Kuwait ratified the Brussels Treaty of 1924 for the Unification of Certain special rules relating to Bills of Lading ("the Hague Rules"). Consequently, the Hague Rules are applicable as part of Kuwaiti law to be applied to maritime cargo disputes.

The Responsibility of the Shipper to Pay Demurrage

The shipper is the party who starts the transportation process by the submission of the Shipping Order to the carrier for transport of the consignments to a determined destination. According to article 176 of the Maritime Law, the carrier issues a Bill of Lading based upon the information provided by the shipper, including the consignee's details. However, in some cases, the shipper is entitled to pay the demurrage stipulated by the shipping line when the consignee does not appears at the port of discharge .

The transfer process is based on the shipper's Shipping Order, as above mentioned, and in accordance with article 179(2) of the Maritime Law, which stipulates that:

'*The shipper shall be responsible before the carrier for compensation of detriment resulting from inaccuracy of the submitted information in respect of commodities. The carrier, may not adhere to inaccuracy of the information stated in the bill of lading before anyone other than the shipper*".

Also, article 4.3 of the Hague Rules stipulates that '*The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper, his agents or his servants*'.

Consequently, the shipper is liable to compensate the carrier for damages flowing from his (or his agent's) fault or negligence, or from the lack of consignment information provided by the shipper. According to the same principle, the shipper will also be responsible for the information related to the consignee at the port of discharge, as the original consignment/ consignee/destination information was provided by the shipper. Consequently, the shipper shall be responsible for the payment of the demurrage to the carrier (as mentioned in the Bill of Lading) when the consignee nominated in the Shipping Order does not turn up to receive the consignment.

The Responsibility of the Consignee to Pay the Demurrage

The consignee is normally the party responsible for following the procedures required to receive the cargo from the shipping carrier or his agents. However, in some cases when the consignee accepts the consignments and obtains the Delivery Order from the carrier/carrier's agents, the consignee may delay in returning the containers back empty to the carrier, or suddenly stop the customs procedures and leave the consignments inside the container without continuing the procedures required to deliver the cargo. Both actions change the nature of the container from valuable equipment in the transport operation into just storage for the consignee's cargo, which may cause huge losses to the shipping carrier.

Article 175(2) of the Maritime Law has sought to counteract such indecent actions, by declaring that the consignee (who committed to the terms of the Bill of Lading as owner of the consignments) shall be obliged by the conditions of the Bill of Lading once the consignee attends to the carrier holding the Bill of Lading. This concept has been clearly stated in the commentary on article 175(2) in the explanatory memorandum to the Maritime Law, which states that the consignee shall bear the obligations arising from the contract of carriage, whether this was accepted explicitly or implicitly.

According to the conditions mentioned in the Bill of Lading, the consignee shall be responsible for the payment of the demurrage to the carrier once he delivers the Delivery Order to the carrier/ carrier's agents. Whether the fault is the delay in returning the containers back empty or whether it is in the procedure of delivering the cargo from the containers not being completed, once the consignee attends to the carrier/carrier's agent holding the Bill of Lading it will be considered as acceptance to the conditions and the obligations under the Bill of Lading.

Legal Recommendations

In addition to relying on the demurrage condition on the back page of the Bill of Lading or on advertising the same on the carrier's website, it is recommended to also clearly mention this clause on the front page of the Bill of Lading whereby the merchant will be liable for the demurrage and the precise charges and calculations should be stated. This will be clearer evidence before a court of the carrier's right to collect the demurrage from the merchant and of its exact amount and will also minimise the documents submitted before the court which may help to save time in obtaining judgment.

Rana Hegazi
Associate
Cairo, Egypt
r.hegazi@tamimi.com

International Market Trend: Online Banking Identity Checks Still Unregulated Under Egyptian Laws

Egyptian markets are now starting to tackle the latest trends in the financial cards and electronic payments industry with the aim of uncovering sources of future market growth. Several banks operating in Egypt are currently introducing mobile banking applications with the desire to benefit from the widespread present use of technological tools such as smart phones and social media platforms. Such electronic mobile payment systems are expected to increase the competition among banks to offer applications which meet consumers' needs. Egyptian laws do not currently provide specific regulations regarding the complex new electronic identity verification methods and solutions (eg. fingerprints and facial recognition solutions). Nevertheless, mobile payment services and processes are generally regulated by circulars issued by the Central Bank of Egypt (the "CBE") that will apply indirectly to all queries regarding electronic mobile payments and identity verification solutions. This article will shed light on the most important compliance obligations to be followed by such solutions service providers.

