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LAW UPDATE

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Accelerating the Pace of International Arbitration: A Comparative Look at the ICC's New Expedited Procedure Provisions

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In this Issue

Welcome to the April edition of *Law Update*.

We were very pleased to see the Legal 500 EMEA and Chambers & Partners 2017 directories launch since our last newsletter with the firm receiving strong results and a number of firsts in both editions. As with all accolades, we would not be able to achieve such success without our friends and clients. We are grateful for your ongoing support of our firm and we look forward to continued success in partnership with you.

Since my last message, we launched our Tax practice to provide clients across the region with the services they need to get 'VAT ready' as introductions are made across the region from 2018. Please do get in touch if you need our help. We're ready to assist.

We also proudly launched our 'Know Your Rights: For Real Estate Investors in Dubai' guide in partnership with the Dubai Land Department. The guide aims to provide investors with all they need to know about the laws pertaining to investing in Dubai and is available in both Arabic and English at www.tamimi.com.

The first four months of 2017 saw the firm host and get involved in a number of high profile arbitration and litigation events, both locally and internationally. As we feature arbitration and litigation in this issue of *Law Update*, we present some of the interesting topics to come out of these events.

Starting on page 32, we take a comparative look at the ICC's new expedited procedure provision for accelerating the pace of international arbitration; the security for costs in arbitration (page 36) and we cover the Bahraini Constitutional Court's rejection of a challenge to the GCC Commercial Arbitration Centre's Arbitration Rules on page 48.

Our Banking & Finance team outline some important legal and regulatory developments in the UAE financial services sector (page 16), while our Intellectual Property team highlight the importance of paying attention to trade names and domain names in respect of trademark licences in the UAE (page 22). Our Corporate Commercial team analyse the liabilities of Directors under the UAE Bankruptcy Law (page 28).

Our offices in the region have some interesting news to share this month in our regional jurisdiction updates, starting on page 52. We cover Saudi Arabia's privitisations plans for sports clubs, the new employment regime in Jordan and look at changes to the tax regime in Oman.

As always, I trust you will find the information interesting and useful. For further information on any of these articles please do not hesitate to contact us.

All the best

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Judgments

Law Update Judgments aim to highlight recent significant judgments issued by the local courts in the Middle East. Our lawyers translate, summarise and comment on these judgments to provide our readers with an insightful overview of decisions which are contributing to developments in the law. If you have any queries relating to the *Law Update Judgments* please contact *lawupdate@tamimi.com*

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Sharjah Court of Appeal orders repayment of compound interest even after settlement

A recent decision by the Sharjah Court of Appeal (in appeal no 1081/2016 by the claimant "Our client" and appeal no 1073/2016 by the defendant bank) has broken the common rule that the court will not reopen matters related to compound interests after settlement of the bank loan and closure of account by the customer and issuance of clearance letter by the bank . The Court found that a party could raise a claim against the imposition of compound interests even after settlement of the bank loan because imposition of compound interests is a violation of public policy. Al Tamimi represented the successful claimant.

Background

The claimant is a businessman who had applied for bank facilities by way of loans from one of the UAE's largest banks in order to finance his projects.

The bank offered banking facilities with interest rates that the bank said compared competitively to those offered by other banks in the UAE.

The claimant accepted the bank's offer, believing that the proffered interest rate was the best he could get from any bank in the UAE, and he signed four facility agreements with the bank.

The claimant noticed that, even though he was paying the loan installments regularly, the bank was calculating compound interest rates and additional fees that were not agreed between the parties in the signed agreements. The additional payments presented an onerous burden on the claimant and his business.

The claimant therefore notified the bank that the compound interest rates they calculated were illegal and exceeded those normally applied by the banking industry, and that the additional rates contravened the terms of the signed agreements. The claimant was forced by the onerous interest rates to approach another bank and obtain another loan with a simple interest rate in order to close his loan accounts with the defendant bank and stop the calculation of the compound interests and additional fees.

The claim

The claimant subsequently filed a case before the Sharjah courts requesting the appointment of a banking expert who could review the facility agreements and the methods employed by the bank to calculate the interests.

The expert was duly appointed and, after considering the documentation, he reported that the bank had calculated compound interests and additional fees amount of almost AED 10.5m.

In its defence, the bank said that the claimant had accepted the additional interest calculations and had assumed an obligation to pay them. It said that this meant the claimant had no right to bring any claim after settling all loan installments and issuance of the clearance letter. Any dispute should have been raised prior to settlement of instalments and issuance of the clearance letter.

In reply, the claimant argued that compound interest rates are prohibited by Sharia and violate the public policy, and as long as there is a violation of the public policy he had the right to sue the bank even after full settlement of the loan, especially that he had had no choice but to make an early settlement in order to stop the compound interest from accruing.

Court of First Instance

On 27 September 2016, Sharjah first instance court issued its judgment and ordered the bank to pay to the claimant the full sum, as assessed by the banking expert, of almost AED 10.5m, plus interest of 5% per annum from the date on which the claim was raised. The court based its judgment on the prohibition on compound interests found in Sharia law and the violation of public policy that the interest rate represented.

Court of Appeal

Both parties filed appeals and on 22 February 2017, the Court of Appeal issued its judgment upholding the decision of the First Instance Court and confirming that the bank had no right to calculate compound interest rates. The Court of Appeal also agreed that, as a matter of public policy, the claimant had the right to sue the bank in respect of the compound interest rates even after settlement of full loan, because they are prohibited by Sharia.

"Compound interest rates are prohibited by Sharia and violate public policy, giving claimants the right to seek redress from the courts even after settlement of the full loan."

Analysis

Usually the UAE Courts will not allow a party to resile from the terms of an agreement it has voluntarily entered into. However on this occasion the Court of Appeal has allowed it because the compound interest is prohibited by Shariaa and violates the public policy and the banks should not apply it.

This judgment is not final and may be subject to review by the Court of Cassation. However it nonetheless indicates a willingness by the courts to review the agreements and dis-apply them should they contravene the public policy.

For further information on this dispute or any of the grounds / merits of this case or judgments, please contact Ahmed El Shaer (Senior Associate / Litigation department – Sharjah)

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Caution: Selling mortgaged property in Dubai

In Dubai criminal case 124 of 2012, the Dubai Court of Cassation made an important ruling regarding the selling of mortgaged property and the application of the 2008 Dubai mortgage law (Law No. 14 of 2008).

The Facts

The Seller had purchased a substantial number of plots in a development through financing from a Bank. All the plots were subject to the Bank's mortgage.

Subsequently, the Seller sold 20 plots to the Purchaser whilst the mortgage remained on the land.

The Purchaser fell behind on his payments to the Seller after cheques amounting over AED 120 million were dishonoured. The Seller filed a criminal complaint against the Purchaser.

The Purchaser denied the charges on the basis that the Seller had defrauded him by selling property that was mortgaged, a fact the Seller had failed to disclose to him as alleged by him. He sought to be acquitted of the crime of dishonoured cheques. Al Tamimi represented the Seller in this case.

Court of First Instance

The Court sentenced the Purchaser on the basis of the dishonoured cheques.

Court of Appeal

The Purchaser appealed to the Court of Appeal.

The Court of Appeal acquitted the Purchaser on the basis that the Seller had obtained the cheques fraudulently because of the non-disclosure of the mortgages. The Court of Appeal had erroneously applied Law 14 of 2008 because they had relied on Article 10 of Law 14 of 2008 which obliged the Seller to get the consent of the mortgagee to sell the mortgaged property.

Court of Cassation

The Seller appealed the decision before the Court of Cassation and encouraged the Public Prosecutor to appeal. The Public Prosecutor accepted the application and appealed based on the following grounds:

a. The Court of Appeal applied and based its decision on Article 10 of Law No. 14 of 2008 (Dubai Mortgage Law) which provides that "*The Mortgagor shall not sell, gift or otherwise dispose of the Mortgaged Property Unit or Property or create any right in rem or personal right over the Mortgaged Property Unit or Property without the approval of the Mortgagee and subject to the assignee agreeing to take over the obligations of the Mortgagor under the mortgage contract…*". However Law No. 14 was not applicable in this case and could not be applied retrospectively since the sale of the plots of land was executed before Law 14 of 2008 was issued.

b. In relation to the issue of the applicable law, it was argued that the Court should differentiate between the provisions that govern mortgage contracts in Dubai under the new Law No. 14 of 2008 and the provisions under the UAE Civil Code which also deals with mortgage contracts. Under the Civil Code, consent from the bank/mortgagee is not required and the purchaser does not need to be notified of the existence of the mortgage (Article 1412 of the UAE Civil Code) provided that this does not affect the mortgagee's rights.

c. It is common practice in Dubai for developers to mortgage plots prior to the commencement of a project and sell off-plan units to end users. The Appeal Court's decision could lead to the invalidity of most sales in Dubai.

d. The validity or otherwise of the sale and purchase agreement had no bearing on the offence of giving a cheque in bad faith.

The Court of Cassation's Findings

Disposing mortgaged property

The Court of Cassation rejected the Purchaser's argument pertaining to the failure to disclose to the Purchaser that the land sold was actually mortgaged and could not be disposed of by the Seller. The Court of Cassation accepted the counter-argument that the sale and purchase agreement had no bearing on the offence of giving a cheque in bad faith.

The Court of Cassation also accepted the argument that the transaction between the parties and receipt of the cheques occurred before the Dubai Mortgage law (14 of 2008) came into force. The Court held that a law takes effect upon its issuance by the relevant authority which is evidenced by publication in the Official Gazette (which is when it becomes public knowledge).

Law No. 14 of 2008 was issued on 14 August 2008. The law came into force 60 days from the date of publication. Accordingly, the provisions of Law 14 of 2008 should not have been applied to this case, as the transaction took place on 22 April 2008. In relying, amongst other things, upon the provisions of that law, the Court of Appeal erred and its decision should be overturned. Instead, the Civil Code was to be applied, specifically Article 1412 of the Civil Code which states:

"*The mortgagor may dispose of his property, which is pledged by way of security without the same affecting the rights of the mortgagee.*"

Under this article there is no requirement for the mortgagor to obtain the mortgagee's consent prior to disposing the property.

The Court of Cassation also confirmed that a person who owns mortgaged property has the right to dispose of the property to which he still holds title. Selling the property or obtaining additional mortgages would not constitute fraud within the meaning of Article 399 of the Penal Code. Exercising a right of ownership does not attract any criminal liability or entail deception.

Finally, the Court of Cassation held that the defence of non-responsibility does not arise if a cheque is issued in connection with a legitimate transaction, regardless of the extent of the defect marring the contract. Article 401 of the Penal Code would only apply if a cheque is issued in connection with any of the property-theft crimes listed in the provision.

Conclusion

The Court of Cassation decided to issue its judgment on the merits from the first appeal without returning the case back to the Court of Appeal. The application of Law 14 of 2008 was disregarded and the Court of Cassation applied UAE Civil Code (Article 1412) which does not require the mortgagee's consent for the owner to sell his mortgaged property.

This case is important because it confirms that Law No. 14 of 2008 (Dubai Mortgage Law) does not apply retrospectively. If the court had held otherwise then this may have invalidated a number of sales contracts in Dubai. The market can however now take confidence that agreements made before the introduction of law No. 14 of 2008 are still valid and enforceable.

Sellers of property, however, must now ensure they obtain the consent of both the purchaser and the mortgagee when selling mortgaged property. If consent is not obtained, the courts may consider this as a violation of Article 10 of Law 14 of 2008 and the contract deemed void.

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Software Escrow: Protecting business critical software in the Middle East

Software escrow generally refers to the arrangement whereby the source code of software (and associated explanatory notes and instructions) owned by a vendor is deposited with a trusted, independent third party (known as an 'escrow agent') for the benefit of a customer who has rights to use the software. Software escrow might be requested by a licensee as a means to mitigate its risk during the period the critical business software is being developed for the licensee and the period during which the licensee requires the use of the business critical software. Generally, under a software escrow arrangement, the escrow agent is required to release the software source code to the licensee in specific scenarios (e.g. if the licensor files for bankruptcy). Access to the source code and associated documentation allows the licensee (through its programmers) to maintain the software, modify it (for example, to fix bugs or errors) or to enhance it (for example by building new functionality).

Considering software escrow

Software escrow is a useful means of minimising the risk of using third party supplied business critical software. It is an essential part of business continuity and disaster recovery planning. It serves to secure the storage of business critical source code and provides protection whilst the software is being developed, and for as long as the software is in use by the customer in the operation of its business.

Software escrow should always be considered by the licensee of any third party software, particularly custom developed business critical software. Some factors to take into account as a licensee when deciding whether to request the licensor to place the software in escrow, include:

- the importance of the software in the operation of the business;
- the potential impact to the business and customers (such as financial or reputational loss) in the event the software is corrupted or otherwise ceases to function as intended;
- whether the software is difficult or costly to replace if the solution is no longer supported by the vendor (whether due to insolvency or otherwise); and
- the organisation's corporate risk management strategy.

Software escrow agreement

A software escrow agreement is typically a three party contract that governs the procedures and terms of the escrow process between the licensor, licensee, and escrow agent. The agreement normally outlines the procedures for the deposit of the source code and handling of the source code by the licensor and escrow agent, including what will be deposited (updates, customisations, etc.), how often the deposits are to occur, how the escrow agent is to receive the source code, and where and how it is to be stored.

> **"Software escrow.. is an essential part of business continuity and disaster recovery planning."**

The most heavily negotiated provisions in a software escrow agreement are those relating to the events that trigger the release of the source code. In essence, the aim is to ensure that the customer is able to obtain access to the software in the event the licensor is unable to continue maintaining and supporting the software. The trigger events are negotiable and typically include:

- bankruptcy of the licensor;
- the discontinuance by the licensor of its business;
- the dismissal of substantially all of the employees of the licensor / service provider, or the employees that develop and/or provide maintenance for the licensed software;
- failure by the licensor to comply with the licensing agreement (such as failing to provide required support services);
- the discontinuation of support by the licensor for the type or version of software licensed to the licensee; and
- the occurrence of a change in control event in relation to the licensor / service provider.

Software escrow and the cloud

Under a traditional software escrow arrangement, if the supplier were to become bankrupt, for example, the customer might be able to access the source code and hand it over to a new service provider for the purposes of maintaining the software so that the customer could continue to utilise the software

A software escrow arrangement in the context of a cloud offering is slightly more complicated. Firstly, the supplier may not want to enter into escrow arrangements with all of its customers (particularly those who are paying bargain prices). Secondly, if the parties were to opt for a public cloud SaaS offering, then it is very likely that a standard version of the software will be offered to all customers. Even if the software were to be bespoke, due to the very nature of cloud services there is likely to be very little software installed on the customer's equipment to begin with as the software would be accessed via a web browser. Finally, if the source code were to be made available to the customer, on its own, it would not be sufficient to allow for continuation of the SaaS. At a minimum, access to the following would also be required to ensure continuation of service:

- documentation in relation to the source code and access to critical systems and portals;
- information regarding network configuration and topology; and
- knowledge of administrative processes and procedures.

The good news is that cloud software suppliers are becoming more open to entering into escrow agreements in order to reassure customers of the vendor's commitment to best practice around service continuity. Separately, an increase in the use of the cloud is resulting in an evolution in escrow services where the parameters of escrow services are changing to account for SaaS offerings. Escrow is increasingly being used to provide continuity for SaaS; however, it must be carried out properly. An effective cloud escrow service would, for example, provide for verification and integrity tests on each deposit to ensure it is accessible, virus free, and consists of the correct type of material, insists upon regular deposits of code as the supplier updates and maintains the software, and generally ensures that the service delivered is tailored to the cloud's peculiarities and is as watertight as possible.

Al-Tamimi & Company's Technology, Media & Telecommunications team regularly advises on technology related issues including software escrow. For further information please contact Sana Saleem (s.saleem@tamimi.com) or Nick O'Connell (n.oconnell@tamimi.com).

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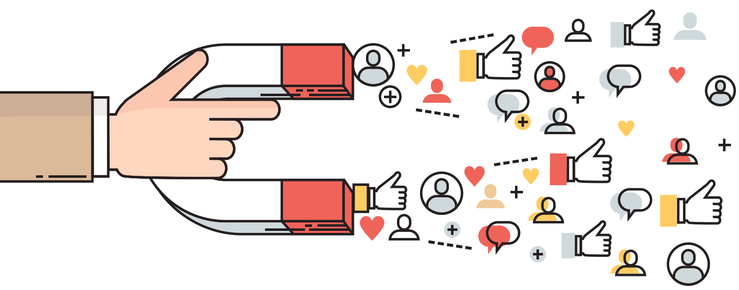

Influencers & Sponsors: What you didn’t know you need to know

Social media influencers, those people tasked with impacting trends, topics and brands, continue to be a much-discussed part of the marketing industry. Reflecting the global trend, there is a lot of buzz around influencers in the UAE right now. Many regional and international influencers are rapidly achieving a significant presence and following within the UAE. Whether it is food, fashion, lifestyle, makeup, or any other consumer product, the UAE public is increasingly plugging into social media to stay on top of ‘what’s hot’.

With the announcement late last year that Dubai will be launching a new club for social media influencers, and with some local influencers now reportedly earning up to USD 5,000 per post, social media influencers are transforming the branding, advertising, and content creation industry in the UAE and across the globe. Businesses have realised the great potential that influencers have to generate brand awareness and popularity, and are increasingly moving to include influencers within their marketing budgets.

As the influencer movement has happened so quickly, there is no unified global approach in regards to the specific legal nuances of being an influencer or a sponsor in this context. However, it is clear that failing to address the relevant legal considerations can have detrimental impacts for both influencers and sponsors seeking their services, both in terms of brand management and growth.

Set-up

Influencers, whether they know it or not, are actually running a business. That means that, according to the laws of the UAE, they would require a trade licence. In general terms, a supplier should not be invoicing for any services in the UAE without an appropriate trade licence. If an influencer is charging ‘per instagram post’, for example, they will need to enter into a contract and then invoice for their services. This should be done through a UAE licensed company, as opposed to in a personal capacity. Whilst this might seem problematic for the influencer, it should be noted that this also assists influencers in managing their own legal liability and, if needed, take court action against a sponsor if they are not paid.

While this may not have been strictly enforced up until now, it is likely that, as the use of influencers grows and becomes more prominent, it will become increasingly important for an influencer to have the appropriate corporate structure in place. In addition, any sponsor that is securing the services of an influencer needs to be sure that they are able to enter into an enforceable contractual relationship with the influencer.

‘Scope’ it Out

It has been common for sponsors to have a very informal arrangement with influencers in this region. However, this is not in line with international best practice. Internationally, sponsors not only have contractual relationships with their influencers, but also enforce stringent terms of behaviour that apply to the material that is created by the influencer.

When entering into such agreements, it is very important that influencers and sponsors define the scope of work very clearly. Having unclear terms will inevitably lead to disagreement between the parties regarding their disparate expectations. This may not only result in the influencer’s obligations being stretched far beyond what they understood to be required but can lead to a breakdown in the relationship. Leaving terms, such as the number of posts, as undefined or ‘to be agreed’ is certainly a pathway to such a result. These terms, such as USD$1,000 for 1 post per month for three months, should be set out clearly and in writing.

Some key questions to consider when finalising the contract are:

- What content is to be included?
- What is the term of the agreement – how many posts, what frequency, and in what time period?
- Who gets to choose the style/vibe of the post, i.e. who has the creative control?
- Will any posts make it clear that they are sponsored, such as using #sponsored or #ad ?
- What hashtags are required?
- What analytics are to be provided to each party?
- Are there to be any approval processes involved prior to posting?

Disclose

One of the key differences with a sponsor using an influencer to promote a product, instead of a more traditional form of paid advertising, is that the audience does not necessarily know whether an influencer is expressing a genuine opinion or if it is a sponsored post. This point has been the subject of much discussion on a global scale. Different countries have put in place laws and policies to regulate this matter. In the USA, there have been some high profile cases in which the Federal Trade Commission ('FTC') has emphasised the requirement for companies to be transparent about what are sponsored posts versus organic posts. In such a case, when a business has sponsored or paid an influencer to create certain content or endorse a product, this needs to be clear to consumers. Failure to do so has been deemed as deceptive marketing conduct. The FTC has also released a policy for the way in which an influencer relationship should operate, which is very prescriptive.

