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LAW UPDATE

Latest Legal News and Developments from the MENA Region

Changes to the Regulatory Framework for Dubai Private Schools

Safeguarding Children in a UAE Education Context

Law No 13 of 2017 concerning the Judicial Fees in Abu Dhabi

Overview of the Judicial Bodies at the Saudi Arabian Football Federation

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Contents

Judgments

Articles

A Focus on Education

Jurisdiction Update

In this Issue

Welcome to the August edition of *Law Update*.

This special edition focuses on Education and covers some very interesting topics related to this sector across the region. We explore the very current topic of VAT and the impact this will have on the education sector across the GCC (page 29). We also look at changes to the regulatory framework for private schools in Dubai (page 20) and go through the process of setting up a University in Egypt (page 35). Our team in Oman investigates investing in this growing sector (page 37) and our team in KSA review the status of education in the Kingdom one year post the launch of Vision 2030 (page 42). Overall, a very interesting read for our clients doing business in this space.

Next, we turn to the pharmaceutical industry and the difficulties surrounding the tracking, discovery and policing of counterfeit medicines. These counterfeits divert nearly one trillion dollars from the global economy and as such, we look into Innovative Technologies In The Fight Against Pharmaceutical Counterfeits on page 15.

When describing a mortgaged property for the purpose of entering it into finance and obtaining title deeds, it is imperative for security agents, banks and security holders to be diligent when describing the property and to minimise any discrepancies. Whether a discrepancy is material or not is at the sole discretion of the judge. On page 8, we explore examples of how such discrepancies relating to real estate can have an impact on foreclosure proceedings, which in turn may have a disastrous effect on the sale of a mortgaged property.

Following the political events in the midst of and post the Arab Spring in Egypt, we cannot deny the effects that catalysed the Egyptian economy's downturn. On page 46, we explore the country's new Investment Law (no.72 of 2017) in an article which provides a summary of the new incentives presented by this Law, along with its guarantees, exceptions and its reintroduction of a clear and structured investment map.

We hope that you find this edition of Law Update to be a compelling and informative read. Should you have any questions or would like further information, please do not hesitate to get in touch.

We also look forward to reconnecting with many of our clients and friends over the next month as many of us return following the summer break.

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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Union Supreme Court Holds that Parties' Capacity Determined by Nature and Purpose of Contract

In a recent decision (Cassation No 712/2016 Civil), the Union Supreme Court has found that each party to an agreement is to bear responsibility for breaches of that agreement jointly. The USC also remitted the contractual dispute back to the Sharjah Court of Appeal and ordered that the Court looks again into the matter from a different perspective.

Background

The claimant was a local property management and development company. The first defendant was the owner of a property located in the Emirate of Sharjah. The first defendant entered into an agreement with a bank as lender on 25 December 2006 in order to finance the purchase of the property. As part of that agreement the first defendant authorised the lender to collect rental income from the property in order to meet his financing instalments.

The first defendant thereafter approached the claimant to manage the financed property. The claimant and first defendant entered into a management and operations agreement on 31 January 2009. The lender separately also entered into a direct contractual relationship with the claimant on 19 February 2009 for the management of the same property.

The agreement between the lender and the claimant authorised the claimant to rent the property, sign rental agreements, carry out maintenance works, and collect rental income to be deposited in a special account with the lender. In the event that the claimant failed to meet its obligations the lender had the right to terminate the agreement with the claimant.

The claimant connected all services to the property and prepared it for lease. However, on 11 April 2013, after the claimant had completed the preparation of the property and made it ready for lease, the first defendant terminated the 2009 management and operations agreement. Later on, the claimant found out that the first defendant intended to contract with another company to manage the property instead, and hand over the rental income directly to him.

The Claim

The claimant subsequently filed a case against both the first defendant and the lender before the Sharjah Courts, requesting enforcement of its contractual relationship with the first defendant and the lender, or, in the alternative, compensation for both the works and services done to the property and its losses arising out of the first defendant's and lender's breach of contractual obligations. The claimant requested the appointment of an accountant expert to calculate the losses that it suffered.

The expert was appointed and, after considering all documentation, he found that the first defendant was responsible for breaching its contract obligations. He reported that the first defendant should pay the claimant all expenses it had incurred on the property, with additional compensation, without holding the lender liable for any compensation towards the claimant.

Despite the expert report, the claimant emphasized that its loss was the responsibility of the first defendant and lender together and that they were jointly obliged to compensate them for all the money that had been spent on the property and the works done to it.

In its defence, the lender had argued that the agreement it had signed with the claimant was in its capacity as a proxy and not in its own capacity. The claimant objected and argued that the lender in fact entered into the agreement in its own capacity and its name was listed in all lease agreements. In addition to its right to cancel the agreement with the claimant in the event that any of the obligations stated in the contract were not met.
Which means the lender and the first defendant are jointly responsible to compensate the claimant on the works done and expenses spent on the property.

Court of First Instance

On 28 October 2015, the Sharjah first instance court issued its judgment (relying on the expert's report) and ordered the first defendant to pay expenses to the claimant, in addition to compensation.

The claim against the lender was dismissed.

Court of Appeal

The claimant appealed the judgment before the Sharjah Court of Appeal requesting it to amend the decision of the first instance court and order that both the first defendant and lender jointly pay the expenses and compensation to the claimant.

The Court of Appeal appointed the same expert as the court of first instance and therefore the findings of the expert remained unchanged

On 24 November 2016, the Court of Appeal issued its judgment and rejected the appeal.

Union Supreme Court

The claimant appealed to the Supreme Court on the basis that the Court of Appeal erred when it did not enforce both the first defendant and lender jointly to pay the claimant the expenses spent on the building and compensate it for the breach of contract obligations.

The Supreme Court issued its judgment on 11 April 2017 and referred the case back to the Court of Appeal requesting it to re-look into the matter from a different perspective.

The Supreme Court found that the contract signed between the lender and the claimant was entered into by the lender acting in its own capacity. In support of this conclusion, the Supreme Court found that the lender had incorporated its own terms and conditions into the contract with the claimant; it had signed the contract under its own name and in its own capacity; and it had not acted in its capacity as a proxy or signed the contract on behalf of the first defendant, as by virtue of the agreement with the claimant the lender gained many benefits and managed to collect its finance instalments. Hence, the lender is responsible jointly with the first defendant to pay to the claimant the expenses spent on the property and compensate it on the harm / losses occured due to the termination of the contract.

Analysis

The Supreme Court ordered the Court of Appeal to re-look into the matter, clarifying that since the lender signed the agreement with the claimant (after the date of agreement between the first defendant and the lender) in its personal capacity and not by its capacity as proxy, the lender was to bear responsibility for breaching its contractual obligations and is to compensate the claimant - jointly with the first defendant - for all works and services done to the property and the losses it suffered as a result.

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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The Effect of Discrepancies in Security Documents on Foreclosure Proceedings

In this article we illustrate three examples of how discrepancies in security documents relating to real estate may have an impact on foreclosure proceedings with all of the examples relating to the grant of housing loan facilities to retail customers during the course of 2008. Discrepancies in the information within documents submitted as part of enforcement proceedings may have a disastrous effect on the sale of a mortgaged property.

Example One

A leading national bank granted a housing loan facility of AED 2.2 million. A first degree mortgage was registered against the purchased property and secured for the facility amount of AED 2.2 million. The customer had failed to make payments for a significant period and the total outstanding amount had reached near AED 3.6 million, including accrued interest. Consequently, the Bank commenced enforcement proceedings to seek the sale of the mortgaged property through public auction, in accordance with the Dubai Law No. 14 of 2008 Concerning Mortgages in Dubai.

A direct enforcement case was registered, the execution judge in charge of the case file approved an attachment over the mortgaged property for the secured amount, i.e. the amount mentioned within the mortgage contract up to which a mortgagee is generally entitled to recover. At the stage of proceedings when the Court was requested to issue a decision to sell the mortgaged property through public auction, the request was declined without stating any justifying reason.

On investigation it was revealed that the Court's decision was based on a discrepancy in the mortgaged property's information between the title deed, mortgage contract and the facility offer letter. The mortgaged property was defined within the title deed and the facility offer letter issued by the Bank by reference to the unit number. In the mortgage contract it was defined by reference to the plot number with no reference to the unit number at all. A note for readers, it is the mortgage contract that is the main execution instrument in mortgage enforcement cases.

The case is presently subject to appeal and the Bank may be able to rectify the discrepancy between the title deed and the mortgage contract at the Dubai Land Department (DLD). However, the Court has the discretion to not revise its original decision and not permit the sale of the mortgaged property if it believes that the discrepancy of the plot details within the documents submitted by the Bank are too material for its earlier judgment to be altered.

The case shows all banks need to thoroughly check finance and security documents to ensure conformity with the title deed in the course of each transaction and prior to commencement of enforcement proceedings. In the event any discrepancy emerges after a mortgage contract has been registered this should be resolved with the DLD as soon as a bank becomes aware of such discrepancy.

Example Two

A leading international bank granted a housing loan facility of AED 5 million. Again, a first degree mortgage was registered against the purchased property in favour of the bank secured for the facility amount. The customer defaulted under facility and when the enforcement proceedings commenced the total outstanding amount was in the region of AED 5.8 million, including accrued interest.

A direct enforcement case was registered in 2015 in accordance with Dubai Law No. 14 of 2008, and the

execution judge in charge of the case file issued an order to attach the mortgaged property. Interestingly, the attachment was granted for the total outstanding amount despite the secured amount in the mortgage contract being less, i.e. AED 5 million.

In direct enforcement cases, what follows the attachment of a property is an evaluation stage during which the property's value is determined by experts. Conducting the evaluation and obtaining an evaluation certificate is a pre-requisite for listing of the property in public auction. Unfortunately, in the present case, significant issues were faced during the evaluation stage due to a material discrepancy which has severely delayed the issuance of the evaluation certificate. Essentially, both the title deed and the mortgage deed refer to a wrong plot number. Evaluation certificates are typically issued within a month, but in this case, the evaluation certificate has not yet been issued by the DLD to date—a delay of more than 18 months.

It later appeared that the developer had given incorrect property information to the customer, the Bank and the DLD. As such, the circumstances that led to this situation were totally unrelated to the customer. Nonetheless, the incorrect property information given by the developer caused a first degree mortgage to be created over the wrong plot and villa. To avoid this issue, the Bank could have physically checked the property. The developer in question is currently cooperating with the DLD to resolve the matter.

A new title deed may eventually be issued holding the accurate property and mortgage details, followed by the evaluation certificate. Once obtained, the Bank will be able to apply to the court for the sale of the property in public auction. Notwithstanding all these efforts and delays to rectify the discrepancy and obtain the evaluation certificate, the Court retains the absolute discretion to reject the application for the sale of the mortgaged property based on any material discrepancy within the security documents.

Example Three

As a final example, a leading national bank granting a housing loan facility of AED 3 million. A first degree mortgage was registered against the purchased property in favour of the Bank to secure the facility amount. The customer defaulted under the facility and the total outstanding amount was in the region of AED 4.3 million, including accrued interest.

A direct enforcement case was registered in 2016 and the execution judge in charge of the case file issued an order to attach the mortgaged property. The attachment was granted for the total outstanding amount despite it exceeding the secured amount mentioned in the mortgage contract (AED 3 million).

The evaluation process was successfully completed. However, when the Court was requested to issue a decision to sell the mortgaged property through public auction, the request was declined due to a discrepancy between the customer's name on the mortgage deed versus the customer's name in the customer's residency visa, both of which were in Arabic language. One letter was missing within the customer's name mentioned on the mortgage deed which was issued by the DLD.

A request was submitted to the Court to instruct the DLD and General Directorate of Residency and Foreigners Affairs in Dubai to provide the Court with copy of the customer's passport and residence visa which led the Court to determine that this was in fact a discrepancy which was not material to prevent enforcement from going ahead. As a result, the mortgaged property was sold at public auction and the Bank received the sale proceeds (after the relevant deductions).

Conclusion

Banks, security agents, and security holders need to be very diligent when describing a mortgaged property for the purpose of entering into finance and security documents and obtaining title deeds with the mortgage registered thereon.

Determining whether a discrepancy in the security documents is material or not is at the sole discretion of the concerned judge. Banks should not attempt to determine whether a discrepancy is material or not and should immediately rectify any inaccurate information or mismatches within security documents that they hold.

If the Court decides that a discrepancy is not material, the Court may allow proceedings to continue. However, as the first two example cases show, if the issue is material it can cause significant delays in completing the foreclosure process.

If the Bank is in a situation where a judge has rejected its direct enforcement application due to a discrepancy in the security documents in connection with the mortgaged property information, the Bank should consider filing a civil case immediately as an alternate route to enforcing its claim. Civil case proceedings against the debtor will be much longer than a direct enforcement case against a property. Civil cases also present the inconvenience of the Bank having to establish and provide evidence of a valid underlying debt owed by the customer to the Bank. However, if an application for direct enforcement is rejected, initiating a civil case may be the only viable alternative and can lead to the same outcome: the sale of the property in public auction and the recovery of the related sale proceeds.

Al Tamimi & Company's Banking and Finance team regularly advises on all types of security documents. For further information please contact Ahmed Zaki (a.zaki@tamimi.com) or Karim Shiyab (k.shiyab@tamimi.com).

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Law No 13 of 2017 concerning the Judicial Fees in Abu Dhabi: A Step in the Right Direction

On 26 July 2013, Sheikh Khlifa Bin Zayed Al Nahayan, in his capacity as the Ruler of the Emirate of Abu Dhabi, issued Law No. 13 of 2017 concerning the Judicial Fees payable in Abu Dhabi (the "Law").The Law, which will come into force one month after its publication in the official Gazette, repeals Law No. 6 of 2013 concerning the Judicial Fees in the Emirate of Abu Dhabi and the Abu Dhabi Judicial Decision No. 2 of 2012, which had abolished the fee cap applicable to first instance claims (the "Previous Law").

The Law has reinstated the cap on fees payable for court of first instance (civil and commercial) claims, which under the Previous Law was 3% of the value of the claim with no cap. The new fees regime will be implemented after the Previous Law was in force for a period of almost four years. The move is largely welcomed by legal practitioners and litigants and is a step in the right direction.

The new fees have now been set at 5% of the claimed amount with a cap of AED 40,000. This is unlike the fees payable for Dubai Court claims, which have caps depending on the value of the claim with a maximum cap of AED 40,000 (Dubai Law No. 21 of 2015 on Judicial Fees Payable before Dubai Courts). Although the cap has increased from the previous cap of AED 20,000, the Law generally provides more competitive fees than those payable under the Previous Law.

The Law has also removed the fees payable for various requests related to criminal matters. Under Article 50 of the Previous Law, a fee of AED 20 was applicable to 13 different types of requests, such as bail and obtaining the accused's criminal records. This fee is no longer payable for such requests.

One of the other notable changes to the law is with respect to the fees payable for ratification/nullification of arbitral awards and enforcement of foreign judgments. Under the Previous Law, the fee was 3% of the value of the award or the foreign judgment. The fees are now fixed at AED 5,000 and AED 1,000 respectively. These amendments have clarified the long-standing ambiguity that has surrounded the fees applicable for these two categories of cases. Under the Previous Law, there were two categories of fees; the first set fees at AED 1,000 (for both arbitral awards and foreign judgments), if the claim was for an unquantified sum, and the second set fees at 3% of the claimed amount (with no cap) if the amount was quantified. We believe the abolition of this distinction between quantified and unquantified claims is a sensible move because the vast majority of awards and foreign judgments are for quantified sums. Additionally, collecting fees ordinarily applicable to substantive claims acts as a disincentive for judgment creditors, who have already expended large sums on the original proceedings.

New categories and fees have also been introduced under the Fee Schedule included in Article 60 of the Law, however, the fees are nominal.

The table below provides a summary of the fee structures for filing substantive claims in various Courts:

Court	Current Fees	Previous Fees	Recoverability
Abu Dhabi Courts	5% of the claimed amount with a cap of 5% For a claim for AED 5m, the filing fee would be AED 40,000	3% of the claimed amount with no cap.	Fully Recoverable
Dubai Courts	AED 20,000 for claims up to AED 500,000; AED 30,000 for claims between AED 500,001 and AED 1m; and AED 40,000 for claims in excess of AED 1m. For a claim for AED 5m, the filing fee would be AED 40,000.	7.5% of the claim amount with a cap of AED 30,000	Fully Recoverable
DIFC Courts	Determined by the value of the claim and/or the property value with a minimum of USD 1,500 (AED 5,510) and a maximum of USD 135,000 (AED 495,850). For a claim of AED 5m, fees would be USD 36,807 (AED 135,182).	5% of the value of the claim (monetary) and/ or the property with a minimum of USD 1,000 and a maximum of USD 20,000	Fully Recoverable

In our opinion, the new law represents progress in the fee regime applicable in the Emirate of Abu Dhabi. It was prompted by criticisms made against the Previous Law to the effect that court fees acted as an impediment to access to justice. According to a recent survey by the World Bank, court fees and the cost of filing a claim are among the criteria for measuring the efficiency of a judicial system. It's anticipated that the Law will contribute to the Emirate's reputation for providing an efficient and inexpensive forum for resolving disputes.

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Arbitration Clauses in UAE Government Contracts

Arbitration has become a globally-recognized alternative to resolving contractual disputes outside of the traditional judicial system. Today, parties to commercial agreements, particularly construction-related agreements, will usually include an arbitration clause within the contract pursuant to which the parties agree that any disputes which arise between them in connection with the interpretation or performance of the contract will be resolved by arbitration. In the United Arab Emirates, Article 203(1) of UAE Federal Law No. 11 of 1992 Concerning Civil Procedures, as amended ("the Civil Procedures Code") permits contracting parties to agree to refer any dispute concerning the performance and execution of a contract to one or more arbitrators. The courts have generally enforced such arbitration clauses provided they are legally valid and meet the requirements set out in the legislation.

UAE Administration Appeal No. 302/2015, which was heard by the UAE Federal Supreme Court, is an example of a case in which the UAE courts have enforced a legally-valid arbitration clause in a UAE government contract.

The Claim

In March 2002, a UAE federal government body ("the Claimant") entered into a contract with an engineering consultancy company ("the First Defendant") for the provision of engineering consultancy services for an inter-emirate highway construction project ("the Contract"). The Contract contained an arbitration clause which provided that "Any disputes arising from the performance or interpretation of [the] Contract shall be settled by the Arbitration Committee for Compensation (attached to the [government body's] Standing Committee for Projects)..."

The First Defendant subsequently entered into a sub-contract with an international engineering consultancy firm ("the Second Defendant") for the provision of engineering consultancy services in connection with the foregoing project.

A dispute later arose between the parties and the Claimant filed a claim against the First Defendant in the UAE Federal Court of First Instance (Administrative Circuit) in April 2013 for alleged breach of the Contract, and sought damages from the First Defendant and the Second Defendant (who was joined to the proceedings as a co-defendant). The Claimant did so without having regard to the Contract's arbitration clause.