Mobile Payments Subject to General System Security and Data Protection Obligations

The board of Directors of the CBE issued a Decision dated 2 February 2010 providing for the regulations regarding the operation of mobile payment services in Egypt (the "Decision"). The Decision requires the issuing bank to ensure proper identification of the system's customers and proper authorisation to access the system.

Additionally, pursuant to the Decision dated 14 April 2011 issued by the Anti-Money Laundering Unit, the issuing bank must ensure that electronic payments comply with Anti-Money Laundering Authority measures for proper identification of customers and service providers. A list of necessary documents and information is required to be submitted by each customer.

The issuing bank should establish policies and procedures to protect the system's security in addition to protecting the integrity and confidentiality of the customers' data as per Article 100 of the Banking Law (Law No. 88 of 2003) which regulates the confidentiality of client and account information.

Consistent with this, if the bank has direct or indirect access to its customers', clients', suppliers' or distributors' account information and banking details, it must maintain the strict confidentiality of the same and refrain from any disclosure or transfer of such information. Therefore, any mobile payment service provider must ensure it has customer approval for such transfer of data before undertaking its function.

Addressing the Absence of Regulatory Compliance Obligations

As mentioned above, there are no specific regulations regarding such mobile payment service providers. However, electronic signatures and electronic documents are legally recognised by the Organisation of E-Signatures and establishment of the Information Technology Industry Development Agency Law issued by Law No. 14 of 2005, hereinafter referred to as the "E-Signature Law" and its Executive Regulations issued by the Ministerial Decision No. 109 of 2005 (the "Executive Regulations"). In fact, Articles 14 and 15 of the E- Signature Law state that, within the scope of civil, commercial and administrative transactions, E-signatures, E-documents and electronically written messages shall have the same force and determinative effect that signatures, documents and official / unofficial messages have under the provisions of the Evidence Law in Civil and Commercial matters (Law No. 25 of 1968). Moreover, Article 1 of the E-Signature Law defines 'Electronic Writing' as 'all the letters, digits, symbols or any other signs on an electronic, digital, photographic support or any other

similar means that gives perceptible indication' and defines an E-signature as 'an electronically written message in the form of letters, digits, codes, signals or others and has a unique identity that identifies the signer and uniquely distinguishes him/her from others'. Such a broad definition may encompass mobile payment service providers. Therefore, these electronic authentication methods would be considered legal and applicable in Egypt.

Having said that, the Decision provides that the issuing bank and the service provider must ensure the highest security standards of encryption and authentication of originator identity. Additionally, a double authentication access process must be in place, using phone numbers and PIN to originate a payment instruction. It is to be noted that the Decision stipulates that PINs must satisfy certain requirements. For example, PINs must be composed of a minimum of 4 digits (preferably 6) and must not appear as readable text on any system computer during the process. The Decision also provides that when a payment system is accessed by internet through web protocols from a mobile phone and the phone number cannot be verified, the identity verification must include a name and a password of not less than 8 digits in addition to the PIN of the service.

Security Requirements

Even though the CBE did not yet issue yet a regulation regarding the mobile payment service providers, the Decision issued by the Executive Director of the Anti-Money Laundering Unit dated 14 April 2011 provides that a periodical risk analysis of the system should be undertaken, including conducting penetration tests and ethical hacking to ensure the strength of the system. Additionally, according to this Decision and the CBE's regulations, the IT structure operating the mobile and internet banking must include firewalls, intruder detection systems, data file and system integrity checking, as well as surveillance and incident response procedures.

Strict procedures should also be applied for the physical security of access to programmes, networks, and any equipment operating mobile payment solutions. Strict protection of system encoding keys should be ensured.

It is to be noted that the CBE is entitled to supervise any part of the system to make sure it complies with its measures and specifications.

Consumer Protection Obligations

According to CBE regulations, mobile payment service providers must set up maximum limits for daily and monthly withdrawal operations. This will depend on the amount of risk related to the service and the risk management reports submitted by the Bank related to the service.