While the UAE does not currently have express laws in place concerning this matter, we note that Federal National Media Council Resolution 35 of 2012, the National Media Council ('NMC') Resolution on Advertising Standards, does include the following:

> '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.'

This law is not ambiguous in its requirement that editorial content be separated from advertising content. However, it is not clear whether the NMC would consider the insertion of, for example, one unidentified advertisement into a feed of editorial content as being an infringement of this regulation. It may still be considered to be 'unique and separated', notwithstanding that it is not marked as advertising. However, even if it is considered to be unique and separate, it is likely that the advertiser will not be 'clearly determined'.

As we have not yet seen the NMC apply this law to an influencer, and because we do believe that there is scope within this law for it to be applied if they chose to do so, we strongly recommend that both the sponsor and influencer consider this aspect before they enter into their contract.

Even without the discussion about this law, there has still been much debate about increasing the transparency of the influencers' position as a paid representative, and whether express disclosure should be required. For now, it would be extremely wise to ensure that, whatever the parties agree in regard to this point, i.e. whether the influencer must use '#sponsored', '#ad' or a similar hashtag in their posts, it should be clearly included in the contract between the sponsor and the influencer.

"... there has still been a lot of debate about increasing the transparency of the influencers' position as a paid representative, and whether express disclosure should be required."

Protect your brand

For influencers, protecting their brand is always a key consideration in any transaction, as it can be easy to lose the public's interest or trust. However, with the dynamics of the brand/influencer relationship, the influencer certainly will feel that giving up too much control to a sponsor over the content creation would result in loss of popularity, as usually it's the individual's own creative edge that makes the individuals popular, and therefore an influencer, in the first place. Consequently, the influencer is likely to desire to protect their own brand.

For the companies using influencers, however, brand protection will be equally relevant. Using an influencer as the face of a brand can be risky business, as we saw with the recent dropping of YouTube star PewDiePie by Disney-owned Maker Studios as a result of a Wall Street Journal investigation into offensive themes in his Youtube channel. As a brand owner, it is always vitally important to ensure that there is a provision to exit a contract with an influencer who fails to live up to the required standards or if the influencer ceases to remain influential.

If you require assistance with your corporate set-up, negotiating or entering into a contract with an influencer, sponsor, or agency, or want to know how to protect your brand, please get in touch with us.

The Technology, Media & Telecommunications team at Al Tamimi regularly advises companies on their advertising and marketing practices in the region. Contact Fiona Robertson (f.robertson@tamimi.com) or Amna Qureshi (a.qureshi@tamimi.com) for details.

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Resolving complaints relating to Telecoms in the UAE

Consumers will sometimes have issues with their telecommunications provider and may consider filing a complaint. Such issues may relate to, for example, a consumer being charged for a service/product the consumer did not purchase. Often these consumers are not sure of the process for making such a complaint. In this article, we outline the procedure for the making, processing and resolving of a consumer dispute in regard to a UAE licensed telecom service provider.

The Telecommunications Regulatory Authority ("TRA") is the UAE's federal regulatory body for the telecommunications industry. The TRA's Consumer Protection Regulations ("TRA's Regulations"), which were amended in January 2017, set out the process for consumer complaints and disputes. Under the TRA's Regulations, the TRA has a broad range of powers and scope to provide suitable remedies for consumers.

The first point for filing a complaint is with your licensed telecommunications service provider itself. Telecommunications service providers are legally required, under the TRA's Regulations, to maintain procedures to handle consumer complaints and to provide consumers with information regarding the complaint process. Where possible, telecommunications service providers are supposed to resolve a consumer complaint at the point of first contact, so a consumer who is dissatisfied with the telecommunications services that have been provided, should in the first instance, raise the matter directly with the relevant telecommunications service provider in accordance with its Consumer Complaints procedure.

In the event that the telecommunications service provider fails to resolve the matter to the consumer's satisfaction, the matter can be escalated through the TRA's Consumer Dispute procedure. The TRA will generally handle consumer disputes only after the complaint has been handled by the relevant telecom provider and within a three month period of the last handling by that telecoms provider. Despite this, the TRA's Regulations provide that the TRA does have the discretion to accept any consumer dispute at any time.

Lodging a dispute with the TRA

The person submitting the dispute must provide the following information and documents to the TRA:

- the consumer's name, address and contact details (phone number and email);
- the telecommunications service provider's complaint reference number and the consumer's account number;
- copies of personal ID documents - UAE ID card or passport;

- a written description of the dispute;
- copies of all correspondence with the telecom provider; and
- written authorisation or power of attorney, if the person submitting the complaint is not the consumer/account holder.

The TRA will assess the dispute and if it considers the submission to be complete and appropriate, the TRA will correspond directly with the relevant telecommunications service provider on behalf of the consumer. It is important to note that the TRA will reject disputes which it considers to be incomplete, frivolous, capricious or simply designed to damage the interests and reputation of the telecommunications service provider.

The TRA will advise the telecommunications service provider of the dispute and the telecommunications service provider is required to respond to the TRA within three business days.

Review and acceptance of the dispute

The TRA will conduct an initial assessment of the dispute, particularly with a view to verifying that the dispute is genuine and the submission is complete.

If the TRA decides not to accept the dispute, the consumer will be notified immediately and the case will be closed.

Correspondence with the Telecom Provider

The TRA will submit a copy of the dispute to the telecommunications service provider, together with any instructions or questions that the TRA may choose to raise.

The TRA will set a deadline for the telecommunications service provider to investigate and respond to the dispute. The telecommunications service provider shall use its best endeavours to close the dispute by the set deadline, however it can make a written request for an extension if required.

Review of the Telecom provider's response

The TRA will carefully review the telecommunications service provider's response to the dispute and, if the TRA is not satisfied with this response, the TRA will provide further instructions to the telecommunications service provider.

Once the TRA is satisfied with the response and actions to be taken by the telecommunications service provider, the TRA will inform the consumer of the outcome and if the consumer is satisfied, the case will be closed.

" the TRA is taking a much more active role in bringing telecommunications service providers together and finding solutions for consumers with a view to increasing consumer satisfaction."

If the consumer is not satisfied with the outcome, the TRA may reopen the case and submit further instructions to the telecommunications service provider.

The TRA's Regulations also require that during the course of the procedure, the TRA will use its best endeavours to keep consumers informed about the status of their complaints. Under the TRA's Regulations, the TRA has the authority to resolve disputes and order any remedies accordingly. At any stage during the course of the handling of a consumer dispute by the TRA or at the conclusion of the TRA's handling of the consumer dispute, the TRA may direct the telecommunications service provider to undertake any remedy it considers to be reasonable and appropriate.

The TRA's Consumer Dispute Procedure is an efficient and clear-cut process that can be a great relief for consumers in situations where they are unable to resolve disputes directly with their telecommunications service provider. The take away point is that, when considering filing a complaint, it is important to remember that your telecommunications service provider should be the first point of contact. Telecommunications service providers are responsible for ensuring that all consumer complaints are handled efficiently. If your telecommunications service provider is unable to resolve the issue then the matter may be escalated to the TRA. Ultimately, quality of service is high on the agenda and the TRA is taking a much more active role in bringing telecommunications service providers together and finding solutions for consumers with a view to increasing consumer satisfaction.

Al Tamimi & Company's Technology, Media & Telecommunications team regularly advises on telecommunications related issues including consumer complaints and disputes relating to telecommunication services. For further information about these matters, please contact Nick O'Connell (n.oconnell@tamimi.com) or Amna Qureshi (a.qureshi@tamimi.com).

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Financial Services: Legal and Regulatory Developments in the UAE

It has been a busy time for legislators in the United Arab Emirates ("UAE"), with the introduction of many new laws and regulations which impact the financial services industry.

This article looks back on recent developments and attempts to predict what else may be enacted during 2017.

Centre for Amicable Settlement of Disputes

The Director General Office of Dubai Courts has issued an Administrative Decision no. 33 of 2017 ("Decision") concerning the jurisdiction of the Centre for Amicable Settlement of Disputes ("Centre"). The Decision excludes the following disputes from the Centre's jurisdiction:

i. Labor disputes;
ii. Personal status disputes; and
iii. If one of the parties is a "bank".

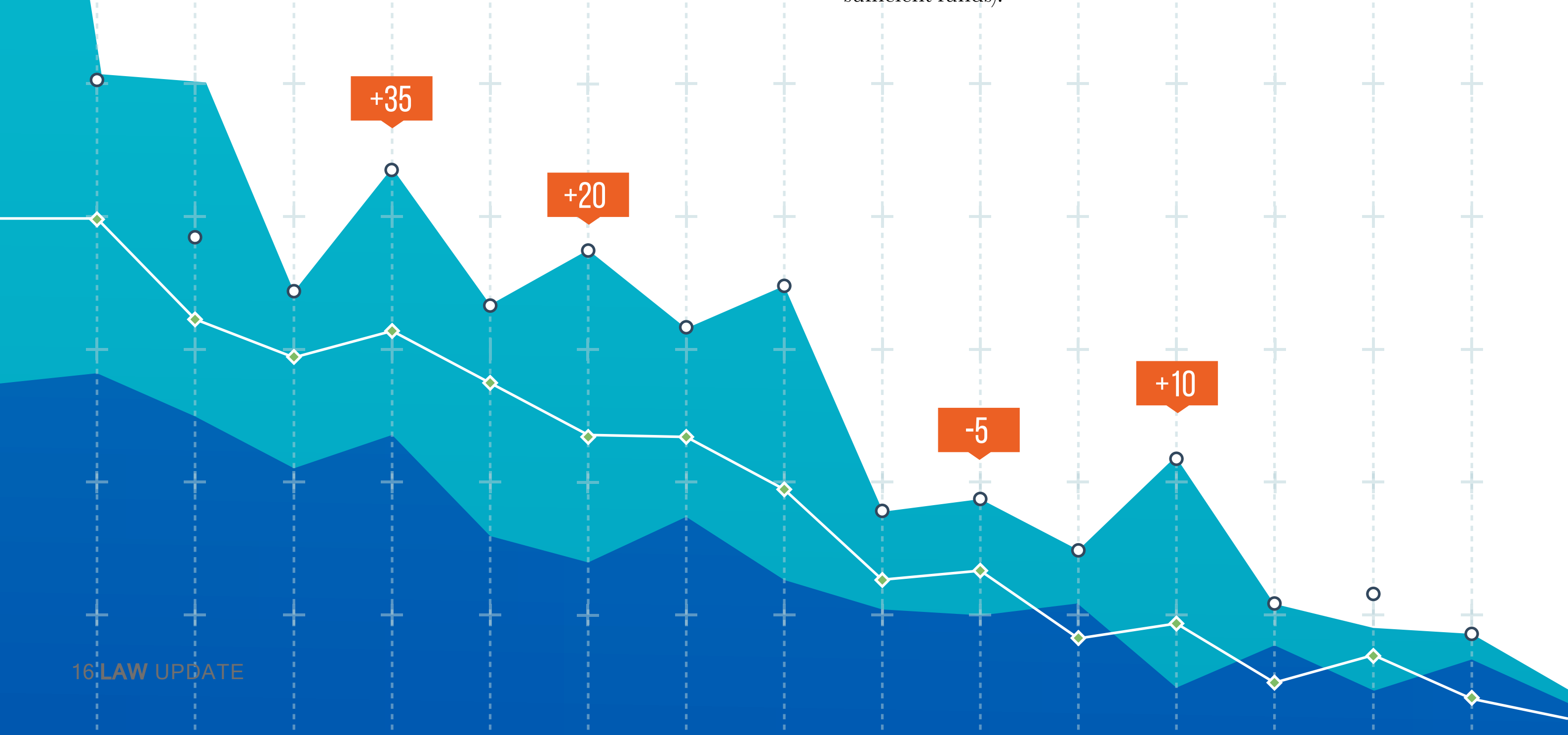
The Decision is an important change to the current practice in Dubai, which required banks to file their cases before the Centre prior to filing it with the Court of First Instance, which impacted the cost and timelines.

The Decision was effective on 12 March 2017.

Misdemeanour Court

Dubai has also issued Penal Order Law No. 1 of 2017 to establish a misdemeanour court to fast track certain offences. Of particular interest to financial institutions will be the inclusion of two offences related to cheques, being:

i. Giving a cheque with malicious intent; and
ii. Signing on the back side of the cheque (without sufficient funds).



UAE Central Bank Regulation of Electronic Payment Systems

The Regulatory Framework for Stored Values and Electronic Payment Systems Regulation (the "EPS Regulation") was issued by the UAE Central Bank pursuant to the Cabinet Decision No.6/6 of 2016 and was effective as of 1 January 2017. The EPS Regulation has been long awaited by the banking industry and marks the formal issuance of regulations by the UAE Central Bank that recognises, governs and licenses the fast growing business of digital payment services. The EPS Regulation enables the issuance of Digital Money and Payment Instruments involving the United Arab Emirates Dirham.

The UAE Securities and Commodities Authority Promotion and Introduction regulations

The SCA issued a new regulation, Board Decision No. (3/R.M) of 2017 regarding the Promotion and Introduction Regulations (the 'Promotion Regulations'). The Promotion Regulations were published in the Federal Gazette No. 611 on 31 January 2017 and came into force on 1 February 2017. Although the Promotion Regulations are currently in force, implementation is uncertain and clarifications from SCA are awaited.

UAE Federal Law No. (20) of 2016 on Mortgage over Movables

The Mortgage of Movables Law became effective in March 2017. The Law changes the regime for security over moveable assets and creates a public security register for such security. The Cabinet Resolution contemplated by the law is yet to be issued.

UAE Federal Law No 9 of 2016 concerning Bankruptcy

The new Bankruptcy Law came into force on 29 December 2016, placing greater emphasis on restructuring and work out solutions.

UAE Central Bank Regulation of Capital Adequacy

The UAE Central Bank has issued new regulations to ensure capital adequacy of all banks operating in the UAE in accordance with Basel III. The Regulatory Framework for Capital Adequacy was effective as of 1 February 2017.

Dubai Financial Market launches of a trading platform for exchange-traded funds (ETFs)

Dubai Financial Market has launched a trading platform which provides ongoing support to rapidly growing the EFT industry.

Other Securities and Commodities Authority regulations and updates

SCA has recently issued various new regulations which include:

a. Licensing the Activity of Administrative Services of the Funds no. 4RM of 2017

   The regulation covers the licensing requirements and procedures for a Funds' Administrative Service provider, its obligations towards SCA and its clients.

b. Anti AML and Anti Terrorism Reg. no. 2RM of 2017 (amending the previous one no. 17 R of 2010)

   The new regulation makes substantial amendments to take into consideration and ensure compliance with changes introduced with the Federal AML law no. 9 of 2014 and Federal Anti Terrorism law no. 7 of 2014.

c. The Administrative Order no. 1 RT of 2017 concerning the criteria of Real Estate Investment Funds

   This Order aims to set out the purpose, conditions and specifications for real estate investment funds in the UAE.

d. The Administrative Order no. 3 RT of 2017 concerning the criteria of Capital Venture Funds

   This Order sets out the purpose and conditions for UAE capital venture funds.

e. SCA has on 22 December 2016, issued guidance notes to provide information in relation to the implementation of the Automatic Exchange of Information for tax purposes - the Common Reporting Standard in the UAE. The guidance notes do not have the force of law.

What is likely for the remainder of 2017?

It is not always possible to predict with any certainty legislative developments in the UAE, especially the timing of enactment. However laws and regulations which could be on the horizon include:

a. UAE Netting Law
b. Finance Company Regulations
c. Union Law (amendment)
d. Leasing Law
e. Clarification from SCA on the Promotion Regulations
f. Further Central Bank regulations, including on microfinance and crowd funding

For further information on any of the laws and regulations mentioned in this article, please contact the Banking and Finance team at Al Tamimi.

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Enforcing Non-Compete Restrictions against Former Employees in the UAE

Employees are often privy to a wide range of their employer's confidential and commercially sensitive information. To safeguard their business interests and protect the integrity of their confidential information, it is understandable that many companies seek to prevent their employees from leaving the company and immediately joining a competitor, given the risk of the company's commercial information being divulged to the new employer and undermining the former employer's competitive edge.

In light of this risk, Article 127 of UAE Federal Law 8 of 1980, as amended ("UAE Labour Law") allows UAE companies to impose post-termination restrictions on their employees to prohibit them from competing with the company for a period of time following termination of their employment. Article 127 requires that non-compete restrictions are imposed only to the extent necessary to protect the company's legitimate business interests, and accordingly the restrictions must be limited with respect to time, place and the nature of work.

However, even where non-compete restrictions are contractually agreed upon between an employer and an employee, it is very difficult for UAE companies to enforce the restrictions in practice once the individual leaves the company. This is primarily because injunctive relief is not an available remedy before the UAE Labour Court and accordingly, companies are unable to obtain a court order preventing their former employees from joining a competitor (the position is different within the Dubai International Financial Centre ("DIFC") and the Abu Dhabi Global Market ("ADGM"), both of which are separate legal jurisdictions whereby the respective courts do have the power to grant injunctive

"The UAE Labour Law allows companies to impose post-termination restrictions on their employees to prohibit them from competing with the company for a period of time following termination of their employment."

relief). Accordingly, if a former employee is in breach of their contractual non-compete obligations, in practice the company's recourse (outside the DIFC and ADGM) is typically limited to seeking monetary damages from the former employee or potentially filing a police complaint against them for breach of confidentiality, both of which give rise to their own challenges in practice.

Ministerial Resolution 297 of 2016 seeks to introduce a mechanism for Article 127 of the UAE Labour Law to be enforced in practice. In particular, the Resolution provides that the Ministry of Human Resources and Emiratisation (formerly known as the Ministry of Labour) may refrain from issuing a work permit (or withdraw a work permit that has already been issued) where a final court judgment finds that the individual is (or would be, if a new work permit is issued) in violation of the non-compete obligations owed by the individual to their former employer. This action can be taken by the Ministry in respect of the validity period of the non-compete restriction. For example, if the individual has a six month non-compete restriction, the Ministry may refrain from issuing them a new work permit (or withdraw a work permit that has already been issued) for a period of six months following termination. As a preliminary threshold issue, the contractual non-compete restriction would need to be limited in duration, geographical scope and business activities to the extent necessary to protect the former employer's legitimate business interests (in accordance with Article 127 of the Labour Law) and accordingly a company cannot rely on the Resolution to enforce an excessively broad or onerous non-compete restriction.

It is yet to be seen how the resolution will work in practice, including whether it can form the basis of a claim in its own right (or whether it would need to form part of a civil claim for monetary damages, as mentioned above, or be raised as a counter-claim to a labour claim filed by the employee). In any event the company would need to incur the costs of filing (or defending) a court claim and await final judgment. Further, practically speaking the final court judgment would likely be obtained after the individual's contractual non-compete restrictions have expired (and therefore it remains to be seen whether, in the event of a successful claim and in order to give teeth to the Resolution, the employee's work permit with the new employer may be withdrawn). Further, the Resolution cannot be relied upon where the former employee wishes to join a competitor in a UAE free zone (or is otherwise not regulated by the Ministry), as they would not require a Ministry work permit to join the new company.

Notwithstanding the potential procedural and practical issues, however, the Resolution may assist UAE companies in enforcing non-compete restrictions against their former employees and help safeguard the company's sensitive information and commercial interests.