Court of First Instance

At the first hearing, the First Defendant and the Second Defendant both raised the defence that the Court of First Instance did not have jurisdiction to hear the case and, therefore, the Claimant's claim should be dismissed pursuant to Article 203(5) of the Civil Procedures Code as the dispute should be resolved by arbitration in accordance with the

arbitration clause in the Contract. Article 203(5) of the Civil Procedure Code states "*If the parties agree to arbitrate the dispute it shall not be permissible to bring an action in respect thereof before the courts but, nevertheless, if one of the parties does have recourse to litigation without regard to the arbitration clause and the other party does not object at the first hearing the action must be tried and the arbitration clause shall be deemed to be cancelled.*"

The Court of First Instance judgment held that the Claimant's legal action was barred by the arbitration clause which was agreed by the Claimant and the First Defendant in the Contract.

Court of Appeal

The Claimant appealed to the UAE Federal Court of Appeal (Administrative Circuit) in Abu Dhabi. However, the Court of Appeal dismissed the appeal and upheld the judgment issued by the Court of First Instance.

Federal Supreme Court

The Claimant appealed again, this time to the UAE Federal Supreme Court– (Administrative Circuit) in Abu Dhabi, arguing that the arbitration clause became unenforceable with the dissolution of the Arbitration Committee pursuant to the UAE Prime Minister Resolution issued on 20 February 2006. The Supreme Court decided that the Claimant's appeal was without merit and, therefore, dismissed the appeal. The Court's reasoning was as follows:

Arbitration is an exceptional means for resolving disputes outside of the normal means of litigation before the courts. Arbitration is limited to the dispute that the parties choose to submit to the arbitral tribunal. An arbitration agreement covering all disputes and consequences that may arise out of the contract would include disputes arising out of the formation or termination of the contract or thereafter. The foregoing resolution of the Prime Minister replaced the Standing Committee for Projects with another committee, namely the Committee for Compensation Claims, whose responsibility is to review compensation and arbitration claims. The Prime Minister's resolution essentially changed the committee's name without altering its designation which has been retained under a different name. This step served to prevent the creation of a gap in this subsidiary legislation until a framework is put in place to support the implementation and enforcement of arbitration clauses. Hence, it cannot be argued that the arbitration clause became void with the dissolution of the Committee responsible for arbitration provided the Committee has continued to exist, albeit under a different name. Therefore, the arbitration clause remains in force and may not be disregarded on the pretext that the relevant arbitration framework has been cancelled.

Significance of the Case

This case is significant for a number of reasons. First, the Supreme Court acknowledged that arbitration is an exceptional means for resolving disputes outside the usual forum (i.e. the local courts), and that if parties have agreed to refer all disputes to arbitration, this will include disputes concerning the formation or termination of the contract.

Second, in order for an arbitration clause to be legally effective, it must meet the requirements set out in Article 203 of the Civil Procedures Code.

Third, the arbitration clause in the Contract made reference to a special arbitration committee established by a government body. The Supreme Court held that a party cannot raise the argument that the arbitration clause became void if the Arbitration Committee continued to function, albeit under a different name. Further, the Court held that the arbitration clause in the Contract was still valid and effective and may not be disregarded on the basis that the relevant arbitration framework had been cancelled. The Appellant should not have approached the Courts directly without first going to the Arbitration Committee.

Finally, where a party to a legally valid arbitration clause commences legal proceedings in the courts in breach of the arbitration clause, the counter-party seeking to raise a jurisdictional objection as a defence must do so at the first hearing, in accordance with Article 203(5) of the Civil Procedures Code. Otherwise, he is taken to have waived his rights under the arbitration clause.

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Update on the Joint Judicial Tribunal

In February's edition of Law Update, Muhammad Mahmood and Diego Carmona introduced the first four decisions of the Joint Judicial Tribunal between the Dubai Courts and Dubai International Financial Centre (DIFC) Courts, set up by Decree 19 of 2016. In April, Tarek Shrayh and Peter Smith explained the possible effects of these decisions in the Dubai Courts of First Instance, which nullified the enforcement order made by the DIFC Courts in Meydan Group LLC v. Banyan Tree Corporate Pte Ltd, and outlined developments in the Tribunal's procedures. In this article, we recap the Tribunal's jurisprudence so far, and summarise and explain the Tribunal's three most recent published decisions.

On 22 May 2017, the Tribunal met to hear a number of applications relating to alleged conflicts of jurisdiction in cases before both the Dubai Courts and DIFC Courts. Shortly afterwards, the Tribunal published the majority judgments, which are available on the DIFC Courts' website. The dissenting judgments of the DIFC Court judges on the Tribunal were referred to but not published.

Recap of the Tribunal's 2016 Judgments

The initial decisions of the Tribunal showed a preference for the general jurisdiction of the Dubai Courts in any real or potential conflict in proceedings before both court systems.

In Cassation 1/2016 the Tribunal decided that enforcement proceedings in the DIFC Courts of a Dubai International Arbitration Centre (DIAC) award were to give way to annulment proceedings in the Dubai Courts on the grounds that only one of the two courts should determine whether to annul or recognise the arbitral award, "*for the sake of justice and to avoid contradictory judgements*", despite assets of the award debtor being within the DIFC Court's jurisdiction. The Tribunal 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, presumably on the basis that the seat of the arbitration was Dubai rather than the DIFC or elsewhere (although it is important to note that the Tribunal did not explicitly say this). The Tribunal followed this approach in Cassation 2/2016, which involved another Dubai-seated arbitration brought to the DIFC for enforcement.

In both these cases the Tribunal took a different position to the orthodox arbitral position, which is that the courts of the seat of the arbitration usually have jurisdiction to set aside awards while the courts of the place in which enforcement is pursued usually have jurisdiction to hear enforcement proceedings in parallel. The Tribunal has also taken a different approach to the one adopted by the DIFC Court of Appeal in its well-known decision in *Meydan Group LLC v. Banyan Tree Corporate Pte Ltd* [2014] DIFC CA 005. In *Meydan*, the DIFC Court of Appeal upheld the DIFC Courts' jurisdiction under Article 42 of the DIFC Arbitration Law (1/2008) to recognise and enforce an arbitral award irrespective of the state or jurisdiction in which it was made, even though neither party was located in the DIFC or had assets there. Following the handing down of the initial Tribunal decisions, the Meydan enforcement order of the DIFC Courts was declared null by the Dubai Courts of First Instance in early 2017.

However, the Tribunal declined to allow jurisdictional challenges to the enforcement of foreign arbitral awards (Cassation 3/2016) and foreign judgments (Cassation 5/2016) by the DIFC Courts. In both of these cases, the judgment and award debtor had applied to the Tribunal as a tactic to stay enforcement proceedings before the DIFC Courts. The Tribunal rejected the defendants' applications after finding that there were no parallel proceedings before the Dubai Courts and so no real or potential conflicts of jurisdiction. The Tribunal left open which court would have been the appropriate forum had there been a parallel claim in the Dubai Courts.

Between these first two sets of cases lies a fifth case, Cassation 4/2016, which was released slightly later than the others. The appellant had previously lost jurisdictional

challenges before the DIFC Court of First Instance and Court of Appeal when the respondent first brought their action in the DIFC for unpaid debts due under a loan. The appellant had claimed that the Sharjah Courts were the correct jurisdiction to hear the action even though the Sharjah Courts had themselves declined to exercise jurisdiction. Before the DIFC Courts could issue immediate judgment on the claim, the appellant sought a declaration from the Tribunal that the Dubai Courts should hear the claim instead. The Tribunal noted that the appellant had previously conceded that the DIFC Courts should hear the dispute and rejected the application. The facts were unusual and the decision is something of an outlier, serving to show the way the Decree 19 process can be used to delay valid enforcement in the DIFC Courts.

The Tribunal's 2017 Judgments

In Cassation 1/2017, the appellant was again the losing party, this time in respect of an arbitral award issued under London International Maritime Arbitrators Association rules which the respondent had brought to the DIFC for enforcement. Unlike in the previous case the appellant brought before the Tribunal (Cassation 5/2016, see above), the appellant award debtor had filed a claim, referred to but not identified in the Tribunal judgment, in the Amicable Settlement of Disputes Centre. The Tribunal noted the Centre was "*an integral part*" of the Dubai Courts and, as such, found the Dubai Courts to be the "*competent courts*" for the dispute given "*the general principles of laws embodied in the procedural laws*" and the Dubai Courts' "*general jurisdiction*".

In short, this judgment extended the reasoning of Cassation 1/0216 and Cassation 2/2016 in two ways. Firstly, by referring to "*general principles*" and "*for the sake of justice and to avoid contradictory judgements*" the Tribunal applied the same logic to jurisdictional challenges against the enforcement of foreign arbitral awards by way of the DIFC Courts' conduit jurisdiction as it had applied to the enforcement of domestic arbitral awards in the first two Cassation judgments. Secondly, the Tribunal moved beyond basing its decision on whether or not Dubai is the seat of the arbitration. We are not directly told in the Tribunal judgment where the seat of the arbitration was, although the default under the LIMAA rules is England and the judgment notes the award was "*issued by arbitrators in London*".

The facts of Cassation 3/2017 were similar to Cassation 1/2016. The respondent claimant had a DIAC award it brought to the DIFC for enforcement against the appellant defendant. This time, however, the defendant did not have any assets in the DIFC. The appellant issued nullification proceedings in the Dubai Courts, and the Tribunal accordingly held that the Dubai Courts had sole jurisdiction over both the enforcement and nullification claims.

Likewise, the facts of Cassation 5/2017 were similar to Cassation 5/2016: the respondent claimant brought two English Court orders to the DIFC Courts for enforcement against the appellant defendant, which in turn had recognized two arbitral awards in the respondent's favour. The judgment debtor initially challenged the jurisdiction of the DIFC Courts to enforce the English orders but then waived its objections, leading to a DIFC Court order for enforcement. The judgment debtor applied to the Tribunal when the DIFC Courts ordered disclosure of its financial information. The Tribunal rejected the application as no parallel proceedings were before the Dubai Courts. It also declined to hear a challenge regarding the constitutionality of the jurisdictional gateway and enforcement provisions in the DIFC Judicial Authority Law (Dubai Law No.12 of 2004, as amended), finding the question of constitutionality to be one for the UAE Federal Supreme Court.

Conclusion

The 2017 decisions of the Tribunal show a continued preference for the general jurisdiction of the Dubai Courts in any real or potential conflict in proceedings before both court systems.

The creation of the Tribunal is to be welcomed as it can provide an initial judgment on whether proceedings should be brought in the Dubai Courts or the DIFC Courts, potentially streamlining litigation and avoiding unnecessary delays and costs later on. There is considerable comity between the two court systems. As the Tribunal has noted on several occasions, the New York Convention does not apply when parallel proceedings are underway in two courts of the Emirate of Dubai (i.e. the Dubai Courts and the DIFC Courts).

In the absence of the rules regarding appropriate jurisdiction promised in Article 2 of Decree 19 or more detail in the published judgments, the Tribunal's jurisprudence is still developing. The takeaway from the Cassation 1/2017 case is that the enforcement of foreign arbitral awards and judgments can now be halted in the DIFC Courts for no reason other than the existence of potentially conflicting proceedings in the Dubai Courts, including its Amicable Settlement of Disputes Centre, whether or not those proceedings are for annulment.

The numbering of the 2017 judgments indicates that there are at least two other Tribunal decisions yet to be published (Cassation 2/2017 and 4/2017). We await these with interest.

Al Tamimi & Company's DIFC litigation team regularly advises on jurisdictional matters, including the recognition and enforcement of foreign and domestic decisions. For further information please contact Rita Jaballah (r.jaballah@tamimi.com), Tarek Shrayh (t.shrayh@tamimi.com) or Peter Smith (p.smith@tamimi.com).

The Fight Against Counterfeit Pharmaceuticals: Innovative Technologies to the Rescue?

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For the pharmaceutical industry and for governmental regulators, counterfeit medications remain a top concern not only in the MENA region, but globally. Today's pharmaceutical market and supply chains are becoming increasingly complex, which makes the discovery, tracking and policing of counterfeit medicines difficult. Given that counterfeit products divert nearly one trillion dollars from the global economy annually, a focused effort is now required not only by law enforcement, policy makers and pharmaceutical companies, but technology developers, who have the increasingly difficult task of developing innovative solutions to track and identify real or counterfeit medicines, and more importantly ensure that consumers are not being exposed to ineffective or potentially life-threatening fake medications.

In this article we explore existing solutions and the next wave of promising innovative technologies which are at the forefront of the pharmaceutical industry's global fight on counterfeits. First we begin with a brief discussion about where the fake medicines are originating and how they are produced.

Where do counterfeit medicines originate?

Although the true scope and size of the pharmaceutical counterfeit market is hard to ascertain with accuracy, at least local governments and international organizations now have a better idea of how traffickers are saturating regional and global markets with fake medicines. For the MENA region, and also other major international markets, fake medicines are usually originating somewhere in Asia. According to a recent report by the U.N. Office on Drugs and Crime ("UNODC"), China and India are the largest sources of fake medicines, with China being the originating point for an estimated 60 percent of medical counterfeits seized globally. According to the report, recent efforts by China and India to curb counterfeit production may prove difficult to enforce, as production is likely to be moved elsewhere, including Myanmar and Vietnam.

The rise in e-commerce has also increased the ease with which counterfeiters can now enter the market, which has in turn increased the inherent difficulties in tracking

and policing fake medicines. Online retailers have made it easy for counterfeits to be delivered to the hands of unsuspecting consumers in a quick and efficient way. A counterfeit operation could occur at any step in the supply chain in any country in which a pharmaceutical company may be located, from manufacturing, to distribution, labelling and packaging.

Counterfeit production and consumer risks

So how are counterfeits produced, and how risky are they for consumers? With the advancement in printing technologies available to the public, counterfeiters can fake or mimic any product labelling or packaging, including bar codes. Firstly, to make the medicines, a simple tablet pressing tool is used to produce fake pills. Most solid oral dosage drugs can be easily manufactured in this way. Oftentimes the counterfeiters provide what are called substandard drugs, which do not incorporate a sufficient amount of the active ingredient required. In more severe cases, they use unhygienic or dangerous materials. Enforcers have reported finding highly hazardous materials including brick dust, sheet rock, and printer ink for fake colouring, in counterfeit pills.

Some extreme cases have shown that the dangers lie not only in the risk posed by a substandard active ingredient, but also in the incorporation of contaminated ingredients. In one case, vials of a cancer fighting drug were found to contain no active ingredient at all. In another notable instance in the U.S. in 2007, 149 Americans died from a contaminated blood thinner that was legally imported into the U.S.

Currently the most common types of medicines that are counterfeited and are entering the market in the GCC, and particularly here in the UAE, include lifestyle drugs, such as those addressing erectile dysfunction or weight loss. In international markets, highly counterfeited medicines also include specialty drugs (e.g. cancer treating), and drugs with a high "street value", such as potent pain medications. Although recently, pharmaceutical companies have seen an even broader spectrum of counterfeits, including for example diabetes test strips and injectable drugs such as Botox.

It is evident that for technology developers, the potential market opportunities for providing anti-counterfeiting solutions to pharmaceutical companies and regulators are large, and these solutions have become increasingly necessary for safeguarding the consumer. This field of technology has been rapidly developing and there are already sophisticated technologies deployed by pharmaceutical companies and by governmental enforcers, and with new promising technologies in the pipeline, there are hopes that combating pharmaceutical counterfeiting will become more successful and efficient.

Is there a solution?

In the past few years several tech companies have come forward with solutions to this problem. Innovations in this field utilise a wide spectrum of technologies, including radiofrequency identification ("RFID"), microtagging and nano-encryption. Let's take a closer look at each of these solutions and how they are or could be implemented by the industry and enforcement agencies.

Radio frequency identification ("RFID") allows manufacturers and distributors to more precisely track drug products through the supply chain. RFID makes it easier to ensure that drugs are authentic, and it also creates an electronic record of the chain of custody from the point of manufacture to the point of dispensing. An individual drug package is equipped with an RFID tag containing information about the drug's origin, and this information is hard to manipulate. In practice, authorized drug ingredient manufacturers tag all their ingredients with RFID tags before distribution to the pharmaceutical companies. As the drugs are manufactured, the tags of the ingredients are scanned and reported. Information about medicinal ingredients as well as a serial number and other essential product information are added to an RFID tag that is attached on the package of the drug. Now the drug package tag contains information not only about its own origin, but also about the ingredients and the amount of each ingredient in the drug. The information on the tag can be converted into an electronic record, which can be added to with more and more information about the events on the drug's supply chain journey, from the manufacturer all the way to its end destination (i.e. pharmacy, hospital).

Microtagging is another innovative technology, which has been developed with the purpose of identifying characteristics of individual pills or tablets. In essence, microtags serve as non-visible edible bar codes and can be

utilized by pharmaceutical companies to track their drug product on a batch basis. The microtag is made up of porous silicon dioxide particles, which have been electrochemically etched and thereafter contain a unique porous structure, thus creating a unique ID. The particles are mixed with the outer coating of a pill or tablet prior to the tablet being coated, and thus the edible microtags are integrated and become part of the pill coating. The microtags enable companies to determine the identification and supply chain history of an individual pill, including information such as product type, dosage type, the manufacturing facility, lot/batch number and so on. The unique microtag signature and related information can be then read with a simple spectrometer-based device so that the pills can be identified and authenticated throughout the supply chain and ultimately once they have reached their destination.

Nanoscale encryption is another technology that has in recent years caught the eye of the pharmaceutical industry. The encryption details are proprietary, but in essence an individual pill can be embossed with specific encrypted information or codes at the nanoscale. This can include a variety of encrypted information, for example the point of manufacturing, the delivery destination, the dosage and expiration data and other such information which would be utilised to identify and authenticate the medicines. The embossed encrypted codes are in the range of about 200 nanometers in size. The codes and information contained therein can then be decrypted through the use of a customized scanning electron microscope and proprietary decryption software.

Enforcement in the GCC

So what do these technologies mean for the fight against counterfeits in the GCC region? Authorities in the GCC region, particularly in Saudi Arabia and the United Arab Emirates have taken a strong stance to secure the safety of medicines being provided to local consumers. With nearly 60% of the regional share, Saudi Arabia is the largest pharmaceutical market in the GCC, and forecasted to reach nearly 4.7 billion USD this year. The Saudi Food & Drug Authority (SFDA) has put in place several measures to ensure counterfeit medicines are not infiltrating the supply chain. These measures include the use of spectroscopy devices, which are used as scanners to analyse the chemical composition of the medicines and thereby identify counterfeits.

The UAE has also recently increased efforts to eliminate fake medicines from reaching consumers. As a result, Dubai Customs authority recently seized a large shipment of 556,000 drugs, which were counterfeits of a blood clot prevention medicine. The Health Authority in Abu Dhabi (HAAD) has also announced that it will commence using a new device which can detect counterfeit medicines in about seven seconds. Additionally from a legislative perspective, the UAE Federal Law N°4 of 1983 on the pharmaceutical profession and industry will be updated to introduce new seizure measures and procedures for suspected counterfeit shipments, and will strengthen penalties against those dealing with counterfeit drugs. These updates are expected by the end of this year.