In the event of disputed transactions or system customer complaints, the dispute resolution must be subject to fixed rules announced to the customers. These rules must be stated in the agreement entered into between the customer and the bank. This agreement shall stipulate the customer's responsibilities to keep his pin code secure and to immediately report the loss of his mobile phone as well as the reimbursement conditions, if any, and any service charges or fees. A form of these conditions must also be published on the bank's website.

Conclusion

At present, the Egyptian government has a policy at a national level of encouraging electronic payments to increase efficiency and transparency. The financial significance of this was marked on 3 March 2015 by the announcement of a partnership between Egypt and MasterCard to extend e-financial services to 54 million Egyptians. Part of this development will be by rolling out a digital ID program that links Egyptian citizens' national ID to the existing national mobile money platform.

The CBE regulations need to be amended and updated in order to face the emergence of e-financing in Egypt. Whilst the E-signature Law does cover mobile payment service providers, legislation specifically tackling electronic banking and financial operations is needed and should be brought forward. Such legislation should also prevent and protect electronic payments customers from technical issues, the absence of regulation hitherto having been bridged by some of the CBE's circulars and data protection provisions.

News & Events

29 SEPT

International Association of Korean Lawyers

Al Tamimi & Company were proud sponsor of the International Association of Korean Lawyers (IAKL) 2016 annual conference held in Washington D.C. The Conference has become the venue for connecting lawyers of Korean descent together to promote communication and friendship all around the world since its establishment in 1988.

During the conference CLPD Credited seminars to Korean lawyers were provided covering various issues concerning the legal system, the political world, and public service obligation. This year Jongeun (Christina) Lee, Head of Korea Group at Al Tamimi & Co. participated in the PPP panel and presented on the recent legislation of the PPP laws in the UAE, Kuwait, Jordan and Egypt and provided a report on the growth of Korean lawyers' activities in the region as the Regional Governor of the Middle East.

Jongeun (Christina) Lee
Head of Korea Group
j.lee@tamimi.com

4 OCT

Saudi Vision 2030 – Opportunities in the Healthcare Sector

On 4 October 2016 Al Tamimi's Healthcare practice held the first in a series of breakfast briefings, this one focusing on the recently announced Saudi Vision 2030 and the opportunities it presents in the Healthcare sector.

Andrea Tithecott, Partner, Healthcare, provided a brief update on developments in Healthcare around the Middle East before Julie Bassi, Senior Associate from our Jeddah office, focused in-depth on Saudi Vision 2030 and its interim action and development plan, the National Transformation Program 2020, which aims to transform the economy of the Kingdom of Saudi Arabia. Julie considered its impact on the healthcare sector and the opportunities available to the foreign investor.

The next Healthcare breakfast briefing will be held on 7 December.

Julie Bassi
Senior Associate
Commercial Advisory
j.bassi@tamimi.com

Andrea Tithecott
Partner & Head of
Regulatory Practice
a.tithecott@tamimi.com

10 OCT

Shifting Sands – Changing Landscapes for Sophisticated Investors in the GCC

Al Tamimi's Private Client practice, in conjunction with Irwin Mitchell Private Wealth, held targeted seminars for sophisticated investors in Abu Dhabi and Dubai on 10 and 11 October respectively. The sessions examined some of the key areas and prominent issues family businesses face in the current economic climate.

Gary Watts
Partner & Head of Corporate Commercial
g.watts@tamimi.com

Ruksana Ellahi
Senior Associate
Commercial Advisory
r.ellahi@tamimi.com

Gary Watts (Head of Family Business) and Ruksana Ellahi (Senior Associate, Private Client), addressed strong and flexible legal structures in the GCC, which can survive the evolving business and legal landscape, not only in the UAE but throughout the Middle East. They also focused on the introduction of taxes across the GCC such as to Corporate Tax, VAT and Excise Tax.

Nick Rucker, Alex Ruffel and John Riddick, Partners at Irwin Mitchell Private Wealth, addressed the changes to the UK treatment of individuals domiciled outside of the UK (non-doms) and UK inheritance taxation of UK residential property which will have effect from 6th April 2017; off shore trusts established by long term residents; Business Investment Relief (BIR) to encourage commercial investment and a general update on issues around matrimonial dispute jurisdiction shopping, immigration and passport issues following the Brexit vote.

For more information on these issues please contact Gary Watts.

