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LAW UPDATE

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In this Issue

Welcome to the June/July edition of *Law Update*, our 300th issue!

July saw the firm make a number of new appointments which we were very proud to announce.

We welcomed our newly promoted partners; Divya Abrol Gambhir (Dubai, UAE), Foutoun Hajjar (Bahrain), Omar Handoush(Kuwait), Ahmad Saleh (Dubai, UAE), Jeremy Scott (Dubai, UAE) and Willem Steenkamp (Dubai, UAE).

We also welcomed Alex Ghazi, former Group General Counsel and Company Secretary for Arabtec Holding PJSC to the team as Head of our Abu Dhabi office.

The team in our Cairo office was further enhanced with the appointment of Hossam Garmon who joined the firm as Partner and Head of Banking & Finance (Egypt).

These key appointments take the total number of partners to 60, which further strengthens our service offering, regional footprint and cross-border capabilities.

This month *Law Update* focuses on innovation, digitisation and advancements in technology. Our Technology, Media & Telecommunications (TMT) practice, along with colleagues from other practice areas, have provided a number of interesting articles on topics relevant to technological developments and the swift move towards innovation across the region. A very hot topic at the moment is Fintech and Regtech in the Middle East, and we have an interesting article on that on page 41. Other thought-provoking articles include a guide to deals in film financing (page 49) and practical guidelines for minimising risks from cyber attacks (page 70). Please feel free to contact Nick O'Connell (Partner - TMT) via email, n.oconnell@tamimi.com with any queries on matters falling within the broader technology, media and telecommunications space.

Other noteworthy articles include the first enforcement by the DIFC Courts of a US judgment (page 31). Our Corporate team takes a look at the law and Dubai's grand plan in relation to 'Blockchain' (page 30). Our regional jurisdiction updates start on page 86 with our team in Bahrain looking at busting the myth on cheques. We provide an overview of introduction of a new comprehensive sports law in Egypt. The Kuwait team highlight collision liability under Kuwaiti maritime law and we have a very interesting article by our KSA team on socialising at work and the implication of using social media in the workplace in the Kingdom.

As always, I welcome your feedback and suggestions. If you would like further information on any of the article please get in touch. We hope you find this edition of *Law Update* an informative and enjoyable read.

I also take this opportunity to wish you and your families a relaxing and pleasant 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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Abu Dhabi Court of Cassation's Interpretation of Conflicting Contractual Clauses: A Specific Arbitration Clause Overrides a General Clause that Provides for Court Jurisdiction

It is an established principle that a court of substance has the discretionary power to interpret the clauses of an agreement, provided that such interpretation considers the agreement as a whole in understanding the parties intent. In a judgment handed down in October 2014, the Abu Dhabi Cassation Court confirmed the application of another rule available to Courts or arbitrators in interpreting conflicting provisions in an agreement; namely that specific clauses override general clauses dealing with the same subject matter.
In this judgment the Cassation Court confirms the application of the foregoing rule where the conflicting clauses provided for recourse both to State Courts and arbitration for the resolution of their disputes.

The Court further addressed the distinction between the required authority for the validity of an arbitration agreement and the authority required by Article 58 of the Civil Procedures Law to appoint an attorney to represent a company in the arbitration proceedings, which does not have any legal effect on the validity of an arbitration agreement.

The facts of the case

At the Court of Cassation, the Respondent was a manager and a shareholder of a limited liability company ("Company").

The Respondent, in his capacity as the manager of the Company, entered into a sub-contractor agreement with another company ("Contractor") for the performance of certain construction works for the value of AED 2 million ("Agreement").

The Company completed all works as per the Agreement; however, the Contractor failed to settle all the Company's invoices.

The Respondent, in his personal capacity and as a proxy of the other two shareholders in the Company, assigned their shares in the Company to other parties by virtue of a notarised Memorandum of Association ("MOA"). In the Memorandum of Association, it was agreed that any rights derived or stemming from contracts or transactions concluded prior to the assignment of the shares would be kept by the assignors. It was further agreed that the assignors have the full right and capacity to seek redress in connection with such contracts or transactions without the prior consent of the assignees.

The Respondent issued a claim at the Abu Dhabi Court of First Instance ("CFI") seeking the appointment of an arbitrator to look into the dispute between him and the Contractor. The CFI appointed an arbitrator who later issued an award against the Contractor.

The Respondent then filed a claim for the ratification of the Arbitration Award ("the Award") at the CFI. The Contractor filed a counter claim seeking to have the Award annulled.

The Abu Dhabi CFI ratified the Award. Dissatisfied with this outcome, the Contractor appealed the decision. On appeal, the Abu Dhabi Appeal Court upheld the CFI judgment. The Contractor therefore filed a petition to the Abu Dhabi Court of Cassation ("CC") challenging the lower Courts' judgments.

On Appeal to the Court of Cassation

The Contractor's argument before the CC was twofold:

a. First, the Contractor argued that the Appeal Court erred in its decision to uphold the ratification of the Award despite the Contractor's claim for an annulment of the Award on the ground that the Company's representative (i.e. the Respondent) did not have the requisite capacity to either enter into and bind the Company to the arbitration agreement or to sign the Power of attorney delegating that power to the appointed attorney to represent the Company in the arbitration proceedings.

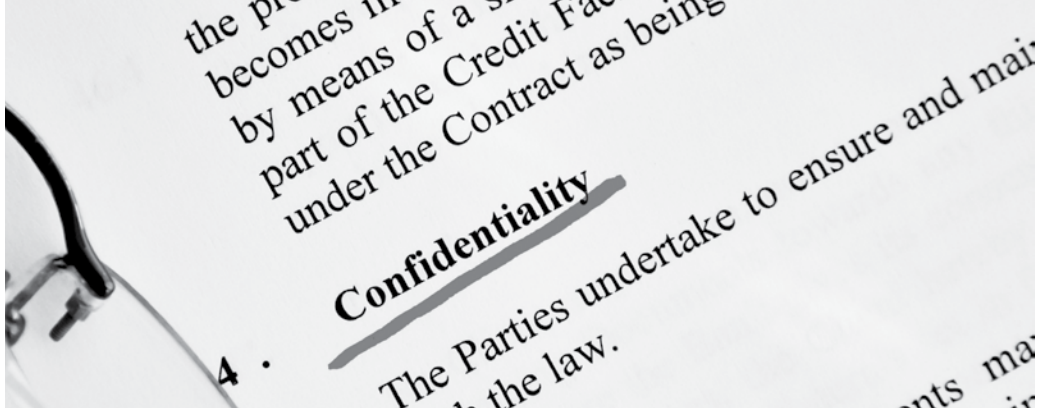
   The Contractor argued that it is evidenced from the Company's Memorandum of Association, appointing the Respondent as the Company's manager; nevertheless, the MOA did not authorise the Respondent to enter into arbitration on behalf of the Company. The Contractor further asserted that Article 58 of the UAE Civil Procedures Law ("CPL") requires an express and specific authorisation to enter into arbitration agreements. The Respondent, albeit not authorised as such, signed the Agreement on behalf of the Company and further appointed an attorney to represent him and the other shareholders.

b. Secondly, that the decision being challenged contradicted certain provisions of the law and the Court had further erred in its application of the law in dismissing the Contractor's assertion that the dispute stemming from the Agreement did not fall within the scope of the arbitration agreement. In this vein, the Contractor argued that Clause 10 of the Agreement provided for the exclusive jurisdiction for the Abu Dhabi Courts over any dispute that may arise between the parties. Nevertheless, the Appeal Court dismissed the Contractor's argument on the ground that the arbitration clause contained in the Agreement is construed as a specific clause that supersedes the general clause i.e. Clause 10. The Contractor argued that the Appeal Court's conclusion in this respect contradicts the general principle which dictates that resorting to Courts is the rule and arbitration is the exception.

Judgment of the Court of Cassation

The CC rejected both the Contractor's arguments:

a. The CC stated that in order for an arbitration agreement to be valid, the required legal capacity pursuant to Article 216 (b) of the CPL is the capacity and competence to dispose of the disputed right. It is also established in the Commercial Companies Law and the rulings of the Cassation Court that the director of a limited liability company has the full authority and legal capacity to manage the company including the capacity to agree to arbitration on behalf of the company. The



foregoing does not contradict the provision of Article 58 of the CPL because Article 58 concerns the authority granted to an attorney to litigate the dispute before the concerned forum.

The Appeal Court in its application of the above stated that it is evidenced that the Agreement was entered into between the Contractor and the Respondent in his capacity as a director of a limited liability company. It is also evidenced from the Company's trade license that it is a limited liability company with the Respondent and two others as the shareholders and it is further evidenced from the Company's trade license that the Respondent is its director. The Appeal Court concluded that the Agreement was made prior to the assignment of the shares and was signed by a person who had the authority and capacity to agree to arbitration.

The CC upheld the Appeal Court's findings and further stated that the Appeal Court's application of the law was correct, especially since there is no clause in the Company's MOA that limits the Director's capacity or precluded him from entering into an arbitration agreement. The CC further stated that the power of attorney granted from the Respondent to his attorney in the arbitration proceedings is irrelevant to the validity of the arbitration agreement and thus the above argument was rejected. In stating this, the CC distinguished between the capacity to dispose of the disputed right required to bind a company to arbitration and the capacity to appoint an attorney to represent the company in arbitration proceedings as required by Article 58 of the CPL.

b. The CC stated that the interpretation of disputed contracts, terms, and clauses falls within discretionary power of the court of substance to identify the parties intention; provided that such interpretation considers the agreement as a whole and does not read the contractual provisions in a vacuum.

The Appeal Court had found that: "Even if Clause 10 of the Agreement subject of arbitration provided for the exclusive jurisdiction of the Abu Dhabi Courts over any dispute that may arise between the parties which echoed the general rule of the State Courts' jurisdiction to adjudicate disputes. Nevertheless, the Parties followed this general clause with a specific one i.e. Clause 12 whereby they agreed that any dispute arising from the Agreement or its interpretation shall be amicably settled between the parties otherwise for such dispute to be referred to be settled by arbitration in Abu Dhabi. The Court construes from the foregoing that the Parties intended for their disputes to be settled through arbitration."

The CC found that the Appeal Court's interpretation of the Agreement to be sound and falls within the Appeal Court's discretionary power to interpret contracts and their clauses and therefore the CC rejected the Contractor's second challenge.

Conclusion

In confirming arbitration as an exceptional mode of dispute resolution, the above judgment is without doubt another positive leap taken by the UAE Courts towards establishing the UAE as an arbitration friendly jurisdiction. However, it is imperative for parties to be mindful of any inconsistencies or conflicting provisions in their agreements. These inconsistencies may render a clause or certain clauses inoperative or at the very least provide room for dispute. Since the practice before the UAE Courts is for arbitration clauses to be interpreted in a very narrow manner, parties must ensure that their arbitration clause is detailed, clear and signed by a competent individual to avoid any future challenges to its validity and enforceability.

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Is a Holding Company Criminally Liable for Acts Committed by its Subsidiary? The Abu Dhabi Court of Cassation Responds

The principle that a person cannot be responsible for the acts of another is a fundamental principle of UAE criminal law. A person, natural or legal, can only be accountable for his own acts. Article 2 of the Penalties Law (Law No. 3 of 1987) states that "*No person shall be held accountable for the crime of another person. An accused is innocent until proven guilty in accordance with law*". Rulings of the Court of Cassation have emphasised this point on multiple occasions.

Article 65(1) of the Penal Law (as amended) extends the principle that a person can only be accountable for his own acts by attributing criminal liability to legal bodies acting through their human agents: "*Judicial persons, with the exception of governmental agencies and their official departments, public organisations, and establishments, are responsible for any criminal act committed, for their account or in their names by their representatives, directors, or agents.*"

In a recent ruling of the Abu Dhabi Cassation Court dated 30 April 2017 in Penal Case No. 4542/2015, the principle that a person cannot be accountable for the acts of others was judicially examined. Al Tamimi and Company acted in this appeal.

Facts

The defendant was a holding company and special purpose vehicle. Its main, authorised commercial activity was the purchase and sale of shares in other companies. The acquired companies in turn became subsidiaries of the holding company. An employee of the subsidiary company was injured while repairing an aircraft engine when a steel object fell off the engine onto his hand. The treating hospital reported the matter to the police, who after completing their investigations referred the matter to the Public Prosecutor. The Public Prosecutor charged the holding company in respect of the injury, alleging that it had acted negligently in failing to take the necessary precautions for the safety of the employee.

The holding company based its defence on the liability of its subsidiary. Evidence showed the subsidiary was the injured man's sponsor on his official residence visa and the injury occurred in the subsidiary's engine maintenance department. The holding company argued it was not responsible for the subsidiary's actions and could therefore not be held liable.

First Instance Decision

The Court of First Instance rejected this argument and convicted the holding company on the basis of the following:

1. The person who has actual control over something that requires special attention, whether that person be an owner or a lessee, is responsible for the damage caused by that thing when it causes harm to others.

2. It was proven to the Court, after considering the memorandum of association of the subsidiary company, that the accused holding company owned shares in the subsidiary, thereby conferring criminal liability for the victim's injury on the holding company because it controlled the subsidiary.
3. It was also proven to the Court that the holding company had failed to provide equipment to properly ensure the safety of workers. By its failures, the holding company had enabled the victim's injury.

The Court fined the holding company and ordered it to pay compensation to the injured worker.

Abu Dhabi Court of Appeal

The holding company appealed against this judgment on the following grounds:

1. The First Instance decision violated the principle that a person is not accountable for another's actions in contravention of Article 93 of the Civil Transactions Law. Companies have independent legal personality and therefore have independent financial liability. The holding company had completely independent legal personality from its subsidiaries, including the subsidiary employing the injured worker.
2. The First Instance decision confused civil and criminal liability when it found that ownership of shares in the subsidiary company made the holding company liable under the principle of control.
3. The First Instance Court had wrongly applied civil law principles rather than criminal law principles. The Court had relied on a legal opinion to support the finding that a person who has actual control over something that requires special attention, whether an owner or a lessee, is responsible for the damage and harm caused by that object. That legal opinion was applicable in a civil law context and did not apply to the Penalties Law under which the holding company was charged. Evidence in the police inspection report did not prove that the holding company had a sufficient degree of control over the work place, and the holding company claimed it knew nothing about that particular site.

The Appeal Court upheld the judgment of the First Instance Court and stated that it was satisfied by the reasons given by the latter, as well as the evidential basis for the conviction of the holding company. The Appeal Court did not address the arguments raised in the holding company's defence.

Abu Dhabi Court of Cassation

Many commentators found the judgment of the Appeals Court disappointing, having expected that the case would assert the orthodox position on criminal liability. The holding company filed a further appeal to the Court of Cassation. The holding company sought an order remitting the case to the Appeal Court under Article 240 Penal Procedure Law for a retrial by alternative Judges. The alternative option was for the Court of Cassation to avoid remitting the case for retrial and deciding the case itself. However, such an order is rare and only happens when the Court of Cassation believes its intervention is necessary to settle a dispute decisively.

In reality, the reasons for challenging the Appeal Court's decision before the Cassation Court were similar to those before the Appeal Court. However, the arguments before the Court of Cassation stressed the grave violation of the principle that a person is not accountable for another's actions in terms of criminal liability and the implementation of the provisions of the Penal Law. They also

“The Court of Cassation thereby stood for the principles that no person shall be held accountable for the crime of another person and that an accused is innocent until proven guilty in accordance with law. It also restated the conventional position that a company is a legal person, independent from its shareholders, and with its own financial liability.”

stressed that the first instance and appeal courts had gravely erred in the implementation of law when they held the holding company's liable for criminal acts committed by its subsidiary.

The Court of Cassation brought the appeal hearing forward as a matter of urgency given the public importance of the appeal points. The Court simultaneously considered the points of appeal raised by the Public Prosecutor.

The Court heard the holding company's arguments that it should not be held responsible for the subsidiary's actions given its separate legal personality and the holding company's lack of substantive control over the subsidiary. In a rare move, the Court exercised its power under Article 249 of the Penal Procedures Law and decided to impose its own decision on the facts of the case without remitting the matter back to the lower courts. It upheld the holding company's appeal and overturned the conviction.

The Court found:

“*The context of Articles 2 and 65 of the Federal Penalties Law No. 3 of 1987 and the amendments thereto indicate that no person shall be held accountable for the crime of another person, and that legal persons are criminally responsible for the crimes committed by their representatives, directors, or agents thereof for the account and in the name thereof exclusively. The challenged judgment has violated the requirements of such articles and as such, it has violated the law and erred in the interpretation and implementation thereof.*”

The Court of Cassation thereby stood for the principles that no person shall be held accountable for the crime of another and that an accused is innocent until proven guilty in accordance with law. It also restated the conventional position that a company is a legal person, independent from its shareholders, and with its own financial liability.