Considering that regulatory agencies, enforcement authorities and pharmaceutical companies in the GCC are beginning to turn to innovative technologies and evolve their means of combating counterfeits, the tech companies providing such solutions should consider expanding their market presence in the region and accomplishing this includes putting in place the appropriate intellectual property protection strategies for their new technologies. As with any new innovative devices or processes, it is always advised that companies protect their intellectual property and know how, through appropriate patenting strategies in this region. Having a strong proprietary patent portfolio in place will help these companies to be competitive solution providers and ensure their interests in the region are adequately protected.

It remains to be seen how new technologies will fare in terms of ease of implementation, cost, effectiveness in deterring counterfeits, and scope of applicability, but nevertheless, the available tools for enforcement agencies and regulatory bodies in the GCC region are rapidly evolving and will hopefully in the near future aid in eradicating dangerous medicines from reaching unsuspecting consumers.

Al Tamimi & Company's Patents, R&D and Innovations team regularly advises technology companies particularly in the life sciences and pharmaceutical industries on patent protection and commercial/regulatory issues associated with these industries in the GCC region. For further information, please contact Ahmad Saleh (A.Saleh@tamimi.com) and Ina Agaj (i.agaj@tamimi.com).

A Focus on Education

In this edition of Law Update we focus on the Education Sector and cover some interesting and diverse topics ranging from cyber-bullying to setting up a university in Egypt.

Whilst these are somewhat uncertain times the Education Sector continues to grow across the region and the public pronouncements are to the effect that it will remain on its upward trajectory.

We take a look at a number of themes in the UAE including the topical issue of cyber-bullying and the heavy criminal sanctions that those engaged in it could be liable for. We also take a look at the new Dubai private schools law which confers sweeping powers on the KHDA who now have a role in almost every facet of school operation. We then turn our focus onto Safeguarding Children and consider the Child's Right Law and its implications for education providers. We also take a look at the issues around conducting scientific research in the UAE (spoiler alert: it's complicated!). Rounding up the UAE we explore Securities and Collateral as a financing option for education providers and then the impact of Vat on education.

Saudi Arabia and its Vision 2030 has the stated objective of increasing private sector participation in the Education Sector. We provide a short update on developments in that potentially massive market.

Turning to Qatar we take a look at the Educational Services Law which is likely to catch some providers off guard. In Egypt we provide a helicopter view on setting up a University. There is much interest in this jurisdiction and international investors and institutions are pleased to see the legislative efforts being made there in order to give reassurance that it is ready for inward capital. We also take a peek at the education investment situation in Oman.

Our colleagues in Bahrain, Kuwait and our other offices continue to support Education Sector clients in those jurisdictions and will issue updates as they arise over the coming year.

In conclusion there is much to look forward to in the sector and it will be interesting to see how things develop in the coming years particularly in respect of Saudi Arabia which is by far the largest potential market. We hope you enjoy this edition and please feel free to share any ideas for future articles or feedback generally with me at i.mcgettigan@tamimi.com. We also publish a monthly email alert In the Know which covers education industry news across the Middle East and if you would like to receive it then please let us know (same email address).

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Changes to the Regulatory Framework for Dubai Private Schools

Significant changes were made to the regulation of private schools in Dubai this year as a result of the enactment of Executive Council Resolution No. 2 of 2017 Regulating Private Schools in the Emirate of Dubai ('Resolution'). This article looks at some of the main aspects of the Resolution and considerations for private schools in Dubai.

Super-Regulator

The Resolution applies to all private primary and secondary schools in Dubai including those in free zones (also including the Dubai International Financial Centre). It confers sweeping powers on the Knowledge and Human Development Authority ('KHDA') who now have a role in almost every facet of school operation. KHDA approval is required in respect of a wide array of matters including the:

- appointment of Principal and teachers (pursuant to KHDA regulations)
- code of conduct for the school and staff
- tuition fee increase or discount
- contract between parent and school
- change of owner, operator, Principal, school name/address/building
- curriculum
- extra-curricular activities
- student affairs policy (including non-discrimination)
- student safety and protection policy
- student admissions
- advertising campaigns
- fundraising activities and receiving donations

Student Affairs and Safety

The Resolution stipulates that the school has a student affairs policy, approved by the KHDA, covering equality, non-discrimination and compliance with KHDA regulations regarding admission etc.

The school must form a committee to deal with complaints by students/parents and take appropriate action to address them. Student counselling as well as programmes dealing with health, social and mental care should not be in conflict with public order and morals.

The school is charged with caring for and preserving students' rights and to take all necessary measures to protect them. It must have a student safety policy (which also must be approved by the KHDA).

Non-discrimination

The topic of discrimination in the education space has caused the death of many trees in other jurisdictions due to the copious articles, opinions and case-law written on the subject. Contrary to popular belief discrimination is often specifically legislated for in many jurisdictions and frequently for good reason (e.g. in order to ensure a minority can obtain education as per their particular ethos and are not 'swamped by the majority'). The issue is contentious and one of the main drivers of litigation against schools in many jurisdictions.

The Resolution stipulates that private schools must treat all enrolled students equally without discrimination on the basis of nationality, race, gender, religion, social class, or special educational needs for students with disabilities. It is noted that

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this requirement applies to enrolled students not applicants. However the Resolution goes on to provide that schools must accept the enrolment of students with disabilities (i.e. applicants) in accordance with the conditions of the school's educational permit, general KHDA regulations and applicable legislation.

Staff Matters

From an employment perspective the KHDA has a significant role in staff affairs. Its approval is required for education staff hires who are recruited subject to KHDA conditions and procedures.

The school must ensure continuous professional development of its academic staff by way of an annual plan.

The Resolution also stipulates that the school should "take all necessary action for encouraging and motivating citizens to join its educational staff according to the applicable legislation and rules approved by KHDA in this regard."

Penalties

The Resolution has some stiff penalties for non-compliance. It contains a schedule that cross references offences with penalties of up to AED 150,000. However the KHDA will write to the school first and ask that the violation be rectified in which case the penalty will not be imposed. If the same violation is repeated within one year then the penalty doubles.

In addition to these financial penalties the KHDA has a number of other very serious sanctions as its disposal including suspension of student admissions, suspension of the school's right to expand and ultimately the cancellation of the schools license.

Conclusion

Given the all encompassing role of the KHDA in the operation and governance of private schools in Dubai it is imperative for schools to develop good lines of communication with the KHDA and approach matters in a proactive way with them. Thankfully the KHDA is well known for its transparency, dynamism and ease of doing business with so a long term collaborative relationship is achievable which will lead to better outcomes for all stakeholders.

Al Tamimi & Company's Education team supports education providers on all legal aspects of their operations. For further information please contact Ivor McGettigan (i.mcgettigan@tamimi.com).

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Safeguarding Children in a UAE Education Context

UAE Federal Law No. 3 of 2016 (the "Child Rights Law") enshrines the basic principle that children have the right to life and safety, and specifically provides that every child is entitled to an education. The Child Rights Law seeks to prevent all kinds of violence in educational institutions and to preserve children's dignity in an education context. The law states that a child's mental, psychological, physical or ethical safety must not be prejudiced. These principles are reiterated and further elaborated on under Executive Council Resolution No. 2 of 2017 (the "Resolution") which obliges private schools in Dubai to take all necessary measures to care for and protect their students' rights.

For education providers in the UAE, there is a clear obligation to ensure that children's safety and welfare is safeguarded to the greatest extent possible. So what can and should UAE schools be doing to reduce the risk of any student in their care being the victim of abuse?

Preventative Measures

At the very outset, thorough and robust background checks should be undertaken on all potential job candidates, and employers should require candidates to provide criminal record checks and certificates of good standing regardless of whether their previous employment was in the UAE or elsewhere. This practice is consistent with the Child Rights Law which prohibits individuals with a criminal record from working in the UAE in any job which allows them to directly interact or communicate with children. Referees should also be requested from the candidate's previous employer(s) for at least the past 5 years, and the school should ensure that thorough referee checks are undertaken. Some schools would outsource this background checking to specialist firms that focus on this.

Additionally, all schools must develop and implement an appropriate child protection policy that is clear and easy to understand for all stakeholders including students, staff and parents. The policy should be reviewed regularly by school management, and clear processes and procedures should be put in place to guide how issues will be dealt with as they arise. The policy should be emailed to all staff and made readily available on the school's intranet.

Further, all staff and other adults working or otherwise in direct contact with the children (including independent contractors) should receive regular training regarding the school's child protection policy, ideally during induction at the beginning of each academic year, to ensure that they can effectively deal with issues affecting the safety or wellbeing of students in the school's care. The school should maintain an up-to-date record of all adults working or otherwise involved with the children at the school. For independent contractors (e.g. coaches, catering staff etc) an introduction to the child protection policy should form part of their on-boarding and also should be explicitly mentioned and appended to the commercial agreement between them and the school.

As part of the school's child protection policy and procedures, designated Child Protection Officers ("CPOs") must be appointed and should receive additional dedicated child protection training, as should school counsellors and doctors who may identify 'markers' of abuse. The school must make it clear to students who their CPOs (and any other key points of contact) are and how they can be contacted, and the school should cultivate an atmosphere where students are encouraged and made to feel comfortable reporting issues to their CPOs. In accordance with the Resolution, private schools in Dubai must also establish a designated committee to address complaints filed by students and parents.

Considerations for Job Offers and Employment Contracts

Employment contracts should include an adequate probation period (which can be up to 6 months in accordance with the UAE Labour Law) as an additional safeguard in relation to new employees. During the probation period an employee can be dismissed without notice if any issues do arise, or even if the employer simply does not consider the employee to be suitable for the work environment for any reason (i.e. even if no specific incidents have actually occurred).

Further, the employment contract should specifically state that the employment is at all times conditional on the employee being vetted and complying with the school's child protection policy, failing which the school will have the right to terminate the employment.

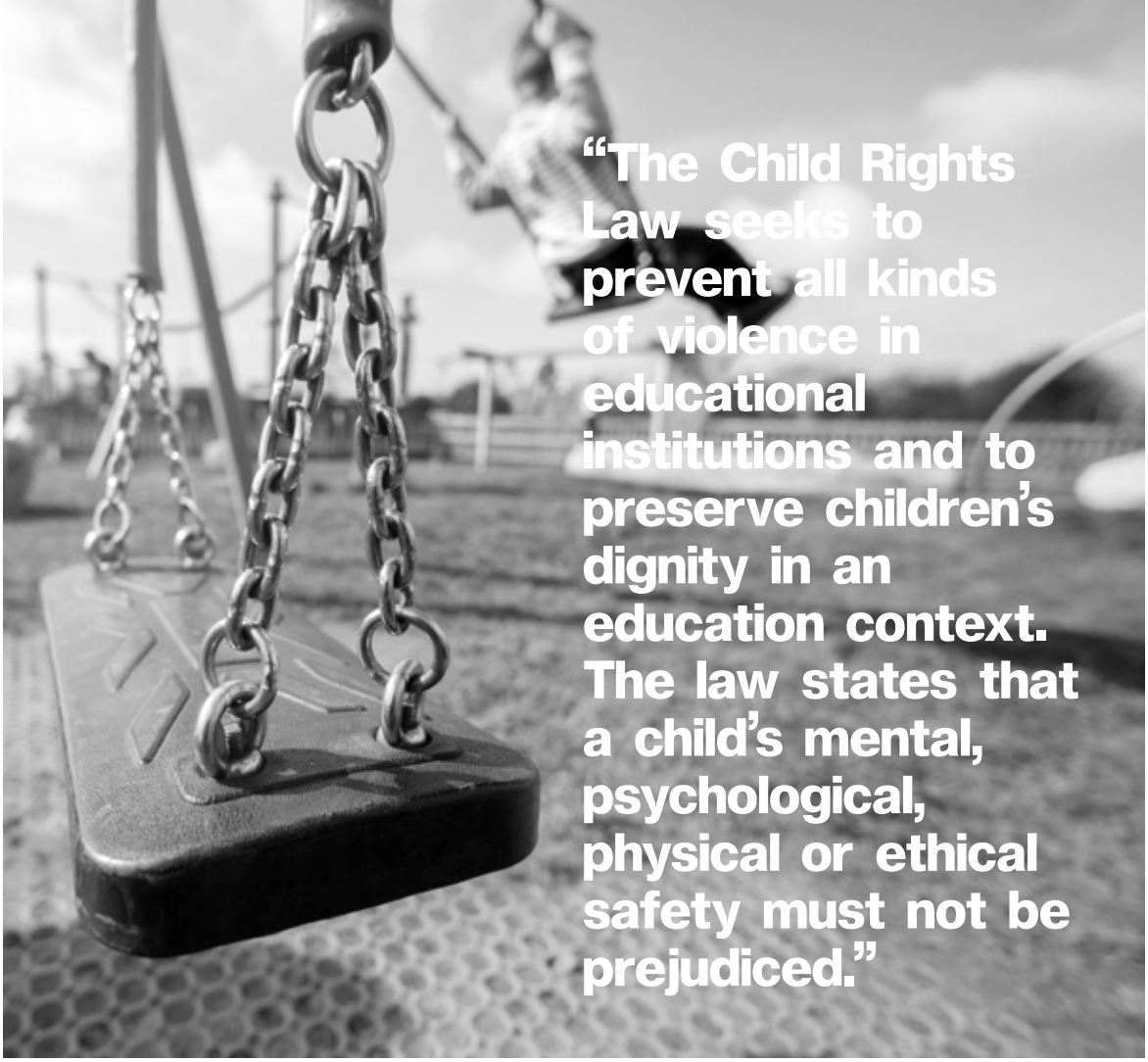
When Issues Arise

While implementing the above steps will help reduce the risk of issues arising in the first place, schools must be able to respond appropriately in the unfortunate event of a child's safety or wellbeing being compromised.

A thorough investigation should be undertaken regarding any matter concerning a child's safety, including by interviewing the child (or children) involved and any other adults or students who were present at the time of the incident. The school counsellor, doctor and CPO should be involved as appropriate to gauge the extent of any physical or emotional abuse that may have occurred, together with any other members of the school committee tasked with investigating complaints and issues of this nature. As part of this process the child's parents or guardians should be kept up-to-date about the incident(s) and the steps the school is taking in response. The school's child protection policy must be followed and depending on the nature of the incident and the outcome of the initial investigation, the matter may need to be reported to the local authorities. The school must also notify its insurers of any potential claim which may trigger the school's insurance policy (i.e. a notification event).

Where an allegation is made against a staff member, it is possible for the school to temporarily suspend the staff member during any investigation into the matter. If the matter is sufficiently serious to warrant the involvement of the police, the employee can be suspended without pay for the duration of any criminal investigation (however the employee would be entitled to back pay for the suspension period unless they are ultimately convicted of a criminal offence). Alternatively, the employee can be suspended with pay for the duration of any internal investigation into the matter, and this is considered best practice. Management should carefully consider how best to explain the staff member's absence to other staff members, students and parents, particularly given the possibility of the staff member returning to duty following the suspension if the allegations against them are not substantiated.

Under the UAE Labour Law an employee is entitled to know the allegations being made against them and an opportunity to defend themselves.



The employer must properly investigate the employee's defence and notify the employee of the potential consequences (e.g. dismissal) if they repeat the offence. It should be made clear to the person making the complaint that it is not always possible for the school to guarantee confidentiality, as the person who the complaint is made against is entitled to know the allegations against them (and the police and other relevant bodies may also need to be notified of the incident).

In the case of gross misconduct, however, an employee can be summarily dismissed (without notice or end of service gratuity) under Article 120 of the UAE Labour Law if they are convicted of an offence involving "honour, honesty or public morals". Technically this would require a police complaint to be filed and for the employee to ultimately be convicted of the offence, after which the employer would be within its rights to summarily dismiss the employee in accordance with the UAE Labour Law. Legal advice should be sought on a case by case basis where a staff member is subject to an allegation involving child safety and the employer is considering its options in relation to the termination of employment or otherwise.

Summary

All education institutions in the UAE have a clear mandate and responsibility to ensure that all children in their care are kept safe from physical and emotional abuse. By implementing the Child Rights Law, the UAE Government has enshrined the basic principles of child safety and sent a clear message to all individuals and institutions who exercise care over children. There are various practical steps which schools and other educational institutions can take to reduce the risk of child protection issues arising. However, effective and decisive action must be taken in response to any issues or incidents which do arise. Given the complexity in respect of potential employment, criminal, civil and insurance considerations, sufficient care and consideration should be taken in all cases.

Anna is a member of the Al Tamimi Education team and regularly advises education providers on a wide range of issues. For further information please contact Anna Marshall (a.marshall@tamimi.com).

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Securities and Collateral for Education Financing in Dubai & Abu Dhabi

Financing of educational institutions (i.e. schools, kindergarten and to a certain extent universities) is on the rise in the UAE. Foreign educational institutions (e.g. schools, kindergarten and universities) either explore local bank funding (i.e. UAE banks) or seek the assistance of their home county banks or financial institutions to fund either establishment or expansion of such educational institutions in the UAE. Whilst educational financing is being widely used in the UAE, banks and financial institutions struggle in zeroing in on effective security. Bank struggle primarily due to the complex corporate structure and supporting infrastructure of educational institutions. In this article we seek to identify (and where possible clarify) the nature of securities and collateral available to banks and financial institutions (in the Emirates of Dubai and Abu Dhabi) to secure such financing arrangements.

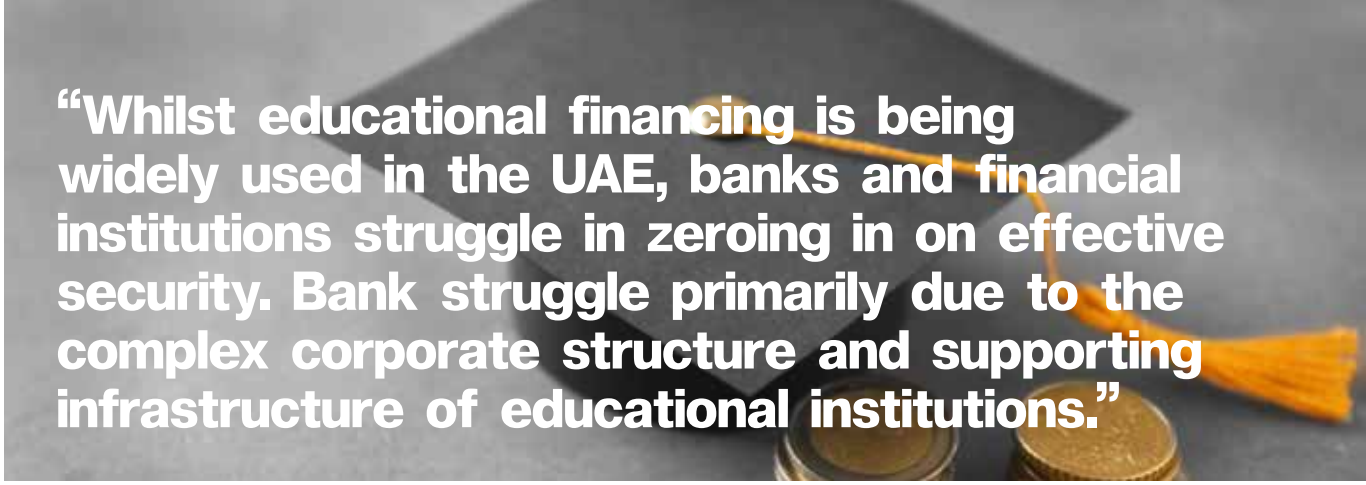
Security Over Movable and Immovable Assets

In the Emirate of Dubai, private schools must obtain an Education Services Permit (Permit) from the Knowledge and Human Development Authority (KHDA). If the school is in the UAE mainland, the limited liability company ("LLC") that will own and operate the school should have one or more UAE national partner whose share in the capital should not be less than 51%. This is based on the minimum Emirati shareholding prescribed for a LLC by the Commercial Companies Law. This creates a need for foreign investors and school operators to enter into nominee arrangements with UAE entities (wholly owned by UAE nationals) or UAE nationals (in their individual capacity) in order to incorporate the LLC, and to apply for and obtain the Permit from the KHDA in its name.