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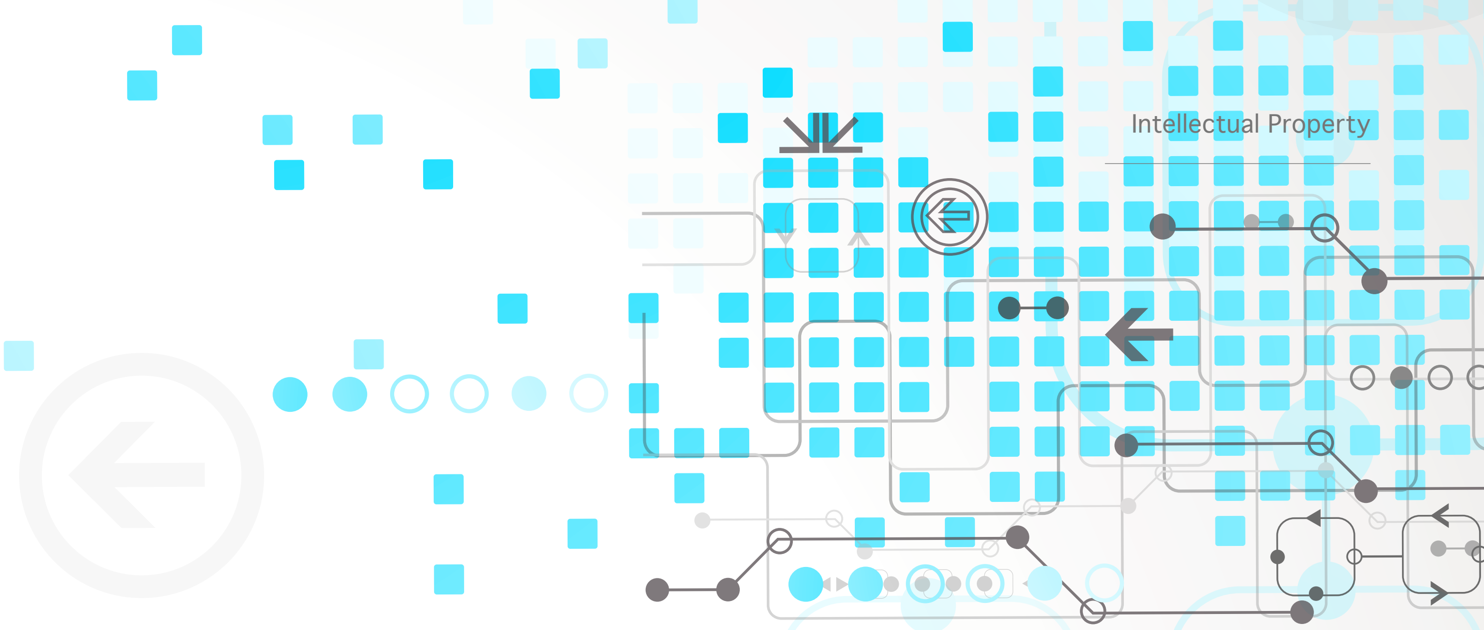
The Dangers of Pirated Software and the Risks for Employers

This article considers the issue of pirated software and the risks posed to employers in this context.

Broadly, copyright law protects the value of a creative work. When making an unauthorized copy of the creative work, copyright infringement occurs. We often see digital copyright warnings in our personal lives, such as before watching a movie, or when accepting a user agreement before downloading software or an application.

Digital piracy in the UAE may constitute copyright infringement under Article 7 of Federal Law No. 7 of 2002 Concerning Copyrights and Neighboring Rights. In a broad context digital piracy is a form of online piracy and includes the unauthorized online distribution of electronic copies of copyrighted material such as software. Violation of local copyright law amounts to a crime, and is subject to criminal prosecution in the UAE. Additionally, unauthorised use of software may be deemed to be an aggravating factor under Article 46 of the Federal Decree Law No. 5 of 2012 On Combating Cybercrimes, as technological means are used to further a crime against the copyright holder. Damages often include paying the price of the illegally-downloaded licenses, and may also lead to serious personal sanctions, such as imprisonment, fines, and even deportation for a company's top officials.

In respectof commercial software, an end user license agreement is included to protect the software program from copyright infringement. Typically, such licenses state that the user can install the original copy of software bought on one computer and allow a backup copy in case the original is lost or damaged. The user agrees to the licensing agreement in the following forms: (i) once the software package is opened usually referred to as a shrink wrap license; and (ii) when the user installs the software. One of the biggest problems faced by software developers and companies is that their software is often cracked and made available online thereby allowing users to freely download and use an unauthorised version of the software; typically this involves downloading illegal software from peer-to-peer network.



Oftentimes, the risks of infringing digital copyright in software are overlooked by employers whose staff regularly uses the internet. In this regard employees illegally download software on company computers without the knowledge of their employer. Over time, this can lead to serious legal disputes, financial repercussions and major disruptions to day-to-day business operations. In fact, according to a study conducted in 2013 by the IDC (International Data Corporation) it was determined that a third of the PC Software in the world is counterfeit. Through its study, the IDC encountered tracking cookies and spywares 78% of the time when downloading software from the internet and Trojans and other malicious adware 36% of the time. Given these rates, where pirated software is downloaded from the internet, there is a one in three chance that dangerous malware will be contained. It is important to point out that some malware are capable of remotely turning on an infected computer's microphone and video camera, potentially giving a cybercriminal eyes and ears into a victim's home or business. Furthermore the risks associated to malware are serious, not only is there risk of loss data and identity theft but there is also serious risks associated to copyright infringement.

In the UAE, as in most jurisdictions, employers may be liable for the actions of its employees. For the employer to be liable, the employee need only show he or she was acting in the scope of their official duties. This is often a fairly low bar. Whether or not the employer is immediately aware of its employees' actions is generally irrelevant. As such, when employees illegally download software on company property, especially if used in the course of their jobs, the employers may be found guilty of copyright infringement.

Detecting software piracy is no longer reserved for sophisticated intelligence agencies and cyber police and can easily be traceable. Software companies are able to monitor "cracked" versions of their software thorough what is described as a "phone home" technology. In brief, the "phone home" technology scans the internet for illegal downloads of its software, and provides detailed information about the infringer, including its IP and Machine Access Control ("MAC") address. These details are linked to the employer through open source methods such as whois.com. Serial keys of illegally downloaded software will often not match the authorized keys known by the copyright holder; thus exposing that the program has been cracked. Hence, when a cracked version of software is downloaded and is being used, the "phone home" technology which is embedded in the software technology, much like a heartbeat, sends signals to the server and provides information which can identify the infringer.

Once this information is known, copyright holders can take swift legal action against infringing companies. This includes filing a complaint with the police and the local courts. Employers should be aware that deleting illegal software can also be tracked, and is often seen by the courts as the company acknowledging its own wrong-doing and possibly tampering with evidence.

In order to minimize the risk of liability for software violations, employers can take various steps to safeguards their rights and minimize the risk of exposing themselves to copyright infringement. For one, the employer can conduct regular audits of employee software usage which includes tracking all software downloads on company property. Secondly, the employer can maintain a well-organized library of software licenses, and make sure they are up to date. Lastly, it is important to educate staff by both ensuring that employee policies are clear about the risks and penalties of software piracy and via regular training to employees about copyright and similar legal issues.

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Trademark Licences in the UAE: Paying more attention to Trade Names and Domain Names

When granting a trademark licence, whether in a franchise, distribution, joint venture, or trademark licence agreement, there are a number of factors that need to be considered by the brand owner. Limitations and restrictions on the use of the trademark, and provisions relating to quality control, need to be carefully drafted for enforceability in the event of non-compliance.

While most licence agreements provide detailed provisions as to the use of the licensed trademarks, it is common for two important uses of the licensed trademark to either be missed out or mistakenly granted to the licensee. When overlooked, these can have a great impact on the brand owner, especially when the licence is terminated. These two uses are the use of the licensed trademark as a trade name and the use of a licensed trademark within a domain name.

From a legal perspective, trademarks, trade names, and domain names are three distinguishable concepts and assets of any business, though they are often considered synonymous. The trade name is the legal name of a company under which it conducts its business; a trademark is the name or logo that the company uses to promote its products and services; and the domain name is the name the company uses to communicate online. Accordingly, these three forms of intellectual property can all have the same function, which is to identify the source of the products or services promoted by a company.

The similarity between trademarks, trade names, and domain names requires attention, especially when a trademark licence is granted in order to guarantee the smooth transfer of the rights in the event of termination of the licence agreement. In particular, the necessary provisions need to be included in the agreement so that the licensee will be prevented from using the brand in the form of a trade name and domain name after termination. In the next paragraphs, we will identify the issues relating to trade names and domain names within the context of trademark licence agreements and explain how to avoid such issues.

Trade Names

A trade name is the legal name of the company under which it conducts its business. Trade names and trademarks can have the same function, and some businesses use their trade name as their trademark.

A registration of trade name in the UAE requires the establishment of a company. The company will be registered with the Commercial Registry in the relevant Emirate. In the UAE, there is no cross-checking between the Commercial Registry (where trade names are registered) and the Trademarks Registry (where trademarks are registered). Hence, there is always a possibility that a third party may register a trade name that is identical to a registered trademark. Furthermore, depending on the goods and services covered in a trademark registration, there are some challenges when contesting a conflicting trade name registration based on a trademark right.

Accordingly, in the context of granting a trademark licence, the general rule is that the licensee shall be barred from registering a trade name containing the trademark.

However, we have seen many licences where the licensee was granted a licence to register a trade name that includes the licensed trademark. We have also seen licences, which were silent on the registration of the trade name, and where the licensee was subsequently able to obtain a trade name similar to the brand name. Below is a helpful case study.

Company X (the "Franchisor") entered into a franchise agreement with company Y (the "Franchisee) for the operation of 'BRIGHT' branded restaurants. The franchise agreement was signed and granted the Franchisee the right to register the BRIGHT trademark as a trade name to operate the restaurant in the UAE. The restaurant started trading and two years later the Franchisee had stopped paying the royalties, and the franchise agreement was terminated. Despite termination, the Franchisee continued operating the restaurant under the BRIGHT trademark on the basis of the trade name 'Bright Restaurant and Café', which the Franchisee registered as the name of the company operating the restaurant (the Franchisee is the legal owner of this trade name). Continuing to use of the BRIGHT trademark in the restaurant, which no longer has any connection to the Franchisor, can cause consumers to mistakenly believe that the restaurant is a franchise or somehow affiliated to the BRIGHT brand of restaurants. Such a scenario can be detrimental to the brand owner as it can affect the brand owner's, or the Franchisor's, ability to appoint a new franchisee.

What remedies are available to the Franchisor in the above scenario? The Franchisor can challenge the trade name registration and apply for its cancellation since the trade name ownership will not automatically be cancelled after the termination of the agreement, unless the Franchisee voluntarily cancels or amends it. A trade name cancellation can be carried out through an administrative complaint, however, the administrative authorities may be reluctant to take any action in cases where a contract is presented to them and they are likely to refer the parties to court. The other available option is a court action, thought it will take up to two years to obtain a final judgment and execute it. Although the Franchisor may be able to cancel the trade name, the procedure could be lengthy and costly, and could potentially damage the brand image and reputation of the Franchisor.

To avoid being in such a situation, trademark owners need to ensure that the registration of the licensed trademark, as the franchisee's trade name or part of it, is clearly prohibited and contained in the agreement.

Domain Names

Domain names registration is a rather simple process and depends on the availability of the proposed name. However, choosing domain names can be tricky as there are several levels at which they can be registered. For example, there are General Top-Level Domains (gTLDs), which includes '.com', '.org' and '.net' suffixes, and Country Code Top-Level Domains (ccTLDs), which includes '.ae', '.us' and '.uk' suffixes.

Once a domain name is registered, it is under the ownership of the registrant. If a domain name violates any other party's trademark and it is registered in bad faith, the owner of the trademark may apply for the cancellation or transfer of the domain name under the WIPO Uniform Domain Name Dispute Resolution Policy (UDRP), which requires satisfaction of certain conditions before a complaint will be accepted.

Similar to what was discussed in the above paragraphs, in the context of granting a trademark licence, the general rule is that the trademark shall not under any circumstances be registered by the licensee as a domain, or part of it, under any gTLDs or ccTLDs. However, we have seen many agreements where the licensee was granted a licence to register a domain name that includes the licensed trademark, and other licences which were silent as to the registration of the domain name and where the licensee were therefore able to obtain a domain name registration.

Using the BRIGHT restaurant example referred to above, the Franchisee was granted the right to register the trademark within a domain name under the franchise agreement. The Franchisee registered the domain name 'www.brightrestaurant.ae'. Upon termination of the agreement, the Franchisee continued to use the domain name along with the trade name, on the grounds of its legal ownership of the domain name. The use of the domain name by the Franchisee will cause confusion to consumers, who are likely to search for the restaurant under the same domain name, though the Franchisor will not have control over the relevant website.

One of the remedies available to the Franchisor is to file for the cancellation, or transfer of ownership, of the domain name. While the UDRP procedure is not time-consuming, it can be a costly. Accordingly, trademark owners are required to ensure that relevant provisions are included in the licence agreement prohibiting, or limiting, use of the trademark as a part of the licensee's domain name. Domain names are recommended to be under the name of the trademark owner and under its control.

Conclusion

Trade names and domain names are of great importance to any business. Not regulating the use and registration of a trademark, in connection with a trade name or a domain name, can negatively impact the brand and the goodwill generated by the trademark, especially when the relevant agreement has been terminated.

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Challenges of Developing New Schools in Abu Dhabi

Abu Dhabi Plan 2030

Abu Dhabi's Urban Structure Framework Plan for 2030 ("Abu Dhabi Plan 2030") identifies that a primary goal for education policy in Abu Dhabi is "to create the highest quality, comprehensive system of education that applies world-class standards and expertise to the delivery of education at all levels ". Abu Dhabi Plan 2030 affirms that education is a key growth sector essential for Abu Dhabi's economic vitality and recommends that schools are incorporated in all new residential developments. Leading international education providers have shown a keen interest to support this aim and several well-regarded providers have opened schools in the Emirate over the last few years.

Legal Background

International education providers typically choose to develop custom-built premises to accommodate their schools as suitable existing facilities are not generally available in Abu Dhabi. These premises are costly to build and frequently providers will need to raise finance to meet the costs of construction. Such investment and financing usually requires that the provider is able to hold a secure and long-term legal interest in the school property. In the case of education providers that are wholly owned by UAE nationals it is generally relatively straightforward to ensure that legal title to the school property can be registered at the relevant municipality and a title deed issued, with a mortgage registered on the title if necessary.

Investment Areas

Education providers that are not wholly owned by UAE nationals face some challenges when seeking to secure their long-term interests in school properties. Generally these providers are restricted to developing schools in those areas of the Emirate that have been designated for foreign real estate investment ("Investment Areas") pursuant to Abu Dhabi Law No. 19 of 2005 and its subsequent amendments ("Law No. 19").

Law No. 19 allows providers that are wholly owned by Gulf Co-operation Council ("GCC") nationals to own land and buildings within Investment Areas. For these providers it is possible to purchase a plot of land on a freehold basis within an Investment Area, develop a school, raise finance, obtain a title deed and register a mortgage on the title at Abu Dhabi Municipality ("ADM").

Education providers that are not wholly owned by either UAE or GCC nationals may take leases of land or existing properties for terms of up to 99 years within Investment Areas. These providers may also enter into long-term musataha agreements of land within Investment Areas for terms of 50 years with an option to renew for a further term of 50 years. Musataha agreements are similar to long-term development leases and allow the education providers to arrange

"The education policy in Abu Dhabi is 'to create the highest quality, comprehensive system of education that applies world-class standards and expertise to the delivery of education at all levels'."

construction and then to operate their schools. It is also possible for the rights granted by these musataha agreements to be registered with ADM and title deeds can be issued in favour of the foreign education provider. If the provider wishes it can grant a mortgage over its musataha rights and this mortgage can also be registered on the title at ADM.

Outside Investment Areas

Outside Investment Areas foreign education providers (including GCC owned providers) are restricted to taking leases of land or leases of existing properties for maximum terms of four years. This restriction on lease terms is imposed by the Tawtheeq rules concerning the registration of leases in Abu Dhabi created pursuant to Executive Council Resolution No. 4 of 2011. Whilst leases can be expressed as being renewable for further terms that is usually not sufficient security for the substantial investment necessary to develop a new school. Obtaining financing for the development is likely to be more difficult as the education provider cannot grant the security of a mortgage over the school due to the short-term nature of its lease. These limitations are a major obstacle holding back development of more schools throughout the Emirate and in areas where there is often a pressing need for new schools to open. All the schools which operated from converted villa premises ("Villa Schools") have now been closed down by Abu Dhabi Education Council (ADEC) and their operations need to be moved and accommodated in more suitable premises. Villa Schools were frequently located in residential areas on the outskirts of Abu Dhabi City, close to the families they served but far away from the Investment Areas where at present new schools can be most easily developed. It will therefore not be easy to transfer students from Villa Schools to the new schools now being opened in often distant Investment Areas.

Conclusion

Considerable investment will be needed in new facilities for schools throughout Abu Dhabi over the coming years to ensure that the educational goals set by Abu Dhabi Plan 2030 are achieved. New schools will be required in all parts of the Emirate, not solely within the Investment Areas in Abu Dhabi City, but also in more peripheral areas. Meeting this need will be particularly challenging whilst international education providers are not always able to secure long-term interests in the facilities they wish to develop across the Emirate. We understand that the Abu Dhabi Government is aware of this concern and is currently giving thought as to how the challenge may be overcome.

Al Tamimi & Company's real estate team regularly advises on real estate matters in Abu Dhabi, the wider UAE and across the region. For further information please contact David Bowman (d.bowman@tamimi.com).

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Compliance in the DIFC: A Whole Different Ball Game

The Dubai International Financial Centre (DIFC) is often described as the free zone with the most sophisticated legal regime in the UAE. It is not only favoured for the absence of foreign ownership restrictions prevalent in onshore UAE but also praised for its international standards of accountability and its consistent approach towards implementing its laws and regulations.

The DIFC provides a comprehensive legal framework together with secure, easy access to an electronic public register for companies incorporated in the DIFC. Companies' records are maintained by the DIFC Registrar of Companies (ROC). The ROC's records are linked to an online platform - the DIFC Portal, for each company incorporated in the DIFC, and each company account on the portal is to be maintained and updated by that company itself. However, this framework is costly to maintain, and that cost is compliance obligation, and the time and money involved.

Beware of Non-Compliance

Compliance with DIFC law is monitored by the Dubai Financial Services Authority (DFSA) and depending on the nature/extent of the breach, non-compliance or breaches result in the prompt levying of administrative fines on companies and their management after the lapse of the applicable grace period (which can be for 30 days).

Fines can range from USD 1,000 (for failing to maintain accounting records open to inspection) to USD 50,000 (for provision of false or misleading information to the ROC) and in some cases, where there is prolonged non-compliance, the ROC has the right to deregister the company (i.e. cancel its license and declare the company defunct).

"In this day and age of higher accountability, can compliance and company secretarial matters be simply brushed under the rug?"

While the UAE does not have a dedicated data protection law currently in place at a federal level, the DIFC has its own Data Protection Law No. 1 of 2007 and its corresponding regulations in place. When processing personal data, an entity is required to appoint a data controller from amongst its employees and notify the Commissioner of Data Protection in the DIFC if it intends to process personal information. A company's data controller must notify the Commissioner of any changes related to personal data operations within 14 days. Failing to notify the Commissioner may result in the imposition of a fine of USD 5,000.

A Culture of Compliance

The DIFC promotes a culture of compliance through its educational seminars, publications, discussion panels as well as its imposition of sanctions. These high standards of accountability have over the past decade, enabled the DIFC to acquire its reputation as an international hub.

It is crucial for companies operating in sophisticated free zones like the DIFC to allocate the right resources to compliance, including company secretarial functions. Finding the right individuals may be challenging but compliance with DIFC laws should not be compromised. In our experience, professional corporate service providers are under-used by DIFC companies.

A number of corporate service providers operate in the DIFC and companies willing to outsource their compliance functions can rely on them to maintain their books and records, including DIFC registers and to renew their commercial licences.

Our experience indicates that many DIFC companies pay insufficient attention to their overall corporate governance, particularly filing of returns with the Registrar ROC. The DIFC monitors the compliance of companies operating in the DIFC and periodically inspects the office premises and in-house corporate records of these companies. Non-compliance with any requirements can lead to sanctions being imposed by ROC and/or the DFSA.