Al Tamimi & Company's litigation team in Abu Dhabi regularly advises on criminal matters. For further information please contact Ashraf Shoukri (a.shoukri@tamimi.com).

Apparent Authority when Signing Arbitration Agreements

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It has been noted in a series of cases that when an application to ratify an arbitration award is filed a respondent, hoping to resist enforcement of the arbitration award often resorts to challenging the capacity of the signatory to the arbitration clause. A party seeking to invalidate the arbitration agreement, as a ground for the annulment of an arbitration award, may allege that the signatory to the arbitration agreement was not authorised to agree to bind the company to arbitrate. The most common scenario that leads to such a claim is when the signatory to the arbitration agreement is not the manager of the limited liability company and does not have the necessary authorisation to bind the company to the arbitration clause.

In a recent judgment issued by the Dubai Court of Cassation (the 'CC') dated 24/2/2016, the CC tackled the issue of the authorised signatory in order to ensure the stability of commercial transactions and the principle of good faith when two parties are entering into an agreement, especially where arbitration is an agreed term.

The facts of the case

The Claimant is a leading real estate developer that entered into sale and purchase agreements for four plots of land (the 'SPAs') with the Defendant. The Claimant alleged that the Defendant had breached the SPAs by their failure to pay the full purchase price of the plots. The Claimant issued a claim against the Defendant at the Dubai Court of First Instance ('CFI') claiming an amount of AED 22,753,201.00, together with interest.

The Defendant filed its defence initially as a jurisdictional challenge, which essentially invoked the arbitration clause and requested that the Court dismiss the claim for its lack of jurisdiction. The Claimant, which is a limited liability company, responded claiming that the arbitration clause was invalid because the signatory to the SPAs was not the manager of the Claimant's company and, hence, did not have the capacity to bind the company to an arbitration clause.

On 29/1/2015 the CFI issued its judgment dismissing the Claimant's case due to the parties' agreement to resolve their disputes through arbitration.

On Appeal to the Court of Appeal

The Claimant appealed the CFI's judgment and on 30/6/2015 the Dubai Appeal Court overturned the CFI's judgment and referred the case back for the lower court to re-adjudicate the case. In its decision the Appeal Court found the arbitration clause invalid because it was agreed to by a signatory other than the manager of the Claimant's company.

On Appeal to the Court of Cassation

The Defendant challenged the Appeal Court's decision at the CC on the grounds that the Appeal Court erred in finding the arbitration clause invalid due to the lack of capacity and authority of the Claimant company's signatory.

The Defendant argued that it is evidenced from

the Claimant company's trade licence that the director/manager of the Claimant's company at the time of signing the SPAs was the same person whose name is stated in the SPAs as a representative of the Claimant's company.

In addition, the Defendant further argued that the principles of good faith dictate that authority and capacity to enter into arbitration on behalf of a limited liability company is presumed to be issued by its manager/director or by a representative authorised to represent the company in the agreement.

Judgment of the CC

The CC upheld the Defendant's argument.

The CC stated that it is an established rule that arbitration is the parties' explicit agreement for their disputes to be resolved by one or more arbitrators rather, than the normal route of resorting to the State Courts. It is also well established in the rulings of the CC that an arbitration agreement may only be made by a party having the capacity and competence to dispose of the disputed right. This is because the agreement to arbitrate amounts to a waiver of the right to institute the action before the State Court, which has certain guarantees provided to litigants. Arbitration, as an exceptional mode of dispute resolution, therefore requires a special power of attorney. In this vein, a director of a limited liability company is the only person that has the capacity to bind the company to an arbitration agreement (unless such company's articles of association dictate otherwise).

Furthermore, it is established in precedents of the CC that, if the name of a certain company is stated at the beginning of an agreement and a person signed the agreement on behalf of this company where signatories are set out to sign, this constitutes a legal presumption confirming that the person who signed the agreement was authorised by the company to enter into contractual agreements. In this case, all rights and obligations stemming from this agreement become binding on the company.

To elaborate, the CC made a distinction between two scenarios:

1. If the name of the company is stated at the beginning of an agreement, followed by the name and capacity of its representative, and such agreement was signed by a readable name, other than that of the representative stated at the beginning of the agreement, and when such agreement contains an arbitration clause, a party may argue the invalidity of the arbitration agreement due to the lack of capacity of the signatory to bind the company to arbitration.
2. If the name of the company is stated at the beginning of the agreement without stating the name and capacity of its representative, and when such agreement is signed with an unreadable signature, it is then a conclusive legal presumption that such signature is attributed to the person who has the legal capacity to bind the company to an arbitration agreement. A party may not then challenge the validity of the arbitration agreement.

The reason for such distinction, as reasoned by the CC, is that the principles of good faith dictate that a party's consent when entering into a contractual obligation must be free of any coercion or misrepresentation. This is in addition to the legal rule that a party may not manufacture evidence for itself against another.

In light of the above, when examining the SPAs where the parties agreed to arbitration, the CC noted that the names of parties were stated without explicitly stating the names of its representatives. The SPAs were further signed by unreadable signatures without stating the names of such signatories. Consequently, the Court found that, in line with the legal principles stated above, the signatures on the SPAs were attributed to the legal representatives of the parties and as such their agreement to arbitrate was valid and the State Courts did not have jurisdiction over the dispute.

Conclusion

Parties entering into any agreement would be advised to ensure that the names and capacities of their signatories are clearly stated both at the 'parties' clause as well as the 'signature' section of the contract. This is especially the case when there is an agreement to arbitrate.

Moreover, the parties must be mindful of the fact that only the authorised person whose name is stated in the agreement must actually sign the agreement, otherwise they may face challenges to the authority of the signatories and, by extension, the terms of the agreement.

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Every Player Gets a Fine: UAE Criminal Court Issues Fines for Broadcast of Content Without Consent

A broadcaster in the Arab World, as well as the production company and the on screen presenters have all been fined AED 50,000 in a criminal matter. They were each fined because of the broadcast of a television program that contained a prank where the consent of members of the public involved in the prank had not been obtained. This article considers the legal issues involved.

Background

The broadcaster entered into a production agreement with a UAE based production company, whereby the latter would produce and deliver a television program to the broadcaster. The agreement obliged the production company to prepare, record and deliver the final complete series after satisfying all legal and non-legal requisites. The broadcaster obviously aired the program to the public on both its usual platform but also to its digital channels, as was anticipated by the agreement.

In one of the episodes, members of the public were video recorded without their knowledge. In this case, certain of those members of the public has not been asked if they could be included within the program, nor had they signed an appearance release, as would be usual for such programs.

The program was aired and these members of the public discovered that they were on television only as the program went to air. However they did not see the funny side of the program and filed criminal complaints under UAE Law No. 5 of 2012 (concerning Cyber Crimes) (the Cyber Crimes Law); charges were lodged against the broadcaster and the production company as well as each of the presenters of the program.

Public Prosecution

The Public Prosecution accused each of the defendants of recording and broadcasting footage of people, without obtaining their consent.

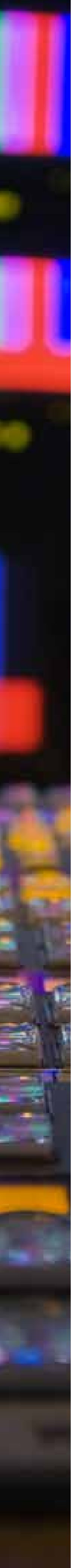
As part of the defence prepared for the broadcaster, a private media expert was appointed to prepare a report explaining the different roles and obligations of broadcasting and production companies in these situations. The expert explained that international and regional common practice was that broadcasters only bear responsibility for reviewing and censoring scenes from episodes that touch upon major issues that are not permitted to be broadcast by law, such as the promotion of drugs, insulting religions etc.

This responsibility does not generally include ensuring that approvals were taken from third parties whether they are for the appearance in the program, as in this case, or for material used such as music, photographs or artwork. This obligation traditionally always falls on the production company as does other practical production matters such as securing approvals and licenses required to record in public places.

The Court of First Instance issued its judgment imposing a fine of AED 50,000 to be paid by each defendant, with the fines totalling AED 450,000.

Deportation

The Public Prosecution appealed this judgment, asking that the court also consider Article 42 of the Cyber Crimes law which relates to deportation. The article states that:



"The Court shall adjudge to deport the foreigner convicted for committing any of the crimes provided for in this Decree by Law after executing the prescribed punishment."

The Court of Appeal agreed with the Public Prosecution in the Appeal judgment and added deportation to the initial ruling. The TV presenters challenged this judgment before the Court of Cassation. The challenge was rejected by the Court of Cassation and consequently, the judgment issued by the Court of Appeal is now final.

Comment

This case is a powerful reminder of the importance of ensuring proper legal checks are followed before material is broadcast.

Whilst it is usually the obligation of production companies within the media industry to seek all clearances , it is still recommended that broadcasters and publishers working in any digital environment ensure that production companies are aware of their obligations pertaining to obtaining all necessary approvals, and fulfil all legal requirements in relation to content that they deliver. This applies in relation to their legal requirements under the contract, and their obligations under the law.

Legal professionals should also be involved in the review of content production agreements and, in addition, of materials being considered for broadcast to ensure the proper filtering and removal of illegal scenes and materials.

Whilst a contract is always a good first step in the process, it cannot replace the implementation of proper legal checks to ensure that all parties understand what to expect beyond the boundaries of the contract, and how to mitigate risks by ensuring that all necessary approvals and licenses are in place.

Al Tamimi & Company's Technology Media and Telecommunications team regularly works with the Litigation team on issues arising from media and content agreements and on regulatory matters and disputes. For further information please contact Fiona Robertson (f.robertson@tamimi.com or Omar Khodeir (o.khodeir@tamimi.com).

"Whilst it is usually the obligation of production companies within the media industry to seek all clearances, it is still recommended that broadcasters and publishers working in any digital environment ensure that production companies are aware of their obligations pertaining to obtaining all necessary clearances, and fulfil all legal requirements in relation to content that they deliver. This applies in relation to their legal requirements under the contract, and their obligations under the law."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Criminal Liabilities Arising from Infringing Intellectual Property Rights

Intellectual property law overlap with criminal law in many ways, one of which is piracy of media content. This is one of the fastest-growing forms of criminal offence and breaches of intellectual property rights ('IPR') in the region.

In some instances, UAE traders, who are often, caught selling illegally-unlocked set top boxes (receivers) and Internet Protocol television (IPTV) decoders to consumers, which allow users to access exclusive TV channels, may face severe criminal penalties. These flow from several UAE laws that protect intellectual property, trademarks and copyright, such as the UAE's Federal Copyright Law No. 7 for 2002, and Federal Trademark Law No. 37 for 1992 and its subsequent amendments. Additional and more severe penalties can be imposed the offences are done through electronic platforms, making provisions of the Federal Law by Decree No. 5 of 2012 regarding Combating Cybercrimes, commonly known as the Cybercrime Law, also applicable.

In other cases, traders unlawfully place famous trade names and trademarks on their products to deceive the consumer, with the aims of selling goods, increasing market share and generating fat profits.

To provide more insight on illegal piracy, we highlight below two cases that demonstrate the potential criminal consequences for anyone caught infringing the copyright laws of media content and breaching IPR.

Case 1

An unknown person established a website that could be accessible by the public in order to download or upload exclusive movies and TV shows. On the website, the perpetrator uploaded a considerable number of famous old and recent movies and TV series that could be downloaded for further use.

The movies and series were only licensed to be provided by a leading, direct-broadcast satellite provider of popular TV entertainment content, who broadcast movies, comedy shows and sports channels from major networks and studios. Access to such content required subscription and payment of a fee by the consumer.

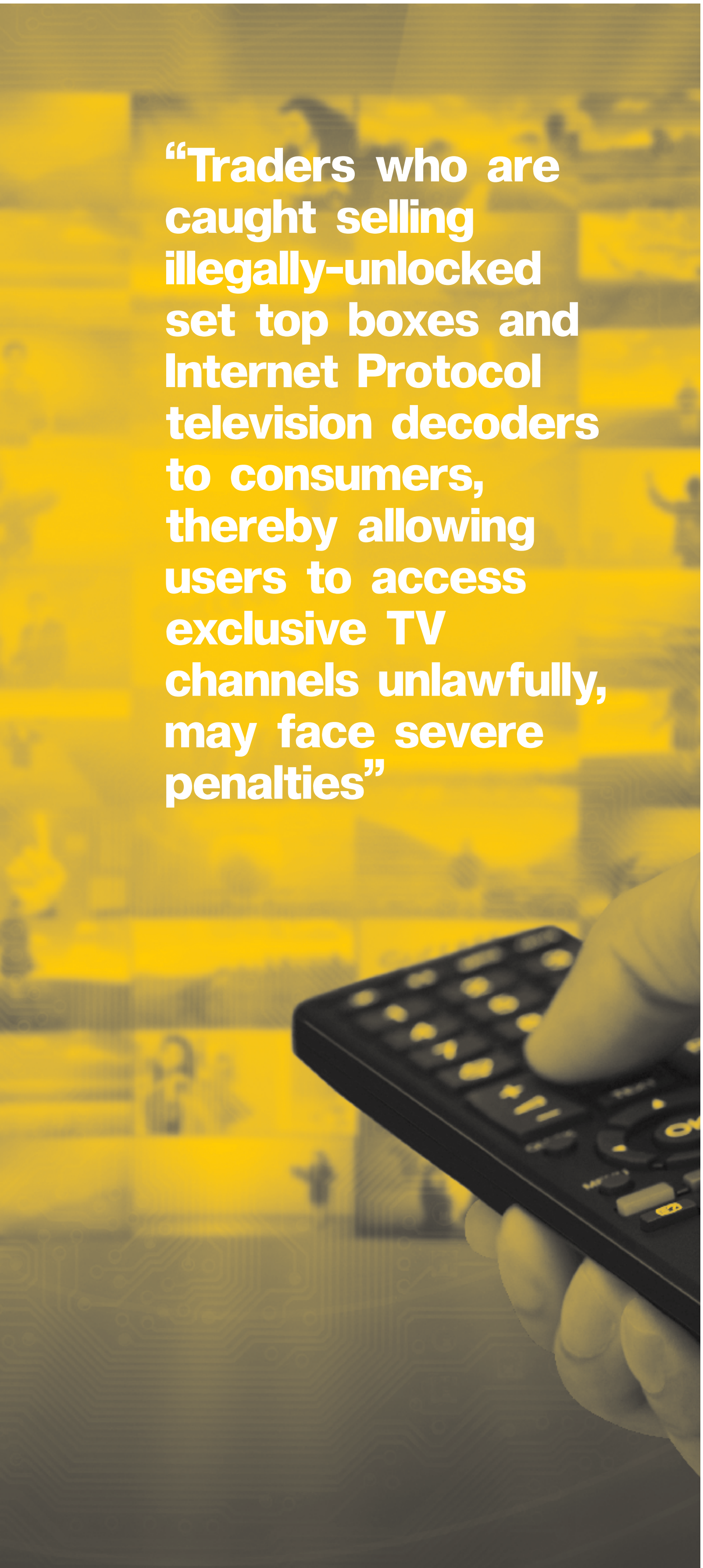
The perpetrator also placed the famous trade name and trademark of the broadcasting company next to the website's download links. In doing so, he intended to confuse the public into believing that the website somehow originated from or was affiliated with the broadcasting company.

Criminal proceedings were instituted against the perpetrator in Abu Dhabi. The Abu Dhabi Police investigation department successfully followed the available leads and revealed the identity of the perpetrator. The Public Prosecution office issued an indictment order against the perpetrator for committing acts penalized by the Cybercrime Law and the Federal Law by Decree No. 3 of 2003 regarding the Organization of the Telecommunications Sector (as amended). Those acts were as follows:

a. Unlawfully benefiting from the broadcasters visual channels via technological means;
b. Exploiting telecommunication devices to transmit the broadcaster's telecommunication services; and
c. Facilitating for others the unlawful benefiting from the broadcaster's visual channels via technological means.

The accused was found guilty before the Court of First Instance and sentenced to 6 months along with payment of 50,000 AED as compensation to the victim broadcaster, from whom we acted. The Court further ordered the perpetrator's

"Traders who are caught selling illegally-unlocked set top boxes and Internet Protocol television decoders to consumers, thereby allowing users to access exclusive TV channels unlawfully, may face severe penalties"



deportation and the removal of all content available on the illegal website.

The accused appealed and the Court of Appeal reduced the sentence from 6 to 2 months' imprisonment.

Case 2

In a second recent case, traders were discovered to be subscribers to the exclusive TV channels outside the UAE and to offer access to the TV channels to their local consumers within the UAE. The traders used a number of measures in order not to reveal the source of the subscription.

The Dubai Criminal Court of First Instance convicted one of the traders of copyright infringement by using the internet. The Court's judgment obliged the perpetrator to:

- Pay a fine of 200,000 AED
- Close the store used for selling the IPTV decoders for a period of one year;
- Deport the perpetrator from the UAE; and
- Refer the civil claim for compensation to the competent civil court.