As the assets of schools (including the land on which the schools are built), are usually owned by the LLC, any security to be provided over the assets of a school requires the involvement of the 51% UAE national shareholder (Nominee). In typical school financings, this has resulted in the need to involve the Nominee as an active participant in the financing arrangements. Due to restrictions of foreign ownership of immovable property in Dubai (except designated areas where land be owned by foreigners), the Nominee is usually the sole owner of the school property and as such must be involved in any land mortgage to be granted over the school premises and registered with the Department of Land and Properties, Government of Dubai.

In the Emirate of Abu Dhabi, problems arise when the financier is looking for security over the associated real estate rights, especially when the educational institution is established outside the 'investment zones'. In our past experience, real estate rights in Abu Dhabi were secured by an assignment of the leasehold interest or "musataha" in favor of the financier. The landlord would typically be the Abu Dhabi Education Council (ADEC), and would agree to assign its leasehold interest in the land provided: (a) it was for financing the educational institution to which the lease related; and (b) ADEC consented to the assignment by way of an acknowledgment. Once this security was fully executed by the assignor, assignee and ADEC, it would be noted in the books of ADEC, but not registered with the any land department or municipality. In order to enforce such security the financial institution would have to rely on the cooperation of ADEC in its capacity as the landlord.

Since the inception of Abu Dhabi Law no. 3 of 2015 it is possible to create security over the real estate right, when the educational institution is built on land that belongs to the Emirate of Abu



"Whilst educational financing is being widely used in the UAE, banks and financial institutions struggle in zeroing in on effective security. Bank struggle primarily due to the complex corporate structure and supporting infrastructure of educational institutions."

Dhabi. This form of security would be in the form of a mortgage over the registered leasehold / "musataha" interest. Such mortgage is usually over the rights of the educational institution under the lease / "musataha" entered into by the Department of Municipal Affairs (acting on behalf of Government of Abu Dhabi) and the educational institution, in accordance with the applicable law. Difficulty arises when the educational institution (outside any Investment Zone in Abu Dhabi) is not completely owned by UAE nationals i.e. the shareholding pattern of such institution involves foreign ownership. In these cases it is not possible for such institutes to enter into a lease with the Department of Municipal Affairs with respect to land outside the Investment Zone in Abu Dhabi and thereby create a mortgage over it and hold it on behalf of the educational institution. In such situations, it is advisable for the local shareholder of the educational institution to enter into the lease and mortgage such lease in favor of the financier.

It is also important to note that all real estate security can only be created in favour of a UAE Central Bank licensed bank or finance company. Therefore when the foreign educational institutions seek funding from their home country banks (not licensed by UAE Central Bank) it is common for them to appoint a UAE bank the security agent to hold such security which adds to the cost of creating such security.

It is also common for education financiers to take security over the current movable assets of the educational institutions by way of a pledge. Unlike other project assets, such assets are of low monetary value which depreciate over a period of time.

Security over the Income Stream

A common form of security available from educational institutions stems from the applicable fees, which is the primary source of income for any such institution. As such, school or university fees can be assigned to a bank and can be payable from the student body directly to an account of the bank or an account of the school maintained with the lending bank. Where school fees are paid by credit card, the school is able to assign the point of sale receivables to the lending bank by entering into a separate security assignment with the merchant bank providing such point of sale arrangement to such educational institutions. There is a challenge with 'start-up' schools that typically takes 1-2 years after set up for enrolment of students and receipt of school fees. As the set-up process for schools is fairly capital intensive, the need for financing arises from the very initial stages, when the income stream is not available to be secured. Lending banks typically must rely on a contractual undertaking from the school to assign the school income when such income (in the form of fees) materialises.

Promoter Guarantees

Apart from the various securities available to banks, banks usually also obtain guarantees of the promoters of the school. This allows the banks to be able to attach the personal assets of the promoters or take security over other personal assets of the promoters (which are independent of the educational institution).

Conclusion

It is important for banks and financial institutions to carefully structure their loans and security in order to safeguard themselves and make mitigate themselves against the issues and risks discussed in this article. As education financing becomes increasingly prevalent, it is essential financial institutions develop a clear understanding of the security structures available to be able to effectively secure themselves from any risks associated with lending to financial institutions.

Al Tamimi & Company's banking team regularly advises both lenders and borrowers on financing offered to educational institutions. For further information, please contact Mamoon Khan (M.Khan@tamimi.com) or Sakshi Puri (S.Puri@tamimi.com).

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Conducting Scientific Research in the United Arab Emirates: Legal Considerations

Higher education institutions and other entities that are involved in research ('Research Institutions') operate in a complex legal and regulatory environment in the United Arab Emirates ('UAE'). In this article we look at that environment and some of the issues regarding which research institutions should be aware.

Setting Up and Licensing

Setting up and operating research institutions requires substantial investment in human and financial capital and, as such, it is important that their operations are compliant with the applicable laws and regulations in order to effectively exploit research and avoid any disruption of their research activities.

The UAE laws and regulations applicable to research institutions are diverse and include both federal and emirate level legislation, depending on the location of the institution and the nature of research activities conducted. At the federal level, the Ministry of Higher Education and Scientific Research ('MOHESR') was established by Federal Law No. 4 of 1992 and became responsible for a number of things, including coordination with research institutions regarding approvals to licence such institutions.

At the incorporation level, research institutions in the UAE should be licensed to conduct research activities under their corporate licence (issued by the relevant authority of the jurisdiction where they are incorporated). Certain public institutions are established by decree, which will set out the authorised activities that can be conducted by them. Private institutions wishing to engage in education and research activities in the UAE must apply for a number of permits, including the MOHESR approval. If, for example, a private intuition wishes to set up their operations in the Dubai Healthcare City ('DHCC'), they will require the necessary approvals from the MOHESR and a DHCC Education Permit to be able to provide education or training programmes in the DHCC. Furthermore, to conduct research activities, a DHCC Research Permit is needed, which is obtained by submitting details of the clinical research to be undertaken at the facility. Not all research is permitted in the DHCC, thus, for example, research involving animal studies and human embryonic stem cell research is not permitted.

Besides the corporate licensing requirements, depending on the nature of the research activities, research institutions may also be required to obtain specific research licences from the specialised governmental bodies regulating the relevant research activities.

Scientific research projects on the physical and biological environment, including research on air, soil, water, and wild organisms must obtain permits from the environment agency in the emirate where the research is conducted. Thus, for example, in Abu Dhabi, a scientific research no objection certificate is required from the Environment Agency – Abu Dhabi, in addition to specific authorisations for research that involves activities such as import or export of live animals.

Some other notable regulated research activities include nuclear related research activities, the use of drones such as for survey or other purposes, the use of certain marine or coastal areas, the use of private islands or lands, and research activities in culturally and archaeologically significant sites.

Further, the devices used for conducting research activities may require special approvals. In the case of medical devices, the Ministry of Health and Prevention ('Ministry') requires such devices to be registered with the Ministry prior to their importation and should be in compliance with the UAE requirements. On the other hand, telecommunication devices may require type approvals issued by the Telecommunication Regulation Authority ('TRA') in the UAE.

Personal Information

When research activities involve the capture and use of personal information of individuals, these institutions should comply with the relevant data protection laws, consumer protection laws and other general information protection elements of the UAE laws, depending on the jurisdiction where the research is being undertaken.

Pioneering Work

It is important to note that scientific research may, in certain cases, relate to new and unregulated activities or fields. In these cases, it is prudent to carefully determine and consult with the relevant regulatory bodies that oversee such activities and obtain their guidance in relation to these.

On and Off Campus

Research institutions are not always fully aware of research activities conducted by their faculty and staff. It is therefore important for research institutions to have clear protocols and guidance in place to ensure compliance with the research activities as approved on their licence permits, and the applicable laws and regulations. In addition, research institutions should put in place awareness seminars and training for their faculty and staff to ensure that they follow the processes and procedures in place to protect the institution from being exposed to heavy civil or penal sanctions, including monetary fines, delayed release of shipments of materials or equipment from customs, and the suspension of research activities permits and licences. There are also potential reputational damages to consider.

Conclusion

The number of permits and approvals required by research institutions to be able to undertake scientific research can appear daunting; however, with proper guidance and use of an approvals matrix, the task can be accomplished in a methodical and efficient way.

For more information, please contact Ahmad Saleh, Partner & Head of Patents & Designs (R&D and Innovations) at Al Tamimi & Co at A.Saleh@tamimi.com or by phone at +971 55 362 8282.

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How will VAT Impact the GCC Education Sector?

As the VAT drive in the GCC gathers momentum, this article focuses on the potential VAT issues for the education sector.

The United Arab Emirates ("UAE") and the Kingdom of Saudi Arabia ("KSA") have announced that VAT will be implemented on 1 January 2018. The other GCC countries have yet to make an official announcement on the implementation date.

At the time of writing, of the GCC countries, only KSA has published a draft VAT law and implementing regulations on 29 May and 19 July 2017 respectively.

Overview of VAT in the GCC

VAT registered businesses that supply goods and services are subject to VAT at either the standard rate or zero rate. Businesses are entitled to claim a credit for VAT paid on their purchases if they relate to a supply that is standard rated or zero rated. However, any VAT incurred in connection with a supply that is exempt from VAT cannot be reclaimed.

Unless supplies of goods or services are specifically zero rated or exempt, they will be subject to VAT at the standard rate. The standard rate will be 5% across the GCC.

Education: The GCC VAT Treaty

It is common for many countries across the world to exempt education from VAT.

Under the GCC VAT framework agreement, which is a country level agreement between GCC states setting out the common principles on which VAT laws in individual countries will be based, each GCC country has the discretion to either exempt the education sector from VAT or subject it to VAT at the zero rate.

What we know so far on VAT treatment for Education sector in individual countries?

The UAE has already announced that the Education sector will be subject to VAT at the zero rate.

According to KSA's draft VAT implementing regulations , supplies of education services are not exempt or zero rated. Therefore, the expectation is that the education sector in KSA will generally be subject to VAT at the standard rate. However, services provided by the government as part of its government function are outside the scope of VAT and thus public education providers may not be subject to VAT in KSA where there is no commercial activity.

The other GCC countries have not yet made any announcements on the VAT treatment for the education sector.

Different treatment of education across GCC

As the GCC VAT framework agreement gives individual states the ability to subject education sector to either VAT at the zero rate or treat it as exempt, it is possible that education services may be treated differently in individual GCC countries. Indeed, as noted above, the UAE have indicated that education services will be zero rated whereas KSA appears to prefer the standard rated approach.

What are the implications if education is exempt?

Clearly there will be implications for education providers in GCC countries where the education sector is exempt because they will not be able to recover any VAT incurred on their expenses directly attributable to that exempt supply.

Education service providers that make both taxable and exempt supplies will also need to apportion the VAT in relation to certain shared overheads – for example, marketing, utilities and rent - because the VAT attributable to exempt supplies will not be recoverable.

These factors will increase the cost for education providers who may, in turn, wish to raise the school fees to compensate for the higher cost in order to maintain profit levels.

What are the implications if education is zero rated?

A consequence of zero rated treatment is that the educational provider is likely to be in a VAT refund position, which may result in cash flow issues. Therefore, it is important for affected businesses to manage and review their commercial contracts, invoices and VAT refund claims to reduce this impact.

What is the definition of education?

The meaning of "education" services where such services are either exempt or zero rated is important because ultimately this will dictate the VAT treatment. To the extent that any services fall outside the definition of "education", they will be subject to VAT at the standard rate. Any potential exclusions from the zero rated or exempt treatment must also be considered.

In the UAE, the education sector will be zero rated, but it is remains to be seen how "education" and "education provider" will be defined for these purposes. In some countries, the definition is usually based on local law and subject to the education provider being accredited by the local educational authority.

The VAT treatment can vary depending on whether the education provider is engaged in pre-school, primary, secondary or higher education. Some countries also appear to favour a distinction between private and public sector education providers with the latter not subject to VAT.

Ancillary services

In addition to education services, for which the education provider usually charges a school or tuition fee, the education provider may also be engaged in other ancillary services. Determining the VAT treatment may present challenges for such services. For example, education providers may also undertake the following income generating activities:

- administrative services;
- provision of course materials;
- provision of catering to students, staff and guests;
- membership of student organisations, associations or bodies;
- sale of goods such as uniform, stationary, merchandising, books, computers, musical equipment and bags;
- provision of accommodation to students, staff, visitors and letting to general public during non-term time;
- transportation of students;
- provision of short term courses to the public, for example, during the summer or evening;
- organisation of events including attending sites, excursions and field trips, conferences, musicals, plays, shows etc.;
- examination services;
- research grants and donations; and
- scholarships and sponsorships.

It is important to determine whether and to what extent the above activities will fall to be treated as related and incidental to "education" services and subject to the same VAT treatment, or whether they will be considered as supplies of a different service and subject to separate VAT treatment.

Businesses must ensure that appropriate controls and processes are in place and that the correct VAT classification is identified for all your transactions at the outset in order to be compliant and avoid penalties.

Al Tamimi & Company's tax team regularly advises on VAT implementation. For further information please contact Shiraz Khan (s.khan@tamimi.com).

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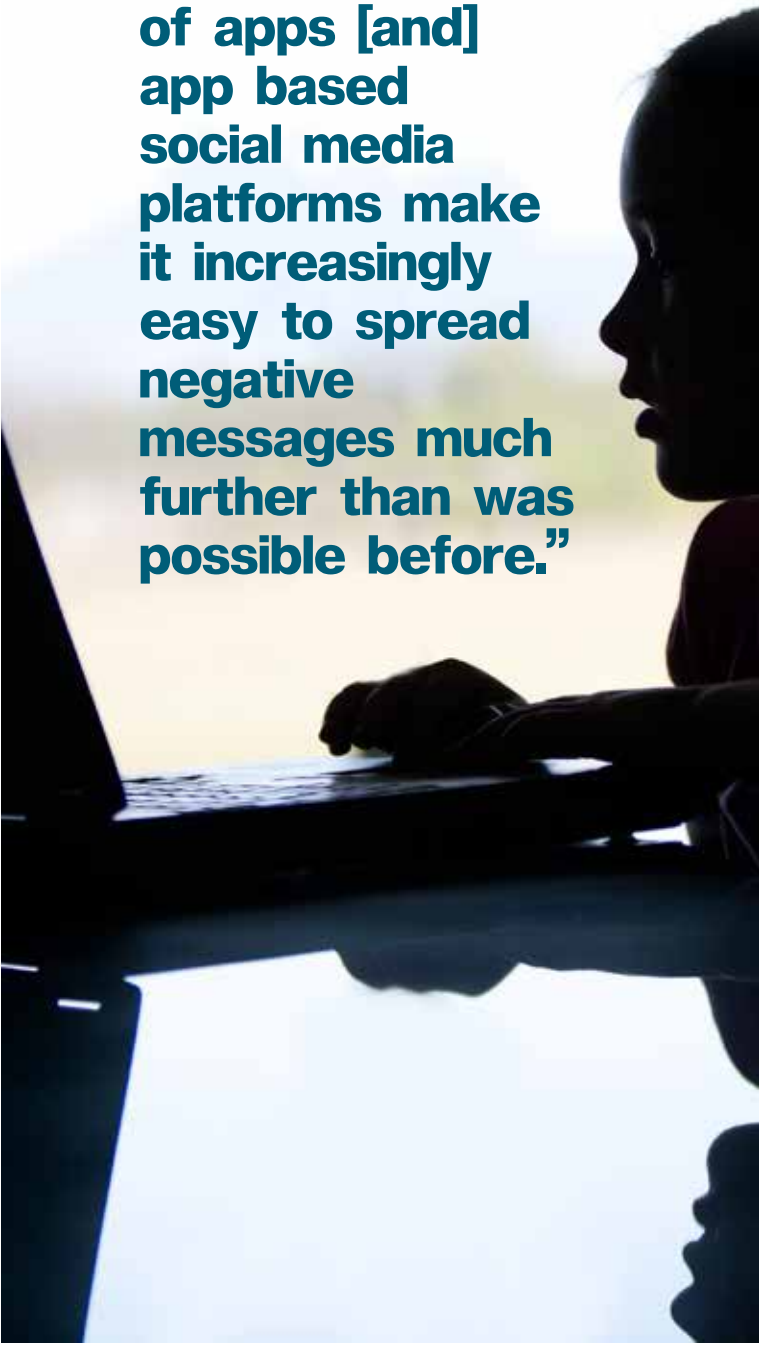
Cyberbullying: a Snapshot of the Laws in the UAE

"Mobile phones are the preferred medium for [cyberbullies], and the proliferation of apps [and] app based social media platforms make it increasingly easy to spread negative messages much further than was possible before."



It would be impossible to ignore the growing presence of technology and devices in the lives of children in the region; indeed even some schools now require them for children from seven or eight years onwards. However, there are also concerns emerging from parents and teachers that this technology can be used for harm as much as it can be used for positive educational purposes. It is becoming increasingly important for schools to educate students about the legal and appropriate use of the internet and to have policies which are clearly communicated to both staff and students. If pupils are engaging in cyberbullying activities, there could be consequences under a school's disciplinary and code of conduct procedures. If a school is aware of these types of activities, but does not take action, there could be reputational, regulatory, and potentially even legal implications for that school. Under the new Dubai Schools Law (Executive Council Resolution No. 2 of 2017) schools have an obligation to have in place a 'student safety and protection policy' approved by Dubai's Knowledge and Human Development Authority and must take all necessary measures to care for and protect their students' rights.

There are two ways in which technology may become a medium for abuse rather than education. Firstly; when children themselves are targeted in a way that they may not properly understand. The second is when children abuse technology to take advantage of, or persecute, others in their peer groups. In this article the authors focus on issues arising from the second category. Attention is given to potential legal ramifications for young people and children who misuse online resources and, in particular, social media.

Underage Access to Social Media

An important consideration is a child's minimum age before he or she is granted social media access. Firstly, it is important to note that there are no laws specifically governing minimum age requirements. There are certain guidelines and regulations that may apply to content (most visibly in relation to the censorship of films, television, and to a lesser extent magazines). Some of these guidelines also extend to online content. In this regard, telecommunications carriers have the right to block content they consider breaches Annex 1 of the Telecommunications Regulatory Authority's Internet Access Management Policy, for instance; 'internet content containing pornography and nudity' and 'gambling internet content.' These regulations, however, do not provide minimum age requirements for generic social media sites.