Conclusion

In a challenging economic climate, companies are often focussed on pressing business concerns. Compliance can fall by the wayside.

We predict companies will increasingly outsource their compliance needs to trustworthy corporate service providers, allowing management to generate profits without undue distraction. For this reason, Al Tamimi and Company is the first regional law firm in the DIFC to spin off a licensed corporate services provider entity, Al Tamimi & Company Corporate Services Limited now operating on the ground and ready to assume responsibility for these outsourced functions. If you are interested, please contact Izabella Szadkowska, Partner, Corporate Commercial department and/or Alyzeh Zahid, Associate, Corporate Commercial department at Al Tamimi & Company on +97143317161 or on I.Szadkowska@tamimi.com or A.Zahid@tamimi.com.

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Liabilities of Directors under the UAE Bankruptcy Law

The new UAE Bankruptcy Law (Federal Decree Law No. 9 of 2016) came into force as a response to the 2008 global financial crisis. The new law was designed to encourage the development of a "rescue culture", and replaces Volume 5 of Federal Law No. 18 of 1993 on the Commercial Transactions Law.

This article assesses the impact of the new UAE Bankruptcy Law on directors and managers of distressed companies. However, the assessment will significantly depend on the courts' application and the infrastructure necessary for an effective implementation. It is believed that although the new bankruptcy law puts bankruptcy under the supervision of the court, and to a certain extent promotes a 'rescue culture', it introduces onerous duties on company directors.

The General Aspects of the Law

The Bankruptcy Law introduces a number of detailed processes with expedited timelines to address financial distress. Primarily, these processes include:

1. A framework for the restructuring of financial institutions (the details of the framework have not yet been provided);
2. A rehabilitation process for solvent debtors facing financial difficulties – "the preventative composition";
3. A rehabilitation process for insolvent debtors – "the restructuring scheme"; and
4. An insolvent liquidation process.

It may be argued that these processes are a positive change from the previous system, which did not provide many options to deal with financial distress and which failed to secure protected legal rights or information for creditors.

Under the new law, a court appointed official or insolvency trustee plays a central role in the aforementioned processes. Pursuant to the preventative composition option, the debtor continues to manage its business, under the supervision of the court appointed insolvency trustee. Comparably, within the restructuring regime, the management of the debtor or its business will essentially be undertaken by the court appointed trustee. In both cases, the law appears to favor a debtor friendly rescue culture, but practical challenges remain, such as the lack of experience available in the UAE to administer these judicial processes.

However, while the law favors a rescue culture by providing various alternatives to formal insolvency procedures, it imposes significant duties on directors.

Liabilities of Directors under the Law

Following the enactment of the new Bankruptcy Law, individuals, whether directors of a company or not, remain subject to the criminal liabilities imposed by Article 423 of Law No. 3 of 1987 promulgating the Penal Code for acts such as fraud, embezzlement and forgery. The principal statement regarding "directors' duties" is contained in Article 162(1) of Federal Law No. 2 of 2015 concerning Commercial Companies Law, which states that directors are liable towards the company, shareholders and third parties for all acts of fraud, abuse of authority, breach of the provisions of the Commercial Companies Law or the company's articles of association, and mismanagement.

Under Article 144 of the Bankruptcy Law, a competent court may obligate the directors and general managers, all or part of them, jointly or not, to pay all or part of the company's debts in cases where they are held responsible for the company's losses according to the Commercial Companies

Law. This provision applies in cases where the company's funds are not sufficient to fulfill at least 20% of its debts.

Further to the aforesaid liabilities provided in the Commercial Companies Law, the Bankruptcy Law implements further penalties against directors and general managers. Article 198 of the Law states that directors and general managers shall be sentenced to a period not exceeding five years and shall be fined an amount not exceeding AED 1,000,000, if, after issuing a final resolution to initiate legal proceedings against the company, they commit any of the following:

i. hide, damage or alter all or some of the company's records, with the intention of harming the creditors;
ii. embezzle or hide a part of the company's assets;
iii. acknowledge unpayable debts and, knowingly, either in writing, verbally, or in the budget, or through refraining from submitting papers or explanations in their possession, know the result of such refraining;
iv. obtain the preventive composition or restructure for the company through deception; and/or
v. announce false information of the subscribed or paid up capital, or distribute fictitious profits or receive bonuses higher than the amount stipulated by law or in the memorandum or articles of association of the company.

The previous regime, under the Commercial Transactions Law, specified various scenarios where a debtor might become criminally liable for the offence of negligent insolvency, such as where the debtor fails to file for insolvency when its debts become significantly overdue. Even though the new Bankruptcy Law decriminalizes a number of these scenarios, it is still interrelated to the Commercial Transactions Law, which is evidenced in Article 68 of the Bankruptcy Law. Article 68 obliges a debtor company to submit a request for initiation of procedures to the court if it has stopped paying its debts at its maturity for over 30 consecutive working days, due to the instability of its financial position or if it has a negative asset position. If this scenario befalls the company, it is arguable that the company's failure to initiate formal procedures will constitute "mismanagement" on the part of the manager, and will therefore, constitute grounds for creditors to bring claims under Article 162(1) of the Commercial Companies Law.

Previously there was no recourse to directors liable for insolvency, as it was a criminal offence under the UAE Penal Code to draw a cheque on an account knowing that there are insufficient funds in the relevant account to meet the amount drawn. Under the new Bankruptcy Law, criminal actions filed for dishonored cheques are suspended if a preventative composition plan or a debt restructuring plan is initiated. In this event, the cheque holder/creditor becomes one of the unsecured creditors. This encourages distressed businesses to initiate composition plans and file for debt restructuring, rather than prompting managers to abscond and exit the UAE. However, the protection offered is only a suspension. This may still mean that directors are inclined to exit the UAE, due to the risk of imprisonment, and undertake any restructuring or bankruptcy from outside the UAE. The new law offers a slight reprieve, yet it remains to be seen whether managers will be personally liable for dishonored cheques following the suspension period, or whether this penalty is reserved only for directors.

Conclusion

While the new Bankruptcy Law significantly improves the old insolvency regime under the Commercial Transactions Law, for directors and managers it acts as a double edge sword. Whilst it does offer a safe harbor in some situations, in many cases it creates new potential exposures for liability. Like any new law, it will take time for all stakeholders to fully understand how the law will be implemented in practice, and until applications are filed, the practical effects of the Bankruptcy Law can only be analyzed theoretically.

A Focus on Dispute Resolution: Arbitration & Litigation

In this month's special feature of Law Update, we focus on dispute resolution. The resolution of commercial, investment, and other disputes in an effective and efficient manner is essential for business in any economic cycle, and the recent slowdown caused by the drop in oil prices is no exception. We are seeing parties resorting to courts, arbitral tribunals, and other dispute-resolution mechanisms at a steady, if not accelerated, pace, in the current economic environment.

Against this backdrop, several key developments in the dispute-resolution sphere have taken place recently in the region. As previously reported in Law Update, one of the most notable and significant changes to the UAE legal landscape has been the revision of Article 257 of the United Arab Emirates Penal Code. In its revised form, Article 257 allows for the imprisonment of arbitrators and experts who are found to have contravened "the requirements of the duty of neutrality and integrity."

While this amendment is no doubt well-intended, it is highly vague. This makes it vulnerable to abuse, which is regrettable. For example, the revision of Article 257 may be used as an additional ground to disrupt arbitral proceedings and to challenge arbitral awards and thus abused to create opportunities for procedural delay and/or delay to enforcement procedures. Not only does the foregoing threaten to significantly delay the arbitration process, it could make arbitration in the United Arab Emirates unattractive for arbitrators and parties (and already we have seen evidence of this in practice). Indeed, Article 257 is contrary to international best practices, which generally provide protection, rather than specific criminal exposure, for arbitrators.

Not only is the foregoing regrettable, it is unnecessary. The purpose behind Article 257 is to target corruption, conscious bias, and dishonesty rather than to provide an additional opportunity to seek to disrupt the arbitral process. It is worth bearing in mind that, prior to the revision of Article 257, arbitrators in the United Arab Emirates could be prosecuted for bribery, corruption, and dishonesty under the Penal Code; it is neither desirable nor necessary to specifically target arbitrators in this regard.

It is especially unfortunate that this amendment has been enacted at a time when the arbitration community in the United Arab Emirates is eagerly anticipating the enactment of a new national arbitration law, which is believed to be arbitration friendly and which would promote the development of international arbitration in the United Arab Emirates. International perceptions matter to the success of arbitration in the United Arab Emirates when one considers the open nature of our economy and the high level of foreign direct investment and trade in the country. Sadly, therefore, the revision of Article 257 gravely threatens to obstruct the United Arab Emirates' goal of becoming a leading arbitral seat globally or even in the Middle East.

Another recent key regional development is Qatar's adoption of Qatari Arbitration Law No. 2 of 2017 as its new national arbitration law. While the new law is based on the United Nations Commission on International Trade Law (UNCITRAL) Model Law, the law has modified certain UNCITRAL articles and omitted others, leaving scope for the courts to unduly interfere with the arbitral process and requiring parties to send a copy of their award to the Qatari Ministry for Justice. Nonetheless, it marks a promising development for arbitration in Qatar and brings Doha into the spotlight again as a potential arbitral seat in the region.

This month's Law Update contains articles on several other notable developments in and issues of interest to the region. One of these articles analyzes recent revisions to the Rules of Arbitration of the International Chamber of Commerce (ICC), which provide for expedited procedures to make resolution of certain disputes, particularly relatively low-value disputes, faster and cheaper, while maintaining important features of the arbitral process. Significantly, these procedures may essentially override the parties' agreement, so the article bears careful reading.

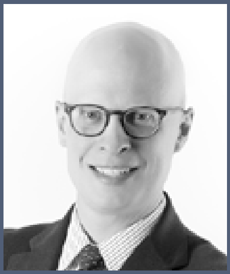
Another article in this month's special feature focuses on security for costs in international arbitration. In some circumstances, upon the application of a respondent, a tribunal may order an impecunious claimant to lodge monies into an escrow account or provide a bank guarantee for the respondent's legal costs to ensure that the claimant does not pursue an illegitimate or dubious claim and then leave the respondent to bear its own legal costs in defending such a claim in circumstances where the claimant is unable to defray them. While measures of this sort must be used cautiously so as to not make it difficult or impossible for a claimant to pursue genuine claims, such measures do provide important protection and significant tactical advantages for respondents in some cases.

From there, the special feature addresses when and how anti-suit injunctions can be sought in the Dubai International Financial Centre (DIFC) Courts and whether we can expect to see an increase in these injunctions in the future. An anti-suit injunction is a court order against a person to refrain from pursuing a claim before a foreign court or tribunal. While the order is made against the person over whom the court has jurisdiction (rather than the foreign court or tribunal), an anti-suit injunction can be controversial because it may interfere with the foreign court's or tribunal's jurisdiction and procedures. The DIFC Courts have recently made it clear that they are willing to issue anti-suit injunctions, which may offer an advantage to litigants concerned that their counterparty may ignore an arbitration or exclusive jurisdiction clause.

This issue also provides an update on the Judicial Tribunal (also known as the Joint Judicial Committee) established by Dubai Decree 19 of 2016. Recent decisions by this tribunal have enabled the DIFC Courts to continue functioning as a conduit for the enforcement of foreign arbitral awards and foreign judgments in Dubai. At the same time, however, these decisions have effectively precluded domestic, non-DIFC arbitral award creditors from using this conduit mechanism, at least until the Dubai Courts have conclusively determined challenges to the validity of these awards.

This special feature concludes with an in-depth look at the United Arab Emirates law on fraud. The rapid economic growth of the United Arab Emirates has resulted in increasingly complex commercial transactions. While these transactions facilitate continued economic development, they also create opportunities for individuals willing to engage in fraud and related criminal activity. This article explores the nuances of the United Arab Emirates law that prohibits such conduct.

We hope you find this special feature interesting and informative. Please contact us for any queries relating to these or other dispute-resolution matters.



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Accelerating the Pace of International Arbitration: A Comparative Look at the ICC's New Expedited Procedure Provisions

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International arbitration has become the preferred means of resolving cross-border commercial disputes in the modern business world. However, increasing demand for arbitration has resulted in complaints about delay and the costs of arbitral proceedings, which, in turn, is driving demand for change aimed at improving the efficiency and cost-effectiveness of arbitration.

Expedited arbitration is a relatively new process in international arbitration that is often used for disputes of limited value. It aims to shorten the duration of arbitral proceedings and reduce the cost of arbitration while preserving its main principles and purposes. The International Chamber of Commerce (ICC) is the latest institution to have introduced expedited arbitration procedures. It joins several other arbitral institutions, including the Stockholm Chamber of Commerce (SCC), International Centre for Dispute Resolution (ICDR), Singapore International Arbitration Centre (SIAC), Swiss Chambers' Arbitration Institution, and Hong Kong International Arbitration Centre (HKIAC), that have successfully adopted mechanisms for expedited arbitration. All of these mechanisms serve the same purpose – effective, time- and cost-efficient arbitration.

> **"Expedited arbitration is a relatively new process in international arbitration that is often used for disputes of limited value. It aims to shorten the duration of arbitral proceedings and reduce the cost of arbitration while preserving its main principles and purposes."**

Main Features of the ICC's Expedited Procedure Provisions

The ICC recently introduced its Expedited Procedure Provisions, which offer an option to conduct arbitration on an expedited or "fast-track" basis for disputes with a limited amount at stake. The Expedited Procedure Provisions came into effect on 1 March 2017 and are set out at Article 30 and Appendix VI of the ICC Rules. The Expedited Procedure Provisions apply to arbitrations in which (1) the arbitration agreement was concluded after 1 March 2017, (2) the amount in dispute is not more than USD 2 million, and (3) the parties have not opted out of the Expedited Procedure Provisions.

The main features of the Expedited Procedure Provisions that distinguish them from the general arbitration procedures set out in the ICC Rules are summarised in the table below:

	General Arbitration Procedures under ICC Rules	Expedited Arbitration Provisions under the ICC Rules
Maximum Amount in Dispute (USD)	Not limited	USD 2 million (or more if agreed by parties) (Article 30(2) and Article 1(2) of Appendix VI of the ICC Rules)
Terms of Reference	Required (Article 23 of the ICC Rules)	Not required
Case Management Conference	To be held "as soon as possible" after drawing up the Terms of Reference (Article 24 of the ICC Rules)	Timing is limited to no later than 15 days after the date on which the file is transmitted to the arbitral tribunal (Article 3(3) of Appendix VI of the ICC Rules)
Number of Arbitrators	One or three, as provided in the arbitration agreement (with a default of one if not specified) (Article 12 of the ICC Rules)	One, irrespective of the arbitration agreement (Article 2 of Appendix VI of the ICC Rules)
Expedited Appointment of Arbitrators	No time-limit requirements	Appointment to be made "within as short a time as possible" (Article 2(2) of Appendix VI of the ICC Rules)
No Oral Hearings/ Documents Only	Possible, but only if neither party requests otherwise (Article 25(6) of the ICC Rules)	Possible, but for the tribunal to decide (Article 3(4) of Appendix VI of the ICC Rules)
Submission of New Claims after Constitution of Tribunal	Possible	Not allowed (Article 3(2) of Appendix VI of the ICC Rules)
Deadline for a Final Award	Six months from the date of the last signature by the arbitral tribunal or by the parties of the Terms of Reference (Article 31 of the ICC Rules)	Six months from the date of the case management conference (Article 4(1) of Appendix VI of the ICC Rules)
Arbitrator Fees	Fee scale with a minimum amount of USD 3,000 (Appendix III, Scale B, for general arbitration)	Fee scale with a minimum amount of USD 2,400 (Appendix III, Scale B, for the Expedited Procedure)

Comparison with Other Institutional Rules

As noted above, the ICC is not alone in offering a mechanism for expediting arbitral proceedings – several other arbitral institutions, including the SCC, ICDR, SIAC, and HKIAC have incorporated such features into their rules as well. This section highlights some of the important similarities and differences in these expedited features among the various sets of rules.

Amount in dispute

Under the ICC's rules, the expedited procedures will apply automatically if the amount in dispute is less than USD 2 million, although parties can "opt-out" if they agree that the Expedited Procedure Provisions will not apply. Conversely, parties may also agree to apply the Expedited Procedure Provisions to cases with an amount in dispute of more than USD 2 million if they "opt in" to the Expedited Procedure Provisions for such disputes via the arbitration agreement.

By way of comparison, under the SIAC Rules, expedited procedures can be applied to disputes with an amount in dispute up to the equivalent of USD 4,280,000 (Rule 5.1(a) of Schedule 1 of the SIAC Rules). The recently revised SCC Rules for Expedited Arbitration go even further: they are silent on the amount in dispute in terms of applying the expedited procedures. This approach provides the parties with greater latitude in using the procedures, including in high-value disputes. However, both SIAC and the SCC apply their expedited procedures only in disputes where the parties "opted in" by specifically choosing the expedited procedures in their arbitration agreement.

Some institutional rules provide that their expedited rules can apply in cases of "exceptional urgency" (e.g., Rule 5(1)(c) of the SIAC Rules and Article 41.1(c) of the HKIAC Rules), even where the amount in dispute is higher than the amount in dispute stipulated for expedited procedures for non-urgent cases. However, most institutions with expedited procedures, and the ICC in particular, do not require a pre-condition of "urgency" or "emergency" for their expedited procedures to be applied.

Like the ICC's Expedited Procedure Provisions, the ICDR's expedited procedures automatically apply to certain low-value disputes, but the cap is set much lower at USD 250,000 as compared to the ICC's threshold of USD 2 million. Similarly, the cap under the Swiss Rules is set at the equivalent of USD 993,000. The ICC's calibration of the USD 2 million-threshold may have been driven by the fact that both the number and value of disputes submitted for arbitration under the ICC Rules is growing. According to the ICC Statistical Report for 2015, the average value of the disputes referred to the ICC rose to USD 84 million, which is 25% higher than in 2014, when it was USD 63 million.

Size and role of an arbitral tribunal

Under the ICC's Expedited Procedure Provisions, the dispute is to be resolved by a sole arbitrator nominated by the parties. If the parties cannot agree, the ICC's International Court of Arbitration (ICC Court) will appoint an arbitrator. The requirement of a sole arbitrator in the Expedited Procedure Provisions (regardless of the number stipulated by the parties in their arbitration agreement) will foster efficiency in the arbitration process and help reduce the cost of the arbitration. The appointment of arbitrators can be a time-consuming exercise and parties may misuse it as a delaying tactic. Additionally, an arbitration conducted by a sole arbitrator will typically be far cheaper than one in which three members of a tribunal take part.

The provision for a sole arbitrator is also provided for in the SCC and the ICDR Rules, even when the parties have agreed otherwise. In contrast, the ICDR, SIAC, Swiss, and HKIAC Rules allow a multiple-member tribunal to be appointed by agreement between the parties or by the decision of the arbitration institution.

With respect to the powers of the tribunal, the ICC's Expedited Procedure Provisions follow the practise of most other institutions (including the ICDR, SIAC, and HKIAC) by giving the tribunal the full discretion to conduct an arbitration (e.g., to dispense with an oral hearing and to decide a case on the basis of documents only).

Time limits and procedural matters

One of the main purposes of the Expedited Procedure Provisions is to shorten the duration of the arbitration process, which in some complex matters can take years. One of the provisions geared towards keeping the arbitral process brief is the prohibition on parties introducing new claims once the sole arbitrator has been appointed, unless expressly authorized by the arbitrator. Moreover, the Expedited Procedure Provisions provide that the case management conference must be held no later than 15 days after the sole arbitrator has received the file from the ICC. The requirement of a case management conference for expedited arbitrations in most of the institutional rules is consistent with

the approach in mainstream arbitration under those institutional rules. A number of institutions, including the ICC, SCC, ICDR, and SIAC, require a case management conference to be held for expedited arbitration.