12 OCT

Construction & Infrastructure Seminar Series, Abu Dhabi

On the 12th October, we held an interactive Construction and Infrastructure seminar which took place in our Abu Dhabi office. The theme of the discussion revolved around the 'Termination of contracts – UAE law and what you need to know!', and addressed the following areas:

Ahmad Ghoneim
Senior Associate
Litigation
a.ghoneim@tamimi.com

- Termination Definition
- Types of Termination
- Effects on Performance Bonds
- Consequences of Termination

Ahmad Ghoneim, Senior Associate presented the seminar to a wide range of attendees. 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.

18
OCT

Construction & Infrastructure Seminar Series, Dubai

The C&I Series presented its second seminar for the month on the 18th October in its DIFC office. This session entitled ‘Know what the law really is when you have a dispute...’ was presented by Naief Yahia, Partner who provided perspective on:

- Liquidated damages vs limitation of liability
- Overview of different types of defects and contractors / engineers liability,
- Decennial liability under UAE law

For more information on upcoming Construction and Infrastructure breakfast seminars, please contact events@tamimi.com.

Naief Yahia
Partner
Litigation
n.yahia@tamimi.com

24
OCT

IABM Workshop

On Monday the 24th of October, Fiona Robertson, Senior Associate with Al Tamimi’s *Technology, Media & Telecommunications* practice, held a workshop for local members of IABM, the international trade association for suppliers of broadcast and media technology, whose members globally represent over 80% of the market’s revenues. The workshop’s primary focus was on contracts, a day to day challenge for many working in this sector. Covering everything from reading and writing contracts through to understanding legal terminology, consequences of termination and protecting rights, the workshop provided a practical introduction for all those in attendance.

Fiona Robertson
Senior Associate
Technology, Media &
Telecommunication
f.robertson@tamimi.com

26 OCT

RAK Seminar

RAK Seminar - Directors / managers of LLCs under the Federal Commercial Companies Law no (2) of 2015

On Wednesday, 26 October we held a very successful and informative seminar in Ras Al Khaimah which addressed the liabilities of directors / managers of LLCs under the Federal Commercial Companies Law no (2) of 2015.

Ammar Haykal, Partner, Head of Office Ras Al Khaimah, Adam Powell, Head of Corporate Commercial Ras Al Khaimah and Adnan Al-Erqsousi, Associate, Litigation Ras Al Khaimah presented to a full house where they provided an overview on some of the key topics that are top of mind for many of our clients. The seminar was well attended and a great success.

Ammar Haykal
Partner &
Head of Office - RAK
a.haykal@tamimi.com

30 OCT

Sponsorship of the Serviced Apartments Summit

Al Tamimi & Company and the Real Estate group were pleased to have sponsored the annual Serviced Apartments Summit which took place on 30-31 October in Dubai. The Summit is considered a one of a kind, B2B conference in the region for serviced apartments, branded residence, aparthotels and rentals.

As a Silver Sponsor of the Summit, Al Tamimi's Tara Marlow, Head of Real Estate & Hospitality , Partner; Jeremy Scott, Head of Real Estate Dubai and Sven Röthlingshöfer, Vice President at EPG Hotels and Resorts participated in a panel discussion and presented a masterclass focusing on a mixed use development containing branded hotel and serviced apartment assets. The masterclass was well received by attendees who found it to be highly informative.

Tara Marlow
Partner & Head of Real Estate and Hospitality
t.marlow@tamimi.com

Jeremy Scott
Head of Real Estate - Dubai
j.scott@tamimi.com

31
OCT

BCDR-AAA New Draft Arbitration Rules

On the occasion of the 2016 International Bar Association Annual Conference in Washington, DC, the Bahrain Chamber for Dispute Resolution (BCDR-AAA) held a breakfast meeting and panel discussion on the BCDR-AAA and its new Draft Arbitration Rules.

Sheikha Haya Al Khalifa, Chair of the Board, and William K. Slate II, a member of the Board and the Chairman and CEO of Dispute Resolution Data LLC, co-chaired the discussion.

The three Committee members made presentations during the meeting. Professor Ziadé provided a general description of the BCDR-AAA and its main activities. He discussed the legal environment in which the BCDR-AAA operates, including the framework provided by the 2015 Bahrain legislation on arbitration, which applies the UNCITRAL Model Law on International Commercial Arbitration to both domestic and international disputes.