To fill this vacuum, which exists in most countries that permit access to global social media, pressure has been applied to the operators of social media sites to place age restrictions on users. Facebook, for example, requires all account holders to be at least thirteen years old before they can create an account. Not only is it not permitted to create an account if you are underage, but it is also not permitted to create an account for another person that is underage. Parents can request deletion of accounts that have been created in beach of this rule. More importantly, Facebook provides a form that allows third parties to report accounts that are held by underage users, which are then immediately deleted.

What else can Facebook et al do?

Platforms such as Facebook have reacted to parental concerns about access to unrestricted content – they have implemented bespoke rules designed to provide a sense of security to their users. However, these are not legal restrictions, and so breaching these rules does not carry any legal consequences. Should a child breach the minimum age restrictions for any social media site and then accesses adult content, there is little that can be done about it from a legal perspective.

Interestingly, in the United Kingdom the National Society for the Protection of Cruelty to Children has requested that there be a statutory code of practice to ensure children are adequately protected online. If the UK does take this to the next step, we can expect other countries to follow suit. This may mean that, in the future, there will be legal repercussions for online publishers who do not properly control or prohibit access to inappropriate content by children.

TERMINOLOGY RELATING TO CYBERBULLYING

CYBERSTALKING: MAKING THREATS TO A PERSON, USUALLY DESIGNED TO THREATEN THEIR SAFETY.

TROLLING: A DELIBERATE ACT INTENDED TO GET A STRONG RESPONSE CAN BE DONE THROUGH THE USE OF INSULTS.

BULLYING: SENDING UNPLEASANT INFORMATION ONLINE ABOUT A PERSON, DESIGNED TO NEGATIVELY AFFECT THEIR REPUTATION OR RUIN THEIR FRIENDSHIPS. USUALLY CIRCULATED IN A MANNER TO ENSURE THAT THE PERSON CAN READ IT, IN ORDER TO MAXIMISE THE EFFECT.

OUTING: CIRCULATING STORIES OR IMAGES THAT WILL PUBLICLY HUMILIATE A PERSON.

CATFISHING: STEALING A PERSON'S IDENTITY WITH THE AIM OF RE-CREATING SOCIAL NETWORKING PROFILES IN ORDER TO HUMILIATE OR HARM THE VICTIM.

Cyberbullies

Cyberbullying occurs when technology is used to convey the bullying message to the victim and to those around the victim. Mobile phones are the preferred medium for these acts, and the proliferation of apps such as WhatsApp as well as app based social media platforms make it increasingly easy to spread negative messages much further than was possible before. In addition, secondary perpetrators can readily forward and share the negative material, resulting in its rapid and widespread dissemination. The message may be viewed multiple times by a larger and more diverse audience – it could be sent to the victim's siblings, teachers, neighbours, and broader social groups.

The UAE's Child Rights Law (Federal Law No. 3 of 2016) affirms that all children have the right to education and basic protection in the UAE. Bullying has always been difficult to punish. It is suggested that the increased use of technology may aid bullying. Equally, such technology may assist with tracing its source.

Defamation, which is often at the core of cyberbullying, is potentially a criminal offence in the UAE. Not only does the UAE have extensive provisions within its Penal Code (Federal Law No. 3 of 1987), but it also has the benefit of the Cyber Crimes Law (Federal Decree No. 5 of 2012 on Cyber Crimes). For example, Article 138 of the Penal Code stipulates that a punishment of jail and a fine (determined at the discretion of the judge) "*shall be inflicted on any person who publishes through any means of publicity news, pictures or comments pertaining to the secrets of people's private or familial lives even if the same is true.*" The UAE has traditionally considered defamation to be a serious criminal offence.

As is often the case, it is the Cyber Crimes Law that provides the most practical recourse for victims of crimes involving technology. Article 20, for example, deals with slander in the broadest of terms:

> *Without prejudice to the provisions of slander crime prescribed in Islamic Sharia, any person who insults a third party or has attributed to him an incident that may make him subject to punishment or contempt by a third party by using an Information Network or an Information Technology Tool shall be punished by imprisonment and a fine not less than (AED 250,000) and not exceeding (AED 500,000) or by any of these punishments.*

Note that the prescribed fine is a minimum of AED 250,000. Imprisonment is also possible, although a minimum sentence is not prescribed. For some offences the Juvenile Law (Federal Law No. 9 of 1976) specifically dictates that children under the age of eighteen may be sentenced to no more than half of the prescribed detention period.

Article 16 of the Cyber Crimes Law states that a perpetrator of an action that could be considered to be extortion '*shall be punished by imprisonment for a period of two years at most and a fine not less than AED 250,000 and not in excess of AED 500,000, or either of these two penalties*'. Accordingly, threatening to bully someone unless money is received may lead to severe penalties – the act of bullying does not have to eventuate, it can simply be threatened. If the extortioner uses the threat of bullying (eg; "I'll tell everyone that you…") in order to extract money or something of value from the victim, they may be found guilty under this law.

Of course, the standards that are applied to defamation can be high – as is generally the case globally. The statement must, first and foremost, do harm to someone's reputation, and must do so in a manner that makes people consider that person in a negative light.

Additionally or alternatively, the parents of a victim may wish to consider civil action through court. This does present a more difficult case, requiring assessment of the damages arising from the offence, and should accordingly be discussed with a competent lawyer before proceeding.

Images: Consent, Inappropriate Images, and Sharing

Cyberbullying can be, and often is, undertaken by using images of the victim in a way that is not authorised or otherwise without their consent. This could include images taken of the victim with consent at the time, but on the understanding of confidentiality. They may have, for example, been provided during the course of a relationship. Images may otherwise have been provided as a result of persistent bullying behaviour – eg; "if you don't give me photos, I will tell everyone that you…".

In the UAE, using images without consent can be a serious issue (which we have covered in previous Law Update articles). In this article we address common issues concerning the creation, retention, and/or circulation of pornographic images, as are commonly used in cyberbullying cases.

The Cyber Crimes Law prescribes harsh penalties for any use of material that is considered to be pornographic. Article 17 states;

> *Any person who established or operated or supervised an Electronic Site or transmitted, sent, published or re-published through the Information Network*

> *pornographic materials … and anything that may prejudice public morals shall be punished by imprisonment and a fine not less than (AED 250.000) and not exceeding (AED 500.000) or by any of these punishments.*
>
> *Any person, who produced, prepared, sent or saved pornographic materials … and anything that may prejudice public morals for the purpose of exploitation, distribution or displaying for a third party through an Information Network shall be punished by the same punishment.*

The Article penalises several actions relating to a qualifying image's utilisation – including its transmission and sending. In addition, the Cyber Crimes Law imposes further penalties if the pornographic material concerns subjects younger than eighteen years old – so the vast majority of school pupils, stating:

> *If the subject of the pornographic content was a juvenile not exceeding eighteen years of age or if this content was designed to tempt juveniles the perpetrator shall be punished by imprisonment for a period not less than one year and a fine not less than (AED 50,000) and not exceeding (AED 150,000).*

This is followed by Article 18:

> *Any person who intentionally acquires Juvenile Pornographic Materials by using an Electronic Information System, Information Network, Electronic Site or any of the Information Technology Tool shall be punished by imprisonment for a period not less than six months and a fine not less than (AED 150,000) and not exceeding (AED 1,000,000).*

Again, this covers situations where a person is seeking pornographic materials from anyone younger than eighteen. The fine is significant, as is the minimum jail term.

In addition, Article 16 of the Cyber Crimes Law (above) may also apply. If, for example, a teenager threatened to bully or defame a fellow student unless they provided a sexual image of themselves, then not only are they guilty of inciting contempt, receiving and distributing pornography, and child pornography, but they are also guilty of extortion. A court has discretion to apply all of the above penalties. As far as penalties are concerned, the Cyber Crimes Law also requires a judge to order the deportation of any perpetrator that is not a UAE national.

Reputation Management in the Online Environment

Undoubtedly it is imperative to take action against any person that is bullying another – and any adult that has to deal with a child that is being bullied has reason to wish it to stop as soon as possible. Unfortunately, the disadvantage of taking legal action is that the victim may be required to disclose aspects of their lives they may be ashamed of, or do not wish to make public. Under the Juvenile Law, court hearings in relation to children under eighteen will not be made public and may only be attended by certain persons (eg; lawyers, custodians, Ministry of Social Affairs) or with a court's permission. A court may even excuse a child's attendance during witness testimony if considered to be in the child's interests.

In all of the above, it is important to remember that, from a practical perspective, online publications often remain accessible for a long time, if not forever. Even when content is taken down from a site, or deleted from a particular device, it may be cached or may have been forwarded or saved to other devices. It may be dormant for some time and then re-surface, affecting the reputation of not only the victim, but inevitably the perpetrator and their cohorts. In teaching children, and young adults, about their use of social media, the importance of maintaining their reputation should be stressed at all times. A bullying post, a semi-naked photograph, a political rant - these can all come back to haunt them later. There is only one chance to emphasise this to all young people; it cannot be remedied later.

Al Tamimi & Company's Technology Media and Telecommunications team regularly advises on issues arising from media and content issues and on regulatory matters and disputes. For further information please contact Fiona Robertson (f.robertson@tamimi.com).

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Setting up a University in Egypt

While the Egyptian higher education system has expanded rapidly in the past few decades, the demand for higher education continues to outgrow the expansions as a result of the demographic surge in the higher education age group. According to 2016 statistics, Egyptians aged between 15 and 24 years constitute almost 20 per cent of the Egyptian population.

Moreover, it is widely noted that the pre-university education level does not provide students with the skills necessary for the labour market. Consequently, graduates find it hard to earn a living, which drives the demand for university education. In addition, the positive social image of higher education graduates is another factor that has affected the demand for higher education.

The Egyptian government is initiating a range of reforms to improve the regulatory framework of higher education and attract investments to this sector. However, the market still remains open for further investment to cover the shortage.

In Egypt, private universities are under the supervision of the Ministry of Higher Education ('Ministry') and the Supreme Council of Universities ('Council') and are subject to the rules and provisions set out under Law No. 12 of 2009 for Private and Civil Universities and its Executive Regulations ('Universities Law').

Egyptian law does not set any restrictions with regard to the number of founders of a private university; however, the law does require that the majority should be of Egyptian nationality, and all of the founders should not be academic staff members in Egyptian public universities.

In order to commence establishing the university, the founders must deposit, with an Egyptian bank, the required capital, in addition to providing the necessary facilities for the university's operation.

Private universities are incorporated upon promulgation of a presidential decree incorporating the university, which confers rights to the founders to receive profits, to be represented in the management, to set the initial internal regulations of the university, among other rights.

With respect to funding, a university may accept contributions and donations, subject to certain restrictions, whether from local or foreign sources. A private university's main purpose cannot be the gain of profit; however, operating for profit is not conceptually prohibited. The university should have an annual budget determining its revenues and expenses, including the distribution of the net profit and surplus resulting from its activity. However, it must primarily allocate sufficient funds to the reserves of the university and improvement of the services provided by the university. The university may subsequently distribute the remainder as dividends.

Colleges are not recognised as separate entities, rather as integral parts of the university. Therefore, the institutional licence is granted to the university, as the entity having legal personality. Further, prior to establishment, the founders must confirm the colleges and faculties that they intend to launch upon establishment of the university.

Upon issuance of a presidential decree establishing the university, the university becomes an independent juristic person, separate from its founders and managed by is the university's board of trustees ('BoT'). The BoT sets the internal regulations, which include the mechanism of the distribution of net profits. Typically, the BoT also has the right to manage the assets of the university and set its initial tuition fees. However, it is worth noting that annual increases in tuition fees may not be decided at the BoT's discretion; the Ministry, after collaborating with the Council, issues

annual decrees determining the maximum annual increase for all tuition fees in both the public and private sectors.

Egypt has a very extensive intellectual property protection law (Law No. 82 of 2002 on the Protection of Intellectual Property Rights) ('IP Law'). This law is extremely important as the university may be in collaboration with a foreign university, which in turn would grant the Egyptian university the use of its name and curriculum. The IP Law will protect the foreign university's name if it has been registered and protected locally. However, the curriculum, even if the collaboration has ended, may not be withdrawn from the Egyptian university with immediate effect as this would create a disruption for the enrolled students. Consequently, most collaboration agreements contain a period of a few years following termination of the contract where the Egyptian university is allowed to use the curriculum upon paying an agreed licence fee.

As the government and the parliament are seeking to convince investors to make long-term investments in Egypt, they have collaborated in changing old policies by implementing and ratifying new laws with the purpose of protecting investors and facilitating investment procedures. Given that the education market has not been fully explored, it is foreseeable that further investments will come into the country and target this market.

While the Egyptian higher education system has expanded rapidly in the past few decades, the demand for higher education continues to outgrow the expansions as a result of the demographic surge in the higher education age group. Given that the education market has not been fully explored, it is foreseeable that further investments will come into the country and target this market.

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Education Investment in Oman

Growth and Opportunity

The education sector in Oman has expanded rapidly from only three schools in 1970 to now stand at some 1,647 schools, with 724,395 pupils, 18 public colleges, 20 private colleges, a single state university and seven private universities. In addition to the public and private universities there are Applied Science Colleges in most of the governorates in Oman.

The remarkable growth of the education sector sits alongside a commitment from His Majesty the Sultan's government to both spend and promote further investment in this area. It is seen as a key feature of the government's long-standing vision for economic diversification and the transformation of Oman.

Investor interest in private educational institutions continues to rise, with higher education likely to be the key focus for investors, both domestic and foreign. In large part the interest is driven by the availability of government incentives, such as favourable terms for key infrastructure and the financial support granted by the government for building universities' campuses and sponsoring students to study in these universities. The government's commitment to the education sector is further evidenced by its promotion of 'labour readiness' for the next generation of Omani graduates and its complementary in-country value("ICV") initiative, whereby specified levels of corporate spend need to promote domestic development, including the development of national training, education and research and development institutions. ICV is currently applicable to the oil and gas sector and the vision is to increase the level of spend on local content from the 18% that it stood at in late 2013, when ICV was unveiled, to 32% by 2020.

Sector Oversight

Below are the main regulators of education in public and private sectors in Oman (as previously covered in a previous Law Update article)

Public Education: Ministry of Education is in charge of formulating the policies of education, administration and management of the education system in Sultanate of Oman;

Private School Education: This is delivered by private schools licensed by the Ministry of Education which approves its syllabus; and

Higher Education: Ministry of Higher Education is the responsible body for regulating the higher education in the Sultanate in public and private universities and colleges as well as recognition of certificates issued by educational institutions abroad.

In addition to the administrative and regulatory bodies mentioned above the Education Council, plays an important role in formulating the policies and provision of legislative proposals to both Ministry of Education and Ministry of Higher Education as well as observing the performance of the educational institutions in the country and issuing reports in this regard to the relevant authorities.

The Education and Higher Education Councils continuously propose and formulate policies to drive forward the development of the education sector in Oman. The main projects that are being undertaken presently by the education councils include:

- the formulation of the national education strategy 2040; and
- restructuring of the education system and some education law.

These types of projects will ensure transformation of education in Oman in the near future and should open up the Oman market for new investors in the educational sector. The increasing impact of the Law for the Protection of Competition and Prevention of Monopoly further ensures that opportunities for investment in all sectors, including education, are offered equally to all investors whether local or foreigner. Relaxation of exclusivity rights for commercial agents has meant some regional franchise arrangements are more straightforward.

Regulatory Framework in Oman

Public schools are established by Ministry of Education in different governorates in Oman which offers three levels of education- elementary, primary and secondary.

Private schools are subject to foreign investment rules and cannot be established without the issuance of a trade license by Ministry of Commerce and Industry and an approval from Ministry of Education. An Omani local partner is required to establish a private school and cannot be wholly owned by a foreign investor with the exception of GCC nationals who are accorded similar treatment to Omanis.

Most private schools take the form of limited liability companies in Oman. Limited liability companies are run and managed by managers compared to private universities that are run through a board to be appointed by the council of trustees.

Private universities can be established in the Sultanate given that the majority of the funds in the share capital of the universities are owned by Omanis and the main objective of the university is not realization of profits.

The establishment of private universities and approval of its articles of association are made by way of issuance of a decision by the Minister of Higher Education upon a request made by the founders of the private university.

The drive for quality and the investment environment

Many see the greatest investment opportunity being in the graduate training field. Vocational training institutions such as Oman Tourism College, Maritime College of Oman and the International College for Engineering and Management are all partnerships between government and private sector interests. All are developing professional training, both academic and vocational, to a high calibre alongside the ever improving and developing accreditation regimes. These types of labour preparedness institutions complement private sector job-creation initiatives and the in-country value programme.

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Educational Services in Qatar: Recent Updates

Education continues to be an important area of development in Qatar. In the past 18 months, there have been a number of developments regarding the regulation of education in Qatar. In brief:

- in November 2016, a new law regulating private schools (Qatar's Law No. 23 of 2015 Regulating Private Schools) took effect;
- in April 2017, a new resolution (the Minister of Education and Higher Education's Resolution No. 10 of 2017 on Providing Educational Services) was issued to clarify key matters applicable to any individual or entity that provides 'educational services' in Qatar; and
- in June 2017, a new law (Law No. 9 of 2017 regulating government schools) calling for the establishment of public schools in the country took effect. The law stipulates that the government of Qatar should open public schools and provide those schools with the necessary funds to carry out their role in educating the youth and promoting innovation and academic excellence.

This article will focus on the second bullet point, namely recent developments relating to the provision of educational services in Qatar. Developments in relation to private schools and public schools will be examined in future updates.

Educational Services Law: Application

The Minister of Education and Higher Education's Resolution on Providing Educational Services (Resolution No. 10 of 2017) (the 'Resolution') came into effect in April 2017. The Resolution clarifies key provisions of Qatar's Law No. 8 of 2015 the Educational Services Law (the 'Educational Services Law'), which came into effect in November 2015.

The Educational Services Law governs any individual or entity that provides educational services (defined below); however, it does not apply to educational services offered by:

- governmental authorities; and
- non-governmental parties to their employees.

In addition, the Educational Services Law does not apply to 'private schools' (private school means every non-governmental facility that provides education from kindergarten through to the end of secondary school).

What are Educational Services?

Educational services are defined in the Educational Services Law to include education and/or training in the fields of:

- languages, computing, secretarial, accounting, business administration; and
- other fields determined by the Minister of Education and Higher Education, the Secretary General of the Supreme Education Council (the 'Minister').

Relevantly, the Minister passed the Resolution, which expands the educational services fields (as stated in the Educational Services Law) to include the following:

- reinforcement classes for the educational services;
- educational training;
- mental math;
- visual arts for training on drawing, sculpture, photography, decoration works and the like; and
- educating and training handicapped persons.

The Resolution provides no additional guidance regarding what each of these fields includes; however, generally speaking, subject to the exclusions set out above and in the absence of a more specific law, the Educational Services Law will apply to private higher educational institutions, such as colleges and universities, offering education or training in relation to any of the fields set out above.