Most institutional rules are silent as to whether the application of expedited procedures may be objected to or discontinued after they have been applied. Following the practice of the ICDR Rules and the SIAC Rules, the ICC's Expedited Procedure Provisions reserve for the ICC Court a right to discontinue the application of the expedited procedure at any stage of the proceedings, either on its own motion or upon the request of a party after consultation with the tribunal and the parties.

Timing and content of an arbitration award

Award timing differs under the expedited rules of the various institutions. Under the ICC's Expedited Procedure Provisions, the time limit within which the arbitral tribunal must render its final award is six months from the date of the case management conference.

In comparison, under most other expedited rules, even those providing a case management conference for their expedited arbitrations (e.g., ICDR, SIAC, and SCC Rules), the time limit for rendering an award is calculated from the date of the constitution of the tribunal (e.g., Rule 5(2)(d) of the SIAC Rules) or from the transmittal of the file to the tribunal (e.g., Article 41(2)(f) of the HKIAC Rules; Article 42(1)(d) of the Swiss Rules).

The ICC's six-month time limit for rendering an award follows the practice of most arbitral institutions. However, some institutions provide for a three-month time limit (e.g., Article 43 of the SCC Rules for Expedited Arbitrations). The ICDR Rules establish the shortest deadline for rendering an arbitral award in expedited arbitration, providing that an award must be rendered within 30 days of the closing hearing or of final written submissions.

There is a tension between, on the one hand, the need to finalise the arbitration within the strict time-limit imposed by the rules, and, on the other, the tribunal's duty to allow the parties a full opportunity to present their cases. A failure to comply with that duty may make the award unenforceable under Article V(1)(b) of the New York Convention. To avoid this outcome, the ICC's Expedited Procedure Provisions reserve the right for the ICC Court to extend the time limit for issuing a final award. Hopefully, this provision will apply only in very limited exceptional circumstances.

The ICC's Expedited Procedure Provisions require that an award must be reasoned. In contrast, most other expedited rules allow for an award to be in summary form unless the parties have specifically agreed otherwise (e.g., Rule 5.2(e) of the SIAC Rules, Article 41.2(g) of the HKIAC Rules, and Article 42.1(e) of the Swiss Rules).

Conclusion

Mr. Alexis Mourre, the President of the ICC Court, has stated that the ICC's Expedited Procedure Provisions are "an entirely new offer to the business community and an effective answer to the legitimate concerns of the business community as to the time and costs of arbitration". Such procedures are indeed a key development in terms of maintaining the attractiveness and utility of international arbitration and have been taken up with enthusiasm. While parties should understand that the Expedited Procedure Provisions are not suitable for all kinds of disputes, parties should seriously consider using these newly established procedure where:

- the dispute is low-value and/or has little impact on the ongoing business of the parties;
- the case is straightforward and can be dealt with on a documents-only basis;
- situations where the time and cost of arbitration are material issues; and/or
- both parties agree to apply the expedited procedure.

Al Tamimi & Company's Arbitration team regularly advises on dispute resolution and arbitration matters. For further information please contact Thomas Snider (t.snider@tamimi.com). Mr. Snider would like to thank Ms. Iryna Kovalchuk, an intern with Al Tamimi & Co., for her assistance in researching and drafting this article.

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Security for Costs in Arbitration

Provisional measures, also referred to as protective, conservatory or interim relief, play an essential role in the field of international arbitration. Whatever their designation, such measures involve awards or orders issued for the purpose of preserving the status quo and safeguarding a party from damage during the course of the arbitral process, pending the outcome of the arbitration. Provisional measures are generally available from either the national court or an arbitral tribunal. However, the type of interim relief that a tribunal may grant in arbitration has generated considerable debate for some time now, particularly when it comes to the arbitral tribunal's power, or lack thereof, to order security for costs.

Generally, an order for security for costs is an order by a tribunal that orders a party bringing a claim or a counterclaim to provide security for the costs of the other party in case the claim or counterclaim fails and the claiming party does not pay the costs awarded against it. It does not extend to security for any award for damages. In practice, this is provided by way of bank guarantee or payment into an escrow account. Hence, when granted, security for costs allows for predictability regarding the recoverability of the respondent's costs in arbitration. After all, a respondent has not chosen to go to arbitration, and yet may find itself having to incur substantial legal fees defending a bad claim, only to find that the claimant then refuses to pay its costs or is unable to do so.

The arbitral tribunal's power to grant interim measures stems from two sources: the national law of the state in which the arbitration is seated, and (to the extent that law allows) the agreement of the parties (as contained either in the arbitration agreement or the set of arbitral rules that the parties agree to follow).

National Legislation

An arbitration tribunal should not grant provisional relief unless satisfied that the applicable arbitration law at the seat of arbitration confers the power on the tribunal to do so. Equally, interim relief ordered by a tribunal will likely not be enforceable in a national court unless the laws governing the arbitration allow such relief. In recent years, we have witnessed a general trend whereby most of the common law based national laws and the rules of most arbitral institutions based in common law jurisdictions expressly provide that arbitrators may order security for costs. In contrast, most of the civil law based national laws and the rules of most arbitral institutions of those jurisdictions do not confer express powers on the arbitrators to

order security for costs. The national laws of most civil law jurisdictions do however include broad powers to order 'any interim measure that they deem necessary'. This general power is considered to be wide enough to include the power to order a party to provide security for costs. Therefore, while in practice it is only ordered in very particular circumstances and the threshold is somewhat high, provided that it is consistent with the parties' arbitration agreement security for costs is generally available in international arbitration.

For example, in line with this trend the revised 2006 UNCITRAL Model Law on International Commercial Arbitration provides at Article 17 that "Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, grant interim measures". It follows that an arbitral tribunal has the power to grant interim relief in an arbitration seated in a jurisdiction that has adopted the Model Law. That said, whilst many national laws grant certain powers to the tribunal to order interim relief, there is still a general lack of express provisions empowering the tribunal to specifically order security for costs.

Common Law Approach

England's 1996 Arbitration Act and Singapore's 2012 International Arbitration Act are two examples of national laws which expressly authorize an arbitral tribunal to make an order for security for costs. Article 38(3) of England's Arbitration Act provides that:

> "The tribunal may order a claimant to provide security for the costs of the arbitration.
>
> This power shall not be exercised on the ground that the claimant is:
>
> a. an individual ordinarily resident outside the United Kingdom, or
>
> b. a corporation or association incorporated or formed under the law of a country outside the United Kingdom, or whose central management and control is exercised outside the United Kingdom."

To the same end, the Singapore International Arbitration Act grants the tribunal the power to order security for costs (Article 12(1) (a)). The reason these laws specifically state that the fact the claimant is based abroad is not a grounds for ordering security for costs is because it is the very nature of international arbitration that parties typically will be from different jurisdictions, and parties will not want to arbitrate in a jurisdiction where security for costs order can be made on the mere fact that the claimant is from a different jurisdiction than that of the respondent. It is assumed that the respondent would know the nationality and place of residence of the claimant before entering into business and therefore can fairly be deemed to have assumed the risk of dealing with the claimant.

Moreover, many of the enforcement risks that might apply in respect of a costs award against a foreign claimant are reduced in the context of international arbitration by the application of the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards. Signatories to the New York Convention, which include (for example) Kuwait, Qatar, Bahrain, UAE, Singapore and England, provide an established legal mechanism for enforcement of the award that is available to the respondent if need be.

Civil Law Approach

Civil law jurisdictions such as Switzerland, France, Bahrain, and Qatar, permit tribunals to order interim measures but with no specific mention of the tribunal's power to make an order for security for costs. In the French Code of Civil Procedure, for example, both the tribunal and national courts have the requisite jurisdiction to order interim measures. Similarly, in the Middle East, Article 9 of Qatar's new Arbitration Law (Law No. 2 of 2017) states that the national courts have jurisdiction to order interim measures and Article 17 of the same law provides that:

> "Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, grant interim measures or issue preliminary orders as entailed by the nature of the dispute or for prevention of reparable harm, including to:
>
> a. Maintain or restore the status quo pending determination of the dispute;
>
> b. Take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral tribunal itself;
>
> c. Provide a means of preserving assets out of which a subsequent award may be satisfied; or
>
> d. Preserve evidence that may be relevant and material to the resolution of the dispute."

Whilst the aforementioned justifications do not expressly provide for security for costs, they do confer power on the tribunal to order interim measure it deems necessary, which in theory should include security for costs.

Arbitration Rules

Likewise, most major institutional rules nowadays address the tribunal's power to grant interim measures. For example, Article 26 of the 2010 UNCITRAL Rules does not explicitly refer to security for costs but provides that the tribunal may grant

> "any temporary measure by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party, for example and without limitation, to:
>
> a. Maintain or restore the status quo pending determination of the dispute;
> b. Take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral tribunal itself;
> c. Provide a means of preserving assets out of which a subsequent award may be satisfied; or
> d. Preserve evidence that may be relevant and material to the resolution of the dispute."

Article 28 of the 2017 ICC Rules authorizes a tribunal to order "any interim or conservatory measure it deems appropriate," subject to contrary agreement by the parties. Along the same line, Article 30 of the DIAC Rules authorizes the tribunal to order various provisional measures as it deems necessary including "injunctions and measures for the conservation of goods". Some institutional rules do directly refer to security for costs. Article 25 of both the LCIA Rules and the DIFC-LCIA Rules confers on the tribunal the power to order various interim measures, including security for all or part of the amount in dispute including a party's claim to recover its legal and arbitration costs.

Test for Granting Security for Costs

As can be seen from the above, often the tribunal will have the power to order security for costs. However there is no detailed in guidance in either the law or the arbitral rules as to when such orders should be made. Ordering the claimant to provide security for costs is a serious measure as it may prevent a claimant from being able to pursue a legitimate claim.

The Chartered Institute of Arbitrators (based in London) has issued practice guidelines on security for costs applications (updated in 2016), and recommends that when arbitral tribunal decides whether to make an order for security for costs, they should consider the following points:

a. the prospects of success of the claim and defence. If the defence is clearly hopeless, then there is little prospect of a costs order being given in the respondent's favour. However tribunal's are usually careful not to pre-judge the merits on the limited information they usually have at time a security for costs application is made, and will usually assume that the defence has some merit.
b. the claimant's ability to satisfy an adverse costs award and the availability of the claimant's assets for an enforcement of an adverse award. This is often the real test, as if the claimant has money and enforcement will be relatively straight forward in the event the claimant does not pay an adverse costs order, then there is little need for security for costs to be granted.
c. whether it is fair in all the circumstances to require one party to provide security for the other party's costs. So, for example, there could be a situation where although the respondent will likely struggle to enforce a costs order made in its favour, it would be unfair to order security for costs because the claimant's inability to pay is a result of the respondent's conduct and it would prevent a seemingly legitimate claim progressing.

This list is not intended to be exhaustive and the guidance is only advisory, but in our experience tribunals follow similar tests. Arbitrators should exercise their discretion and consider any other additional circumstances surrounded the arbitration. A balance must be struck between the rights of a party to pursue its claim against the right of an opposing party to recover the costs of a defence in the event it defeats the claim.

Conclusion

A security for costs order can provide important protection for a respondent against the costs of an action where there is sufficient evidence that the claimant may not be able to pay costs. It is also a useful tool to put pressure on a claimant, or counterclaimant, to settle the proceedings. Care must be taken before making such order though as to avoid unfairly blocking genuine claims made by impecunious parties from moving forward. As demonstrated above, while the majority of national laws and institutional rules empower a tribunal to order interim measures, security for costs is rarely mentioned explicitly. Respondents should however keep the option in mind.

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Anti-Suit Injunctions in the DIFC

An anti-suit injunction is an order by a court that demands that a person refrain from pursuing a claim before another court or arbitral tribunal. Although it is called an 'anti-suit injunction', it applies to the party itself (being subject to the court's jurisdiction), and not the suit itself or the court before which the suit has been brought (which would not be in the court's jurisdiction). Such orders are nonetheless controversial because they will have the effect of interfering with the process of a foreign court (which goes against comity between national courts). This article will explore when such an order might be sought in the DIFC, the tests for seeking it, and whether we can expect to see more of these orders in the future.

Anti-Suit Injunctions – A Brief History

Anti-suit injunctions are a common law creation and have a long history. They developed in the English Chancery Courts and by the 16th century they were being issued to stop defendants filing actions before the various other civil courts that existed at that time (such as the King's Bench Courts and the Court of Common Pleas). This was in order to stop a defendant oppressing the claimant by bringing claims before the wrong court and so wasting the claimant's time and money, which is must the same reason that they continue to be issued today.

Anti-suit injunctions are however unknown to civil law jurisdictions, where there is a strong emphasis on the individual's right to have access to whichever courts they believe they have the right

to use. It is then for that foreign court to determine if it has the jurisdiction to deal with the claim as filed. This necessarily involves questions of state sovereignty (the courts being an organ of the state), and it would be considered an affront to comity and an inference in the foreign state's judicial affairs for an anti-suit injunction to be issued.

The differences in approach between the civil and common law systems are clearly seen in the UAE, where both systems co-exist in the form of the UAE Courts (civil law) and the DIFC and ADGM Courts (common law).

The UAE Courts

The UAE Courts do not issue anti-suit injunctions. Instead they accept the notion that it is the right of people to file claims before whichever national courts they believe has jurisdiction to deal with the dispute. It is then for that court to determine if it does indeed have jurisdiction. It is not for the UAE Courts to interfere with such rights, or to interfere with the sovereign power of a foreign court to determine its own jurisdiction.

There is support for this approach in the UAE Civil Code, which states:

> 'Article 104 The doing of what is permitted by law negates liability, and no person who lawfully exercises his rights shall be liable for any harm arising thereout'

This means that the UAE Courts are unlikely to entertain a claim for damages in relation to the wasted costs incurred defending a claim wrongfully brought by the other party before a foreign court.

The DIFC Courts

The DIFC Courts are a common law court and will issue anti-suit injunctions in support of proceedings before the DIFC Courts, arbitration, and even foreign court proceedings. Breaching such an order would be a contempt of court and may lead to a fine or a person being arrested.

The DIFC Courts have discretion as to when to issue an anti-suit injunction, and will follow the English Courts' approach in considering the following factors:

1. Whether the foreign proceedings are the best forum for the dispute, or are oppressive and vexatious on one of the parties.
2. Whether the foreign proceedings breach a binding contract between the parties to arbitrate or to litigate before the DIFC Courts.
3. Whether in the circumstances it is just and convenient to order the injunction. This will also involve a consideration as to whether the application was made promptly.

In *Brookfield Multiplex Construction LLC v DIFC Investments* (CFI 020/2016) the DIFC Courts were

presented with an application for an order to restrain the defendant from pursuing proceedings in the Dubai Courts in alleged breach an arbitration seated in DIFC. The DIFC Court of First Instance ultimately rejected the application because the proceedings before the Dubai Courts were not substantive proceedings, they simply involved the Dubai Court appointing an expert to issue a report on the alleged faulty workmanship without making any binding findings. However the judge in that case, Justice Sir Jeremy Cooke, commented that if the Dubai Courts had taken jurisdiction over the matter, the DIFC Court would have had to have considered whether to issue an anti-suit injunction to restrain the defendant from pursuing the action before the Dubai Courts.

Whilst it has yet to actually occur, this raises the difficult and unusual possibility of parties obtaining anti-suit injunctions from the DIFC Court to restrain claims before the Dubai Courts, whilst the Dubai Courts themselves would not grant such injunctions to prevent a party from pursing an action before the DIFC Courts. Decree 19 of 2016 goes some way to avoid this scenario, as it has created a tribunal to resolve issues of jurisdiction between the two courts. Nonetheless, it highlights some of the tensions that can arise in Dubai where there are two very different judicial systems co-existing.

The ADGM Courts have yet to deal with such issues but will likely take the same approach of the DIFC Courts.

The Future

The DIFC Courts have made it clear that they are willing to issue anti-suit injunctions, even if they relate to other judicial proceedings within the UAE. The creation of a judicial tribunal under Decree 19 of 2016 to resolve jurisdiction issues means that hopefully the DIFC Courts will not have to do this, but it nonetheless underlines the intent of the DIFC Courts to issue injunctions whenever it considers it appropriate. Indeed the Court issued an anti-suit injunction in early 2017 to restrain a party from continuing a civil claim in Pakistan in breach of an arbitration clause, the first time it has done so.

This represents a significant change in legal environment in the Middle East, which before the DIFC Courts had not seen the issuance of an anti-suit injunction. It is further reason for parties to consider using the DIFC Courts, as the availability of such orders severely reduces the prospect of one party ignoring an arbitration clause or exclusive jurisdiction clause, or otherwise attempting to cause problems by filing proceedings in its home jurisdiction.

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The Decree 19 Judicial Tribunal and its Consequences: Redefining the Scope of the DIFC Courts' Jurisdiction

In the last edition of *Law Update*, Diego Carmona and Muhammad Mahmood considered the implications of four of the first decisions of the Judicial Tribunal (also known as the Joint Judicial Committee) established by Dubai Decree 19 of 2016 ('Decree 19 Tribunal').

Those decisions left intact, for now, the DIFC Courts' status as a conduit for the enforcement of foreign arbitral awards and foreign judgments in Dubai. They did, however, effectively stop domestic arbitral award creditors pursuing the same route, at least until challenges to the validity of those awards have been conclusively determined in the Dubai Courts.

The reaction of the Dubai Court of First Instance to the Decree 19 Tribunal decision in *Meydan*

The Dubai Courts may have started reacting to the Decree 19 Tribunal and its decisions. On 15 February, the Dubai Court of First Instance issued an unusually detailed judgment annulling the DIFC Courts' decisions, at both first instance and on appeal, in *Meydan Group LLC v. Banyan Tree Corporate Pte Ltd* (ARB 003/2013 & CA 005/2014). *Meydan* essentially established the precedent for the DIFC Courts being used to recognise and enforce domestic arbitral awards so that the resulting DIFC Court orders can be taken to the Dubai Courts, and other courts, for execution.

The procedural history of *Meydan* is relatively straightforward. Banyan Tree obtained a DIAC arbitration award against *Meydan* and sought its recognition and enforcement in the DIFC Courts in 2013. At both first instance and on appeal, the DIFC Courts found they had jurisdiction to hear the claim and proceeded to recognise and enforce the award. The outcome of these DIFC Court proceedings was widely commented on because neither *Meydan* nor *Banyan Tree* had offices, assets or activities within the DIFC. The underlying contract, a hotel management agreement, was governed by Dubai law rather than DIFC law and the seat of the arbitration was Dubai rather than the DIFC, meaning that the supervisory courts were the Dubai Courts and not the DIFC Courts.

Meydan applied to the Dubai Courts to seek the nullification of the DIFC Court orders. The Dubai Court of First Instance considered the actions of the DIFC Courts and nullified the decisions of both the DIFC Court of First Instance and the DIFC Court of Appeal citing their alleged lack of jurisdiction. In doing so, the Dubai Courts considered a matter for which the Decree 19 Tribunal was established, although the latter body has no power under Decree 19 to nullify court orders. It is also worth noting that an earlier jurisdiction challenge by *Meydan* in the Union Supreme Court failed.

The DIFC Courts' jurisdiction is set out in the Judicial Authority Law (Dubai Law 12 of 2004 as amended by Dubai Law 16 of 2011, the JAL). Article 5 of the JAL gives the DIFC Courts exclusive jurisdiction in cases involving the DIFC, its bodies and establishments; cases involving contractual disputes performed or executed in the DIFC; incidents in the DIFC; or where contracting

parties have opted into its jurisdiction in writing. In its annulment judgment, the Dubai Court of First Instance noted this limited jurisdiction of the DIFC Courts and explained that the Dubai Courts' jurisdiction prevailed in all other circumstances. The Dubai Courts were described as the normal, default courts of the emirate, while the DIFC Courts had only exceptional jurisdiction. Any decisions of the DIFC Courts falling outside this exceptional jurisdiction must therefore fall within the jurisdiction of the Dubai Courts. As none of the jurisdictional gateways set out above were available in *Meydan*, the Dubai Court of First Instance felt entitled to nullify the DIFC Court orders issued in that case.