In most scenarios, the traders or the perpetrators do not expect such severe penalties. However, these sentences show the seriousness with which the criminal courts treat breaches of laws affecting IPR.

In conclusion, traders of electronic devices such as set top boxes (receivers)/ IPTV decoders must cease offering TV and media services which are not permitted in the UAE even if such services are allowed outside of the UAE. The operation of receiving the exclusive TV channels through the internet from somewhere out of the UAE and redistributing the same one a commercial level to the consumers within the UAE is a crime as per the UAE Federal Copyright Laws No. 7 for 2002 and the Federal Law by Decree No. 5 of 2012 regarding Combating Cybercrimes. With the aim to minimize the occurrence of such crimes, the UAE imposes specific regulations for this type to trade. With the understanding that those types of crimes adversely affect important sectors, such as the telecommunications sector, be it private or public, the Courts tend to have a harsh approach towards anyone who breaches the laws regulating it.

Al Tamimi & Company's IP and Litigation team regularly advises on cases involving IP infringement. For further information please contact Bassam Al Azzeh (b.alazzeh@tamimi.com) or Omar Khodeir (o.khodeir@tamimi.com).

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Navigating Domain Names and Social Media Platforms for Brand Owners

Internet presence and social media presence is all important for brand owners in today's brave new world of consumers clutching their mobile phones, tablets and laptops at every turn. Brand owners need to protect themselves in cyberspace. If a brand is worth protecting, it is by the same virtue also worth hijacking and nowhere is it easier to misappropriate than in cyberspace.

The fact is that the entire world has gone digital so even if some brands have not established a strong internet branding presence, it will not deter potential customers from engaging with brands online. In fact, it is very likely that the first thing potential consumers of a brand do upon learning of a brand is to do an online search to research the brand even if the brand does no business online. The brand's reputation will precede the actual presence in cyberspace. Peer review publications, industry publication, blogs, news and popular media channels will generate considerable online data for any brand. All of these media outlets are hungry for content and more likely than not, will have discovered and discussed most brands on the internet, even where the brand has not established an active online presence.

After obtaining a clearance search and preferably seeking trademark registration, brand owners including UAE brand owners should consider reserving the marks as domain and social media usernames. If a third party registers and uses the domain in good faith before the brand does, the brand owner will usually be unable to obtain the domain other than by purchasing it. On the other hand, if the domain was registered and used by a third party in bad faith, the brand brand owners including UAE brand owners could file a Uniform Domain Name Dispute action before the likes of WIPO as an efficient and cost-effective means to retrieve the domain name.

With the proliferation of generic Top Level domains ("gTLDS") such as ". etc.", becoming available for registration, the option of reserving valuable marks on relevant new keyword gTLDs that relate to the mobile market, such as ".app", ".mobile", or the particular industry, such as ".money", ".party", ".fund", ".legal", ".poker", ".cash" etc., is increasingly recommended.

Brand owners including UAE brand owners are advised to attempt to reduce the misappropriation of their trademarks in new domains as they are released by taking advantage of the Trademark Clearinghouse ("TMCH").

The TMCH is a centralized database devised by the Internet Corporation for Assigned Names and Numbers ("ICANN") as part of a regime to protect brands and intellectual property rights. It comprises a central repository, which is managed by Deloitte wherein brand owners may submit their trademarks for validation.

Mobile applications or "apps" are omnipresent. There is literally an app for any kind of venture or enterprise if not for business then at least for information sharing. Mobile devices are outselling personal computers, and an increasing percentage of internet access is made through mobile devices. With the increasing prevalence of apps, brand owners including UAE brand owners should rightly feel the need to create distinctive brands that set their product apart from competing apps. With the sheer number of apps and the resulting marks being registered, it is imperative to have in place a comprehensive regime of trademark protection and enforcement.

In a market proliferating with apps selling all kinds of products, where purchase decisions are made at a touch of a touch screen, brand presence is of crucial importance. Brevity is the order of the day and outlandish or fanciful visual marks which are highly distinctive and possibly complemented by a novel logo would do well to capture the imagination of harried consumers that are typically overwhelmed by the multitude of apps. Given the global reach of the market, brand owners including UAE brand owners attempting to reach markets across jurisdictions should ensure that their chosen trademark travels well in cyberspace while taking care all the while to ensure that their trademark does not infringe the rights of others.

In launching their apps on app distribution platforms, which are accessible across multiple jurisdictions, such as Google Play® and the iOS® App Store, there are specific rules and requirements to be adhered to regarding app names, which would impact upon the choice of a brand owner's trademark.

As part of Apple's naming protocol, the use of an app name that is a registered trademark of another party or is already in use in the iOS® App Store may result in its removal. Apple imposes a maximum number of characters for the names of apps, which is thirty-five characters. Further, it is common for app distribution platforms to have strict guidelines with respect to the use of their trademarks to indicate compatibility with their platforms.

In summary, brand owners need to be aware of certain considerations as they navigate the world of domain names and social media as they roll out their brands in establishing their internet presence.

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Protecting and Enforcing your Trademarks in Iran

Iran has been recognised as one of the major potential markets in the Middle East. With the lifting of the UN Sanctions against Iran, many businesses are looking to expand their operations and enter into the lucrative market. With around 80 million in total population, Iran is considered one of the largest markets in the region for many international and local traders and entities.

The expanding significance of the economic value of the local market requires establishing practical mechanisms for protecting and enforcing intellectual property ('IP') rights. Trademark being one of the dominant and common IP rights, and this article examines various aspects of protecting and enforcing trademarks in Iran. The trademark practice in Iran generally focuses on protection, i.e. filing and registration, and enforcement of brands against infringement and counterfeit.

The Patent and Trademark Registration Act of 2008 [] and related Regulations, together with the Paris Convention for the Protection of Industrial Property of 1959 and the E-commerce Law of 2003 establish the legal framework for the registration, protection and enforcement of trademarks in Iran, and set out the procedures for civil actions and criminal prosecution.

Trademark Protection

The Iranian laws provide no protection to unregistered trademarks. A trademark must be registered in order to enjoy protection. Trademarks may be used in Iran without registration, but the owner of an unregistered trademark is not able to use the law to protect against infringement. The exclusive right to use a trademark rests with the party that has registered the mark. Mere use of a trademark does not entitle the user to enforce its unregistered rights and benefit from protection of the mark.

Registration: The registration of a trademark in Iran involves the typical procedures of filing, examination, publication and then registration. The typical time frame to complete the registration process is 15 to 18 months with relatively minimal fees and expenditures for brand owners. The brand owner should complete the process through a local attorney and should provide the following information and documents:

- Name, address details and nature of business of the applicant
- A specimen of the trademark to be protected
- List of goods and services to which the trademark applies
- A Power of Attorney to the applicant's representative, duly legalised by the Iranian consulate
- A copy of the incorporation certificate for the applicant (if a corporation), duly legalised by the Iranian consulate

A clearance search of the trademark is always recommended to brand owners prior to registration and use. Whilst proof of use is not required to register a trademark in Iran brand owners should carry out such searches prior to commencing registration or commercial exploitation of brands as a precaution. These searches can be initiated and completed within an average period of five working days.

Under Iranian trademark laws, a trademark is any design, image, word, expression, seal, cover, etc., adopted to distinguish industrial, commercial, or agricultural products. Moreover, non-traditional trademarks such as Three-dimensional marks and Colour marks are registrable in Iran. In addition to the standard restrictions such as national flag, official emblems and so on that cannot be registered as a trademark, trademarks covering "alcoholic beverages" in class 33, "beer and ale " in class 32 and all trademarks comprising portraits of a woman in any form, are prohibited from registration in Iran.

Iran uses the International Classification of Goods and Services for the purposes of registration of trademarks (the Nice Classification), although the Registry has adopted a local pre-defined list of goods and services which may not cover all the goods and services listed in the Nice Classification. An application should choose a list of goods and services from the above said pre-defined list which the Registry follows. Iran follows a Multi-class filing system which means that an application to register a trademark can cover more than one class with a discounted official fee applied for each additional class.

Once the registration application is submitted, it will be examined by the Trademark Office and, if no objections or oppositions to the registration are raised, or the objections or oppositions are resolved in favour of the applicant, the application will be published, followed by a 30-day opposition period. If no oppositions are filed within this period, the mark will be registered and a number assigned to it. The registration will then be published once again and the registration certificate will be issued following publication.

Use Requirements: If an owner of a mark, his legal agent, or successor does not use the registered mark without any legitimate reasons within a period of three years from the registration date, such mark may be vulnerable to a cancellation action by a third party. Trademark owners are not required to submit any proof of use of the mark, unless a third party files a request for cancellation on the ground of non-use during the term indicated above.

Trademark Enforcement

As mentioned earlier, the Iranian legal system affords no protection to unregistered marks. Only registered marks enjoy protection and may be enforced through civil or criminal actions. The trademark registration certificate is prima facie evidence of ownership and a trademark owner holds exclusive rights to use the trademark. A trademark registrant may initiate anti-counterfeiting measures against infringers only through the courts, and not with the Trademark Office. The Trademark Office is not the authority to enforce registered trademarks rights in Iran.

We set out below the most common options for trademark owners under Iranian law and practice to enforce their registered trademarks:

Legal Notice: Sending a legal notice or cease and desist letter appears to be a very efficient tool to resolve many problems at an early stage in Iran. Therefore, trademark owners should consider this option against retailers, traders or local entities that infringe or sell counterfeit goods as a first step. The legal notice can be sent as a cease and desist letter from the trademark owner or its lawyer or via an official notice that is served through a court bailiff.

Criminal Action: A criminal complaint is often a swift and effective method to protect against infringement in Iran. If a trademark owner finds that its trademark is being illegally used in such a way that consumers do not realize they are purchasing counterfeit products or that use of a confusingly similar trademark is misleading, it may launch a criminal action. Although it is also possible to do so, it is not advisable to bring a criminal action in cases where the similarity between the marks is arguable.

The criminal complaint will be filed before the Public Prosecution. Following the examination of the complaint and the supporting documents, the Public Prosecutor may issue an injunction order for Police to raid on the infringer and its business within five to seven working days in the normal course of events. The injunction order will be valid for 15 days from the issuance during which the local counsel should conduct the raid along with the Police. The Prosecutor will order the Police to remove all infringing trademarks, logos and signage and seize counterfeit goods and other infringing materials such as business cards and other marketing materials with the infringing trademark on it.

A trademark infringer is liable for imprisonment of three months to six months and/or a penalty of $400 to $1600 or both. However, generally in practice the Courts do not tend to sentence infringers to imprisonment.

Civil Action: A trademark owner can also enforce and protect its rights through a civil court action, which would include a claim for damages. If a trademark owner finds that its trademark is being unlawfully used by others , it may bring a civil court action to stop the infringement. Where the similarity between the marks is arguable, it is advisable to bring a civil action rather than a criminal action, because the court must first be satisfied that the similarity would confuse and mislead the targeted consumers before ordering the infringer to cease use of the imitated mark.

A preliminary interim injunction is also available in a civil action, but subject to depositing a bond with the court to cover possible damages to the other party if the complainant loses the action. The amount of the bond will depend on the court's discretion and cannot be predicted. The time frame for obtaining an interim injunction in a civil action will be around 20 days [from the date of receiving the complaint on file].

Administrative Actions: Generally speaking, there is no administrative action available against trademark infringement activities in Iran. However, in the matter of trademark infringement on signboards, a complaint is available before the Police Supervising of Public Places, a department within Iran's Police, as the authorized department to carry out raids against signboard infringement.

Online Disputes

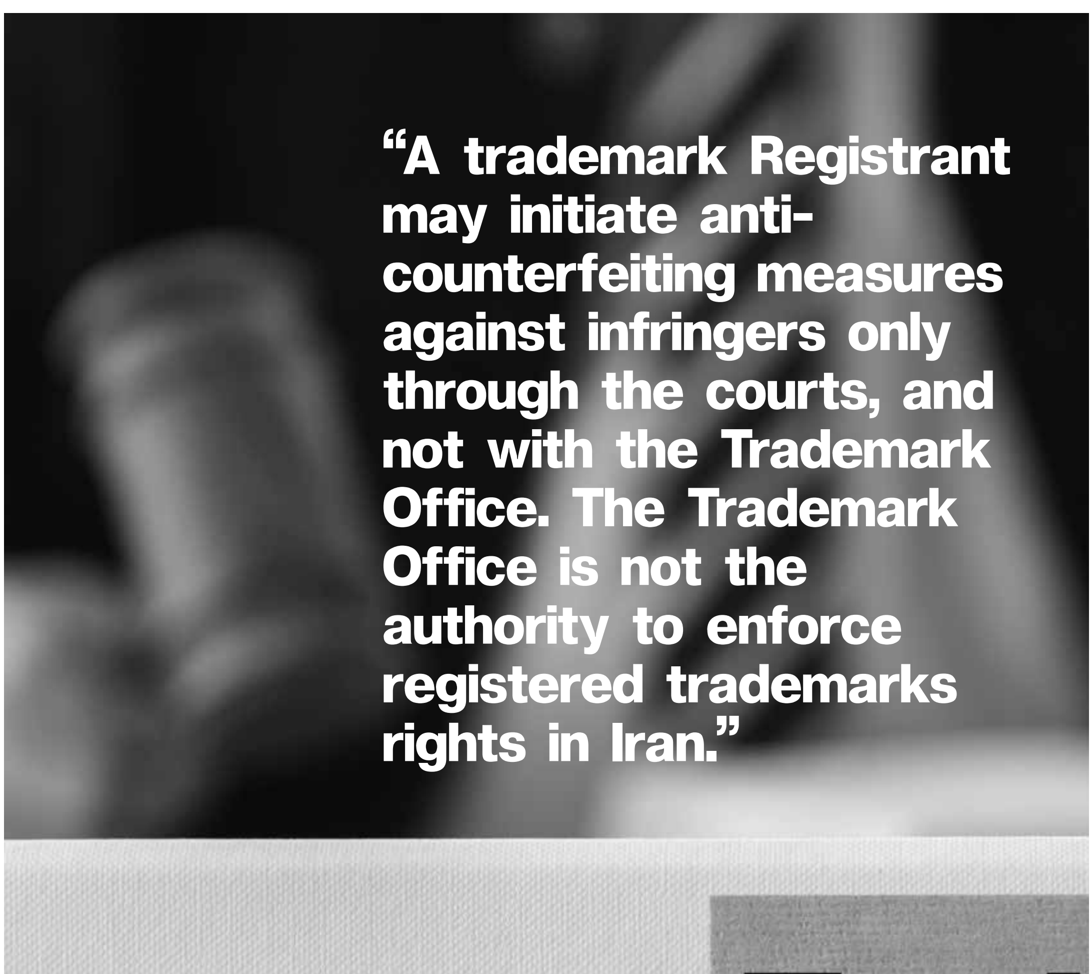
The E-commerce Law in Iran provides for the protection of trademarks used online . The use of a mark as a domain name, or any online use of a trademark that confuses or misleads consumers as to the source of goods or services, is considered as infringement and prohibited by the law. The E-commerce Law provides IP rights owners with remedies against the following activities:

- domain name registration of an existing trademark by an unauthorised party
- domain name registration of a name that is confusingly similar to an existing trademark owned by a third party
- domain name registration of another party's trademark in the top-level domains '.ir', '.co.ir' and similar

The E-commerce Law prescribes that the use of a registered trademark as a domain name by a third party, or any online use of trademarks that may mislead or confuse consumers as to the source of goods and services, is illegal. The infringer will be liable for criminal penalties ranging from one to three years' imprisonment and fines of between $2,500 and $12,500.

Conclusion

Brand value is of paramount importance and should be protected to the fullest extent possible against unlawful and illegal use and a brand can easily be destroyed if used in conjunction with counterfeit goods. Since unregistered rights are unavailable in Iran, brand owners should register their trademarks for the Iranian market at an early stage. Once the trademark is registered, enforcement proceedings may then be taken to protect brand value and recover any damages suffered or incurred.



FinTech Licensing Framework in the UAE

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The banking industry globally is moving from a traditional relationship based banking model to a more technology-based provision of services. This is also true for the UAE as banks in the UAE are recognising the risks and competition they face from technology companies looking to provide financial services using technology (FinTech). To counter this, UAE banks are embracing innovation and technology by investing in FinTech solutions and adapting their business to ensure efficiency and ease in a more cost effective provision of financial services.

To promote the adoption of FinTech in the UAE, while ensuring the highest standards of consumer protection and financial stability, regulators have been actively issuing new rules, regulations and initiatives. We set out below a synopsis of recent regulations issued by the UAE Central Bank ('Central Bank'), Dubai Financial Services Authority ('DFSA') and Financial Services Regulatory Authority ('FSRA').