Key provisions of the Educational Services Law

Key provisions of the Educational Services Law, as clarified by the Resolution, are summarised as follows:

- Any facility that provides educational centres must have a specific licence to operate. Licenses are issued for a one year (renewable) period. The licence fee is QAR 5,000 and the renewal fee is QAR 3,000.
- Applications for a licence will be determined (within 60 days) by an administrative unit of the Supreme Education Council. If an application is rejected, the applicant may appeal to the Minister within 30 days of the decision. The Minister will determine appeals within 30 days of the appeal being filed. If the Minister rejects the appeal, there is no further avenue of appeal and the Minister's decision will be final.
- The licence application must be submitted using the relevant form and should be accompanied by the documents and information detailed in the Resolution (discussed further below).
- Any facility that provides educational services should have separate premises in which they operate (the licence will be issued for that premises). Only one educational centre may be licensed at one premise.
- Licences cannot be assigned to third parties without prior approval from the relevant administrative unit of the Supreme Education Council.
- The licensed provider must not deal with any overseas providers without prior approval from the Supreme Education Council.
- Educational centres should maintain records (that may be inspected by the Supreme Education Council) relating to the centre and it employees, including:
  - a register for employee affairs;
  - a register for seminars and services offered by the centre; and
  - any other register determined by the relevant administrative unit of the Supreme Education Council.

License Application Documents

The Resolution provides that any application for a license must be accompanied by the following documents and information:

1. ID/passport, resumes and certificates of good conduct for the licence applicant as well as:
   a. those in charge of the management of the educational centre; or
   b. the active partners of the educational centre.
2. Specimen signature of the licence applicant (or the legal representative of the educational centre).
3. An undertaking to provide the required bank guarantee (discussed further below).
4. Suggested name of the educational centre and its organisational structure.
5. Copy of the commercial register of the licence applicant.
6. Copy of the title deed of the premises in which the educational services will be provided (or, if the premises are not owned by the licence applicant, a copy of the lease agreement for the premises).
7. An engineering drawing of the premises showing its location and specifications, together with an architectural plan showing the areas and dimensions of the rooms in the premises.
8. A certificate certifying the constructional

safety of the building and confirming that requisite safety and security requirements are satisfied.

9. A copy of the memorandum of association, articles of association or by-laws, as applicable.
10. Any further licence-related documents that the relevant administrative unit of the Ministry of Education and Higher Education may deem to be required.

Bank Guarantee

A licence is subject to a bank guarantee being provided, in the sum of:

- QAR 100,000 for one educational service, or
- QAR 200,000 for more than one educational service.

The bank guarantee may be deducted (in full or partially) if:

- the educational centre violates the Educational Services Law, the Resolution, or any other implementing regulations and decisions; or
- the educational centre fails to provide the licensed service within one year of the licence having been issued; or
- the quality of licensed services falls below the required level; or
- the educational centre's financial situation prevents the centre from fulfilling its obligations; or
- the educational centre fails to rectify a violation within the time frame stipulated by the Supreme Education Council.

In addition, the Supreme Education Council may also impose the following sanctions:

- close the educational centre (for a maximum period of sixty days) in order to investigate potential breaches of the Educational Services Law; and/or
- suspend of the licence; and/or
- cancel the licence.

Other penalties

The Educational Services Law also sets out general provisions that permit the following penalties to be imposed:

- imprisonment of up to 6 months; and/or
- a financial penalty of QAR100,000; and/or
- cancellation or suspension of the licence.

Finally, a court may also impose additional penalties, including:

- closing down the educational centre and removing its signboards; and/or
- recovery of amounts collected from concerned parties.

Looking Forward

Education remains a key area for development in Qatar. We have already seen a number of developments in relation to private schools and educational services providers. Further reforms relating to public schools are expected to be introduced later this year. We will continue to monitor these developments and provide updates from time to time.

Note: the Qatari laws mentioned in this article are issued in Arabic and there are no official translations. For the purposes of this article, we have used our own unofficial translations. Where applicable, we have interpreted the laws mentioned in the context of any applicable regulations and in line with current market practice.

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Vision 2030 and the Transformation of Education in Saudi Arabia: One Year On

In a previous edition we looked at Saudi Arabia's Vision 2030 (and the National Transformation Program which flows from it) ("Vision") and the ambitious road-map for education reform in the Kingdom of Saudi Arabia (please see http://www.tamimi.com/en/magazine/law-update/section-14/august-2/vision-2030-and-the-transformation-of-education-in-saudi-arabia.html).

In this article we check in to see where things currently stand in the Kingdom.

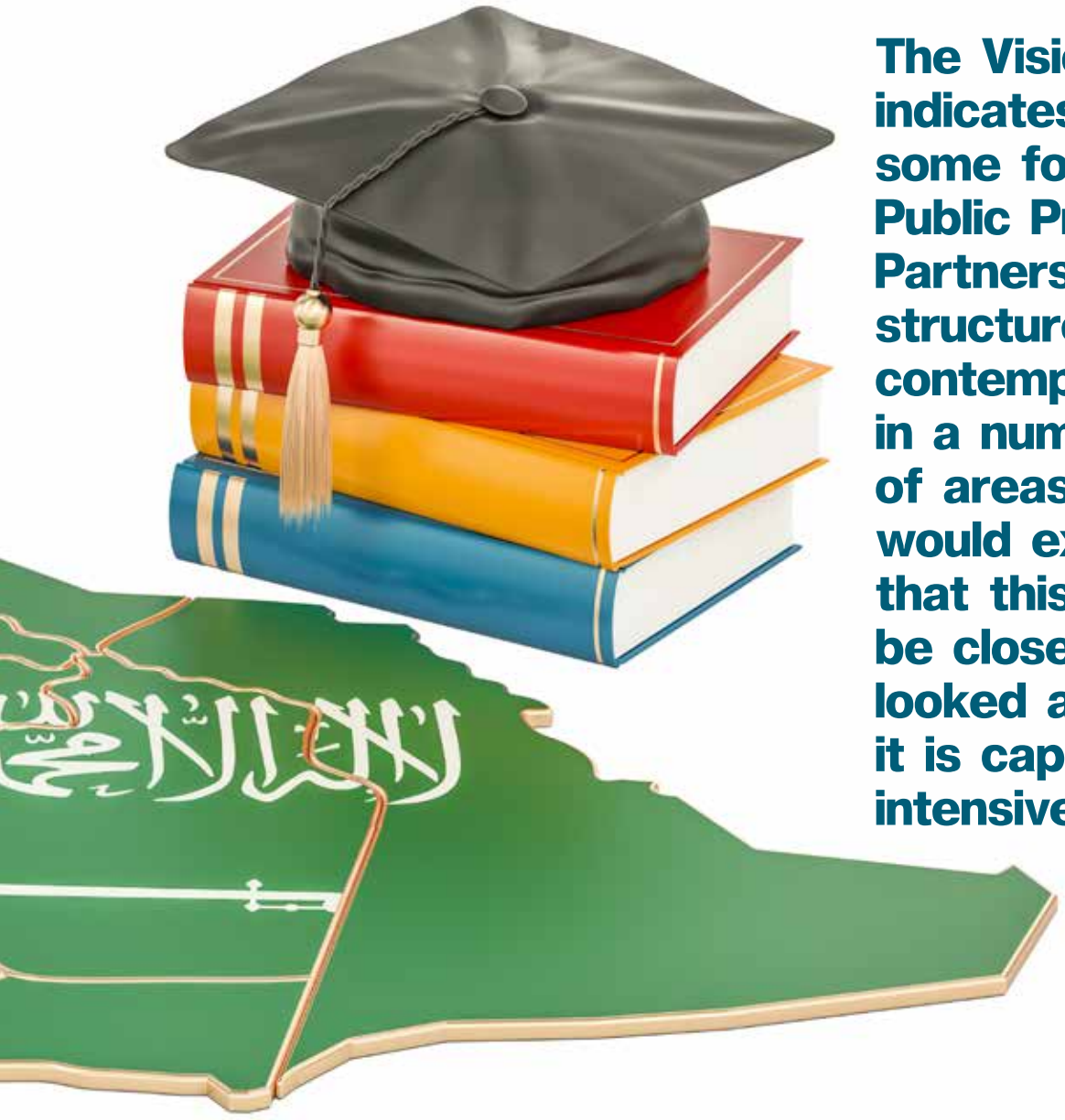
FDI in Education

Foreign direct investment in education in the Kingdom was traditionally very limited. However one of the stated goals of the Vision is for increasing private sector participation in the sector. What form this private sector participation may take is critical, especially in the context of the updated Companies Law which has broadened the potential for foreign ownership in Saudi companies but which does not specifically address the education sector.

The SAGIA website states (our underlining):

> *The historical growth rate of 10% in the Education sector is expected to be sustained going forward, driven by significant investments by the Saudi Government. For example, USD 56 billion has been allocated to projects in the Education sector for the 2014/15 budget, in addition to USD 21 billion approved five-year plan driven by the Tatweer education development company.*
>
> *There are several broad opportunity areas for the private sector to explore in the education ecosystem, including: setting up privately operated colleges and universities; establishing pre-school institutions and day-care offerings; enhancing labor market linkages and job placement programs to match graduates to jobs; creating and delivering blended learning innovations. In addition, there is an opportunity for private sector provision of support services to existing public and private education institutions. Examples include: site maintenance, canteen operations, cleaning services, IT infrastructure and management services.*

Whilst there are no current opportunities listed on the relevant section of the SAGIA website we expect this to change given it is still comparatively early days in the programme. What will be of particular interest is whether and to what extent FDI is encouraged in this context. Furthermore the same approach may not necessarily apply to schools as to other sections of the education market; it was previously suggested that FDI in schools is unlikely in the short term.



The Vision also indicates that some form of Public Private Partnership structure is contemplated in a number of areas... one would expect that this would be closely looked at given it is capital intensive.

PPP

The Vision also indicates that some form of Public Private Partnership structure is contemplated in a number of areas and, although it doesn't specifically mention education, one would expect that this would be closely looked at given it is capital intensive.

Conclusion

The scope for private sector involvement in the education sector in the Kingdom is massive given the demographics and sheer size of the potential market there. However it is still early days in the reform process with many of the specifics remaining unclear. Al Tamimi continues to closely monitor events at the various ministries to ensure that our clients are in the most up to date position and we will publish an update to this note when

Francis is an integral member of Al Tamimi & Company's Education team where he supports education providers in the Kingdom on all legal aspects of their operations. For further information please contact Francis (f.patalong@tamimi.com).

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Autonomy Principle of Letters of Credit: Some Practical Considerations under Bahrain Law

Letters of Credit ('LCs') have been the lifeblood of commerce since medieval times. The assurance to the seller that it is able to deliver goods without exposure to the risk of not being paid, while also protecting the buyer from the risk of paying for goods which they may otherwise not receive, has maintained the role and use of LCs as a fundamental method of payment in international sale and purchase transactions throughout the years. The basic structure of LCs has remained the same despite the continuous intervention of judicial authorities around the world to impose exceptions to their use. This article seeks to highlight that the principle of autonomy as envisaged in the UCP 600 in connection with LCs is being upheld by the courts in Bahrain.

The Autonomy Principle

It is widely recognised that LCs are by and of themselves independent instruments, and are autonomous from the underlying contracts on which they are otherwise based. Under this principle, the issuer of an LC is not concerned with the underlying transactions. The characteristic of independence is embodied in Articles 3 and 4 of the Uniform Customs & Practice for Documentary Credits ('UCP') which was issued by the International Chamber of Commerce and adopted by Bahrain.

In a typical transaction the applicant asks the issuing bank to assume absolute liability to pay the beneficiary under terms and conditions previously negotiated with the beneficiary. Banks, for the purpose of initiating this payment, will deal exclusively with documents and not with goods or services to which the documents may relate. Therefore, the payment by the issuer is based solely on a determination of the conformity of the documents presented by the claiming beneficiary, against the terms and conditions of the LC without reference

to the performance of the underlying contractual obligations by the applicant or the beneficiary.

In certain civil law jurisdictions, the underlying transaction is not treated as being entirely unconnected to the LC. The acceptance of the very concepts of autonomy and independence has been problematic because the principle of "cause" is deeply rooted in civil law tradition. Having said that, the courts have by and large adhered to the principle of autonomy when dealing with LCs in Bahrain.

The Fraud Exception

In practice, banks will assume absolute liability to pay the beneficiary based on a valid claim under an LC and such an obligation has encouraged beneficiaries to accept the LC as a method of payment throughout the years. In addition, when courts are asked to award injunctions against a bank to stop payment under an LC, the courts are reluctant to grant such an order restricting payment.

It is a widely adopted principle that the bank shall pay the beneficiary unless the applicant pursues an official claim to stop payment of the proceeds under the LC. Such an injunction is only issued by the courts in very limited scenarios.

While the Bahrain Law of Commerce No. 7 of 1987 does not include any specific exceptions pertaining to LCs, there have been recent examples of Bahraini courts accepting arguments based on fraudulent claims. In a recent judgment of Bahrain Chamber for Dispute Resolution, the judges emphasised clearly that without fraud being present and perpetrated by the beneficiary, there is no legal ground to block the payment under an LC.

Interpretation of Bahraini Law

For many years the position in Bahrain has been that the execution court judges have been applying Articles 306 and 307 of the Commercial and Civil Procedures Law No. 12 of 1971 on occasions where an application for an attachment on the proceeds of an LCs was sought.

Article 307(3) states: "The said court order shall be sought by virtue of a petition which shall state the reasons for the request. In the event referred to in the foregoing Article, the petition shall give a detailed list of the movables sought to be attached. Where the supporting documents are believed by the judge to be insufficient, he shall prior to issuing his order make a summary enquiry into the case."

However, under a recent landmark judgment of the Cassation Court in Bahrain the court has prohibited execution court judges from issuing orders to attach the proceeds of LCs based on Article 306 and 307. The Cassation Court was of the opinion that such a petition is limited to the right of submitting a petition to seize movable items which does not apply to the proceeds of LC.

It may also be difficult for the Court of Urgent Matters in Bahrain to accept that it has jurisdiction over an application for an injunction relating to the payment under an LC. In several cases, the summary judges sitting in the Court of Urgent Matters have been known to dismiss cases and refuse to award such injunctions on the basis that the remedy in question is not available in such court.

The above indicates the alignment of the Bahraini Court's approach with the international approach towards LCs as a mechanism of financing trade.

Conclusion

It is clear from the above, that the courts in Bahrain have embraced the principle of autonomy with only the fraud exception. This is generally in line with international practice and the UCP 600 and further illustrates Bahrain's position as a business friendly destination.

Al Tamimi & Company's Litigation and Banking & Finance teams regularly advises on matters relating to letters of credit. For further information please contact Noor Alrayes (n.alrayes@tamimi.com) or Rafiq Jaffer (r.jaffer@tamimi.com).

"It is a widely adopted principle that the bank shall pay the beneficiary unless the applicant pursues an official claim to stop payment of the proceeds under the LC. Such an injunction is only issued by the courts in very limited scenarios."

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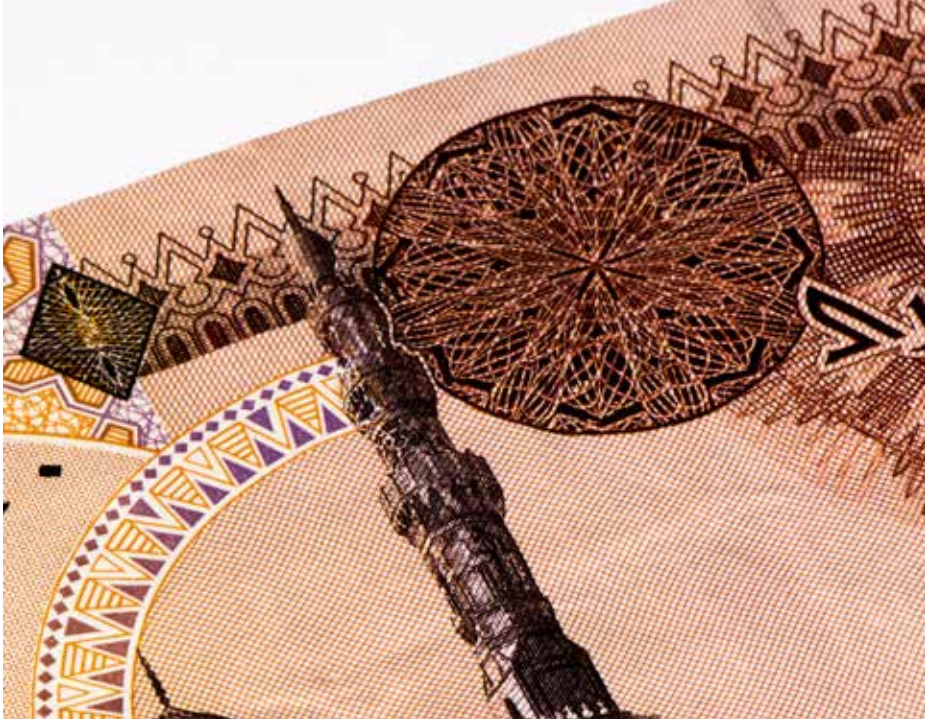

Why Should You Invest in Egypt?

The political events of the Arab Spring triggered a severe down-turn in the Egyptian economy, especially as foreign companies withdrew from the country and closed their affiliated branches. The Egyptian government responded with a variety of policies aimed in part at attracting foreign and domestic investment. The government exerted remarkable efforts to have the new Investment Law (no.72 of 2017) promulgated.

The Investment Law attempts to improve the climate for foreign direct investment. It removes previous constraints such as those on the repatriation of dividends, wire-transfers of hard currency, purchases of imported goods and foreign exchange currency conversions, alleviating concerns that foreign investors would be unable to remove their funds from Egypt.

We summarize here the new incentives introduced by the Investment Law, and explain how they follow the benefits created by the former Egyptian Investment Law.

Financial Benefits

Under the new Law, starting an investment will be exempted from stamp tax, most governmental expenses, and land/property registration expenses. More importantly, the Law stipulates that customs on all equipment and materials required for the manufacturing and establishment of investment projects will be decreased and unified at a rate of 2%.

Article 11 of the Law outlines tax exemptions. The exemptions vary depending on the area in which the investment project is established in accordance with the investment map (see below), the importance of the project, and the significance of the used manpower. A deduction ranging from 30% to 80% of the investment costs will apply. The term of investment cost will be defined and explained further in the Law's Executive Regulations (which are yet to be published).

Moreover, projects established in accordance with the abovementioned Article 11 may be entitled to establish customs ports allocated solely for such projects, to facilitate the importation and exportation process. Further, the Egyptian Government will be responsible for the payment of any infrastructure costs connecting facilities to the real property allocated for the project. In addition to such costs, the government will pay back half of the real property's value to the investor, in case the latter commenced the production within 2 years from the date of handing-over of the said property. In case the project has any strategic features, the allocation of the real property may be free of charge. Not to mention the Government's payment of part of the manpower's training's cost.