Analysis of the Dubai Court of First Instance judgment in Meydan

A number of observers consider the judgment of the Dubai Court of First Instance to have been wrongly decided. Perhaps most importantly, the judgment does not adequately acknowledge the statutory provisions that underpin the DIFC Courts' judgments in *Meydan*. Specifically, it fails to address the key provision in the JAL providing that the DIFC Courts have jurisdiction over any "*claim or action over which the [DIFC] Courts have jurisdiction in accordance with DIFC Laws and DIFC Regulations*" (Article 5(A)(1)(e)). One of the DIFC's laws, the Court Law (DIFC Law 10 of 2004) expressly permits the DIFC Courts to ratify any recognised judgments and awards (Article 24). Neither the JAL nor the Court Law apply a DIFC location or asset test to the exercise of this jurisdiction.

The Dubai Court of First Instance judgment is also inconsistent with the Decree 19 Tribunal's judgment in *Daman Real Estate Capital Partners Limited v Oger Dubai LLC* (Cassation 1/2016). In the latter judgment, the Decree 19 Tribunal expressly stated that both sets of courts had jurisdiction to enforce domestic awards. In Daman, the arbitration award debtor had sought to have a DIAC award annulled by the Dubai Courts while the DIFC Courts had in parallel considered and then recognised and enforced the same award. The Decree 19 Tribunal determined that in the interests of due process, and in order to avoid the risk of conflicting judgments, only one of the two sets of courts should hear both the enforcement claim and the annulment application. It added that on the basis of the "general principles embodied in the laws of the civil procedure", the appropriate forum for the matter was the Dubai Courts, though no further reasoning was provided.

In contrast, in *Meydan*, the Dubai Court of First Instance dismissed any jurisdiction of the

"Parties and practitioners expect the Tribunal to enhance not only its rules and procedures but also the substance of its judgments in order to provide greater predictability of its approach to conflicts of jurisdiction."

DIFC Courts to enforce any domestic award at all. It cited the Protocol of Jurisdiction signed by the Dubai Courts and DIFC Courts in support of its annulment decision, ignoring the specific recognition and enforcement powers of the DIFC Courts set out in the JAL, a Dubai statute, and in the Court Law, a DIFC statute.

Furthermore, the Decree 19 Tribunal does not have jurisdiction to annul any judgments. It is therefore surprising that the Dubai Court of First Instance considered that it had the power to declare the DIFC Courts' judgments in *Meydan* null and void ab initio when the body established to resolve jurisdictional conflicts between the two sets of courts, the Decree 19 Tribunal, does not have the power to do so. For this reason alone, it seems unlikely that the judgment of the Dubai Court of First Instance in *Meydan* would survive an appeal.

Amendments to the Decree 19 Tribunal's procedures

The Decree 19 Tribunal is expressly empowered by Decree 19 to propose the rules necessary to prevent conflicts between the Dubai Courts and DIFC Courts (Article 2(3)) and to set out rules for the Decree 19 Tribunal's procedures. While some of its rules and procedures are already publicly known, adding greater clarity to them would allow the Decree 19 Tribunal to operate more efficiently, leading to more predictable decision-making and reducing unnecessary delays and costs. As more decisions and rules are issued by the Decree 19 Tribunal, they can be expected to serve as precedents and guidance for affected parties. This should help deter or dismiss applications that are weak and motivated purely by short-term tactical considerations.

The Decree already places some welcome requirements on the Decree 19 Tribunal, including to issue a final decision no later than 30 days from the date of submission of any application. However, it is silent on key procedural matters such as how an application is communicated to a respondent, in what form a respondent is required to respond, and by when it must do so.

The Decree is also silent on the language of proceedings before the Decree 19 Tribunal; whether the Decree has retrospective effect; and oversight of the Tribunal. We understand a practice direction setting out rules and procedures (beyond those set out in the Decree itself) is being considered. If and when it emerges, it should make the operations of the Decree 19 Tribunal more transparent and effective. Many practitioners will be keen to avoid the Tribunal becoming a general appeal court for parties that have exhausted their options in the DIFC Courts or Dubai Courts, so this issue may also be addressed in any such practice direction.

A preliminary or summary judgment procedure may also prove useful to filter out spurious applications. This could involve a single judge of the Tribunal carrying out a paper review of an application at a permission stage, followed by a summary decision-making by three judges. Arguably the full Tribunal would only need to meet to consider the most complex or controversial applications.

The decisions of the Decree 19 Tribunal are published in both Arabic and English, with the former version being authoritative. The early judgments have been terse and set out limited reasoning or analysis in relation to their conclusions. Sections of the English-version judgments are unclear, which is surprising in view of the fact that they were signed off by experienced DIFC Court judges with international backgrounds. Parties and practitioners are likely to expect the Tribunal to enhance not only its rules and procedures but also the substance of its judgments in order to provide greater predictability of its approach to conflicts of jurisdiction.

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A Deep Look at the UAE Law against Fraud

Hand-in-hand with the virtually continuous development of economic activity within the UAE, there has been a steady rise in the complexity of commercial transactions. This is a natural by-product of an economy that has been stimulated by massive investment and managed by large-scale economic entities and financial institutions. Growing wealth and prosperity naturally encourages increases in criminal activity, particularly crimes involving seemingly-normal commercial transactions. In this article, we shed light on an example of a common criminal activity: fraud.

Article 399 of UAE Federal Law No. 3 of 1987, as amended, (the 'Penal Code') stipulates that:

> 'Whoever captures for himself or for others transferable money or documents or signing such document or cancelling, damaging or amending it through trickery or using a false name or personality for the purpose of tricking the victim and forcing him to deliver such shall be punished with a jail or a fine.
>
> The same penalty shall be applied to whoever disposes of a building or a movable that he knows he does not own or that he has no right to dispose of such or who disposes of anything of the same kind with the knowledge that another person has disposed of such or contracted on and hence he shall harm the other.
>
> The attempt shall be punished with a jail for a period not exceeding two years or a fine not exceeding ten thousand dirhams.'

The layman's understanding of fraud is that it is an offence that involves deception; however, the elements of the crime are more nuanced. The act of fraud, under UAE law, is the act of acquiring or receiving, through fraudulent means, money, moveable goods, or immoveable real property that is owned by another person. Those means, to be fraudulent, have to convince the victim to surrender the money, goods, or property to the offender. While deception is a necessary aspect of fraud, it is not sufficient in and of itself to establish the offence. Fraud is only considered to have occurred when the act has involved both deceit and the use of fraudulent means to obtain property or assets.

Deceit and fraud distinguished

These requirements are reflected in the decision of the Dubai Court of Cassation in judgment 19 of 1995. In that case, the Court stipulated that the act of lying on its own does not lead to the establishment of fraud. Both deceit and fraudulent means to obtain property or assets had to be established for the offence to have occurred. 'Merely false sayings and allegations are not sufficient for fraudulent means to take place. Lying should be accompanied with material acts or external appearances [that] cause the victim to believe in the truth of the lie and to surrender his money as a result of such belief', the Court explained.

The element of the offence, 'using fraudulent means', is defined by Article 399 of the Penal Code as constituting any of the following actions committed with the intention of deceiving others:

- using a false name or acting in a false capacity;
- disposing of money, or moveable or immoveable property, while knowing that it is not the disposer's property or that he is not entitled to dispose of the same; or
- falsely imitating an act previously carried out by another.

These acts are not only characterised as being deceitful but are also defined as using external instruments for the purpose of supporting the act of fraud.

Requirement of an 'external instrument'

An external instrument, in this sense, refers to measures taken to lend credibility to the deception involved in the fraud. For instance, a criminal may establish a fraudulent company, open headquarters, appoint support staff, and take other steps to create the illusion of a legitimate business. Constructing an appearance of legitimacy confers a level of trust that makes it easier to coerce funds from victims. Commonly fabricated qualities include appearances of wealth, professionalism, or morality to encourage greater levels of trust.

External instruments or appearances can be used in other ways, depending on the type of fraud in question. For example, they can also be used to convince a victim of the occurrence of a false incident, as is common in insurance fraud. For example, a criminal may commit arson to obtain the monetary value of an insured property or conceal the whereabouts of a vehicle before claiming that it had been stolen.

Where a fraudster is assisted by another person in carrying out a deceit, the use of an accomplice is also deemed an external instrument and constitutes fraud. According to the Dubai Court of Cassation in a judgment dated 12/03/2005, in Challenge No. 1/2005 Penal Code, however, the accomplice is only considered an external instrument if their participation was 'a result of the effort, intention, and organisation of the criminal' and was not independently solicited by the accomplice. The accomplices support and intervention will be considered when evaluating the criminal's lying to a crime of fraud.

Abuse of position

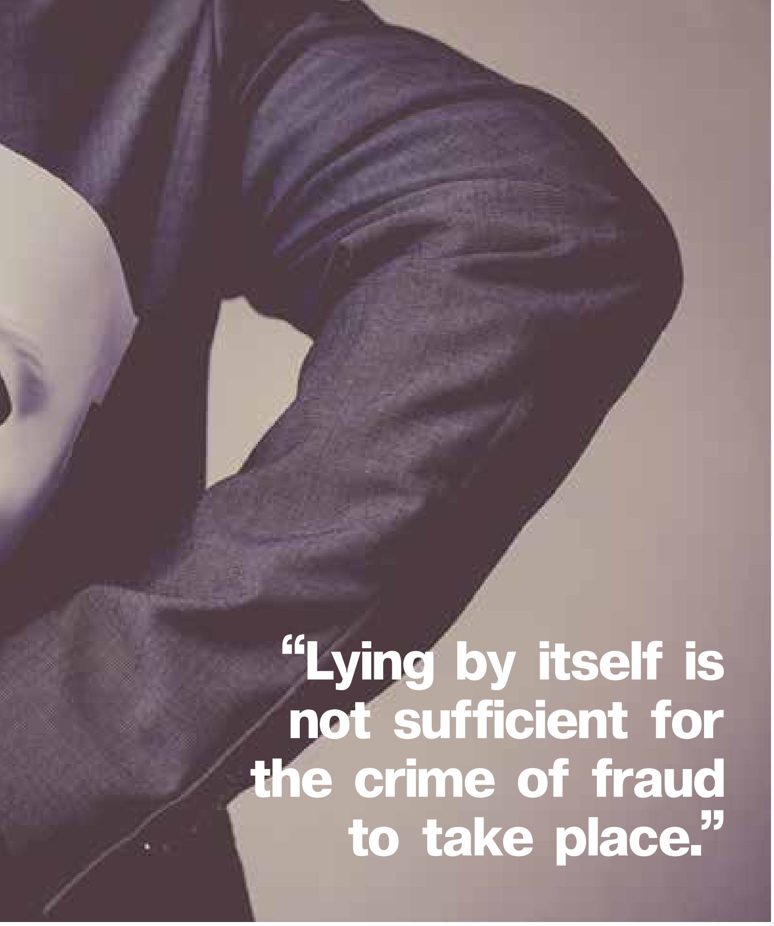
The act of taking a false identity refers to the criminal availing itself of a false identity to provoke a desired response from the victim. For example, a fraudster may pretend to be a lawyer to obtain confidential information from a victim. It is important to note that, whilst this would be a blatant lie, Article 399 of the Penal Code does not refer to this offence explicitly as identity fraud, but rather as simple fraud.

This differs, however, in instances where the fraudster has presented themselves in their true capacity, but abused the trust associated with the given role in an attempt to convince the victim to surrender monies. A policeman, for example, may apprehend a victim and convince them of their obligation to pay a contrived fine. The fraudster has not taken a false identity but has rather abused their position and added certain elements to deceive the victim. In such cases, the judiciary will generally consider the misuse of position or office as a form of fraudulent means.

Deceit

Deceit is that which would cause a victim to believe in an untruth, thereby causing an ordinary person to surrender property. The test for deceit requires that an ordinary or reasonable person would be deceived by the misrepresentation. Actions that were too incredible or outlandish do not fall within the scope of the rule.

With regards to deceit with the intent of gaining control or disposing of property to which the fraudster has no claim, it is possible for an ordinary lie, without an external instrument, to constitute a fraud. The law has been framed to encompass the situation where a victim believes in the validity of the financial transaction even though the perpetrator has not made specific misrepresentations on their position or capacity. Even if a false name or capacity has been assumed



as part of an ordinary lie, without the support of external instruments, such actions are still deceitful and should be punished according to the law of fraud. In these cases, if the victim believes that the accused's identity is authentic, without the usual accompanying evidence, the fraudster is still considered guilty of taking a false name or capacity. It is important to note that deceit may occur in many forms, but wherever it occurs in writing, it may also constitute forgery.

Identifying the victim

The law assists in identifying the true victim of a fraud. The law states that the victim is the possessor, at the time of the crime, of the object of fraud, such as the money or property stolen, rather than the owner of the property.

For instance, consider the position of a couple who have been sold a property by a man claiming to be a property developer. After signing the deal, it transpires that the man does not in fact own the property in question and has disappeared with the couple's money. In this case, the victims of the fraud are the couple who now have completed an invalid purchase, and not the true owner of the house. The true owner is not directly harmed by the crime in the sense of having suffered any damage, although his compromised right to possess the property would still be considered a criminal harm.

The above rules apply in all instances where the fraudster is not in possession of the property that is subject to a sale, whether it is moveable or immovable in nature. However, if the property is moveable and the fraudster is the possessor, then the original owner is also a direct victim of the crime. It is important that the law distinguishes between movable and immovable property and the law relating to ownership. In offences relating to immovable property, such as houses, the title of deed will constitute proof of the ownership of the building, irrespective of who has control of the property. For movable property, or chattels, the individual in control is assumed to be the legal owner until proven otherwise.

The circumstances of the victim

The criminal law takes into account the intention of the victim as well as the perpetrator of fraud, making this element of the offence different from the element of deceit.

In cases where the fraud involves the victim committing an illegal offence, the criminality of the victim does not absolve the fraudulent nature of the act. For example, if a perpetrator assumes the role of an arms dealer to broker a transfer of stolen weapons to a victim who intends to use the weapons for a criminal purpose but disappears with the payment monies before the weapons have been handed over, a fraudulent scheme has still taken place, and the illicit nature of the victims' activity does not prevent them from being victims.

To avoid being classified as fraud, the conditions that are used to persuade the victim to surrender money must be correct and devoid of any falsification. In the Court authority cited above, the defendants used the victim's prior knowledge of an existing case of theft in the area to convince the victim of an imminent risk of robbery and attack. The use of such information, by itself, does not constitute a fraudulent act.

Conclusion

Individuals and companies should be careful when dealing with other parties in transactions involving the transfer of funds or properties. Parties must verify powers, ownership, and other lawful capacities before concluding any transaction. It is not sufficient simply to rely on the appearance of any counter party or to make assumptions as to the other party's powers.

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Bahraini Constitutional Court Rejects Challenge to GCC Commercial Arbitration Centre's Arbitration Rules

The Bahraini Constitutional Court issued its judgment on 25th January 2017 in the constitutional case number D/1/2016, rejecting a constitutional challenge to Article 36 of the Arbitration Rules of the GCC Commercial Arbitration Centre (the "Centre").

In this article, we look at the facts of the case, a dispute between two Bahraini companies, and provide commentary and analysis on it in light of our own experiences in a similar case.

Facts

The appellant (the defendant in the underlying dispute) began proceedings before the High Civil Court to annul the arbitral award number 74/2013 issued against it by the Centre. The High Civil Court rejected the appellant's action and it appealed to the Court of Appeal. During the appeal, the appellant challenged the constitutionality of Article 36 of the Centre's Arbitration Rules.

Article 36 reads as follows (unofficial translation):

1. An award passed by the Tribunal pursuant to these Rules shall be binding and final. It shall be enforceable in the GCC member States once an order is issued for the enforcement thereof by the relevant judicial authority.

2. The relevant judicial authority shall order the enforcement of the arbitration award unless one of the litigants files an application for the annulment of the award in the following specific events: (a) If it was passed in the absence of an arbitration agreement or in pursuant to an invalid arbitration agreement, or if it was prescribed by the lapse of time or if the arbitrator goes beyond the scope of the agreement. (b) If the award was passed by arbitrators who have not been appointed in accordance with the law, or if it was passed by some of them without being authorised to hand down a ruling in the absence of others, or if it was passed pursuant to an arbitration agreement in which the matter of the dispute was not specified, or if it was passed by a person who was not legally qualified to issue such award.

   Upon the occurrence of any of the events indicated in the above two paragraphs, the relevant judicial authority shall verify the validity of the annulment petition and shall pass a ruling for non-enforcement of the arbitration award".

Constitutional Court Legislative Decree No. 27 of 2002 allows parties in a dispute to challenge the constitutionality of an article, whether in a law or in a regulation. If the relevant court deems that such challenge is serious, it shall adjourn the case and grant a period of no more than a month in which the appellant must file a challenge in the form of a case before the Constitutional Court. Otherwise, the party's challenge must be dropped.

Grounds of appeal

The appellant challenged Article 36 of the Arbitration Rules and alleged that this Article violated the Articles of the Constitution of Bahrain, namely Article 20(f), which guarantees the rights to litigate under the law, and Article 30, which states: "*The organising of rights and freedoms laid down in this Constitution and their delimitation will be as per law or based on it. Such organisation or determination will not be prejudicial to the essence of the right or the freedom.*"

The appellant argued that both the restriction on filing a direct annulment action against an award issued by the Centre (in a similar way to an ad-hoc arbitration, where an annulment action against an award must follow any enforcement application by the successful party) and the limited annulment grounds under Article 36 removed the appellant's constitutional right to litigate before the Bahraini courts.

> **"The Centre's Rules could be regulated by the executive authority without violating the Constitution, by taking into consideration the contractual nature of arbitration."**

The appellant also claimed that Article 36 breached the Constitution because it treats parties unequally and discriminated between those who referred a dispute to arbitration from those who referred a matter to the civil courts.

The appellant also argued that the Arbitration Rules were unconstitutional because they had not been issued by the Bahraini parliament as the competent legislative authority, but were instead ratified by the King as head of the executive authority.

The ruling of the Constitutional Court

The Constitutional Court ruled in its judgment that Article 36 of the Arbitration Rules was constitutional because there had been no violation of either Articles 20(f) or 30 of the Constitution.

The Constitutional Court addressed the appellant's allegations by stating that the Arbitration Rules were issued pursuant to Article 28 of the Centre's Charter, which was ratified by Legislative Decree No 6 of 2000. The Constitutional Court noted that Article 36 of the Arbitration Rules provided detail for what was described in general terms at Articles 14 and 15 of the Centre's Charter. The Court also found that the Centre's Rules could be regulated by the executive authority without violating the Constitution, by taking into consideration the contractual nature of arbitration.

On the other hand, the Constitutional Court indicated that parties who voluntarily choose to resolve their disputes through arbitration are different in their legal status compared with those who seek to resolve their disputes through ordinary courts. Each has its own legal status, obligations, and procedures. In light of these differences, equal treatment is not a necessity and, accordingly, any inequality between litigants in arbitration and those before the courts does not breach the general right of equality before the law. The Court further explained that legislators may vary the regulation of the right to litigate, distinguishing between different types of dispute resolution without breaching the principle of equality before the law.

Commentary

It appears that the appellant attempted all possible methods to attack the arbitral award issued by the Center, as the appellant began an application to annul the award before the other party could commence execution of the award. After the court of first instance refused the annulment application, the appellant then brought the claim on the grounds of unconstitutionality at the appeal stage. It is likely that the ruling of the court of first instance described in detail the reasons for rejecting the application, leaving the appellant with no recourse but to bring proceedings in the Constitutional Court.

The issue of the Constitutional Court's ruling does not necessarily end the journey for the appellant as it may still file a second application for the annulment of the arbitral award when the claimant, as judgment creditor, files for execution as under Article 36 of the Center's Arbitration Rules. The path to requesting annulment of the arbitral award remains open despite the rejection of the claim of unconstitutionality including the rejection of the annulment action.