I. UAE Central Bank

The Central Bank has issued the Regulatory Framework for Stored Values and Electronic Payment Systems on 1 January 2017 ('Regulation'). The Central Bank is the sole authority with the power to regulate existing and future digital payment mechanisms onshore in the UAE.

The following concepts and definitions are central to comprehending the various aspects of the Regulation. The Regulation defines Digital Money as any monetary value represented by a claim on its issuer, issued against AED stored on electronic, magnetic, or mobile channels. In international parlance it is electronic money.

Digital Payment has been defined as any payment using electronic, mobile, or magnetic channels excluding credit and debit cards payment.

Payment Instruments that are permissible for being used to initiate or receive a payment instruction are AED denominated cash, bank transfers; credit cards, debit cards, or stored value facility / prepaid cards.

Licensing of PSP

Pursuant to the Regulation, payment service providers ('PSPs') now require a license from the Central Bank.

There are four categories of PSP licenses namely the retail PSP, Micropayments PSP, Government PSP and Non Issuing PSP.

i. *Retail PSP*

   Commercial banks or entities owned at least 50% by banks are eligible for the retail PSP license. It is the broadest category of license. A retail PSP can conduct the entire spectrum of permissible services, the most important of which is issuing Digital Money. Essentially, a retail PSP can offer a prepaid wallet which can be used for purpose of cardless deposits and withdrawals of cash at ATMs.

ii. *Micropayment PSP*

   A micropayments PSP mainly targets the unbanked sector and is suitable for entities like telecommunication companies, exchange houses and entities licensed by the national transport authority. It permits much smaller funding and transaction limits.

iii. *Government PSP*

As the name suggests, a government PSP license enables prepaid digital payments to federal and local statutory bodies. There are also no transaction limits.

iv. *Non-Issuing PSP*

The last category is the non issuing PSP license. This license does not permit the issuance of digital money, handling or solicitation of funds. This category is exempt from several sections of the Regulation related to safeguarding payments, outsourcing, segregated bank accounts, registration requirements, outsourcing and Know Your Customer checks ('KYC requirements'). There are also no transaction limits.

It should be noted that the Regulation details fourteen 'dimensions' which should be considered by a PSP when providing digital payment services in the UAE. These range from obtaining a Central Bank license to customer registration, appointment of agents, KYC requirements, Anti-Money Laundering matters, load and transaction limits, limits on charges, privacy matters, dispute resolution, payment execution, clearing and settlement etc.

Exemptions from the Regulation

The Regulation lists eight categories of payment services/ providers that are exempt from the application of the Regulation. Certain categories are regulated under other Central Bank regulations like payment transactions using a credit or debit card. Two important categories are issuers of closed loop payments instruments and technical service providers.

Technical service providers are not considered to be conducting financial activities since they only facilitate the provision of financial services to PSPs. They do not handle or transfer cash and therefore do not acquire any financial transactions. A payment gateway operator could fall under this category.

Prohibition

The entities that are eligible to apply for a license are required to be those incorporated in the UAE (including in non-financial free zones). Entities incorporated in the Dubai International Financial Centre ('DIFC') and Abu Dhabi Global Market ('ADGM') are excluded.

There also appears to be some ambiguity in the Regulations as to the offering of virtual currencies or crypto currencies.

Restrictions on Fees and Charges

The Regulation sets out limits on funding, holding, daily and per transaction spending that must be complied with. The Regulation also provides that certain charges may not be imposed on users.

Transition Period

The Central Bank has recognized the impact that the Regulation could have on existing participants in the financial FinTech sector and has therefore provided a one year transition period.

Notwithstanding the one year transition period, concerned entities should promptly consider applicable compliance measures under the Regulation, in view of the breadth of scope and requirements of the Regulation. Non-compliance of the Regulation could attract financial penalties as well as other orders to be imposed by the Central Bank as it considers reasonable under the circumstances.

II. Dubai International Financial Centre

DIFC's FinTech Hive Accelerator program

In January 2017, the DIFC launched the FinTech Hive Accelerator programme, providing a platform for financial services and technology firms to build solutions for the financial sector. Supported by Accenture, the programme runs over twelve weeks during which time participants have the opportunity to develop, test and modify their FinTech innovations in collaboration with top executives and financial institutions in the DIFC. It is intended to provide a platform that will allow concepts to be fast-tracked and converted into tried and tested, commercially viable propositions.

DFSA's Innovation Testing Licence

In May 2017, the DFSA, the financial services regulator for the DIFC, announced that FinTech firms can apply for a type of financial services licence referred to as an Innovation Testing Licence. This restricted type of financial services licence will allow FinTech firms to develop and test their concepts from within the DIFC, without being subject to all of the DFSA's rules and regulations. This would mean that firms operating under such licence would not have to comply with the DFSA rules when the concept is at a testing stage. Graduation from the testing phase would be a step towards obtaining a full financial services licence.

III. Abu Dhabi Global Market

FSRA's Regulatory Laboratory in the ADGM

In November 2016, the FSRA of the ADGM launched its Regulatory Laboratory ('RegLab') with the implementation of its FinTech legislative framework. This framework sets out the FSRA's approach to the RegLab which is a specially tailored regulatory framework that provides a controlled environment for FinTech participants to develop and test FinTech solutions without immediately being subject to all the regulatory requirements that would otherwise apply to a fully

licensed firm. It is intended to provide a safe environment within controlled boundaries for businesses to test, develop and provide innovative FinTech products.

The ADGM had approved its first batch of RegLab participants in May 2017, comprising five FinTech startups with various innovative offerings. Participants will be granted a 'Financial Services Permission' by the FSRA to carry on the regulated activity of developing financial services technology within the RegLab. Participants can remain in the RegLab environment for up to two years, during which time it is expected that the technology will be developed to the point where it is in a position to launch and the participant will be able to migrate to a full financial services licence within the ADGM. The second batch of ADGM RegLab applications opened on 16 May 2017 and closes on 31 July 2017.

Conclusion

Taking into consideration the various licensing frameworks and initiatives briefly outlined in this article, it is clear that by laying these foundations the UAE is looking to support and encourage the growth of FinTech in the region. Entities looking to offer FinTech solutions should take into account which jurisdiction is most suitable and what licenses, if any, are required.

Al Tamimi & Company's Financial Regulatory team regularly advises on licensing related matters. For further information please contact Divya Abrol Gambhir (d.abrol@tamimi.com).

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So, You Want to Buy a Ship? Sale & Purchase Essentials

Selling a ship is similar to sailing a ship. It cannot be done by one person. Both require a collaborative effort, with a full complement of crew performing important tasks at key times. Here the author considers a conventional sale and purchase transaction for a commercial ship. Attention is given to the roles of the various parties, the contractual framework within which they operate, and their respective rights and obligations.

A memorandum of agreement ("MoA") is customarily the governing sales contract. Various standard form MoAs exist, the most widely used being a joint product of the Norwegian Shipbrokers' Association and BIMCO. The latest version of this periodically updated MoA, and the subject of this article, is the "SALEFORM 2012", better known as the Norwegian Sale Form 2012 ("NSF 2012"). The NSF 2012 and its preceding versions (notably the NSF 1993) have become industry standards within the UAE and most other popular shipping jurisdictions.

Before Concluding the Memorandum of Agreement

Brokers & Preliminary Negotiations

Before signing the MoA, there are several important stages. Generally a prospective buyer, or eager seller, will approach a ship broker as a first port of call. Brokers are ordinarily remunerated on a commission basis, conditional upon closing, calculated against the value of the vessel. Traditionally it is the seller who is legally responsible for the brokers' commissions. The total brokerage fee is often split between the seller's and buyer's brokers, with an effective commission of one percent each. In practice there are many variations of this arrangement. Parties should be mindful that, contractually, brokers are invariably not party to the principal sale and purchase agreement.

Once a prospective sale is identified, the main terms are considered, with negotiations often led by the brokers. The extent of preliminary negotiations may vary, but will usually focus on larger items, such as; price, required deposit, lay dates for delivery, and inspections. Lawyers are often only engaged once these preliminary negotiations are complete.

Parties are cautioned to ensure these negotiations are not capable of unintentionally creating legally binding agreements. This could (and has) occur through inadvertently extending an offer capable of acceptance through a broker (as ostensible agent), or accepting such an offer. Such risks may be easily avoided by, for example, ensuring correspondences, or recaps, clearly assert that all terms are subject to execution of the MoA. The inclusion of phrases such as "subject to contract" in relevant exchanges have become good practice in this regard.

Inspections & Due Diligences

Before signing the MoA, buyers may seek a basic inspection of the vessel and copies of the main certificates. Whilst recourse is available for failed inspections after signing the MoA, a prospective buyer with no contractual obligations (or paid deposits) may more easily walk away from a sale should the vessel be patently unacceptable. Detailed inspections and surveys are usually performed after signing the MoA, as considered below.

Before signing, each party is also encouraged to perform a preliminary due diligence on the other. Modern vessel ownership is typically structured using single ship-owning entities registered in regulatorily friendly offshore jurisdictions. Opaque structures may obscure the identity and arrangement of one's true contractual adversary. Similar to inspections, safeguards should also be employed in the MoA, for example; evidence of good standing, proof of vessel ownership, etc. And similarly, it is recommended to perform basic checks before committing to the MoA, after which it may be more difficult to avoid the sale if an unsatisfactory position is discovered.

Parties should also be aware of any financing relevant to the sale, before concluding the MoA. If the vessel is mortgaged, or otherwise encumbered, a prospective buyer will be eager to ascertain how clean title will be attained. A seller should also establish from the outset if the buyer intends obtaining financing. From a practical perspective there are various elements that require attention if debt, or equity, financing is applicable. For example; required deletions of registered mortgages, registration of new mortgages, permissible corporate structures, particular requirements of the lender, etc. Whilst it is beyond the scope of this article to consider ship finance in any detail, parties should be mindful that applicable financing will invariably affect some elements of the sale and purchase transaction.

Sale in terms of the Memorandum of Agreement

The NSF 2012, in its unamended form, extends just eight pages covering eighteen clauses. The short document is, however, remarkably versatile. It provides a roadmap of what is required by the parties before transfer of the vessel, what may be done if such requirements are not met, and how transfer of the vessel should take place. Here we consider the main terms.

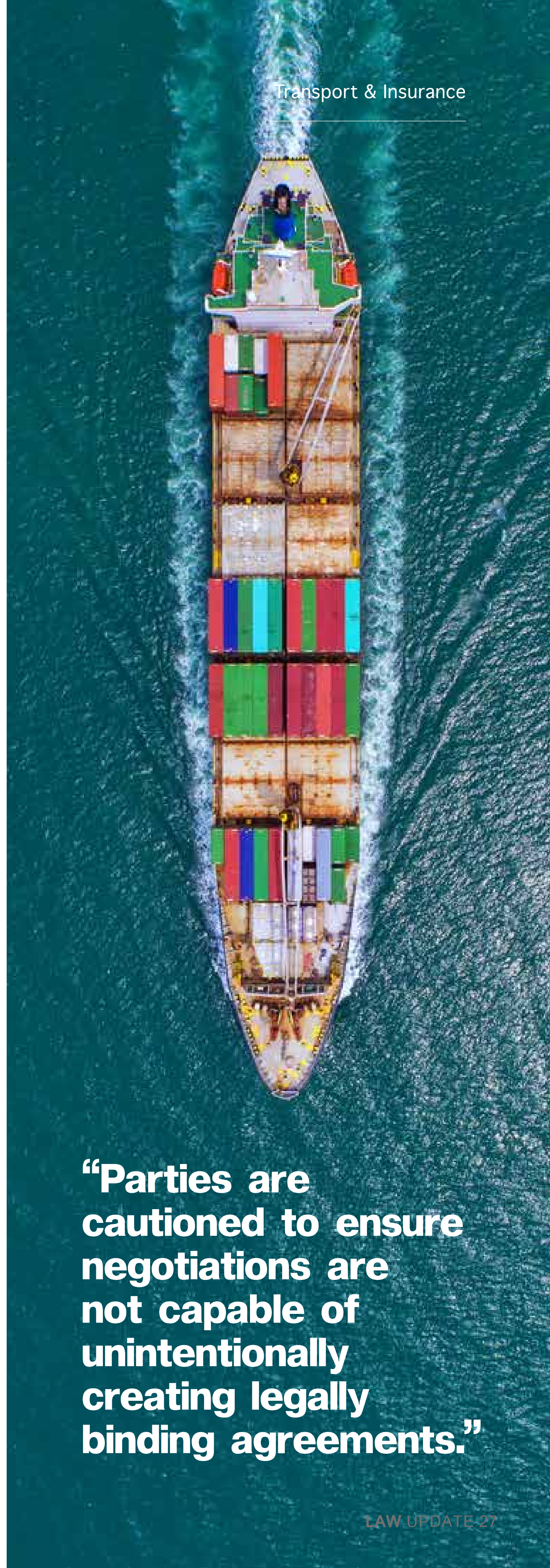
The Parties

The identities of the buyer and seller are not always immediately apparent. In practice, the named buyer will often be a special purpose vehicle ("SPV"). Alternatively, a mechanism permitting novation of the MoA is frequently sought by buyers who have not yet established a SPV to own the vessel at the time of signing the MoA. The buyer should also confirm the identity of the named seller, which should be the same entity listed as the officially registered owner of the vessel.

Vessel Description, Purchase Price and Deposit

Two essential terms of any contract of sale are the property being sold (ie; the vessel) and its price. Both should be clearly stated.

Payment of a deposit by the buyer, to the value of 10% of the purchase price, is standard practice. The NSF 2012 affords the buyer three banking days to make such payment to a third party holder, after signing, and confirmation from the deposit holder that the relevant account has been opened. All things being equal, the deposit will ultimately be transferred to the seller on delivery of the vessel.



"Parties are cautioned to ensure negotiations are not capable of unintentionally creating legally binding agreements."

Inspection

Inspection of the subject vessel, her records, and acceptance thereof is a requirement particularly susceptible to disputes. The various NSF versions have long taken the default position, and still do, of affording the buyer unfettered discretion to effectively either accept or reject the vessel on the basis of inspection.

To accept the vessel, the buyer is required to perform a positive action – the issuance of a written notice of acceptance to the seller. This should be provided within 72 hours of the inspection, unless stated otherwise. If accepted, the NSF 2012 deems the sale "*outright and definite*." Should such notice not be forthcoming, the sale is automatically considered null and void, and the buyer is entitled to have its full deposit returned along with any interest it may have earned.

In practice the inspection clause is often keenly negotiated. Sellers may seek to amend the default position so that the inspection will only nullify the sale if defects are discovered, which cannot be rectified within a reasonable period of time. Buyers will likely seek to maintain total freedom to entirely avoid the sale if desired. Reliance on a purportedly failed inspection is a popular route for buyers seeking to avoid the sale for any number of reasons. Parties should also be mindful of the underwater or drydocking inspections the buyer is entitled to, although non-acceptance in this instance does not by default vitiate the sale, even if defects are found. In all cases, parties would be well advised to clearly stipulate their respective rights and obligations concerning inspections.

Closing the Sale

A ship sale and purchase transaction culminates with its "closing." Here the buyer and seller (usually on the same day) exchange documents, make payment, and physically deliver and transfer the vessel. It requires careful coordination between various parties who operate in unison to ensure the sale successfully closes. Each party has its role to play. As an indication, some key participants on the day may include; seller and buyer (or authorised representatives), lawyers, bankers (both as financiers and for payments), flag state representatives, crew (old and new if replaced), brokers, class representative, insurers, with others potentially also required, normally not all in the same location, or even the same time zone.

There are essentially three main elements to a conventional sale and purchase closing; (i) delivery of documents, (ii) delivery of the vessel, and (iii) payment. Closing often occurs through two simultaneous meetings – one onshore in a meeting room and the other onboard the vessel. Parties will establish communications between the two meetings, and with any required third parties. A "pre-closing" meeting may also occur as a dry run before final closing.

(i) Delivery of Documents

Documentary exchange usually extends to two types of documents. Firstly, the delivery of vessel documents by the seller to the buyer. Secondly, delivery of all other documents stipulated in the MoA.

Vessel documents are those directly associated with the continued operation of the vessel, often kept onboard. They may include; safety certificates, class certificates, technical documents, logbooks, manuals, plans, blueprints, etc. These documents are often exchanged at the ship meeting. Buyer's representative onboard the vessel, commonly an appointed technical manager, will confirm the vessel documents are in apparent order to the onshore meeting.