Labour Exceptions

The Law allows for the appointment of 2 expatriate employees for every 10 Egyptian employees after certain conditions are met, such as the unavailability of suitably trained national manpower. This is an exception to the provisions of Egyptian Labour Law which stipulate that the ratio of expatriates to Egyptian employees must be 1 to 9.

There is an exception to the foreigner-native employment ratio, which can be applied if the investment project is of a sufficient size and importance. In such a case, there will be no maximum limit on the number of non-Egyptians who may be employed. The forthcoming Executive Regulations will likely

further explain the criteria and conditions of the projects that fall under this exception.

On the other hand, the Law prefers Egyptian manpower to foreign expertise, and it requires investors to provide Egyptian employees with suitable training.

Moreover, the Law provides that the foreign investor will be provided with a residential visa in Egypt, which will be valid during the term of the investment project. The Law does not provide a maximum term limit for a residential visa. The Executive Regulations may in future set the limits and conditions, if any, to this provision.

Reintroduction and Restructuring of a Clear Investment Map

The concept of an investment map was first introduced in the former Investment Law (no.8 of 1997), but was removed afterwards. However, in practice, the Industrial Development Authority directed investors towards industrial zones where similar activities were based.

The new Investment Law revives the investment map concept. The map will be structured on the strategic needs of industries and will be organised into geographic zones. In order to ensure the map keeps up with investment needs, it will be revisited and updated periodically, and within a maximum of every three years.

In order to assist areas in need, the Law has been keen to facilitate the procedures for procuring land/real property in order to establish investment projects that satisfy the needs of a particular community. This is to be handled through the Investors Service Centre established at the General Authority for Investment.

Furthermore, depending on the type of investment project and how necessary it is, the Prime Minister is entitled to issue decrees allocating certain plots of land/real properties for certain investment projects in particular, such as infrastructure projects, renewable energy projects, and projects to be completed through a public-private partnership. In these circumstances, no further procedures are required in order to procure the land/property after the issuance of such decrees.

The Law also encourages investments in the fields of telecommunications, electronics manufacturing, technology and all related activities, whose details will be published in the Executive Regulations issued soon. Subject to the further details, importing required materials and equipment for the establishment of investment projects will also be exempted from taxes and customs. Likewise, the newly established technological zones will also be subject to the special tax benefits and incentives listed in the Law.

With respect to free zones, they are established in Egypt by virtue of a Law. The Prime Minister may allocate a free zone for certain particular projects having an exportation objective. Once an investor is granted with a license to establish its project in a free zone, the investor is enabled to enjoy incentives and benefits, without the need to be registered at the Egyptian Industrial Registry.

In a free zone, an investor may obtain a usufruct right on the plot of land on which the investor will establish the required manufacturing facility and/or any required real properties.

Establishing a project in a free zone enables the investor to be exempted from the applicable customs procedures, importation and exportation regulations, value added tax or customs tax. Moreover, any required materials, equipment,

supplies and transportation means (except for passenger cars) for engaging in the activity of the investment project are exempted from customs tax, value added tax and other taxes and expenses.

Additionally, projects established in free zones are exempted from applicable expenses and tax regimes applicable in Egypt.

Renewed Guarantees

In order to further assuage investor concerns regarding the Egyptian authorities, the Law maintains the same guarantees as the previous law did. It promises investors that government authorities will not be entitled to nationalize investment projects, expropriate them unless under certain fair compensation and conditions are met; and freeze or seize or impose guardianship except by virtue of a court order.

Furthermore, administrative authorities are not entitled to issue any decrees adding any financial burdens onto the investor, or cancelling any permit without seeking the approval of the General Authority for Investment.

It should be noted that the privileges, tax exemptions, incentives, and guarantees stipulated under legal regimes prior to the promulgation of the Law are maintained until their expiry and are not affected by the issuance of the Law. Since the Law is completed and interpreted by its Executive Regulations, it becomes practically enforceable upon the latter's issuance.

Dispute Resolution Mechanism

The Law establishes an arbitration and mediation centre that may be competent to settle any potential or existing investment related dispute, if it is expressly chosen and agreed upon by the involved parties.

The Law also establishes grievance committees in the General Authority for Investment that will be tasked with deciding on challenges related to refusals to grant approvals or license decisions, whether such challenged decisions are issued by the General Authority for Investment or any affiliated administrative authority. These committees will be headed by judges.

As for litigation, a ministerial committee will be formed for the purpose of settling any disputes arising between investors and any administrative authority or public sector entity. Another ministerial committee will be formed to solely settle contractual disputes entered into between investors and public sector entities.

Although the Law stipulates dispute resolution mechanisms, recourse to courts remains guaranteed to all investors, whether foreign or local.

The Investment Law attempts to improve the climate for foreign direct investment. It removes previous constraints such as those on the repatriation of dividends, wire-transfers of hard currency, purchases of imported goods and foreign exchange currency conversions, alleviating concerns that foreign investors would be unable to remove their funds from Egypt.

Conclusion

The promulgation of the Law is an undeniable governmental achievement that will be completed by the issue of complementary laws such as the Executive Regulations interpreting the Law, a new Competition Law, bankruptcy regulations, and regulations on the safe exit from the market. The Investment Law is considered a major step in the fertilisation of the Egyptian investment climate that has long been seen as excessively bureaucratic and barren.

The Egyptian Parliament is currently debating the content of the proposed Executive Regulations. We await the outcome of the legislative process and look forward to the embedding process of this new and exciting framework for investment in Egypt.

Al Tamimi & Company's Corporate Structuring team regularly advises on large multinational companies investing in Egypt. For further information please contact Ayman Nour (A.Nour@tamimi.com) or Farah El Nahas (F.ElNahas@tamimi.com).

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Conflict of Laws: an Iraqi Perspective

In a previous article published in the Law Update (May 2017) titled "Contract Drafting Insights from Iraq", we alluded to choice of law briefly and concluded that it is possible to allow for autonomy of the parties to deviate from the choice of Iraqi law. However, before making such a choice it is important that the parties should carefully consider the form and complexity of the chosen legal regime for practical reasons. In this Article, we will discuss the implications of such a choice of law. We will start by summarising the Iraqi conflict of law rules, then cover legal and practical considerations affecting Iraqi courts' decisions, and finally address specific sources of law relevant to international transactions.

Iraqi Conflict of Law Rules

Iraqi conflict of law rules are formal in nature. That is to say, they require courts to decide the applicable law by applying a simple formal test without going into the policy behind said law, its nature, or the intended effects of its application. Those rules can be summarised as follows:

- Iraqi law is the law used to characterise any given legal relationship;
- Real state matters are governed by the law of the state where such real state is located and this includes characterization as real state;
- Formal requirements for contract conclusion are governed by the law of the place of contract conclusion;
- Capacity is governed by the law of the state which the person is a national except that in pecuniary transactions concluded or performed in Iraq and there is a lack of capacity that is not apparent and cannot easily be detected by the other party capacity will be assumed;
- Regulation of juristic persons - companies, societies, or otherwise - is governed by the law of the state within which lies their actual head office, except that if such juristic persons have commenced their main commercial activity in Iraq, Iraqi law will apply;
- Iraqi law applies to marriage and personal status matters where one parties is an Iraqi and otherwise the law of the husband applies;
- Alimony is subject to the law of the debtor;
- Matters concerning selected guardianship, and other arrangements laid down for the protection of persons having no legal capacity or are of diminished capacity and those absent are governed by the law of the country to which such persons belong;
- Inheritance is governed by the law of the state which the deceased is a national;
- Contracts are governed by the law of the parties' common domicile or the law of the state within which the contract was concluded unless an agreement otherwise exists or where it is revealed from the circumstances that another law was intended to be applied;
- Non contractual obligations are governed by the place of events giving rise to such obligations but this does not apply to tort liability for acts outside Iraq that are legal under Iraqi law even if they are illegal under the law of the place where they were committed;
- Law of the place where a lawsuit is filed governs jurisdiction.

Legal and Practical Consideration Affecting Iraqi Courts' application of non-Iraqi Law

The first consideration affecting application of non-Iraqi law is that Iraqi courts cannot refuse to rule or dismiss a claim because the applicable legal regime provides no rule on the dispute or because the applicable law is ambiguous. The concept of denial of justice is interpreted in a way that prevents courts from dismissing non-Iraqi law simply because it is difficult to prove or ascertain. In other words, private parties do not have to prove non-Iraqi law as a fact, and in case of dispute over the existence and content of foreign law, courts will use diplomatic channels through Iraqi consulates to ascertain the applicable law. However, Iraqi courts have discretion in interpreting and applying a given legal text or concept. For example, courts may choose to elect legal experts to explain non-Iraqi law or proceed without requiring an expert report. When looking for experts to appoint, Iraqi courts can delignate this to the parties if they can reach an agreement or seek help from academic institutions and research centres inside or outside Iraq if needed. As indicated earlier, form and complexity of a given law affect the court's receptiveness to its application for practical rather than legal reasons. For example, statuary law is easier to prove using an authenticated text obtained via diplomatic channels while common law is more difficult to prove using this method, and courts can apply simple law directly after it is translated while complex law necessitates involvement of experts and makes matters more difficult for courts.

The second consideration affecting application of non-Iraqi law is that Iraqi courts will not apply such law if it is inconsistent with the public policy and morals of Iraq. As a result, there is always the difficult task of determining what is public policy and morals and whether a given legal rule infringes it or not. One way to solve this problem is to consider all Iraqi mandatory rules to be part of public policy; this would cover all instances where courts would disregard non-Iraqi law. Examples of such mandatory rules include time limitations of action, rules of jurisdiction, labour law, commercial agency registration requirements, caps on interest, and the prohibition on agreements to exempt from tort liability. However, this test of public policy, while being relatively easy to apply, representative of Iraqi courts' reasoning, and of practical use, is not always accurate. In some cases, a successful argument can be made that mandatory rules are not part of public policy and therefore can be disregarded if another legal system is applicable. For example, such an argument can be made for Iraqi mandatory rules such as the requirement to send notice before filing a claim of damages or the disregard for agreed on liability caps in case of claims of fraud or gross error.

The third consideration affecting application of non-Iraqi law is that Iraqi courts only apply substantive rules and not procedural rules. Iraqi law does not offer a clear-cut definition of what is procedural or substantive. However, this rule aims to free courts from having to follow procedures different from the ones followed in regular adjudication to avoid inconsistency or irregularity and because procedural rules are not seen as affecting the outcome of a case. For example, Iraqi evidence law will always apply regardless of the applicable legal regime.

Sources of Law Relevant to International Transactions

There are three main sources of potentially applicable legal rules beside Iraqi law, which play a role in cross border transactions. Those sources are foreign state laws, contractual instruments, and International treaties. It should be noted that, foreign state laws and international treaties may be applicable because of, or despite, party autonomy while contractual instruments such as the UCP for documentary credits, the incoterms for price-delivery terms, and FIDIC for contracts need to be agreed on to have effect. This grouping is useful for another reason because each results in different analysis if they conflict with national Iraqi law. Unlike the public policy analysis mentioned above, contractual instruments cannot change mandatory rules even if such rules are not part of public policy because they are restricted to filling in gaps and changing default rules. Another noteworthy caveat specific to the use of contractual instruments in government contracts is that the tendering regulations used by the Iraqi government contain many mandatory rules that can override, alter, or supersede said contractual instruments. The law applicable to government contracts also directs to specific contractual instruments

"The law applicable to cross border legal relations in Iraqi courts is subject to many legal and practical considerations. Such considerations include party choice (if any), the source of law being argued (state law, contractual instruments, or international treaties), the legal rule itself (if it's procedural or substantive), the form and complexity of the legal argument, the presence of mandatory rules in Iraqi law, and if such mandatory rules are part of public policy or not."

that are an assumed part of contracts, even when they are not expressly chosen, because of mandatory language in government contracting regulations requiring government-contracting parties to choose said instruments.

International treaties can present unique challenges in Iraq. Iraqi treaty law has changed in 2015 to require ratification for all treaties to come into force unlike previous law before 2015. The new law did not address old treaties that Iraq acceded to (signed and deposited an instrument with the treaty depository) but did not ratify (pass a ratification law by the legislature) as the latter was not a condition then. Treaties in this legal status were already problematic to enforce under the old treaty law and this situation did not change. Fortunately, this only affects few treaties such as the United Nations Convention on Contracts for the International Sale of Goods.

Parties seeking to enforce an international treaty in Iraq will face another challenge if the treaty contradicts domestic Iraqi law. Here, we must note that the Iraqi constitution and treaty law is silent on the hierarchy of treaties and domestic law. The resulting analysis is slightly different from what would be expected if an express rule existed. First, courts may check if there are special rules stipulating that a given treaty or law override and supersedes any contradicting legal language. Examples of such rules can be found in the labour law, unless more rights are given in a treaty, and in some investment treaties. If no such rule can be found, statuary interpretation rules may be used to resolve the conflict because a treaty will be treated as national law by virtue of its ratification law. Examples of interpretation rules include cannons such as "more specific rules override general ones" and "later law repeals or amends earlier law".

Conclusion

The choice of law applicable to cross-border legal relations in Iraqi courts is subject to many legal and practical considerations. Such considerations include party choice (if any), the source of law being litigated (state law, contractual instruments, or international treaties), the legal rule itself (if it's procedural or substantive), the form and complexity of the legal argument, the presence of mandatory rules in Iraqi domestic law, and whether such mandatory rules are part of public policy or not. Drafting a good and effective choice of law clause must take into account all of these considerations as well as the nature of the transaction and intersections with the domains of certain Iraqi laws.

Al Tamimi & Company's Iraq litigation team regularly advises on international transactions and or disputes. For further information, please contact Ali Al Dabbagh (A.AlDabbagh@tamimi.com) or Jawad Khalaf (J.Khalaf@tamimi.com).

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How to Release Vessels from Arrest in Kuwait

Kuwait is often seen as an unfriendly jurisdiction for 'vessel arrest' due to a number of factors, including the limited number of ports and the limited availability of space. Whilst the law generally permits vessel arrest, it is rather difficult to implement when compared to neighbouring jurisdictions, such as the UAE.

Nonetheless, the Kuwaiti Maritime Trade Law No. 28 of 1980 (the "Maritime Law") regulates the concept of vessel arrest and sets out the legal basis upon which vessels may be the subject of precautionary and executory arrests. It also sets out the requirements for the release of arrested vessels.

We have, in a previous article, described the legal procedures that must be followed in order to place a precautionary arrest on vessels in Kuwait. This article shall discuss the manner of effecting the arrest, both from a legal and practical perspective.

Although, the Kuwaiti legislature sets out the mechanism for the protection of vessels, in accordance with the Kuwaiti Maritime Trade Law, the latter does not set out the procedures involved in releasing arrested vessels, save for Article 76 of the Maritime Law, which requires a guarantee or any other warranty sufficient to satisfy the debt in question.

What are the procedures for releasing a vessel?

The Maritime Law requires the existence of specific debts in order to arrest a vessel, which are detailed respectively in Articles 73, 74, 75, and 79. 'Precautionary arrest' may be enforced on the vessel by an order of the judge pro tempore of the Kuwait Court of First Instance, though this arrest shall only be made for the satisfaction of a 'marine debt'. Marine debt in this context refers to a claim arising out of one of the circumstances cited in Article 73(2) of the Maritime Law.

Article 76 of the Maritime Law stipulates that the judge pro tempore of the Court of First Instance shall grant an order releasing the vessel if a guarantee, or any other warranty, sufficient to satisfy the debt is offered by the debtor. While Article 74(2) of the same law places an exception for releasing the vessel and states that;

"*Release from arrest may not be ordered, if the arrest is sought due to marine debts mentioned specifically in items 14 and 15 of the second paragraph of Article 73," which are "the dispute in respect of the common property of a vessel, possession, utilization thereof; or of the rights of common proprietors in the amounts resulting from the utilization of the vessel, as well as the Marine mortgage*".

In this instance, the presiding judge may permit the vessel owner to continue use of it, if he is able to offer a sufficient guarantee; alternatively the judge may arrange for the management of the vessel during the arrest period in method manner determines at his discretion.

In relation to the procedure involved in releasing vessels, the Maritime Law is silent about this specific matter. However, the Kuwaiti Civil & Commercial Pleadings Law No. 38 of 1980 (the "Procedures Law") has identified the required procedures for releasing vessels. In this regard, Article 218 of the Procedures Law states that an amount of money equivalent to the value of the debt may be deposited with the treasury section of the Execution Department. This deposit shall facilitate the releasing of the vessel and the subsequent satisfaction of the debts with the deposit.

The arrestee may also present an application to release the precautionary arrest placed on a vessel before the competent judge (the president of the First Instance Court) provided that an unconditional bank letter of guarantee with no time restrictions is also presented. It is preferred that the guarantee is issued by a Kuwait first class bank covering the value of the debt. The Judge will then issue his decision upon consideration of the application and the letter of guarantee.

In cases where the letter of guarantee satisfies the necessary requirements, the judge will issue his decision to deposit the guarantee in the court's treasury, pending a final determination on the subject of the claim, whether this be judicially or by way of an amicable settlement, and to release the vessel from arrest. Upon issuance a decision to release the vessel, the arrestee may then obtain the executory form of the relevant judgment and provide the same to the court bailiffs, who will undertake the necessary formalities required for the releasing of the vessel. The court bailiff will attend the Marine Inspection Department and issue minutes of releasing the vessel. The latter department will notify the remaining competent authorities of the release of the vessel from arrest and confirm that there is no objection to the sailing of the vessel.

The Courts in Kuwait have the discretionary power to decide whether or not the guarantee offered by the debtor is sufficient to secure the subject debt. The Kuwaiti courts will usually only accept a bank 'letter of guarantee' from a local authorised Kuwaiti bank as sufficient security, with alternative forms of guarantee often being rejected. The P&I Clubs' letters of undertaking are also often rejected as security for the release of a vessel (discussed further below). Furthermore, if the owner of the vessel wishes to release the vessel from arrest without presentation of a bank letter of guarantee in a case where the arrest placed on the vessel is undoubtedly a wrongful arrest, whether due to procedural or substantive reasons (e.g. payment of the debt), the arrestee may file an Urgent Case before the Judge of Execution seeking that the arrest placed on the vessel be considered null and void. The judgment rendered by the judge in such a case is promptly executable without bail and without awaiting a final judgment from the Court of Appeal, in cases where the arrestor files an appeal.

The arrestor has the right to challenge the releasing of the vessel in view of the insufficiency of the guarantee deposited in the event that the arrestor considers that the guarantee deposited by the arrestee pursuant to a court order is inadequate security, whether in view of its quantum or terms. The arrestor is entitled to file an obstruction against enforcement of the court order permitting the release of the vessel.

Accordingly, the court order permitting the release of the vessel shall not be executed pending a determination on the obstruction action filed. In order for the obstruction action to have this effect, the action should be filed before the court of execution before execution of the order. Upon filing the obstruction action, a hearing will be scheduled before the Jude of Execution as soon as practicable. Upon conclusion of the pleadings, a judgment will be issued either suspending execution of the order for release of the vessel (i.e. the vessel remains under arrest) or rejecting the obstruction action and proceeding with the execution of the order for releasing the vessel. In such a case, the vessel is able to continue sailing.