In our view, the rash action of the appellant in requesting annulment of the arbitral award at the outset brings to mind a rule of jurisprudence which states that "*whoever hastens what is not yet due, is to be deprived of it.*" The Arbitration Rules do allow a request for annulment but this must be conducted in a specific timeframe i.e. only once the application for the enforcement of the award is made.

The Court of Cassation gave its opinion on the judicial authority that may be requested to annul an arbitral award: "*What is meant by the competent judicial authority in these articles (i.e. the Centre's Arbitration Rules) that looks into enforcement of the award is the competent judicial authority in the state where the award will enforced, and where the award is deposited if required by local law. There is nothing in the Arbitration Rules or the Center's Charter that affords the High Civil Court in the State of Bahrain competency in this regard, and this is notwithstanding the fact that the Center's premises are in Bahrain and established as an independent and active judicial authority and subjected to its own regulation of arbitration and rules of proceedings.*" Case No. 101/2010, session of 2/4/2012. As such, it was incumbent upon the appellant to wait until notified of the request to enforce the arbitral award. Only then could the appellant bring a request for annulment of the award according to the reasons cited by Article 36 of the Arbitration Rules, if any. For instance, if enforcement was requested in the United Arab Emirates, the courts of the UAE would be the competent judicial authority to bring an annulment request before them regardless of the Center's location being in the Kingdom of Bahrain.

Despite upholding the constitutionality of the Arbitration Rules in this case, such claims – whether upheld or rejected – contribute to the enrichment of legal jurisprudence. If there is any consolation to the appellant, it may perhaps be that such important constitutional principles emerge that related to both litigation and arbitration.

The Constitutional Court's judgment is final and not subject to any form of appeal. The appellant is likely to bring annulment proceedings once enforcement proceedings are issued.

Other case law

In a similar case, where we are representing the defendant who received an arbitral award in its favour, the High Civil Court in Bahrain issued a ruling in which it refused to enforce the arbitral award despite the facts that (a) the defendant had not submitted a request for enforcement in Bahrain, and (b) the complete absence of any evidence to justify this decision. The enforcement request was actually submitted in the UAE.

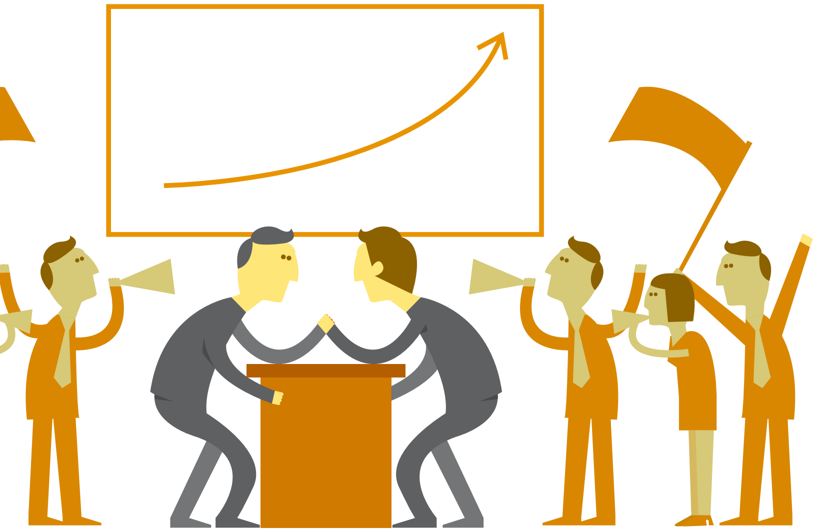
The High Civil Court determined that it had competency to consider such a case after making the following points:

"*..The court makes reference to its competence and judicial specialisation,*

And with regards to the defence presented by the defendant claiming non-competence of the courts of Bahrain to consider the case,

And with the arbitral award being unenforceable except by virtue of an order by the head of the court where the original award was deposited based on a request of any of the parties,

And in view of the annulment request normally being submitted to the competent court in compliance with Article 243 of the Civil and Commercial Proceedings Law, which is the High Civil Court as related to the presented case,



"The Centre's Rules could be regulated by the executive authority without violating the Constitution, by taking into consideration the contractual nature of arbitration."

And based on the foregoing, and with the arbitral award in this case having been issued from the GCC Commercial Arbitration Center, and is therefore subject to Law No. 6 of 2000 and its Arbitration Rules that have been ratified by the GCC Commercial Cooperation Committee in 16/11/1994, as amended in 5/10/1999,

And since Article 36 of Centre's Arbitration Rules stipulates that an arbitral award issued by the tribunal is binding and final and enjoys enforceability at GCC member states after being ordered to be enforced by the competent judicial authority, unless a party requests annulment, in which case it must verify the accuracy of such request and rule against enforcing the arbitral award,

And since the competent judicial authority in the presented case is the High Civil Court as described earlier, and the appellant submitted this case to prevent enforcement of the arbitral award which is a competency of the court since it is the judicial authority responsible for verifying the accuracy of the annulment request, which is in addition to the fact that the award enjoys enforceability in GCC member states, and Bahrain is such a member state,

As such, the courts of Bahrain are competent to consider the dispute, and the defence becomes without basis and must be rejected."

It is obvious that the decision of the High Civil Court concerned a mixture of laws, including the arbitration provisions of the Civil and Commercial Procedures Law (which have since been repealed) and the Arbitration Rules of the Center. This is despite the fact that legal provisions concerning arbitration in the Civil and Commercial Procedures Law are not applicable in an institutional arbitration that is subject to the rules and procedures of a given center (in our case, the Centre). This also represents an unusual departure from the usual position of upholding the arbitration agreement of the parties.

Establishing that arbitral awards issued by the Center are enforceable in GCC member states does not automatically assign competency to all courts of the member states. Establishing competency is intrinsically tied to the order to enforce from the competent judicial authority, as stipulated by Article 15 of the Centre's Charter. It was incumbent on the court to firstly verify the existence of such an enforcement request or enforcement order.

As such, it is legally unsound to establish competency for all courts of GCC member states based on the general principles of the local, Bahraini Civil and Commercial Procedures Law, especially with regards to the annulment of arbitral awards issued by the Center in particular or generally any other institutional or international arbitration. Each such type of dispute resolution avenue has its own considerations and requirements.

The High Civil Court's decision has been appealed in a manner that coincides with the principles previously established by the Court of Cassation, and we eagerly await the results by the end of April 2017.

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New Employment Regime in Jordan: Working Within Flexible Arrangements

The Jordanian Parliament, following increasing calls for a legislative regime change catering to the flexible needs and requirements of a diverse workforce, has recently enacted a new regulation pertaining specifically to flexible working arrangements in the Hashemite Kingdom of Jordan. Such regime, which is contained in the Regulation of Flexible Employment (Regulation No. 22 of 2017) (the “Regulation”), was published in the Official Gazette on 16 March 2017 and came into effect immediately as of such date.

In short, the Regulation offers certain categories of employees (see below) the right and opportunity to choose, with their employers consent, a flexible working arrangement tailored to their personal and familial circumstances, needs and/or requirements – ultimately fostering a very tangible and concrete work-life balance and, in turn, employee satisfaction and engagement.

Who is covered by the Regulation?

The Regulation covers the following specific categories of employees only (collectively, the “Employees”):

1. An employee who has spent at least 3 consecutive years working for the employer;
2. An employee who bears “family responsibilities”, which are defined as encompassing a pregnant employee; an employee who assumes parental ‘responsibility’ of a child; or an employee who assumes responsibility for disabled or ill members of their family (including the elderly or infirm).

3. University students [who are employed with the employer]; and
4. Disabled employees.

What is the scope of the Regulation?

The Regulation provides the Employees with different forms of flexible working arrangements, patterns or schedules of work, including the following:

1. The option to work part-time: where the Employee is entitled to work for reduced working hours (the standard normal working hours are 8 hours per day excluding an hour break, 48 hours per week which can be distributed throughout the week provided that the working day does not exceed 11 hours (exclusive of overtime). The option to work a flexible daily working pattern: for example, commencing work at 10:00 am instead of 9:00 am. The Employees, however, are still obliged to ensure that they work their full standard daily working shift
2. The option of a varied working weekly schedule or pattern: for example, if the original working days are 5 with daily working hours being 8, the Employees could elect to stagger their working hours across the working week such as 10 hours on Sunday and Monday and 6 hours on Tuesday, Wednesday and Thursday. This option is subject to the provision that the daily working hours should not exceed 10 per day (exclusive of overtime).
3. The option of a varied yearly schedule or pattern: for instance, the Employees could elect to work for 6 days a week from January-June and thereafter, work for 4 days a week throughout the rest of the year. This arrangement is, however, restricted by the prohibition mandated under Article 60 of the Jordanian Labour Law (Law No. 8 of 1996) (the "Labour Law"), under which it is stipulated that the employee is prohibited from working for more than 4 weeks in a row without taking any day off.
4. The option for remote working.

The above options are, of course, subject at all times to the prior approval of the employer. It is not, therefore, an unconditional automatic right for the Employees. There will need to be an element of mutual consent to such arrangements taking into consideration the business needs and requirements of the employer at the relevant time. An employer cannot, however, compel an Employee to adhere to a specific arrangement, as otherwise, such arrangement would be deemed as void.

Additional considerations

Where an Employee and his/her employer agree to a flexible working arrangement subject to the Regulation, the following key points should be considered:

1. The Employee should be paid pro-rata to his/her working hours and days but not less than the minimum wage applied in Jordan (which amounts to 220 for Jordanian employees and 150 for non-Jordanian employees).
2. The Employee's leaves and entitlements should be provided by the employer pro-rata to his/her working hours and days.
3. The Employee should still be entitled to take advantage of all the rights and advantages provided under the Labour Law unless his/her original employment contract or flexible contract provide for a more advantageous right.
4. The Employee should be entitled to request to revert to his/her original employment contract at anytime during the flexible arrangement and such request can only be affected upon the approval of the employer.

In order to ensure unhindered implementation of the Regulation, the Regulation obliges the employer to periodically report to the Tripartite Committee (a committee specifically formed by Article 52 of the Labour Law) of its application, where relevant, of the Regulation. Such report should include (i) the forms of flexible arrangements adopted, (ii) the number of Employees who have adopted a flexible working arrangement and the start date of their employment, (iii) the strategy that was implemented by the employer to adopt a flexible working arrangement and (v) the number of all employees working with the employer. The Tripartite Committee shall look into and examine the reports provided by the employer and regularly issue its recommendations to the Minister of Labour in this regard, as required under Article 11 of the Regulation.

Conclusion

The Regulation has received notable positive feedback from various industry circles and is a welcome step in the direction of catering to, and ultimately accommodating, a workforce shouldering differing familial circumstances for female workers, in particular, and in general, the possibility of reducing traffic and avoiding stress of commuting during rush hours. However, certain residual creases still need to be ironed out with regards to the Regulation, including the necessity of amending the Labour Law to align it to the terms of the Regulation and separately, the "employer consent" element attached to the flexible working options generally. Whilst it is acknowledged that any flexible working arrangement requests will invariably need to be considered in the light of an employers business needs and requirements, there should be a careful balance and mechanism in place to ensure that such requests are not flatly rejected or denied by employers arbitrarily; particularly as such an approach would go against the very spirit and aim of the Regulation.

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Changes to the Tax Regime in Oman

In February 2017, significant changes were implemented to the corporate tax regime in Oman. The main amendments, which include an increase in the standard corporation tax rate and an extension of the withholding tax scope, are set out below.

Who is affected?

The changes affect Oman taxpayers, as well as foreign companies without a local permanent establishment that receive certain types of income from Oman. In addition, the changes will also impact small and medium enterprises.

Key changes

Changes to corporate tax rates

The standard corporate income tax rate has increased from 12% to 15%.

A new lower rate of 3% has been introduced for small businesses that meet certain turnover, capital, and minimum employee conditions, and do not fall within specified industry sectors. The lower rate will be irrelevant to most “foreign” (i.e. non-GCC) controlled companies because of the relatively high share capital requirements imposed on these foreign companies under the current Foreign Investment Law of Oman.

Both of these rate changes will apply retrospectively for all financial years beginning on or after 1 January 2017.

Exemption threshold removed

The exemption which previously applied to the first OMR 30,000 of taxable profits has been removed. As a consequence, businesses that were not subject to tax will now be required to file a tax return and pay tax for the first time.

Withholding tax scope extension

The scope of withholding tax has been broadened to include payments of dividends and interest, and payments for services to foreign persons without a permanent establishment in Oman. Ministries and government bodies will now also be required to withhold. Previously, withholding tax only applied to management fees, royalty payments, consideration for the use of, or right to use, computer software, and consideration for research and development.

Other changes

- A minimum period of activities is now required to create a permanent establishment in the case of a building site, place of construction, or an assembly project.
- All taxpayers must obtain a tax card and use the tax card number on all contracts, invoices, and tax authority correspondence.
- Tax exemptions for most industry sectors are no longer available (i.e. whilst existing tax exemptions will be respected, any applications for the renewal of a tax exemption will be impacted if they fall within a sector for which no tax exemption is available).
- The old assessment regime will shift to a self-assessment based system.
- Stricter penalties have been introduced to enforce compliance in cases of certain deliberate violations of the tax law. These take the form of both higher fines and imprisonment of the Principal Officer.
- Electronic filing of tax returns will be introduced.
- Islamic finance transactions will be taxed in the same way as their conventional equivalent.

Al Tamimi's view

Given the impact of low oil prices and the resultant budget deficit, diversifying revenue streams through taxes has been under consideration for some time. In addition to the introduction of VAT, which will be implemented across the GCC by 2018-19, amendments to the Oman income tax law were widely expected in order to generate additional revenue in the form of taxes. The increase in the standard tax rate, the expansion in the scope of withholding tax, the removal of tax exemptions, and stricter penalties to encourage compliance are all measures designed to achieve this objective.

However, the removal of the exemption threshold and the expansion of the withholding tax base will result in a higher compliance cost for businesses operating in Oman. In addition, foreign companies are likely to push the withholding tax burden to local businesses through contractual gross-up clauses further increasing the cost of doing business in Oman. Accordingly, it will be important to consider whether the withholding tax will be reduced or eliminated by an applicable double tax treaty between Oman and the country in which the foreign recipient is resident. Companies operating in Oman will need to review their contracts to assess potential withholding tax liability and consider the implications of additional compliance.

Despite the amendments to the tax law, Oman remains a jurisdiction without any personal income tax legislation and where disposable incomes, particularly in highly skilled sectors, are high by Middle Eastern standards. Furthermore, the Government's continued adherence to its Vision 2020 plan in promoting tourism, manufacturing, logistics, and various other sectors should lead to a higher permanent and visiting population, which may serve to offset the cost of taxation on corporations.

Al Tamimi will be pleased to help you understand how the changes affect your business.

Al Tamimi & Company has a regional tax practice. For further information please contact Arif Mawany (A.Mawany@tamimi.com) or Shiraz Khan (S.Khan@tamimi.com).

"Oman remains a jurisdiction without any personal income tax legislation and where disposable incomes, particularly in highly skilled sectors, are high by Middle East standards."

Saudi Arabia's Privatisation Plans for Sports Clubs

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Sports in the Kingdom of Saudi Arabia ("KSA") first and foremost means football. While sports clubs typically sustain and manage teams across a number of sports, as their mandate has historically been to develop and promote broader athletic pursuits rather than just single-sport success, there can be no doubting that football takes prime place in terms of public interest, the pursuit of excellence and commercialisation of sporting endeavours. The Saudi national team is one of the most successful national teams in Asia. In fact, the team has won the Asian Championship three times and has qualified for the FIFA World Cup four times, the first of which was in 1994. Al Hilal FC has tallied a record of forty-three domestic titles, six trophies in various Asian championships, and a record of eight Arab championships. Similarly, Al Nassr FC holds the distinction of being the first Asian club to play on an international level. Both teams are considered to be amongst the leading football clubs in Asia.

How nations go about organising sporting pursuits, particularly what legal status and forms are chosen to manage their sports clubs, can be a complex matter including considerations of history, culture, resources, and administrative goals. For the purposes of this article, we are going to consider the plans for privatisation of sports clubs in KSA or, in other words, the transfer of operational and financial control from government hands to the private sector.

Background to Privatisation of Football Clubs in KSA

Subject to effective implementation and the absence of significant market distortion factors, the privatisation of sports clubs can be beneficial in terms of providing not only access to capital for short-term use, in player purchases or infrastructure investment (the KSA could

benefit from stadium redevelopment), but also for establishing the necessary business framework to nurture talent and encourage the adoption of best practices in club management. Indeed, the prospect of attracting owners who will be incentivised to bring in the best and brightest management teams to drive commercial success could bode well for growing match-day revenues with stadium development and furthering international competitiveness with player investments.

KSA has recently added a number of new imperatives to its long-standing position that privatisation of certain state-owned assets can and should play a significant role in economic development. The transformative Saudi Vision 2030 plan looks to reduce Saudi Arabia's dependence on oil by diversifying the economic model for the nation across a wide range of fronts. It expressly refers to the promotion of physical and social well-being and healthy lifestyles as specific goals, together with the reduction of costs and increase in efficiency (noting that government is working with the private sector to establish additional facilities and programmes).

Top-division clubs competing in the Saudi Professional League, are all presently government-owned. While this may be counterintuitive for those based in other jurisdictions, it stems from historically centralised growth and development of socially desirable sporting initiatives across a range of sports, including sports that may not have the commercial appeal and the sustainability of football. These clubs are the flagship clubs of the KSA sports industry and although club finances are not currently public information, the PRO League has robust domestic revenues. While official revenues are not public information, certain sources suggest that the KSA domestic TV revenues alone provide substantial income (reportedly exceeding those of the MLS by as much as 50%). It is logical to anticipate that those clubs should be at the forefront of the ambitious plans for sports sector development. Additionally, the KSA government commissioned Deloitte to prepare a feasibility study of the privatisation of leading clubs in KSA. This fact, combined with recent announcements (noted below) that moves are afoot, suggest a serious review of relevant factors has been taken in earnest.

While privatisation has been identified as pivotal in KSA's economic development plans for some time, it was not until late 2016 when more specific goals for the potential role of privatisation in football were announced. Those goals include elevating the quality and status of the league and positioning it to diversify revenues and make a greater contribution to the national economy. Privatisation measures will be considered for clubs that are playing in the country's top league. Further, anecdotal reports suggest that the initial solicitation for investment will be limited to between two and four clubs only. We speculate that it is only the most commercially viable clubs that are being considered for privatisation, at least initially, as the fate of the process may well rely on the early results.

Structural Developments Enabling Football Privatisation in KSA

The Saudi Professional League enjoys strong support and a number of high-profile clubs have a track record of accomplishment in the AFC Champions League. Football clubs in the Gulf Cooperation Council ("GCC") tend to be supported by a combination of traditional revenue sources (broadcasting, commercial, match-day revenues etc.) and contributions from wealthy groups and individuals affiliated, formally or informally, with the clubs. Accordingly, wholesale structural changes overnight will not be easy, as investors will need to maintain traditional support while understandably expecting corporate control with clear guidelines and the freedom to implement their new business plans within clear guidelines.

The announcement of Saudi Vision 2030 in April of 2016 was quickly followed in May by the General Presidency of Youth Welfare being rebranded as the General Authority for Sports and given greater responsibilities for developing sports clubs and facilities. Shortly thereafter in June, the National Transformation Program 2020 ("NTP") was launched as the first stage of implementation of Saudi Vision 2030 with interim targets. In July the General Authority for Sports and the Ministry of Commerce and Investment ("MoCI") organised a campaign to increase awareness amongst football clubs and other parties in the sector regarding the need to register trademarks and logos to protect the value of IP. This is a positive sign and an indicator that we would expect to see more campaigns as professional business processes are embraced and clubs position themselves to exploit available revenue streams.