The second portion of documents is all others required by the MoA. These are generally exchanged at the onshore meeting. The core documents provided by the seller to the buyer are:

- *Bill of Sale*

  This is an important document, legally recording the sale between the parties, normally in a statutory or official form dictated by the flag state. As per the NSF 2012, it should be in a form recordable in the buyer's nominated flag state, transferring title of the vessel and stating that the vessel is free from all mortgages, encumbrances and maritime liens. It should also be notarised, legalised or apostilled (as may be required). Parties should afford sufficient time to have this process completed, and also factor in costs.
- *Evidence the transaction is authorised*

  Corporate entities should provide board and/or shareholders' resolutions.
- *Power of attorney appointing representatives*

  The actual execution of the necessary documents, and transfer of the vessel, should be completed by parties duly authorised to do so (buyer and seller).
- *Certificate from registry evidencing current ownership*
- *Evidence of class*

  Here evidence is presented of the vessel's good standing with a particular classification society.
- *Certificate of deletion from previous registry*
- *Commercial invoice*
- *Commercial invoice for bunkers & lubes*

  Ordinarily a buyer will pay for the vessel's bunkers remaining on board, as well as any unused lubricating and hydraulic oils. Practically, this is often directly deducted from the purchase price.

(ii) Delivery of the Vessel

Physical delivery of the vessel is facilitated through several stages. Firstly, the parties elect a place for delivery. In accordance with the NSF 2012 the seller is obliged to deliver the vessel at this location "s*afely afloat at a safe and accessible berth or anchorage.*"

The parties will also record the lay dates for delivery, being the acceptable period within which delivery may take place. This is done through recording a particular date after which the seller may issue a notice of readiness ("NOR"). The NOR stipulates that the vessel is ready for delivery. Following its issuance, the buyer is obliged to accept such delivery, or risk being considered in default. The seller is obliged to keep the buyer abreast of when it intends tendering the NOR, with intermittent notices of twenty, ten, five and three days being required.

The parties will also record a "cancelling date." The seller is obliged to tender the NOR before such date, failing which, the buyer is afforded the option to cancel the contract.

At closing, delivery of the vessel is achieved through two actions, which take place simultaneously. The first action is the *physical* delivery of the vessel by the buyer to the seller. There are various possibilities in this regard, depending on the circumstances of the sale. Sometimes representatives are placed onboard to communicate with the shore meeting that the vessel is handed over, as noted in the vessel's log book. It may be accompanied with a crew change.

The other action is the *documentary* delivery of the vessel through the signing of a protocol of delivery and acceptance ("PoDA"). The PoDA records the exact time and place of delivery. It is generally regarded as evidencing the exact time title and risk pass from the seller to the buyer. It is ordinarily signed by the authorised representatives at the shore meeting once payment of the purchase price is confirmed.

(iii) Payment

In accordance with the NSF 2012, the buyer is obliged to pay the balance of the purchase price, and release the deposit, "*on the delivery of the Vessel, but not later than three (3) Banking Days after the Notice of Readiness has been given.*" Aligning payment and delivery presents practical challenges, with international bank transfers often taking up to several working days. Various mechanisms have been developed to address this predicament.

One option is a suspense account. Here the buyer prepositions the funds with the seller's bank for quick release upon its instructions. The release may be made in accordance with an irrevocable payment instruction from the buyer/its bank. This is often achieved through issuance of a SWIFT message, usually a MT 103, from the buyer's bank to the seller's bank instructing the payment. Often an accompanying SWIFT MT 199 message details when such payment may be made, and any applicable conditions (eg; receipt of the PoDA).

Confirmation and payment letters are another option. The buyer's bank may confirm it will initiate payment to the seller's nominated account immediately following any specific action (eg; signing of the PoDA). A payment letter will accordingly be released at closing, neutralising any timing challenges.

An escrow agent is a further option. Here a third party is mandated to release funds received from the buyer (in advance), against agreed conditions.

Conclusion

The sale and purchase of a ship presents a variety of challenges, both legal and practical. Many of these may be overcome through careful planning and execution. The NSF 2012 remains a stalwart contract aimed at clearly guiding both buyer and seller through the process. As with sailing a ship, performed well, a sale and purchase will mostly be smooth sailing. Performed poorly, and she may quickly run aground.

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Blockchain, the Law and Dubai's Grand Plan

Dubai is the international business and trading hub of the MENA region. Dubai has near-zero taxation, outstanding lifestyle attractions, advanced physical infrastructure and a safe environment. In the next step towards its ambitious grand plan, Dubai has now set its sights on being the first city built on blockchain by the year 2020.

Blockchain is the technology used to maintain the digital currency bitcoin, and it can be used to facilitate instant payments. There is a public digital ledger of all Bitcoin transactions that efficiently shares and tracks information, and is highly suited to serve as a form of incorruptible and unalterable form of receipt, or proof of all transactions, shared on a network.

However the uses of blockchain technology extend far beyond Bitcoin, or even use at retail points of sale. Dubai believes that using blockchain technology on an Emirate-wide level will drive an efficient business public sector environment and accelerate its development as a trading and financial hub. Dubai Government agencies are now evaluating the potential of blockchain technology to track the import and export of goods traded across the MENA region. These agencies are currently collaborating with the global company IBM to achieve this.

Although blockchain technology has not yet been utilized widely for commercial use, the technology is attracting notice from major global players. Blockchain technology has attracted attention in the financial-services, supply-chain management, healthcare and shipping sectors. One global company testing the technology is Wal-Mart, which is using the technology to improve the way food is tracked, transported and sold to consumers across China.

The shift to using blockchains could slash costs, including, for example the cost of maintaining and exchanging in real- time information about warehousing and inventory. The Dubai Department of Economic Development believes that the potential benefits may be immense. Blockchain technology offers the potential to speed up transactions, increase transparency and accountability in multiple dealings and reduce levels of fraud and money laundering. Trade is Dubai's biggest business, and the use of blockchains could enable business and government to leap into paper-free systems, with smart and verifiable contracts, eliminating the multiple copies of paper documents used track, ship and sell goods.

Many factors remain to be considered before Dubai deploys this technology on a large scale. One area of concern is cyber security. Because the technology has yet to be used on a large scale, it remains to be seen whether the security will truly protect important transactional information in an impregnable fashion. Supporters of blockchains claim they are secure by design; however, a number of recent hacking attacks against digital currency records have raised concerns.

Another factor to be considered is regulatory uncertainty. In this regard, legal frameworks across the globe will have to adapt. Dubai aims to be at the forefront of the technology and to be the first city built on blockchains. Along with the challenge of adapting its legal framework, Dubai and its residents will face technical challenges to integrate blockchain databases with existing systems. Furthermore, additional factors include the high costs associated with the shift to the new technology.

Dubai has already initiated a citywide effort to use blockchains. Over the subsequent months, Smart Dubai, will run workshops to educate the public and private sectors about the technology's potential, meet with government, semi-government and private organizations, to identify and prioritise the industries and services which can benefit the most from this technology, and implement pilot projects to be conducted this year. Smart Dubai is a project supported by a framework between government, private-sector and institutional partnerships to encourage engagement and collaboration in achieving the vision of His Highness to make Dubai the happiest city on Earth.

Major organisations in Dubai have already begun testing blockchain technology. The Dubai Department of Economic Development, the government agency which registers companies and business, issues commercial licenses and protects consumer and business rights, has shifted its entire business registration and licensing system to blockchain. Another participant in the shift is Emirates NBD Bank; in February 2017, Emirates NBD began cooperating with IBM to use blockchain for trade finance and logistics.

Dubai has set its eyes on accomplishing its goal to be a city built on blockchains by 2020. If it succeeds, Dubai will lead its business sector into the terrain of the future; a paper-free digital environment allowing information to be stored in a digitally secure, verifiable and incorruptible form.

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DIFC Courts Enforce United States Judgment for the First Time

(1) Barclays Bank PLC (2) Credit Suisse Loan Funding L.L.C. (3) Midtown Acquisitions L.P. (4) Special Situations Investing Group Inc v Essar Global Fund Limited [2016] DIFC CFI 036

Peter Smith examines the recent, groundbreaking judgment of Justice Sir Richard Field in Barclays Bank PLC and others v Essar Global Fund Limited in which, for the first time, the DIFC Courts registered and enforced a judgment originating in the United States.

The New York Judgment

A settlement agreement was reached between, amongst others, the claimant lenders and defendant borrower, Essar, in relation to a series of debts, whereby Essar would pay sums of money by installments. In February 2016, Essar was notified that events of default had occurred under the settlement agreement, triggering an obligation to pay immediately over US$412 million.

The claimants applied to the Supreme Court of the State of New York for a judgment by confession, a form of decision available under New York law which allows for judgment to be entered for a sum of money if a defendant confesses it is due in an affidavit and consents to the entry of judgment. Such a judgment is entered by a court upon the filing of the affidavit of confession by the creditor without any adversary proceedings. It is effectively a written statement signed by the defendant accepting liability for damages.

A judgment for US$171,769,169 was consequently issued on 25 August 2016 by the Supreme Court of the State of New York ('the New York Judgment').

Essar did not appeal the New York Judgment. In October 2016, the claimants, through the third claimant, issued their claim form in the DIFC Courts seeking enforcement of the New York Judgment, and subsequently applied for immediate (summary) judgment. Five days later, Essar filed a motion before the Supreme Court of New York to vacate the New York Judgment on the grounds of fraud, misrepresentation and other misconduct. Essar argued that the judgment by confession mechanism was only to be used if there had been a default on the agreed payment programme, which there had not. Essar then filed a second motion before the Supreme Court of New York, alleging it had not been served or notified of the New York Judgment until after the judgment had been entered, and that judgment was issued in violation of the terms of the signed confession.

Justice Field was presented with several matters for judgment, of which two – the constitutionality of the DIFC Courts and their jurisdiction to recognise and enforce foreign judgments – were most important.

The Constitutionality of the DIFC Courts

Essar contended that the DIFC Courts did not have jurisdiction to enforce judgments of foreign courts because matters of 'foreign affairs' are exclusively reserved to the UAE Federation by Article 120 of the Constitution of the UAE. The Court rejected this proposition. The judge found that 'the expression "foreign affairs" in [Article 120] and related Articles in the Constitution connote the conduct of foreign policy as between states on the international plane, which is something wholly different from the recognition of a foreign judgment by the DIFC Courts' (paragraph 32).

The Court further held that, even if such recognition and enforcement was within the scope of Article 120, an exception existed within the Constitution conferring jurisdiction on the DIFC Courts. It was not necessary to refer the matter to the Union Supreme Court.

The judgment of Justice Field concluded that the enforcement of the New York Judgment by the DIFC Courts was not a matter of foreign policy. It was instead founded on a rule of private commercial law and based on a voluntary, private or consensual quasi-contractual obligation assumed by Essar (paragraph 35).

The Authority of the DIFC Court of Appeal Judgment in the DNB Bank case on the Issue of Jurisdiction

Essar argued that the finding of the DIFC Court of Appeal (CoA) in DNB Bank ASA v Gulf Eyadah Corporation & another [2015] DIFC CA 007, specifically that the DIFC Courts have jurisdiction to recognise and enforce foreign judgments, was not essential to that judgment and therefore not binding because the defendant in that case abandoned its challenge to the jurisdiction of the DIFC Courts. Justice Field rejected this argument and held that the CoA decision in the DNB Bank case 'dealt authoritatively' with the question of whether the DIFC Courts had jurisdiction to enforce foreign judgments. They were consequently bound to follow this precedent.

According to the judgment, it was a 'necessary inference' that if the DIFC Courts have the power to execute a foreign judgment under Dubai law, they have the power to enforce that judgment by issuing a fresh judgment ordering the defendant to pay the sums owed under the foreign judgment.

Other Arguments

The judge gave short shrift to Essar's contention that because the New York Judgment did not result from adversarial proceedings, it was not capable of enforcement in accordance with common law principles (paragraph 48). He also rejected Essar's argument that since the New York Judgment could be vacated on motion (application) pursuant to New York civil procedure rules, it could not be enforced as it was not final and conclusive on the merits, being a condition of enforcement. The judge emphasised the common law position that a judgment is capable of being executed upon being issued, whether or not there remains the theoretical possibility of an appeal (paragraph 50).

He dismissed assertions that immediate judgment should be refused because the New York Judgment was procured by fraud or in breach of the requirements of natural justice, or that there was a triable issue involving foreign law. Essar had contended that the non-dishonest misleading of a foreign court was sufficient to establish a defence to the enforcement of a foreign judgment. The judge found 'on the contrary' that the correct approach 'requires that the foreign court be misled or deceived with a dishonest intention, this being the hallmark of the common law conception of fraud' (paragraph 63). There was no triable question of foreign law because the judge was content that the judgment by confession was a final and conclusive judgment (paragraph 70).

The DIFC Courts judgment concluded that Essar had no real prospect of establishing any of its defences against the third claimant's claim and that it was just and appropriate to reach that conclusion without a trial. The third claimant's application for immediate judgment was granted.

Analysis

It is perhaps surprising that these aspects of the DIFC Courts' jurisdiction should be seriously challenged by respectable counsel before the Courts today, after considerable debate that has resulted in seemingly settled authority.

Nonetheless, the DIFC Courts entertained Essar's submissions in full, with the judge thoroughly weighing the arguments on both sides before making his findings.

This judgment is welcome for the clarity it gives in answer to key questions about the DIFC Courts' constitutionality and jurisdiction, and it affirms an established precedent in favour of foreign judgment creditors selecting the DIFC as their preferred jurisdiction in Dubai.

Al Tamimi & Company's DIFC Courts Litigation Group regularly advises on enforcement matters. For further information please contact Tarek Shrayh (t.shrayh@tamimi.com) or Peter Smith (p.smith@tamimi.com).

A Focus on Innovation, Digitisation and Advancements in Technology

In this edition of Law Update, we focus on our Technology, Media & Telecommunications practice and on topics relevant to the massive social, commercial, industrial, and economic changes that are currently unfolding due to rapid innovation, digitisation, and advancements in technology.

A new industrial revolution is currently taking place. As recently as five years ago, talk of cloud computing would have been considered fairly niche. These days, it is a fundamental aspect of daily life, commerce, and industry in all corners of the world – be it Kenyan farmers using cloud-based solutions to monitor their irrigation requirements, or major German industrial manufacturers using telematics to monitor wear and tear on industrial equipment. In combinations with other tools, including ubiquitous smart devices and ever-cheaper sensors, huge volumes of data are being collected on an ever-increasing scale. Data is being utilised as a resource leading to new business models, transformation of existing business operations, increased efficiency, and enhanced production. Big data is leading to advancements in machine learning and artificial intelligence, feeding into developments such as the Internet of Things, connected homes, Smart Cities, autonomous vehicles, domestic robots, and drones. Other developments in digitisation, including algorithms, business process automation, augmented reality, 3D manufacturing, blockchain and smart contracts, were previously focussed at an industrial level – and are now being found at a consumer level.

Many countries in the Middle East, particularly in the GCC states, are well-poised to benefit from these major developments. The need for better infrastructure, the need to spend government funds more wisely, and a general desire to move towards knowledge-based economies, is resulting in increased public sector interest and investment, in innovation, digitisation and technology. Private and public sector clients are seeking to modernize and digitise their existing systems, either by adopting or developing state of the art solutions. International technology providers continue to see the huge potential for business across the Middle East. Innovative developments, such as internet protocol messaging services, ubiquitous smart phones, and a growing appetite for mobile content, are examples of how the communications industry is facing change across the Middle East - and around the world. Broader considerations, such as an increased desire for local content and alternative means of content delivery, is resulting in swift development in the media sector across the Middle East region.

Our Technology, Media & Telecommunications practice services a client base that includes technology vendors, as well as a diverse range of private and public sector technology purchasers. Many of these clients are in the financial services sector (eg. including banks, insurance companies and payment solution providers). The team also serves a variety of clients in the telecommunications sector (eg. telecommunications service providers, internet service providers, network and infrastructure providers, equipment manufacturers, and clients with specialist interests in areas such as satellite services, telematics and data centres). Other clients can be broadly categorized as operating in the e-commerce space, ranging from modest on-line marketplace start-ups through to developers of significant 'game changing' technologies looking to expand into the region, marketing and advertising agencies, media development and production companies, internet content providers, e-commerce businesses and online platform operators and social media influencers. Clients in the healthcare, education and hospitality sectors also feature; as do clients in general industrial manufacturing industries. The team also works with a range of government sector entities on a broad variety of technology-related matters, including e-payment platforms, transport infrastructure solutions and data protection and information security related matters. The team's advice is practical and informed by its familiarity with the commercial and industrial sectors in which its clients operate, the legal and regulatory environments of more sophisticated jurisdictions, and its deep knowledge of local law and practice.

Significantly, our Technology, Media & Telecommunications team regularly provides specialist technology, media, and telecommunications related legal support to other departments within the firm – including Banking & Finance, Commercial Advisory, Corporate Structuring, Employment, Intellectual Property, Legislative Drafting, Mergers & Acquisitions, Real Estate, Regulatory and Transport - either in response to ad hoc queries, or as an integral part of project teams working on significant commercial transactions. Team members participate in the firm's sector focus groups, including the Healthcare Sector Group, the Education Sector Group, the Hospitality Sector Group and the Sports & Events Sector Group.