Essam Al Tamimi, Founder and Senior Partner Al Tamimi & Company also attended the breakfast meeting and shared his thoughts on the Draft Arbitration Rules. Essam emphasised the BCDR-AAA's strong role in providing training and spreading awareness through its international events on arbitration and its first-rate legal periodical.

The event was very informative and allowed the delegates to discuss and get an understanding of the new draft rules released by the BCDR-AAA.

United Arab Emirates
Ministry of Justice

46th Year
Issue No. 603
13 Dhu'l Hijjah 1437 AH
15 September 2016

FEDERAL DECREE-LAWS

6 of 2016	Approving an additional allocation to the budget of the Federation and to the ancillary budgets of independent bodies for the financial year 2016.

FEDERAL DECREES

125 of 2016	On the appointment of a UAE consul-general in Houston, USA.
126 of 2016	On the appointment of the UAE Ambassador to the Republic of the Philippines.
127 of 2016	On the appointment of a UAE non-resident ambassador.
128 of 2016	On the appointment of a UAE non-resident ambassador.

United Arab Emirates
Ministry of Justice

46th Year
Issue No. 604
27 Dhu al-Hijjah 1437H
29 September 2016

FEDERAL DECREE-LAWS

7 of 2016	Amending the Penal Code promulgated by Federal Law No. (3) of 1987.
8 of 2016	Amending Federal Law No. (14) of 1995 on combating narcotics and psychotropic substances.
9 of 2016	On bankruptcy.
11 of 2016	Amending Federal Law No. (3) of 1983 concerning the Judicial Authority.
12 of 2016	Amending Federal Law No. (10) of 1973 concerning the Federal Supreme Court.
13 of 2016	On the establishment of the Federal Tax Authority.

FEDERAL DECREES

130 of 2016	Appointing judges in the Federal Courts.

United Arab Emirates
Ministry of Justice

46th Year
Issue No. 604
27 Dhu'l Hijjah 1437 AH
29 September 2016

REGULATORY DECISIONS OF THE CABINET

35 of 2016	Promulgating the implementing regulations of Federal Law No. (2) of 2014 on small and medium-sized enterprises.
36 of 2016	On the UAE Regulation Concerning Monitoring of Data and Communication Cabling Systems.
37 of 2016	On the UAE Regulation Concerning Monitoring of Standards of Safety for Automatic Door and Window Systems.

MINISTERIAL DECISIONS

- From the Ministry of Foreign Affairs and International Cooperation:

515-1 of 2016 — On the diplomatic, special and VIP passport system.

- From the Ministry of Human Resources and Emiratisation:

739 of 2016 — On wage protection.

- From the Ministry of Climate Change and Environment:

611 of 2016 — On the formation of the Advisory Committee on Quarries in the UAE.

ADMINISTRATIVE DECISIONS

- From the UAE Central Bank:

61/6/2016 — Amending Decision No. 77/7/2013 on the licensing and regulation of exchange business.

- From the Securities and Commodities Authority:

26/T.M of 2016 — On the regulation of some financial activities and services as well as trading mechanisms.

- Certificate of approval of amendment of the Articles of Association of Drake and Scull International PJSC.
- Certificate of amendment of the Articles of Association of Arabian Scandinavian Insurance Company PLC.
- Certificate of amendment of the Articles of Association of the Sharjah Group Company PJSC.
- Certificate of amendment of the Articles of Association of Gulf Investment Corporation PJSC.
- Certificate of amendment of the Articles of Association of Dubai Insurance Company PJSC.
- Certificate of amendment of the Articles of Association of International Fish Farming Holding Company PJSC.

- Certificate of amendment of the Articles of Association of Union Properties PJSC.
- Certificate of amendment of the Articles of Association of Dubai Parks and Resorts PJSC.
- Certificate of amendment of the Articles of Association of Dubai Islamic Insurance and Reinsurance Company PJSC.
- Certificate of amendment of the Articles of Association of AXA Green Crescent Insurance PJSC.
- Certificate of amendment of the Articles of Association of Ras Al Khaimah National Insurance Company 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