It should also be noted that there is no specific timeframe for proceedings relating to the release of a vessel from arrest, and the court's decision may be issued on the same day, or within the next three days, if all the necessary documents are available. It is recommended that the arrestee deposit the required bank letter of guarantee at the treasury section of the Execution Department as soon as possible to expedite the release of the vessel and thereby minimise disruption to the arrestee owner's business.

This article is intended to provide you with a brief overview of the procedures for the releasing of vessels under arrest in Kuwait. In our next article, we shall discuss the mechanisms for the executory arrest of vessels and the auction of vessels following arrest.

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Oman Implements the GCC Trademarks Law

On 25th July 2017, the Royal Decree No. 33 of 2017 promulgating the Law of Trademarks for the GCC States ("GCC Trademarks Law") was issued in Oman, and it came directly into effect after its publication. Oman has become the fourth GCC country to implement the GCC Trademarks Law. Nevertheless, Oman has yet to publish the implementing regulations of the GCC Trademarks Law; hence, it is not clear how this new law will be implemented in Oman.

As a background, the GCC Trademarks Law was initially submitted by the GCC General Secretariat and approved by the GCC Trade Cooperation Committee in 1987, but it was only used by the Member States for consultative purposed and there has been no direct application of the law. Further amendments were made in 2006 and 2013 and the law was published in the GCC Official Gazette. Nevertheless, the Trademark Law did not come into force, until the Implementing Regulations were issued in December 2015.

Since the issuance of the Implementing Regulations, Saudi Arabia, Bahrain and Kuwait have fully enforced the GCC Trademarks Law and it replaced their national trademarks law. Now that Oman has now implemented the GCC Trademarks Law as well, the UAE and Qatar are the remaining two states to left to implement it. Qatar issued Law No. 18 of 2007 ratifying the GCC Trademarks Law, which was later repealed by Law No. 7 of 2014 on 8 June 2014 which provides that it will automatically become effective in Qatar, six months after the issuance of the Implementing Regulations. Qatar has yet to publish the Implementing Regulations in its official gazette; hence the law has yet to come into force in Qatar. As for the UAE, it

issued the Federal Decree No. 52 of 2007 ratifying the GCC Trademarks Law; however, no further ratification was made for the amended form of the GCC Trademarks Law of 2013. It still remains unclear when the UAE will issue or ratify the amended GCC Trademarks Law and its Implementing Regulations.

In this article we will highlight the main features of the GCC Trademarks Law that differ from the Oman national Trademarks law.

The Main Features of the GCC Trademarks Law:

Well-known Trademarks

The GCC Trademarks Law provides clear criteria as to the determination of well-known trademarks. Such criteria are similar to those provided by the WIPO Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks. In summary, for a mark to be declared as well-known, consideration shall be taken for the extent of recognition by consumers resulting from the marketing efforts of the trademark owner; the duration and extent of the registration and use of the mark or the number of countries where the trademark has been registered or recognized as a well-known mark; or the value of the mark and the extent to which such value helps promote the products or services to which it is applied.

Examination

The GCC Trademarks Law and its Implementing Regulations provide a certain timeline for the examination of trademark applications, which according to Article (6) of the Implementing Regulations is ninety days from the date of filing. This is a very good development as it expedites the process and will help in clearing any backlogs at the Trademarks Office. In addition, in the event that the Trademarks Office issues a request after examination of an application, a response shall be made within ninety days. While it is a long period, it should be sufficient for applicants to prepare any documents requested or apply any conditions requested by the Trademarks Office.

Appeals to the Trademarks Office's decision rejecting an application shall be filed within sixty days to the Objections Committee. The decisions of the Objections Committee are also subject to appeal to the court within sixty days.

Oppositions

The GCC Trademarks Law provides period of sixty days for opposition against published trademark applications. Currently the opposition period in Oman is ninety days.

Response to opposition shall be made within sixty days of notification, otherwise, the application will be considered abandoned. A hearing session could be assigned and the Trademarks Office shall issue its decision within ninety days from the hearing session.

Another change in the process of the opposition according to the GCC Trademarks Law is that the trademarks Office's decisions issued in oppositions shall be subject to appeal directly to the Court. The current practice is that decisions in oppositions are appealable to a Trademarks Office within the relevant Ministry, with a further chance to appeal to the Court afterwards.

Penalties

The penalties for trademark infringement have been increased. According to the GCC Trademarks Law, the penalties are as follows:

- A fine between OMR 500 (approx. USD 1,300) and OMR 100,000 (approx. USD 260,000) and/or imprisonment for between one month and three years where a person counterfeits a registered trademark in a manner which misleads the public, a person who in bad faith used a counterfeit trademark and who affixes this mark to its products in bad faith; and
- A fine of between OMR 100 (approx. USD 260) and OMR 10,000 (approximately USD 26,000) and/or imprisonment for between one month and one year when a person knowingly sells goods which contains a counterfeit or unlawfully affixed trademark.

Fees

The Implementing Regulations of the GCC Trademarks Law provide a list of official fees; however, it is left to the Member States to determine whether to charge its own official fees. So far the countries that have implemented the GCC Trademarks Law have seen changes in its official fees, which resulted in significant increases. Until now there is nothing announced with respect to Oman official fees, but they are expected to be increased once the Implementing Regulations are issued.

Until the Implementing Regulations are issued, it remains unclear how the GCC Trademarks Law will be implemented in Oman.

While the GCC Trademarks Law does not provide a single registration system, by which a single application will provide protection in all Member States, having a unified trademarks law is a good development, as it allows right holders to enjoy the same level of protection across the Member States, and it sets out a single set of provisions with respect to the registration and enforcement of trademark rights in all Member States, which will help them in managing their portfolios in the region.

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Overview of the Judicial Bodies at the Saudi Arabian Football Federation

The Saudi Arabian Football Federation (SAFF) was founded in 1956 and in the same year joined the Federation Internationale de Football Association (FIFA) and the Asian Football Confederation (AFC). The SAFF is the Saudi governing body for football in the Kingdom of Saudi Arabia. According to Article 49 of the Statutes of the SAFF judicial committees are composed of the following:

A. Disciplinary Committee;
B. Ethics Committee and
C. Appeal Committee.

The members of the judicial bodies of the SAFF may not be members of the Executive Board of the SAFF, the standing/ad-hoc committees of the SAFF or of any other SAFF bodies or clubs. The Disciplinary Committee, Ethics Committee and Appeal Committee consist of a Chairman, a Deputy Chairman and three members. The Chairman and Deputy Chairman are required to have legal qualifications with reliable knowledge, capabilities and experiences with the sport of football. The Executive Board of the SAFF appoints the Chairman, Deputy Chairman and members of the judicial bodies for a term of 4 years. This mandate is renewable.

The responsibilities and functions of the Disciplinary Committee and Appeal Committee are set out in the SAFF Disciplinary Regulation. The SAFF has not yet issued regulations for the Ethics Committee.

Disciplinary Committee

The Disciplinary Committee is empowered to pronounce the sanctions described in the SAFF Statutes and the SAFF Disciplinary Regulation. It has jurisdiction over persons including but not limited to members of the SAFF, officials, clubs, players, referees, intermediaries (formerly referred to as "agents") and other parties set out in the Disciplinary Regulation. The Disciplinary Committee has a wide power to sanction any breach of the SAFF regulations. The statutes and Disciplinary Regulation of the SAFF regulate and specify sanctions, for both natural and legal persons including: warning, reprimand, fine and requiring the return of awards. For natural persons only: caution, expulsion, suspension for a match or for a number of matches, banning from the dressing rooms and/or the substitutes bench, banning from entering a stadium and banning on taking part in any football related activity. For legal persons only: transfer ban, registration ban, playing a match without spectators, playing a match on neutral territory, ban on playing in a particular stadium, annulment of the result of a match, match replay, forfeit, deduction of points and relegation to a lower division.

According to the Disciplinary Regulation, all decisions of the Disciplinary Committee are appealable before the Appeal Committee, except for those decisions where the sanction is: a warning, a reprimand, suspension for less than three (3) matches or of up to two (2) months, a fine of less than SAR 50,000.00 imposed on a club, or a fine of less than SAR 20,000.00 imposed on any other party.

Ethics Committee

The responsibilities and functions of the Ethics Committee include matters related to football ethics and conduct. Its purpose is to protect football from risks, methods and practices that are unacceptable on ethical, social and sporting grounds when committed by members or officials. In addition, the Ethics Committee has the power to investigate issues of corruption, fraud, bribery, forgery and cheating, manipulating match results, football integrity and reputation. The performance of this committee is subject to the SAFF Ethics Regulation as well as FIFA's and AFC's respective regulations. Decisions of the Ethics Committee can be appealed before the Appeal Committee.

Appeal Committee

The Appeal Committee has jurisdiction to hear appeals that are not affirmed as final in accordance with the relevant regulations.

The Appeal Committee is responsible for hearing appeals against decisions of the Disciplinary Committee and the Ethics

Committee. From 1 November 2016 the Appeal Committee has no further jurisdiction to hear an appeal from any decision issued by the National Dispute Resolution Chamber (NDRC) because the Saudi Sport Arbitration Centre formally started to hear such cases from 1 November 2016.

National Disputes Resolution Chamber

In 2015 SAFF established a National Disputes Resolution Chamber (NDRC) to adjudicate in national disputes involving clubs, players and intermediaries. The NDRC is composed according to the provisions of the NDRC Regulations issued by SAFF and the NDRC Standard Regulations published by FIFA. The NDRC is empowered to deal with all national disputes that may involve clubs, players, coaches, intermediaries and disputes regarding the contracts of football professionals, training compensation, solidarity mechanisms and contracts of intermediaries. The decisions of the NDRC can be appealed before Saudi Sport Arbitration Centre within twenty-one days from notification.

Bandar Al Hamidani (b.alhamidani@tamimi.com) is a Senior Associate in Corporate Commercial and a key member of the firm's dedicated Sport's Law practice. Bandar has extensive experience with respect to the laws relating to international sports law and Saudi sports law. Bandar is appointed as an Arbitrator before Court of Arbitration for Sport (CAS) and Saudi Sport Arbitration Centre. Bandar is now the Chairman of the Disciplinary Committee of SAFF, Deputy Chairperson of the AFC Entry Control Body and a member of the Legal Committee at Arab Gulf Football Federation.

Al Tamimi & Company Appoints New Head of Technology, Media and Telecommunications

We are pleased to announce the appointment of Stuart Davies as the new Head of the Technology, Media and Telecommunications (TMT) practice based in the Dubai office.

Prior to joining Al Tamimi, Stuart gained extensive international experience working in private practice and in-house in London and Asia; most recently working for Ooredoo (previously Q-Tel) in Qatar, where he undertook various roles in the group's legal team and its New Business Unit. He has worked with a wide range of clients locally and internationally. Stuart works on a broad range of corporate and commercial matters across TMT, advising on large telecommunications projects, strategic digital partnerships, infrastructure, vendor agreements and data centres. Stuart also has significant media experience and within the technology space, he has expertise on fundraising, payment solutions, e-commerce and OTT messaging.

Stuart's appointment will further strengthen the TMT practice and his extensive experience and market knowledge will enable him to share valuable insight into how we can continue to support our clients.

With a core presence in the Dubai International Financial Centre, and now with specialist colleagues in various Al Tamimi offices across the region, Al Tamimi & Company's TMT practice regularly acts as a one-stop source of advice on Middle East technology, media and telecommunications matters.

Stuart Davies
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Saudi Arabia and Japan ink MOU in support of Vision 2030

This month the Saudi Council Of Ministers has approved an MOU relating to anti-counterfeiting measures, which was entered into by Saudi Arabia and Japan, at the "Saudi Arabia-Japan Business Forum for Saudi Arabia-Japan Vision 2030" in Tokyo, Japan, in September 2016.

This MOU will aid to support the Saudi-Japan Vision 2030 and forge a strong bilateral relationship between Saudi Arabia and Japan, in addition to facilitating trade transactions between the two countries.

The MOU of the cooperation with regards to anti-counterfeiting measures aims to identify aspects and areas of cooperation between the two countries with respect to the protection of intellectual property relating to commercial products in both countries. The two countries agree to cooperate on the exchange of experiences and relevant information, to holding related trainings and seminars, and to share relevant information in relation to anti-counterfeiting measures.

The approval of this MOU shows great progress in protecting commercial trade between the two countries, and also in protecting the intellectual property rights of both Saudi Arabian and Japanese companies.

14
JUNE

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The Institute of Chartered Accountants of India (ICAI) Iftar

On Wednesday, 14th June Essam Al Tamimi, Senior Partner & Founder, Al Tamimi & Company gave a very insightful presentation at the ICAI Dubai Chapter technical session and Iftar.

The event was a great opportunity to bring together a large number of ICAI members and discuss the key developments of the New UAE Commercial Companies Law.

The New Law as approved, introduces some incremental reforms to the existing Companies Law, but mostly maintains the fundamental framework and features of the old provisions, such as the foreign ownership restriction and pre-emption rights in LLCs.

Essam discussed some of the key concepts from the New Law which included the rules governing:

- Public Joint Stock Companies ("PJSC")
- Private Joint Stock Companies ("PRJSC")
- Takeover Rules
- Employee incentive share schemes
- Representative offices
- CSR

During the interactive Q&A session Essam also covered the registration of wills in the Dubai Courts and the DIFC.

United Arab Emirates
Ministry of Justice

47th Year
Issue No. 617
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29 June 2017

REGULATORY DECISIONS OF THE CABINET

18 of 2017	Approving the list of terrorists and terrorist organizations.
19 of 2017	On fees for media services.
20 of 2017	On the approval of common standards for licensing healthcare professionals across the UAE.

MINISTERIAL DECISIONS

- From the Ministry of Economy:

1/104 of 2017	On the registration of Al Shamikha Consumers Cooperative Society.
213 of 2017	Announcing a revision of the Articles of Association of Gulf Capital PSC.
539 of 2017	On rules for private joint stock companies implementing the Commercial Companies Law.
540 of 2017	On the registration of Al Wathba Consumers Cooperative Society.

ADMINISTRATIVE DECISIONS

- From the Federal Transport Authority – Land & Maritime:

37 of 2017	Amending the requirements for registering, licensing and using leisure craft.
39 of 2017	Amending the executive regulations of Federal Law No. (9) of 2011 on land transport.

- From the Telecommunications Regulatory Authority:

24 of 2017	On the fees for SMS messages requesting charitable donations.
25 of 2017	Approving the Regulatory Policy and Procedures for Internet Access Management - Version 1.0.
34 of 2017	Approving the Regulatory Policy and Procedures for Price Control.

- From the Securities & Commodities Authority:

57/R.T of 2017	On adjustment of position mechanisms for investment funds.
58/R.T of 2017	On adjustment of position mechanisms for promotion and introduction activities.
-	Certificate of approval of amendment of the Articles of Association of Unikai Foods PJSC.
-	Certificate of approval of amendment of the Articles of Association of National Bank of Ras Al Khaimah PJSC.
-	Certificate of approval of amendment of the Articles of Association of Oman Insurance Company PSC.
-	Certificate of approval of amendment of the Articles of Association of Emirates NBD PJSC.

- Certificate of approval of amendment of the Articles of Association of National Bank of Fujairah PJSC.
- Certificate of approval of amendment of the Articles of Association of Dubai Investments PJSC.
- Certificate of approval of amendment of the Articles of Association of Julphar (Gulf Pharmaceutical Industries) PSC.
- Certificate of approval of amendment of the Articles of Association of Abu Dhabi Commercial Bank PJSC.
- Certificate of approval of amendment of the Articles of Association of Emaar Malls PJSC.
- Certificate of approval of amendment of the Articles of Association of Dar Al Takaful PJSC.
- Certificate of approval of amendment of the Articles of Association of Marka PJSC.

United Arab Emirates
Ministry of Justice

47th Year
Issue No. 618
19 Shawwal 1438 AH
13 July 2017

FEDERAL DECREE-LAWS

1 of 2017 Amending Federal Law No. (37) of 2006 on private security companies.

2 of 2017 On the immunity from seizure and confiscation of foreign cultural objects.

United Arab Emirates
Ministry of Justice

47th Year
Issue No. 619
7 Dhu al-Qidah 1438H
31 July 2017

REGULATORY DECISIONS OF THE CABINET

21 of 2017 On the fees for various services provided by the Securities and Commodities Authority.

22 of 2017 On licenses for media-related activities.

23 of 2017 On media content.

24 of 2017 Amending Cabinet Decision No. (12) of 2012 approving the performance management policy for Federal Government employees.

25 of 2017 On the "Made in UAE" mark regulation.

26 of 2017 Implementing regulations of Federal Law No. (10) of 2015 on food safety.

MINISTERIAL DECISIONS

- From the Ministry of Justice:

465 of 2017 On the formation of the Ramadan 1438H Moon Sighting Committee.

518 of 2017 Concerning the agreement for the protection of the rights of children in custody.

575 of 2017 On the formation of the Shawwal 1438H Moon Sighting Committee.

- From the Ministry of Human Resources & Emiritisation:

525 of 2017 On the allocation of services to each category of fees for services provided through the Ministry's systems.

- From the Ministry of Health & Prevention:

680 of 2017 *No description*.

- From the Ministry of Climate Change and Environment:

275 of 2017 Amending the Schedule of Reportable Diseases appended to Federal Law No. (8) of 2013 concerning the Prevention and Control of Infectious and Epidemic Diseases Affecting Animals.

377 of 2017 On the denomination of new plant varieties and plant breeders' rights.

ADMINISTRATIVE DECISIONS

- From the General Pension and Social Security Authority:

12 of 2017 On the extension of an employee's assignment.

- From the Emirates Identity Authority:

2 of 2017 On the delegation of authority to the Chairman of the Executive Council.

- From the Securities & Commodities Authority:

18/R.M of 2017 On the rules for mergers and acquisitions of public joint stock companies.

22/R.M of 2017 Amending the regulations for issuing and offering shares of public joint stock companies.

- Certificate of approval of amendment of the Articles of Association of National Marine Dredging PJSC.
- Certificate of approval of amendment of the Articles of Association of Deyaar Development PJSC.
- Certificate of approval of amendment of the Articles of Association of International Fish Farming Holding Company PJSC.
- Certificate of approval of amendment of the Articles of Association of Arabtec Holding PJSC.
- Certificate of approval of amendment of the Articles of Association of Arabtec Holding PJSC.
- Certificate of approval of amendment of the Articles of Association of Etihad Aviation Group PJSC.
- Certificate of approval of amendment of the Articles of Association of Etihad Aviation Company PJSC.
- Certificate of approval of amendment of the Articles of Association of Union Insurance PSC.
- Certificate of approval of amendment of the Articles of Association of Amanat Holdings PJSC.

About Us

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

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

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

17 offices

9 countries

60 partners

330 lawyers

670 staff

45 nationalities

Our Accolades

Client Services

PRACTICES

Arbitration
Banking & Finance
Capital Markets
Commercial
Competition & Antitrust
Construction & Infrastructure
Corporate/M&A
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