Many of the articles in this edition of Law Update provide a taste of some of the areas in which our Technology, Media & Telecommunications team is currently working. Other articles highlight how technological change is leading to broader legal issues in a variety of practice areas. Ultimately, we hope that this special edition of Law Update provides you with food for thought. The world is facing a new wave of social, commercial, industrial and economic changes brought about by rapid innovation, digitisation and advancements in technology – and no one can hold back the tide.

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Arrested Development: Legal Considerations for App Developers in the Middle East

App development is a flourishing industry across the Middle East. We are regularly approached by clients seeking legal advice on issues relating to app development. In some instances, the app is intended to streamline or digitise an existing process of a broader business. In other instances, the app is the business. In this article, we outline some basic legal considerations relevant to developing and rolling-out a new app.

Who owns it?

In some cases, the client company has in-house technical capabilities to develop its own app. In this scenario, it is important to make sure that the terms of the employment agreements of the individuals working on the coding provide that the employer owns the intellectual property rights in the developed app. On the point of ownership of an employee's work product, it should not be assumed that the law in the UAE, or elsewhere in the GCC, is the same as one might find in many other jurisdictions.

Where it is necessary to engage an external developer to undertake the app development, the approach to ownership will depend on the nature of the app being developed. For example, an app that is basically an 'off the rack' or 'white label' product, which only requires minimal customisation for the client company, would not typically be owned by the client company. It would normally be adequate for an appropriate licence to be in place, providing the client company the right to use the app in the manner it requires, whilst making clear that the client company retains all rights in any aspects that it contributes to the customised app. In contrast, where a bespoke app is prepared by an external developer, essentially from scratch at the client company's direction and specification, then it is very important to make clear that all rights in the app vest in the client company and the developer has no right to the app. Failure to address these issues at the outset may result in disputes as to ownership of the app.

An engagement with an external app developer should also include details such as confidentiality obligations, licences of any third party content

used in the development of the app, and also warranties of non-infringement (and indemnities in the event of infringement) of third party intellectual property rights. If the app is going to need technical support during a warranty period or ongoing technical support over a longer term, it would also be prudent to consider engaging the developer to provide this type of support.

Regardless of whether the app is developed externally or internally, consideration should also be given to the listing of the app in the relevant digital distribution platform (e.g. Apple App Store, Google Play, or Windows Store). We have encountered many instances where the client company had expected the app to be listed in its own name, only to find that it ended up being listed in the name of an employee or an external developer.

What about broader legal and regulatory considerations?

Another important preliminary consideration relates to the underlying business. If you are producing an app that is revolutionising microcredit, have you thought about whether there are any financial services regulations that might impact on what you are doing? If you are introducing an app that connects freelancers with people needing work done, could you be facilitating non-compliance with licensing laws or directly breaching labour laws? If your app is going to allow people to order overnight petrol deliveries to their homes, have you made sure you are compliant with the rules relating to distribution of fuel? If your app is going to permit ride sharing or consumer-to-consumer car hire, have you thought about whether the transport regulator might have something to say on that? If your app-based e-commerce business is, through its payment structure, essentially providing credit, have you considered whether the local Central Bank's rules relating to digital payment providers may apply to you? If your app is going to bring fantasy sports to the Middle East, have you taken formal advice on whether it might be facilitating unlawful gambling? Is your 'Muslim version of 'Tinder' going to be embraced by the local telecoms regulator?

As much as you might think you are 'disrupting' existing business models, you need to appreciate that laws and regulations may already exist in the space in which your app is going to be operating. Just because what you are doing may be innovative and not fit neatly into existing legal requirements, it would be reckless to think that the rules do not apply to you or that you simply need not comply. In some instances, non-compliance could result in significant criminal penalties, including fines and imprisonment.

What about app documentation?

It would typically be necessary to have terms that set out the basis upon which consumers or end users use the app, and govern the arrangement between the client company and its customers. As well as the type of details that any agreement might have, such terms and conditions will really need to be tailored to the specific purpose of the app and the associated business processes. An app for online retailing would need details on the mechanics of shipping and returns. An app that acts as a platform for introducing maintenance service providers to property owners would need to include details on complaints and responsibility for unsatisfactory work. An app that introduces restaurants and provides a platform for reviews would need to include clear demarcation as to responsibility for the content of user reviews.

The customer-facing terms and conditions are one side of the equation. In many instances, there will also need to be back-end agreements with merchants and service providers. These agreements will address aspects that are quite different to those addressed in the consumer-facing terms and conditions but, to the extent that some of the aspects overlap, it will also be necessary to make sure there is no conflict.

Privacy policies that set out the type of personal data that is gathered via the app, the purposes for which such data is used and the basis for such use, are also very important. In the GCC, where issues relating to personal data protection are generally not well-addressed in legislation, there are certain minimum requirements that should be met. It is also prudent to try to take an 'international best practice' approach so as to limit risk and future-proof this aspect of the operation. This is particularly important in circumstances where developments in personal data protection regulation outside the region may have an impact on the processing of personal data within the region.

It is also important to bear in mind the requirements of the relevant digital distribution platforms when it comes to developing user terms and conditions and privacy policies so that the documentation does not conflict with any of the platform requirements. Obviously, familiarising yourself with the platform requirements is a fairly fundamental consideration for the entire project and it would be sensible to do so early in the process.

What about registering intellectual property rights?

Preliminary trade mark clearance searching in the relevant markets for the name and logo under which the app is to be made available is important. A third party's prior trade mark rights could act as a barrier to the use of the proposed name or logo and provide a basis for a trade mark infringement action. Additionally, registering the app's name and logo would provide a basis for action against others subsequently seeking to use an identical or confusingly similar name or logo for similar offerings. A trade mark registration also provides a clear legal right that can become an asset for the purposes of valuation or sale of the associated business. Further information on considerations relating to trade mark protection for apps may be found in the article "How to Protect Your Trademark Smartly" in the November 2013 edition of Law Update.

We are often asked if it is necessary to register copyright in software code. Copyright subsists in a copyright work without the need for any registration, although in the UAE (unlike in most countries) a copyright registration system also exists. The registration of copyright in the original coding of an app might be useful if one were seeking evidence of ownership of copyright in the software code, although our general view is that it should not be considered essential to register copyright in software code in the UAE. If one were to initiate a formal dispute as to the ownership of copyright in software code in the UAE, it may ultimately be necessary to submit proof of ownership of copyright in the software code in the form of a UAE copyright registration certificate, but seeking to register copyright at the outset to provide for this possibility may not be the most commercially pragmatic approach.

Care should also be taken to ensure that the app does not infringe copyright by incorporating any third party content (be it software code or 'creative' content such as images, graphics, text, or music) without the necessary authorisations.

The relevance of patent protection to apps is fairly nuanced. Copyright is the typical intellectual property right under which software, including apps, is protected. Patent protection relates to inventions that are novel and have an inventive step. The extent to which software or associated business processes might be eligible for patent protection varies considerably around the world. The position in the UAE is that computer programs as such are excluded from patentability, whereas computer programs suitably linked to hardware and presented as a technical solution to a technical problem might be considered eligible for patenting. This is broadly similar to the position in Europe.

Besides the question of whether an app is likely to be patentable from a technical perspective, consideration should also be given to the issue of whether seeking to patent the app makes commercial sense. Would the cost and timeframe associated with seeking a patent align with the potential commercial benefit and likely lifespan of the app? Would a patent or a pending patent application, actually add value to the business beyond the value associated to other intellectual property (e.g. copyright and trade marks) already associated with the app? Seeking to patent an app should not be considered absolutely essential in every case, although it is something to consider on a case by case basis.

What next?

Documenting proper arrangements with the developer, be it an employee or third party service provider, is essential. Consideration should be given to whether there might be any underlying legal or regulatory restrictions on what the app is proposing to do, how it is proposing to do it, and whether the terms of the relevant digital distribution platforms might also preclude what you have in mind. Suitable front-end and back-end documentation also needs to be prepared. It is also sensible to consider whether any intellectual property rights should be cleared or registrations sought.

Al Tamimi & Company's Technology, Media & Telecommunications team regularly advises on mobile app development related issues. For further information please contact Nick O'Connell (n.oconnell@tamimi.com) or Andrew Fawcett (a.fawcett@tamimi.com).

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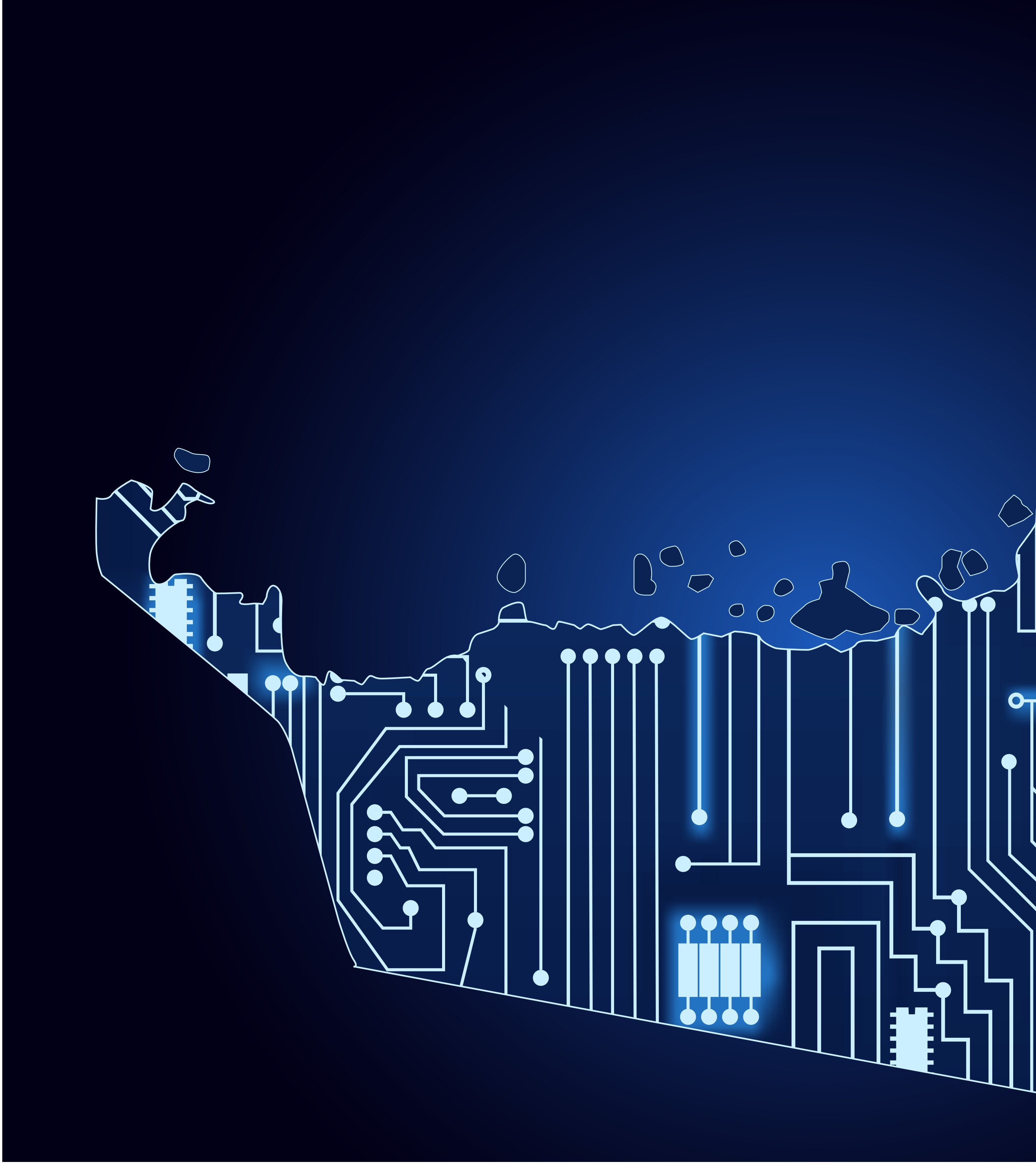
MENA Cloud Alliance launches GCC Cloud Competitiveness Index 2017

The development of cloud computing is fundamental to innovation and the development of digital economies and smart cities. The UAE, and the broader GCC, would benefit from greater clarity when it comes to regulatory considerations associated with cloud computing. Clarity in the regulatory regime will enable greater investment in infrastructure, greater uptake by commercial users, and offer more comfort to end users.

The Middle East & North Africa Cloud Alliance, or "MENACA", is an industry association that seeks to identify and resolve issues around cloud adoption in the Middle East & North Africa. As an organisation set up to help the cloud industry develop, it is vendor-agnostic (not tied to the products of a specific manufacturer) and has diverse members ranging from global technology giants to local data centre operators, academic institutions, and thought leaders. Al Tamimi & Company is a member of MENACA and provided input on MENACA's Cloud Competitiveness Index 2017 for the GCC region, launched recently in Dubai. The aim of the Index is to turn publicly available data into insightful knowledge that might help advance cloud computing in the region.

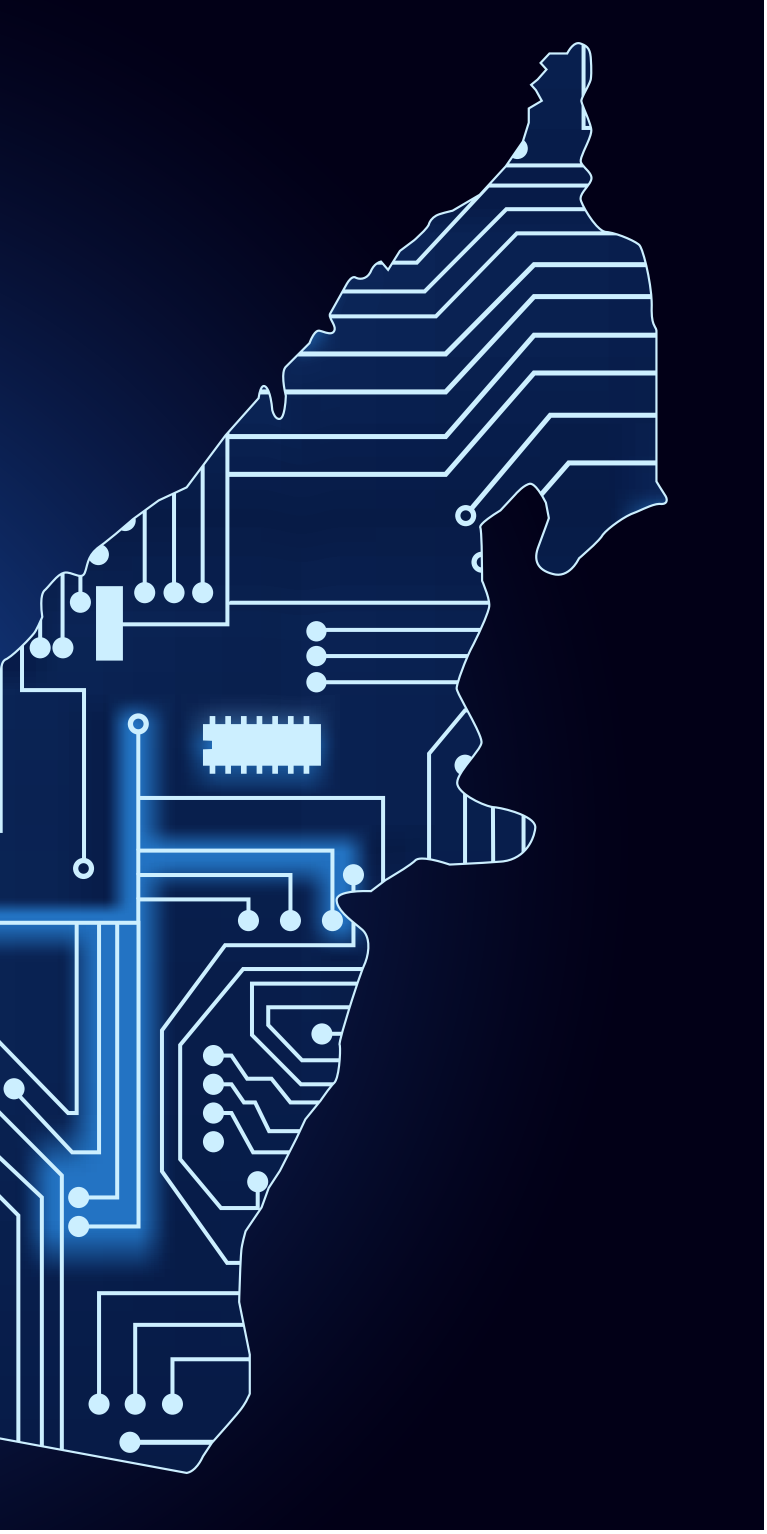
The Index provides a general overview of core issues relating to cloud computing in the region, including issues relating to the licensing of cloud-related operations, information security, data protection, data sovereignty, and lawful access issues. These issues, and a variety of other issues fundamental to the development of the cloud industry (and therefore fundamental to the move towards digitalization in commerce, industry, and society), were discussed by speakers and attendees at the launch event.