Mechanism and Procedures for Privatisation

Specific details concerning the necessary procedural steps for transforming the clubs into corporate entities and subsequently formalising the process of private investment, including timelines, applicable regulations, and execution documentation, have not been provided at the date of this article's publication. However, it is understood that the privatisation plan will likely be carried out in phases. It has also been suggested that for the purposes of investment, every club will have two components, assets and real estate, and that any given privatisation need not include an obligation to purchase the accompanying property or headquarters. This would provide some flexibility to investors in considering various business plans and strategies to optimise growth and development in years to come.

The Council for Economic Development and Affairs has approved the formation of a committee to oversee the completion and implementation of football club privatisation and directed that the General Authority and other stakeholders should create a Sports Development Fund, inter alia, to provide loans and facilities for clubs. This committee is headed by the Chairman of the General Authority for Sports, and includes representatives of the Saudi Professional League and the Saudi Arabian Football Federation. In respect of set up and regulation, whether or not a specific corporate vehicle will be required to hold the assets and what form and scope a designated long-term regulator may take in the process, is currently unclear. The success of privatisation programs in general can turn on the quality and oversight of a credible regulatory body moving forward, so it would be in the committee's best interests to ensure that this point is given due consideration.

The size of the Sports Development Fund earmarked for assisting with this process and the precise details of planned allocations are not officially available at present but the establishment of the fund does suggest an understanding and appreciation that there will be certain costs involved in helping even the top clubs achieve immediate sustainability.

Potential Challenges

Privatisation in general can include a number of challenges both predictable and unforeseen. In the current context, it is instructive to note where at least some of those issues may arise.

1. **Lack of Market Comparators:** In implementing a new legal structure on a going concern in a relatively unique sector, it is beneficial to have current, similar examples to "stress-test" as potential models. In the present context, models from neighboring GCC jurisdictions are limited, as KSA will likely lead this movement.
2. **Management of Accounts & Transparency:** For a number of the selfsame reasons why privatisation is desirable (prudent and stable corporate management, imposition of sustainable commercial strategies etc.) investors are likely to be cautious and thorough in gaining an understanding of the existing business. As such, it is important that government exercise full disclosure in dealing with qualified bidders. With respect to early efforts to sell the Saudi Telecommunications Company (STC), negotiations broke down with three potential investors (NTT of Japan and France Telecom both opted out during negotiations, while the Saudi government rejected the US-based Southern Bell Corp's proposed terms), reportedly in part because of concerns including a lack of transparency and the historical management of accounts. In the context of football privatisation, such issues could lead to unnecessary delays and increased costs in terms of agreeing valuation, conducting comprehensive due diligence and subsequently preparing deal documentation.

3. **Limiting the Scope of Investor Pool:** The information currently available suggests that for the initial phase at least, only KSA national investors will be entertained as bidders for sports clubs. A limited field of investors may accordingly limit the range and dynamism of business proposals and deny access to otherwise skilled and enthusiastic sources of capital for sports investment. The STC privatisation referred to above indicates that for the right opportunities, and under the right conditions, significant international investors will be interested in the KSA market. Recent activity in the world of football also suggests that casting the net wider, to include Chinese investors for example, could bring rewards. This restriction could be ameliorated to attract investors with foreign capital and skilled sector-experience, even on the basis of permitted minority stake investments.
4. **Regulatory Oversight:** Even after identifying and attracting suitable investors, if an appropriate procedural model for executing the investment can be accomplished, previous privatisation efforts in other sectors within KSA have taught us that the lack of clear guidelines and strict regulatory monitoring may be detrimental to the government's ultimate goals for the sector. Over the past decade, Saudi Arabia has privatised elements of its utilities, including in the water supply, electricity, and telecommunications sectors. In each of these areas, consumers have raised serious concerns about the performance of the privatised entities. For this reason, the government should give sufficient consideration to the nature, powers and processes through which ongoing regulation will be implemented. The identification and assembling of suitable regulatory requirements and personnel should be considered a pre-requisite for successful privatisation.

Comment

The background and motivation for taking the significant step of privatising Saudi football clubs is clear. Vision 2030's expectations for the sector's contribution to the national economy, including anticipated job growth and diversification of revenues, are aggressive. The structural development of necessary organs to oversee the plan has been put in place rapidly. The necessary mechanisms and legal procedures to complete club privatisations are not yet entirely clear. Appropriate privatisation guidelines and benchmarks will be necessary to (i) attract the optimal profile and number of investors; (ii) facilitate comprehensive inventory of assets; (iii) efficiently manage the investment mechanics; and (iv) implement suitable regulatory checks and balances post privatisation.

Some delay is to be anticipated and is not necessarily a bad thing as some procedural flexibility can be beneficial (e.g. given the need to read and react to the investor pool and reduce the potential for missteps). The impetus for growth and the opportunity for private entities to get involved provide substantial encouragement for job growth from developing a sector rather than just a team or even a league. Additionally, the potential benefits of encouraging investment in sporting facilities, as well as developing local talent and increasing competition, are benefits we would all look forward to seeing reflected on the pitch. This should be balanced against a concern that not casting the bidder pool wide enough to include foreign investors may preclude willing, able and experienced team owners.

How the process moves in the next few months will determine how successful the plan will be and it would be unfortunate if the momentum created by recent statements is lost. A number of factors, including the relative strength of the top clubs, the size of the market, the potential for sustainable revenue generation, the government's willingness to place specialists in key roles, a long history of passion for football, the relative dearth of comparable entertainment, the parallel/collaborative investment in public participation, and the commitment to develop grass-roots sports, as well as sports facilities, all combine to suggest that there are significant reasons to believe the time may be right to proceed with this long mooted plan.

Experience suggests delays should be anticipated as we see the development of a publicly available bidding process and clear regulatory guidelines. Beyond those hallmarks, any feedback from bidders during the process will provide valuable information. Indeed, a stutter-step between the bidding process and any award, even if it results in a slippage of timelines, could be indicative of a willingness to read and react to bidder feedback, which could be positive as successful privatisation should be a collaborative undertaking. In any event, with a number of high-level statements pointing to impending developments, it will be an interesting time to keep an eye on developments in the long-planned privatisation of KSA sports clubs.

Steve Bainbridge is the Head of our Sports Law & Events Management practice. Ahmad Ayoub is a Trainee Lawyer in Al Tamimi & Company's Corporate & Commercial Department, supporting and advising corporate clients registered and operating in the DIFC and/or the UAE across a range of corporate commercial matters. Ahmad also routinely supports our Sports Law & Events Management practice on commercial and administrative projects.

The original version of this article was first published on 10 February 2017 at www.lawinsport.com

https://www.lawinsport.com/articles/item/how-saudi-arabia-plans-to-privatise-its-sports-teams

"Know Your Rights: for Real Estate Investors in Dubai"

Al Tamimi and Company is pleased to announce the launch of a real estate book titled "Know Your Rights: for Real Estate Investors in Dubai" ("Book"), prepared and published in collaboration with our colleagues at the Dubai Land Department ("DLD"). The book was officially announced on the 3rd of April 2017 during a press conference held at the Dubai World Trade Centre during the Dubai International Government Achievements Exhibition.

The Book provides companies and individuals with the vital information they need when considering investing in real estate in Dubai and seeks to answer some of the most important questions that investors have regarding their real estate investments and dealings with government authorities, developers and other relevant parties.

This is the first time that the DLD's main policies have been summarised and made publicly available in written form, making it easier for investors to understand and comply with DLD policies when acquiring properties in Dubai.

Al Tamimi and Company will continue to work with the DLD to regularly update the Book to reflect new laws and requirements and to translate it into other languages, including Russian, French and Chinese.

As Dubai's real estate market matures, more laws, regulations and DLD policies are expected to be issued soon in Dubai. For example, H.E Sultan Buti Bin Mejrin, General Director of DLD, confirmed during a recent press conference that the DLD is working on issuing a new tenancy law, a new law governing the management of common areas (as a replacement to the current Strata Law No 27 of 2007) and finally a law which will regulate REITS and real estate funds in Dubai. The Book will continue to evolve with this changing regulatory landscape.

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Implementation of the online filing system in Bahrain

In line with the GCC region's recent drive to improve Intellectual Property services, starting from the 20th of February 2017, the Bahrain Trademark Office implemented the online filing system.

At present the new online system will only be applied to trademark application filings, opposition actions and objections against refusal decisions filed after 20 February 2017, while the old applications and pending matters are still done by submitting the relevant form and paying the fees directly to the Trademark Office. It is worth mentioning that this system will be expanded gradually to include all the services provided by the Trademark Office, including change of agents and renewals.

The introduction of the online system will result in streamlining the trademark process by cutting time and providing more accurate results. We are confident that this system will enhance the procedures before the Trademark Office and help bring the Kingdom of Bahrain further towards the digital society.

New Draft Laws on IP Protection in Qatar

At a meeting chaired by the Prime Minister and Minister of Interior HE Sheikh Abdullah bin Nasser bin Khalifa al Thani, the Cabinet, approved two draft laws on the protection of industrial designs and its executive regulations.

The Ministry of Economy and Commerce (MEC) prepared the draft law with the purpose of developing and modernizing Law No 9 of 2002 on trademarks, commercial data, trade names, geographical indications and industrial designs and models.

The project includes provisions relating to the Protection of Industrial Property Office's issuance of a periodical journal called 'Industrial Property' to publish the data required to be announced in accordance with the provisions of the law.

According to the law, a registration book must be prepared and kept in the office to record all industrial designs and models, owners' data, notifications assignment of property, beneficiaries of the licenses, licenses renewal, cancellation and nullity and all other related issues as determined by the executive regulations of this law. The draft law also provides the registered owner of the industrial design the right to prevent others from making, selling or importing products taking the shape of its design or model, the draft law also provides that the duration for protection of the industrial design or model is for a period of five years, and renewable for two similar terms.

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Doing Business in Bahrain

Al Tamimi & Company and the Bahrain International Investment Park (BIIP) hosted an informative breakfast seminar on Thursday, 9 March 2017 at the Capital Club, Bahrain. The seminar was very well attended with around 90 clients and friends of the firm in attendance. Presentations were delivered by Foutoun Hajjar (Head of Bahrain Office); Raj Pahuja (Head of Corporate Commercial – Bahrain) and Zahir Qayum (Senior Associate, Employment – Bahrain). Al Tamimi's Samer Qudah (Partner and Head of Corporate Structuring) and guest speaker Bader Fareed Al Saad (Director, Industrial Areas Operations, Ministry of Industry, Commerce, and Tourism) also participated as panel speakers. The topics discussed covered an array of recent and significant changes to Bahrain's commercial laws and procedures, including: new rules on foreign ownership; new procedures for company registration; Bahrain Labour Law; corporate governance and new provisions under the Industrial Law.

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22
MAR

Doing Business in the Middle East Seminar

Al Tamimi & Company hosted its annual seminar on Wednesday the 22nd of March 2017, at the Sheraton Amman Hotel. The seminar covered the setting up options, restrictions on foreign ownership, and trusts in the KSA, GCC, Egypt, Iraq, and Jordan. The presentations were uttered by Khaled Saqqaf (Partner & Head of Jordan & Iraq), Samer Qudah (Partner & Head of Corporate Structuring), Foutoun Hajjar (Partner & Head of Bahrain), Ayman Nour (Partner & Head of Egypt), Mohammed Norri (Partner & Head of Baghdad), Ahmed Basrawi (Senior Associate from Jeddah Office). It was a successful event, and more than 150 guests attended, and were very pleased to share their opinion.

22
MAR

Bonds and Sukuk Issuances in Qatar

Rafiq Jaffer
Partner, Head of Banking & Finance - Qatar
r.jaffer@tamimi.com

On Tuesday, 22nd March Al Tamimi's Banking & Finance team ran an evening seminar and reception in conjunction with LinkLaters. The seminar attracted a wide range of local and international banks and companies and covered the key topic of Bonds and Sukuk issuances in Qatar and in the GCC, addressing key regulatory issues and key trends in the GCC loan market.

Speakers:

- Rafiq Jaffer, Partner and Head of Banking & Finance – Qatar – Al Tamimi & Company
- Jonathan Fried – Partner, Linklaters
- Andrew Jennens – Managing Associate, Linklaters

For more information on upcoming Banking & Finance seminars, please contact events@tamimi.com.

22
MAR

Technology Transfer Roundtable Event

Ahmed Saleh
Head of Patents & Designs (R&D and Innovations)
ah.saleh@tamimi.com

Al Tamimi & Company in conjunction with Khalifa University of Science Technology and Research (KUSTAR), United Arab Emirates University (UAEU) and King Saud University (KSU) organized an annual Technology Transfer and Commercialisation roundtable event on 22 March 2017. The event was hosted at Al Tamimi's offices in DIFC with the objective of discussing a collaborative plan of action for the monetisation of research and innovations and the transfer of technology by key stakeholders in the education sector in the region.

The session was attended by representatives from more than 10 universities. The participant universities discussed about their experience in tech transfer and needs to have an effective process for commercialisation of their research work. The participants showed interest in forming an innovation and technology transfer association to act as a platform that enables universities to collaborate and facilitate the linkage between universities and the industry for the commercialisation of inventions, facilitating training and education in technology transfer, building awareness around innovation fostering and technology transfer, as well as experience and knowledge exchange between universities.

If you are a university or a higher education institution having presence in the GCC region and are interested in joining the technology transfer group, please contact Ahmad Saleh (a.saleh@tamimi.com), Head of Patents & Designs (R&D and Innovations).

30
MAR

IAKL Mid-Year Leadership Summit in Dubai

Jongeun (Christina) Lee
Head of Korea Group
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Jiwon Ha
Senior Associate
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Al Tamimi & Company were proud sponsors of the International Association of Korean Lawyers ("IAKL") Mid-Year Leadership Summit in Dubai which was held from March 30th to April 1st. Korean lawyers from all over the world, including U.S., Canada, Austria, Germany and Korea gathered in Dubai for potential cooperation and networking. During the opening reception, Omar Omar, Partner and Head of Transport and Insurance, Thomas Snider, Partner and Head of Arbitration and Nick O'Connell, Partner of TMT attended as honored guests from Al Tamimi. IAKL members held meetings at the DIFC office of Al Tamimi and visited Abu Dhabi Global Market Authority. H.E. Kang Ho Park, Ambassador of the Republic of Korea made a special visit to Emirates Palace Hotel to welcome the Korean lawyers. The summit established our strong support for IAKL and promoted global collaborations of Al Tamimi Korea Group and Korean lawyers worldwide.

United Arab Emirates
Ministry of Justice

47th Year
Issue No. 613
2 Rajab 1438 H
30 March 2017

FEDERAL DECREES

17 of 2017	Ratifying the Air Services Agreement between the UAE and the Slovak Republic.
18 of 2017	Appointing the UAE Ambassador to the Republic of Ghana.
19 of 2017	Appointing judges in the Federal Courts.
20 of 2017	On the UAE's accession to the Beijing Treaty on Audiovisual Performances.
21 of 2017	Ratifying the Extradition Treaty between the UAE and the Republic of Italy.
22 of 2017	Ratifying the Agreement on Mutual Legal Assistance in Criminal Matters between the UAE and the Republic of Italy.
23 of 2017	On establishing a UAE embassy in the Republic of Hungary.
24 of 2017	On establishing a UAE embassy in the Republic of Bulgaria.
25 of 2017	Approving the resignation of the Undersecretary of the Ministry of Infrastructure Development.
26 of 2017	Appointing the Director and Deputy Director of the Executive Office of the Minister of Presidential Affairs.

REGULATORY DECISIONS OF THE CABINET

5 of 2017	On the marriage grant's terms, conditions and standards.
6 of 2017	On the organizational structure of the General Authority of Islamic Affairs & Endowments.
7 of 2017	On establishing the Office of the Minister of State for Tolerance.
8 of 2017	On the organizational structure of the Office of the Minister of State for Tolerance.
9 of 2017	On the training of graduates of colleges of medicine and medical professions other than doctors and pharmacists.

MINISTERIAL DECISIONS

- From the Ministry of the Interior:

177 of 2017	Amending the implementing regulations of Federal Law No. (21) of 1995 on traffic.
178 of 2017	On the rules and procedures for traffic control operations.

- From the Ministry of Justice:

220 of 2017	On the establishment of the Prosecution for Information Technology Crimes.

- From the Ministry of Health & Prevention:

202 of 2017	On the sales prices of medicines.

- From the Ministry of Climate Change & Environment:

103 of 2017 On the building of artificial reefs.

- From the Ministry of Economy:

78 of 2016 Announcing a revision of the Articles of Association of Thuraya Telecommunicatio Company PSC.

585 of 2016 Announcing a revision of the Memorandum and Articles of Association of Gulf Tot Tractebel Power Company PSC.

81 of 2017 Announcing a revision of the Articles of Association of Emirates Rawabi PSC.

82 of 2017 Announcing a revision of the Articles of Association of Al Qudra Holding PSC.

160 of 2017 Announcing the incorporation of Shuaa Energy 2 PSC.

ADMINISTRATIVE DECISIONS

- From the Emirates Standardization & Metrology Authority:

18 of 2017 On approving UAE standard specifications.

- From the Securities & Commodities Authority:

- Certificate of approval of amendment of the Articles of Association of Dubai Investmen PJSC.

- Certificate of approval of amendment of the Articles of Association of Foodco Holding PJS

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

56 partners

330 lawyers

670 staff

45 nationalities

Our Accolades

Our Practices

Arbitration

Banking & Finance

Capital Markets

Commercial

Construction & Infrastructure

Corporate

Corporate Structuring

Education

Employment

Family Business & Governance

Financial Crime & Sanctions

Financial Services Regulation & Enforcement

Healthcare

Hospitality

Insurance

Intellectual Property

Litigation

Mergers & Acquisitions

Projects

Real Estate

Regulatory

Sports & Events Management

Technology, Media & Telecommunications

Transport

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Our Partners

Breakfast seminar:

The Impact of **Culture** on International **Arbitration***

Register at: **https://goo.gl/UWuirh**

Sunday, 7 May 2017

09:00 - 11:00 am

Al Tamimi & Company Dubai Office
Building 4 | 6th Floor
Dubai International Financial Centre
Valid ID will be required to access the DIFC building

https://goo.gl/1Fm3Br

Al Tamimi & Co. and Middlesex University Dubai are delighted to invite you to a breakfast seminar on the impact of culture on international arbitration. The event will offer a unique opportunity for practitioners and academics to understand how culture can affect the fairness, efficiency and legitimacy of international arbitration.

Guest speaker

Professor Won L. Kidane
Seattle University, School of Law

Panelists

Thomas Snider
Al Tamimi & Co. Partner, Head of Arbitration

Laila El Shentenawi
Al Tamimi & Co. Senior Associate

Moderator

Dr Tenia Kyriazi
Middlesex University Dubai,
CPC, Law and Politics Programmes

* *Legal professionals attending the seminar are eligible for 2 CLPD points.*

التميمي و مشاركوه
AL TAMIMI & CO.

Middlesex University Dubai

CENTRE OF INNOVATION AND EXCELLENCE

WiAR

APPOINTMENT AS ARBITRATOR-
BREAKING THE OLD BOYS' NETWORK

Women in Arab Arbitration take Gary Born out for Lunch

WHEN

May 8, 2017
12pm – 2pm

WHERE

Al Tamimi & Co.
Dubai International Financial Centre (DIFC)
Building 4 East
6th Floor
Dubai, UAE

RSVP: events@tamimi.com
Spaces are limited and will be allocated in order of registration

A WIAR Event Organized By• Heba Osman• Nayiri Boghossian• Laila El Shentenawi • Ilham Kabbouri•

AGENDA

12.00 – 12.30pm
Registration and Networking

12.30 – 12.35pm
Host's Welcome
Thomas Snider

12.35 – 12.40pm
WIAR's Welcome
Heba Osman

12.40 – 13.55pm
Lunch Discussion
Breaking the Old Boys' Network- Tips, Tricks and Q&A
***Gary Born*, President of the Singapore International Arbitration Centre (SIAC) and Chair of the International Arbitration Practice Group, Wilmer, Cutler, Pickering, Hale and Dorr LLP**
Facilitator: *Ilham Kabouri*

13.55 – 14.00pm
Closing
Laila El Shentenawi

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