SENIOR PARTNER
Essam Al Tamimi
e.tamimi@tamimi.com

MANAGING PARTNER
Husam Hourani
h.hourani@tamimi.com

DEPUTY MANAGING PARTNER
Hassan Arab
h.arab@tamimi.com

UAE
ABU DHABI
Stephen Forster
s.forster@tamimi.com

DIC, DUBAI
Samer Qudah
s.qudah@tamimi.com

DIFC, DUBAI
Husam Hourani
h.hourani@tamimi.com

THE MAZE TOWER, DUBAI
Bassem El Dine
b.dine@tamimi.com

RAS AL KHAIMAH
Ammar Haykal
a.haykal@tamimi.com

SHARJAH
Zafer Oghli
z.oghli@tamimi.com

BAHRAIN
MANAMA
Fotoun Hajjar
f.hajjar@tamimi.com

EGYPT
CAIRO
Ayman Nour
a.nour@tamimi.com

IRAQ
BAGHDAD
Mohammed Norri
m.norri@tamimi.com

ERBIL
Khaled Saqqaf
k.saqqaf@tamimi.com

JORDAN
AMMAN
Khaled Saqqaf
k.saqqaf@tamimi.com

KUWAIT
KUWAIT CITY
Alex Saleh
alex.saleh@tamimi.com

Philip Kotsis
p.kotsis@tamimi.com

OMAN
MUSCAT
Ahmed Al Barwani
a.albarwani@tamimi.com

QATAR
DOHA
Hani Al Naddaf
h.alnaddaf@tamimi.com

SAUDI ARABIA
AL KHOBAR
Jonathan Reardon
j.reardon@tamimi.com

JEDDAH
Grahame Nelson
g.nelson@tamimi.com

RIYADH
Grahame Nelson
g.nelson@tamimi.com

ARBITRATION
Paul Turner
p.turner@tamimi.com

BANKING & FINANCE
Jody Waugh
j.waugh@tamimi.com

CAPITAL MARKETS
Ahmed Ibrahim
a.ibrahim@tamimi.com

COMMERCIAL
Marcus Wallman
m.wallman@tamimi.com

CONSTRUCTION & INFRASTRUCTURE
Scott Lambert
s.lambert@tamimi.com

CORPORATE
Gary Watts
g.watts@tamimi.com

CORPORATE STRUCTURING
Samer Qudah
s.qudah@tamimi.com

EDUCATION
Ivor McGettigan
i.mcGettigan@tamimi.com

EMPLOYMENT
Samir Kantaria
s.kantaria@tamimi.com

FAMILY BUSINESS & GOVERNANCE
Gary Watts
g.watts@tamimi.com

FINANCIAL CRIME & SANCTIONS
Khalid Al Hamrani
k.hamrani@tamimi.com

FINANCIAL SERVICES REGULATORY & ENFORCEMENT
Rita Jaballah
r.jaballah@tamimi.com

HEALTHCARE
James MacCallum
j.maccallum@tamimi.com

HOSPITALITY
Tara Marlow
t.marlow@tamimi.com

INSURANCE
Yazan Al Saoudi
y.saoudi@tamimi.com

INTELLECTUAL PROPERTY
Omar Obeidat
o.obeidat@tamimi.com

LITIGATION
Hussain Eisa
h.shiri@tamimi.com

MERGERS & ACQUISITIONS
Gary Watts
g.watts@tamimi.com

PROJECTS
Alex Saleh
alex.saleh@tamimi.com

REAL ESTATE
Tara Marlow
t.marlow@tamimi.com

REGULATORY
Andrea Tithecott
a.tithecott@tamimi.com

SPORTS & EVENTS MANAGEMENT
Steve Bainbridge
s.bainbridge@tamimi.com

TECHNOLOGY, MEDIA & TELECOMMUNICATIONS
Nick O'Connell
n.oconnell@tamimi.com

TRANSPORT
Yazan Al Saoudi
y.saoudi@tamimi.com

CHINA GROUP
Yi Long Wong
y.wong@tamimi.com

IRAN GROUP
Hamid Mojtahedi
h.mojtahedi@tamimi.com

KOREA GROUP
Jongeun (Christina) Lee
j.lee@tamimi.com

Our Partners

The UAE has the lowest **bed density** in the region at 11 beds per 10,000 as compared to 22 bed per 10,000 in Kuwait and 54 per 100,000 in high-income countries[1]

By 2030,
non-communicable diseases
will account for 87% of all deaths in the GCC[2]

Data Sources: 1. World Health Organization
2. World Bank
3. Alpen Capital