Governments in the region are keen to innovate and a key aspect of this is the move towards greater use of data in developing policy, allocating resources, delivering services within government entities and to the public. Despite this, lack of clarity around the use of the cloud, inconsistency between



approaches taken by different entities, and concerns around data residency and security are hindering uptake.

The roles of various players involved in delivery of cloud services are developing. Telecommunications service providers are able to leverage their technical skills, networks, and infrastructure to position themselves as fundamental to the cloud ecosystem. Data centre providers are moving away from simply providing data warehouses that dedicate a set of resources to particular computing technology, application, or line of business, to providing converged infrastructure, that pools and shares information technology resources, enhancing data centre efficiency. Managed service providers, who manage information technology infrastructure and end-user systems remotely, are becoming increasingly well placed to perform a brokering-type role for cloud services. Cloud service providers are enhancing their competence in interoperability and integration technologies, and systems integrators are having to move from simply providing hardware, software,



and integration services, to providing long-term business solution integration.

In this context, the Index identified the important role that universities and training establishments have in trying to ensure that there are enough skilled workers to support the ongoing development of cloud infrastructure and cloud-based services in the region. Failure to address education in this area, both in terms of making the sector appeal as a career choice and in terms of ensuring high quality technical competence amongst trainees, has potential to be a major impediment to development.

In its conclusion, the Index highlights the role that cloud technology plays in enabling the likes of Smart Cities, Internet of Things, Big Data, and summarises three key take-away points on which the GCC needs to focus in order to ensure that the benefits of cloud technology are harnessed for these types of purposes. These can be summarized as Regulation, Price, and Talent.

- **Regulation**: The Index highlights that clarity is required in areas such as cloud-specific regulations, data protection, data breach notification obligations, and law enforcement access to data. The Index asks whether the GCC might be able to learn from the mistakes of other countries and regions and take a consistent, collective approach to regulating these issues.
- **Price**: The Index notes that cloud uptake requires access to reliable, high-speed infrastructure at a reasonable price so as to be competitive but many of the countries in the region score poorly on affordability when it comes to connectivity. The Index asks whether policy makers in the GCC might be able to incorporate adequate network access policies into their ICT visions.
- **Talent**: The Index highlights an increasingly widening talent gap as a major challenge and suggests that local labour markets will have to improve to attract and retain global talent. It suggests that the effort that has successfully helped the rankings of various GCC centres as desirable places to do business could also be harnessed to providing an environment that helps to develop, attract, and retain skilled workers.

Cloud-based infrastructure and solutions will continue to provide the backbone for the rapid innovation that is swiftly becoming ubiquitous. The cloud needs to be embraced rather than viewed with suspicion. There is a lot of work to be done in the region to ensure that the benefits of cloud can be leveraged to the greatest extent possible.

For further information on MENACA and the Cloud Competitiveness Index 2017, please visit: www.menacloud.org .

For further information on issues relating to cloud computing, be it from a vendor or customer perspective, please contact Nick O'Connell (n.oconnell@tamimi.com) or Andrew Fawcett (a.fawcett@tamimi.com).

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Into the Wild: Fintech and Regtech Innovation in the Middle East

Dubai International Financial Centre and Abu Dhabi Global Market, two of the leading financial services free zones in the region, are each seeking to appeal to developers of financial services technologies by setting-up innovative environments in which so called fintech solutions can be developed and, to a degree, let out "into the wild". Fintech, and its cousin, Regtech, are both very hot topics in the region at the moment – and their relevance is only going to grow.

The term "fintech" previously referred to back-end technology in the financial services sector; think software and information technology solutions relating to banks and insurance companies. More recently, the term has come to mean broader technological innovation in the financial services sector, including things like app-based retail banking, peer-to-peer lending and share-trading platforms. The term also refers to payment platforms that circumvent the roles of traditional financial services players, finance training platforms, distributed database / block-chain technologies, and crypto-currencies such as bitcoin. In some instances, fintech solutions might address gaps in existing financial service offerings, including in circumstances where an opportunity is best addressed by a more nimble and more entrepreneurial operation, unhindered by the bureaucratic processes and legacy technology issues that may slow down more established institutions.

Regtech also seeks to utilise innovative technologies, such as Artificial Intelligence, block chain, big data analytics, cloud computing and biometrics. However, its core purpose is to address compliance and risk management issues, and enabling more effective management of compliance costs and reducing operational risks.

DIFC's FinTech Hive Accelerator programme

In January 2017, the Dubai International Financial Centre launched the FinTech Hive Accelerator programme, providing a platform for financial services and technology firms to build solutions for the financial sector. Supported by Accenture, the programme runs over twelve weeks during which time participants have the opportunity to develop, test, and modify

their fintech innovations in collaboration with top executives from the DIFC and regional financial institutions. It is intended to provide a platform allowing concepts to be fast-tracked into tried and tested commercially viable propositions.

Participants receive access to leading financial services firms and executives, involving both mentoring, insight, and direct feedback from target user groups. The programme also involves workshops and discussions on relevant topics such as procurement, regulation, and industry trends.

The Dubai Financial Services Authority (the regulator for the DIFC) has also proposed that fintech businesses that meet certain qualifying criteria will receive an 'Innovation Testing Licence' (discussed elsewhere in this edition of Law Update), reflecting the nature of the activities to be undertaken during the testing phase. Graduation from the testing phase would be a step towards obtaining a full Financial Services Licence.

ADGM's 'sandbox' and the FSRA's Regulatory Laboratory Guidance

In our June/July 2016 edition of *Law Update* we wrote about the Financial Services Regulatory Authority (FSRA) of the Abu Dhabi Global Market and its Consultation Paper No. 2 of 2016 regarding a proposed regulatory framework to support participants deploying innovative technology within the financial services sector. The Consultation Paper proposed the creation of a 'regulatory laboratory' or 'sandbox', intended to provide a safe environment, within controlled boundaries, for businesses to test, develop, and provide innovative fintech products.

In November 2016, the FSRA (the regulator for the ADGM) issued its FinTech Regulatory Laboratory Guidance, which sets out the FSRA's approach to the RegLab framework. In May 2017, media reports indicated that ADGM has approved its first batch of RegLab participants, comprising five fintech startups with various innovative offerings. Participants will be granted a 'Financial Services Permission' (also discussed elsewhere in this edition of Law Update), by the FSRA, to carry on the regulated activity of developing financial services technology within the RegLab.

What next?

The application of new technologies in the financial services sector has potential to bring clear, practical benefits. Besides DIFC and ADGM, others in the region are looking at accommodating fintech development by providing receptive environments. Notably, the Bahrain Economic Development Board has partnered with a Singapore fintech consortium to develop a fintech ecosystem and regulatory framework for Bahrain.

For fintech developers each of these initiatives offer an attractive opportunity to test products under lighter restrictions and regulations in an environment that has committed itself to becoming a centre of fintech excellence in the Middle East.

Leading financial services centres in the Middle East are seeking to position themselves as hubs for the fast growing financial technology industry through the introduction of light-handed regulatory regimes designed to support and develop financial technology innovators.

Al Tamimi & Company's Technology, Media & Telecommunications team regularly advises on legal issues to do with the development of new technology, and works closely with specialists in our Banking & Finance team with regard to issues relating to the use of technology in the regulated financial services sector. For further information please contact Nick O'Connell (n.oconnell@tamimi.com).

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Splinternet: Do Data Localisation Laws Threaten the Global Internet?

The borderless nature of the Internet has enabled the development of the digital economy and revolutionary technical innovations. It has become easy for companies (large and small) to achieve a global reach.

However, in the wake of the Edward Snowden whistleblowing leaks that revealed mass foreign surveillance wiretaps of the Internet, a number of governments are considering implementing data localisation laws.

In practice, data localisation laws are highly likely to fragment the Internet resulting in inefficiencies and greater costs. Many recent technological advances may be affected or impeded by such laws.

What is Data Localisation?

Data localisation laws require that businesses that operate on the Internet, store and process data within the country where the businesses are located rather than servers overseas. Businesses that do not comply can be barred from doing business in that country or receive substantial fines.

Late last year the Russian's communication authority, the Roskomnadzor, blocked access to the LinkedIn website to comply with a Moscow City Court ruling that LinkedIn was in breach of Russian laws that require websites to store personal data of Russian citizens on servers in Russia. LinkedIn reportedly had argued that the laws should not apply as LinkedIn does not have a physical presence in Russia and that its activity is international and not specifically directed at Russia.

The common justification for data localisation is the assumption that placing data abroad jeopardises security and privacy. However, it does not necessarily follow that data localisation will actually prevent surveillance, as physical access is not technically necessary in order to conduct such activities. Furthermore, data localisation laws can be used as a means for governments to ensure that data is more readily available to their own domestic law enforcement.

In November 2013, Richard Salgado, Google's director of law information and information security is reported to have told a US congressional panel "If data localisation and other efforts are successful, then what we will face is the effective Balkanization of the Internet and the creation of a 'splinternet' broken up into smaller national and regional pieces, with barriers around each of the splintered Internets to replace the global Internet we know today."

Some consider that data localisation laws can be used by countries as a trade protection strategy used to provide local businesses with competitive advantage to increase their share of domestic IT markets otherwise dominated by global IT companies. The reality is that any economic

gains will be likely limited to a few local sectors, such as data centres. Such gains are likely to be small compared to the potential harm done to the remainder of the digital economy.

Where are these Laws Being Introduced?

Data localisation laws already exist in various forms and degrees in several developed and developing countries.

Vietnam requires Internet service providers to maintain copies of data within Vietnam to allow for possible government inspection. Australia prohibits the transfer of health data out of Australia in some situations. Indonesia requires companies to have data centres and disaster recovery centres the territory of Indonesia.

Arguably, although not strictly classed as a data localisation law, the EU's Data Protection Directive (and its successor, the General Data Protection Regulation), could be considered as effectively requiring data localisation because of the Directive's restrictions on transferring personal data to non-EU countries.

However, there is a newer more worrying trend emerging of more comprehensive data localisation laws with greater global reach. The previously mentioned law in Russia requires that any personal data of Russian citizens to be stored and processed within Russia. The law also requires the disclosure of the location of these data centres to the Russian authorities.

Recently the Cyberspace Administration of China called for public comments on its draft "Security Assessment for Personal Information and Important Data Transmitted Outside of China". These measures include a significant expansion of the data localisation measure that potentially applies to all businesses collecting data in China.

Some Developments in the GCC

A public consultation document issued in July 2016 by Saudi Arabia's Communications and Information Technology Commission ("CITC") called for comments on proposed Regulation for Cloud Computing.

The draft regulatory framework provides that "User Content" (defined as any data provided or generated under a contract for cloud services) will be subject to different levels of information security, depending on its sensitivity, origin, and other criteria.

It is proposed that no "Level 3" User Content can be transferred outside Saudi Arabia for whatever purpose and in whatever format, whether permanently or temporarily (e.g. for caching, redundancy or similar purposes).

While "Level 4" concerns highly sensitive or secret content belonging to concerned governmental agencies or institutions (and it is understandable that there may be a reason to localise such content), the "Level 3" classification in the proposed regulations is broader and includes "sensitive User Content of private sector companies or organisations". What is "sensitive" is not defined.

Cloud service providers are to presume that "Level 3" information security is to apply to any government authorities or agencies.

This proposed regulation can be contrasted with information security controls currently in place in the UAE. The National Electronic Security Authority ("NESA") has developed the 'UAE Information Assurance Standards' ("IAS") which include security controls for cloud computing. Compliance with the IAS is only mandatory for "UAE government entities and other entities identified as critical by NESA" (e.g. operators of critical IT infrastructure) - although NESA has recommended that all UAE entities who are not strictly subject to the IAS requirements should adopt them as a matter of best practice.

While the IAS does not prohibit cloud services, it does require an entity to define information security requirements covering the retention, processing and storing of data in cloud environments, which requires the consideration of regulatory and other requirements potentially limiting the processing, and storage of information in external entities for example, laws or business agreements preventing certain types of information from being stored outside national borders.

This approach of mandating only that an entity must expressly turn its mind to what data it is storing outside national borders and the security of that information in the context of what is best for

its particular operations is preferable to having a blanket prohibition that requires data localisation. This appears to provide more scope for balancing business and national interests.

Where Should Data be Stored?

If data localisation becomes commonplace, determining what data must be stored in which country may be easier said than done.

If Company X is headquartered in India but has subsidiaries around the world, does that mean that under data localisation laws all of Company X's data would have to be stored in India by the cloud service providers it uses to manage its online operations? Alternatively, should localised data be stored in the country of each Company X subsidiary? Will the country of incorporation matter or just the country where the relevant office or employee is located?

There are no clear answers as matters currently stand. Much will depend on how each jurisdiction drafts its data localisation laws on the issue.

What Does This Mean For Companies?

Data localisation laws create a significant barrier to companies seeking to expand their international presence. Widespread data localisation will require global service providers to build or rent physical infrastructure in each jurisdiction that requires data localisation. The associated costs and administration burdens will likely make the provision of many global services currently taken for granted by Internet users impractical.

Most markets in the GCC may be too small for many companies (e.g. start ups and app developers) to justify paying the costs associated with data localisation and consequently, a blanket imposition of data localisation by a GCC government means that the local markets risk getting left behind in the digital economy.

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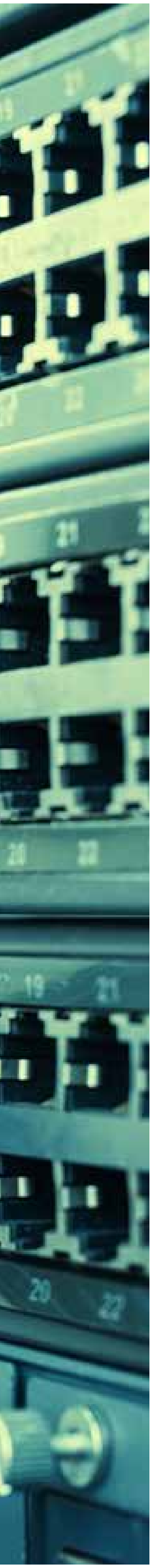

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Cyber Attacks will make you WannaCry

A ‘cyber attack’ is commonly defined as the use of malicious code to manipulate or disrupt a computer system. In the past, cyber attacks were mostly aimed at governments and the defence industry. Today, it is not unheard of for commercial and industrial companies to come under the same level of sophisticated attack that was once reserved for states. The increasing use and reliance on technology and the proliferation of new technological devices have made us more vulnerable now than ever before. To make matters worse, sophisticated crime syndicates are using encryption to hide their activity. Consequently, any company, government entity, non-profit organisation, or individual that uses computer systems or the Internet is susceptible to a cyber attack. The drivers for these crimes are varied and include extortion, commercial sabotage, hacktivism, cyber spying, cyber terrorism, and cyber warfare. There is particular concern about the vulnerability of the healthcare sectors in many countries as they process vast amounts of sensitive personal data.

Attacks in the Middle East

The Middle East has long been a target for various types of cyber attacks.

The Shamoon attack on oil giant Saudi Aramco in 2012, described by former US defence secretary Leon Panetta as the most destructive cyber attack on a private business then seen to date, is believed by US officials to have been the work of hackers working on behalf of the Iranian government. In that attack, the virus crippled 35,000 computers at Saudi Aramco within hours by overwriting the master boot record and rendering their computers inoperable. Earlier this year, the Saudi government warned organisations in the Kingdom to be on the alert for variants of the Shamoon virus, following attacks on various ministries and government agencies. Given the continued conflicts in the region, such attacks are expected to increase.

At the time of writing, the WannaCry ransomware hack has indiscriminately hit 200,000 targets in at least 150 countries. Ransomware is a type of malicious software that blocks access to a computer system until a sum of money is paid. According to Symantec, Saudi Arabia is the most targeted country for ransomware attacks in the Middle East and Africa region, followed by the UAE.

Potential losses resulting from cyber attacks

The frequency and severity of cyber attacks increases year-on-year, and it is now imperative that organisations take a proactive strategy to manage them. Such strategies need to be targeted to ensure:

- the preservation and continuity of commercial operations;
- protection of commercially sensitive information and valuable intellectual property;
- protection against the theft and misuse of sensitive and personal information of employees and staff;
- prevention of fraud; and
- minimal brand damage and loss of good will.

Protecting against, and recovering from, cyber attacks

A multi-pronged approach should be taken to deal with this threat in a way that covers all bases, including:

- using information technology systems and products that were originally designed with security in mind;
- finding and fixing vulnerabilities before an attacker can try to exploit them;
- properly vetting new employees, agents and contractors who have access to information technology systems;
- deploying both proactive and reactive cyber security solutions;
- establishing internal security policies and plans for defending against attacks (and testing such plans through the use of exercises);
- preparing and promptly implementing disaster recovery in the event of a cyber attack;
- placing 'best effort' obligations on service providers to perform remedial action against virus contamination. This includes ensuring restoration of data from backups maintained by the service providers, locally stored data, and backups maintained by the customer as well as reconstructing lost or corrupt data;
- obtaining cyber security insurance. Note however that this type of insurance can be difficult to source as only specialised underwriters and IT experts have the requisite expertise to even come close to appropriately pricing the insurance risk. Even then, the actuarial estimate of the insurable risk is unlikely to be accurate as estimates of total annual loss due to cyber risk vary greatly from around $100 billion to over $1 trillion; and
- a right to terminate the contract where the service provider is not able to restore the service promptly following an attack. This leverage ensures immediate attention, and as a last resort, allows the customer to engage another service provider to restore the services.

Customers should review their existing IT contracts to ensure they contain sufficient obligations on the technology vendor or IT service provider to comply with the measures above. Where the contract does not address these issues, the customer should seek to raise these concerns with vendors and service providers with a view to having terms amended to address these types of essential concerns.

Conclusion

Organisations can no longer afford to ignore cyber security threats and must put in place systems and processes to defend against and recover from cyber attacks. The recent global Wannacry ransomware hacks are a clear reminder of this. Financial institutions, healthcare providers, government agencies, airlines and online businesses are particularly vulnerable and should undertake an internal review to identify and address any weaknesses.

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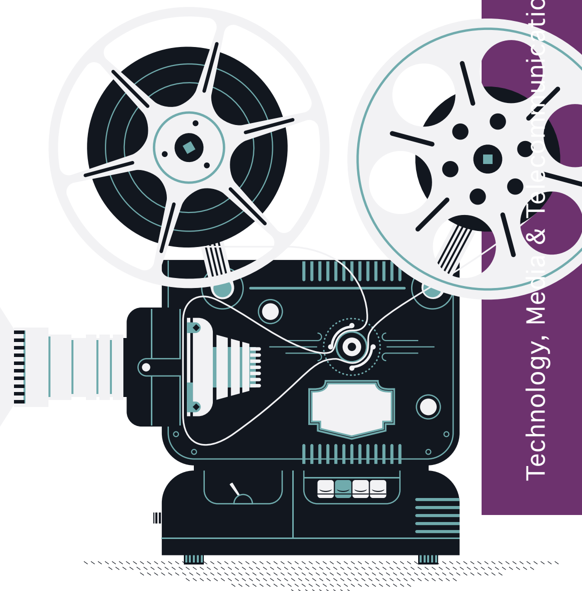

Money Makes the Camera Go Round: A Guide to Deals in Film Financing

Ideas for films are not unusual – we have potential film ideas presented to our team every month. Harder to find are film finance deals. Films are generally not cheap to produce and with all costs of production having to be paid up front as they are incurred, a film producer needs to have access to a significant amount of money in order to commence production.

A lot of filmmakers start their creative output by financing their own films – small budget short films, paid with credit cards and assisted by the provision of free services, friends as cast and borrowed equipment. It all contributes towards the growth of the filmmaker, but at some stage any filmmaker with ambition is going to want to expand beyond this into larger longer films, with multimillion-dollar budgets. So just how are such films financed? For those that dream of a life behind the camera, we take a look at the various ways in which a filmmaker can strike a film finance deal.

Pre Sales

The traditional method of financing films comes from pre-selling the distribution rights to the film to sales agents or distributors in certain key territories in advance of the production. This not only raises funds, but allows the filmmaker to promote the sales agent's or distributor's interest in the film, when negotiating for other forms of finance from third parties. Third party financiers are likely to be more interested in providing money to a film that has at least a chance of being released to cinema.

The filmmaker should always aim to seek an advance on the eventual returns from the film, which not only provides much-needed funding for the production of the film, but demonstrates the sales agent's or distributor's intention to actually take the film once it is complete. In the optimum pre-sales deal, the advance would be provided before pre-production, meaning that the money could be used to fund the production of the film. It is important to note that pre-sale advances are more likely to be paid to films with box office 'draws' in key cast or, in some cases, the director role. As one would expect, distributors will value an experienced and well-known director above a talented but unknown first time director.

In practical terms, the availability of distribution advances has significantly dropped in the digital age and is almost non-existent in the Middle East. However, obtaining a sales agent or distribution agreement at the earliest time possible is still desirable commercially. Such an agreement can significantly increase a filmmaker's chance of obtaining other forms of third-party finance. To ensure that the distribution agreement is going to be advantageous, despite the failure to procure an advance, the filmmaker should seek the inclusion of a minimum guarantee in relation to the revenue that the film will raise. This is clearly an advantageous commercial term for the filmmakers, as it provides the distributor with an incentive to maximise its efforts to distribute the film and to increase potential revenue. As return of their investment, finance will generally be the goal of any third party financier, they will view the inclusion of a minimum guarantee as indicative of the films potential for commercial success.

Government Funding and Rebates

Many governments across the globe provide incentives for filmmakers to undertake some or all of the production process within their borders. They view filmmaking as an excellent means of bringing in business but many also view it as culturally important to encourage filmmaking. Others also view it as part of their tourism development.

Whatever the reason, it is crucial that a filmmaker become familiar with the various incentives that could be used to either finance the film directly (grants or investment), provide rebates against costs incurred in the country, or provide a tax benefit. These change regularly, and filmmakers should keep themselves up to date on new incentives and changes to older schemes. Remember that incentives can be provided by governments in smaller territories – some of the states within the USA have their own schemes. In a further article published in this edition, we have provided a summary of the current incentives applicable to filmmakers wishing to film in Abu Dhabi.

Film finance that is provided by any government entity usually involves long and complex agreements. These will include clauses which determine the way revenue will be applied (known as the 'waterfall' in film circles). Whilst the entire agreement is incredibly important and should be reviewed in detail, the waterfall is an also an important part of the entire film deal and must properly reflect not only the government position as a financier, but must take into account all other parties that may have an investment position or a

right to a deferred payment. Whilst taking the time to ensure this is correct might not take priority in the midst of planning for the production of a film, it is incredibly difficult, if not impossible, to re-negotiate these terms later. This may mean that the filmmaker themselves have to sacrifice their own share of the film revenue to fix any errors that become apparent at a later date.

Bank Gap Finance

Internationally, there are only a few banks that are interested in providing gap finance to filmmakers for film production; that is a small amount as a high interest loan, provided in order to complete the film. However, it is important to note that gap finance terms will always require payment first from the returns that come in from the film. They generally only finance a small percentage of the film budget – possibly the last 5-10%. They do also charge high interest in their investment. Therefore, approaching a bank for money for a film is generally only considered as a last option for a filmmaker, used when they have exhausted all other avenues and find that they are slightly short on the final total budget. On the positive side, once banks have been repaid their investment, they generally no longer have a stake in the film, leaving any subsequent returns for the filmmaker!

The Angel Investor

There is no doubt that many filmmakers dream of meeting a person with disposable funds and a desire for involvement in the creation of an independent film – the so-called 'angel investor'. In reality, these people are hard to find, but from time to time high net -worth individuals do provide money for film production.

An angel investor will have their own reasons for being involved in the project and filmmakers should ensure that they clearly understand these goals from the outset. Some investors are seeking a tax break and so their main commercial goal will be to ensure that the film is produced in such a way (or in such a location) that guarantees that they can claim that tax break. Some investors will want to have copyright ownership in the film as part of their consideration for providing the finance but some may actually need to have copyright ownership in order to achieve their own financial goals. Filmmakers are generally uncomfortable with any deal that removes their ownership and control over the rights to their film, but this desire has to be balanced against the level of finance that is being provided by the investor; if an investors is prepared to provide a high percentage of the film's budget, they are right to pursue (or negotiate?) some level of ownership. In this case, it is best to take advice about the establishment of a special company (known as an 'SPV") to own the film rights, with the filmmaker and investor both listed as shareholders in the SPV.

Conclusion

In securing finance for a film at any stage, it is important to remember that the financier is generally interested in the way in which the investment is going to provide a return to their portfolio. It is rare to find a finance source that is satisfied with the simple act of investing as a gesture of support for a filmmaker's vision. On the other side, filmmakers are always determined to ensure that the concept and direction of the film are not compromised by the insertion of the wrong cast member, the incorrect soundtrack, or the inappropriate design element. It is also important however, to ensure that the deal for finance does not end up compromising the filmmaker's control or vision. Deals must be carefully crafted and properly documented in order to ensure that the financier is aligned with the filmmaker's dream. The above represents only a small insight into some of the commercial and legal issues associated with film finance – filmmakers are strongly advised to carefully consider their options, reviewing the commercial deal points and reading the agreements from any finance source. Their own position as filmmaker and their own potential to earn any future revenue depends on it.

Al Tamimi & Company's Technology, Media & Telecommunications team advises both filmmakers and financiers on the commercial and legal issues associated with film production. For further information, please contact Fiona Robertson (f.robertson@tamimi.com).

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Abu Dhabi Film Incentives: A Reminder of the Basics

One of the exciting filming initiatives that was introduced to the film finance landscape in the region was the Abu Dhabi Government's rebate for productions that are filmed in its boundaries.

To remind people of this potential source of funding – and at 30% of spend, it is one of the highest rebates in any country – below is a summary of the basic provisions of the regulations and a synopsis of the process involved.

What Does the Rebate Cover?

Many different types of production can attract the rebate:

As is usual with rebates globally, feature films are included. To qualify as a feature for the rebate, the film should be at least 75 minutes long and "intended for initial commercial distribution to cinemas". The rebate is not genre specific and can even apply to documentary filmmaking.

The range of television programming that will qualify for the rebate is very broad with the key criteria being, again, that it must be intended for commercial distribution. Neither vanity nor fund raising projects qualify for the rebate, nor do sports, news or current affairs or anything "magazine" style (such as talk shows, infotainment or lifestyle shows). However, this still leaves a lot of genres including comedy, drama, documentary, game shows and reality TV. The program can be stand-alone or a series but must have a minimum 30 minute duration per episode. Each series or season of a program is however only entitled to receive the rebate once.

The most unusual aspect of this rebate is that commercials and music videos also attract the rebate although for music videos, you do need to show that the video has been commissioned by an international entity for use commercially.

Animation is not yet covered by the rebate in any category.

What Does the Rebate Apply To?

The rebate applies to the expenditure incurred in respect of goods or services that are supplied in Abu Dhabi for the production. The shoot must have a minimum duration of one day. The rebate applies to any category of goods and so would naturally include all aspects of the shoot - catering, equipment, set build, filming, extras, travel, post-production and the rest but interestingly, the rebate also can be claimed against some unusual elements:

- airfares booked through Abu Dhabi entities;
- per diems (daily expenses, allowances);
- legal and accounting fees; and
- public liability and workers' insurance.

As with all such rebate schemes, it is important to cross check the current legal position before you book crews and fly people to the UAE as there are some important limitations on allowable expenditures. For example, per diems are currently limited to USD 100 per day per person for cast and crew. Cast fees cannot usually be claimed as local expenditure, although extras may be allowed.

There are also limits on the amounts that can be claimed. At the time of writing, for example, for feature films, the maximum rebate is USD 5,000,000 and advertising has a limit of USD 500,000.

When Does the Rebate Apply?

To obtain the rebate, you need to pay for budget items through a local Abu Dhabi based company. This can be done by hiring a local company to do the actual production. It can also be achieved by securing a local production services entity, undertaking the filming yourself and then having that production services entity pay the third parties (commonly known as a 'pass through'). In this case, the local production services entity will have to apply for the rebate and will receive the money to their account. Note that joint applications are not permitted.

What is Excluded from the Rebate?

It is important that the production is financed by a third party that is resident outside of the UAE. So content that is financed by an entity within the local UAE market does not qualify for the rebate.

This condition does not apply to:

- feature films and telemovies of over 75 minutes duration; and
- long form television drama or comedy with at least 13 x 30 minute episodes.

These two forms of production can be financed locally.

How to Apply?

In this process, as with many processes in the region, the paperwork is very important and can alter from time to time. Potential applicants are advised to thoroughly check the current requirements before applications are made and note that the Authorities are always able to request further documentation or information if they feel it is necessary to do so.

At the outset, the application process involves the following:

1. the production must be approved by the Abu Dhabi Film Commission or the National Media Council in the UAE – this process is managed by the Abu Dhabi Film Commission; and
2. a list of required documentation must be lodged in order to secure an Interim Certificate, currently:
    a. the above approval;
    b. the relevant application form;
    c. shooting script, treatment or format;
    d. proposed production schedule;
    e. the proposed budget for the Abu Dhabi elements of the production;
    f. the agreement between the applicant and the actual producer;
    g. the agreement between the relevant party and the foreign finance source; and
    h. proof of relevant insurance.

Once production is complete, the applicant must provide an auditor's report on the costs incurred and the rebate claimed, sample footage from the shoot and a sworn statement in the approved form.

The application will then undergo final assessment – this process usually takes a couple of weeks and payment can be made within 60 days of the issuing of that final assessment.

The Technology, Media and Telecommunications team at Al Tamimi & Co regularly advises clients about matters relating to content financing, production and distribution for all types of media. For further information, please contact Nick O'Connell (n.oconnell@tamimi.com) or Fiona Robertson (f.robertson@tamimi.com).

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Back to the Digital Future: Updating Media Buying Agreements for New Advertising Outlets

In the days before the expansion of media, when the options available to an advertiser encompassed billboards, radio, print, and stretched to television if the budget was big enough, there was no complexity involved in developing an agreement with your media agency. There was advertising and it was carried across the media that you chose for the fee that was charged at that time. Data was minimal. Distribution was localised. Campaigns largely carried the same message across all media.

The massive growth of media into what is now known collectively as digital media (encompassing the web, social and mobile in particular) and digital media's ability to react, distribute, and interact with consumers in ways that were not thought possible even 20 years ago, has meant that the simple act of contracting for a brand campaign is not as 'simple' as it once was. There is however one area where these media campaigns have remained unchanged – many brands and agencies are using agreements that are more suited to the 1997 media landscape than to the ways in which brands create content and communicate with their potential customers in 2017.

A standard advertising agreement contains terms that will, at a minimum, include the media, the frequency, the placement, the size, and the term. Fees will traditionally be based on a rate card that differentiates based on the potential audience for that placement – for example, for different times of the day or more desirable placement in a magazine. It was possible that if a media plan was set in stone, the fee could be readily determined at the outset of the agreement.

Growth into New Ideas

As advertising progressed away from the standard model of placing a static advert in a particular media, new ways of promoting brands were developed. One early iteration, still used today, was the placing of a product within video content (notably music videos; remember Michael Jackson holding the can of Pepsi?). Product placement progressed to advertorial content – a brand campaign that was completely integrated into editorial content, ideally in a seamless manner. This was eminently suitable to print content and segmented television programs and for some time was widely used within radio. In Australia, for example, this led to investigations by the authorities in the 1990's, as it became increasingly difficult to differentiate between the editorial and the paid commentary.

At the time, agreements started to integrate new commercial terms that addressed the way in which these campaigns were delivered. Suddenly, we focused on 'seconds on screen' or 'number of brand mentions', albeit still accompanied by the usual inclusion of territory, number of spots and term.

Different Campaigns, Different Deals

Digital media has encroached seamlessly into our media consumption and with it, our exposure to brands and advertising has also altered in some ways. There has been a significant expansion from traditional media advertising and it has been embraced by brands worldwide. Certainly brands continued to seek familiar styles of advertising, with early digital advertising agreements referring to banners, pop ups and crawls, including references to the all important frequency and position. Such agreements might also include reference to the type of websites that would be targeted – perhaps ones that were of interest to male youth in Kuwait, or housewives in Saudi.

However, as the consumers distaste for this style of content became evident, and the media itself grew in audience and most importantly bandwidth, advertising became more diverse and cleverly

tailored to the new environment. Native advertising developed out of the concept of advertorial, but was effected in a much more subtle manner. The content or editorial was paramount, albeit that the brand was subtly noted within the content at some point.

Native advertising now takes many forms. It might include search advertising, when advertising appears directly alongside content sites that are thrown up in an online search. Social media sites now contain a plethora of 'promoted spots' that are generally produced by the publisher of the site (in the case of closed platform content) or by the brand (for open platforms or hybrids). In either platform, they are intended to retain the look and feel of the material around the spots. They appear to be seamless, a perfect integration of brand with editorial.

Clearly, an agreement that is designed for the provision of native advertising for a brand cannot be the same as an agreement for a banner ad. For example, an agreement for placement of advertising in a closed platform could include agreement as to demographic targets and geographic targets, but they will also need to contain a mechanism for the creation of the content itself, which would never have been included in an agreement for, say a banner ad. A banner ad would simply have been created by the brand and then provided to the publishing site. For native advertising, a key element for the brand campaign is the content itself, which may include more than one piece of content and which will most likely be created by the publisher or its contractors. So this agreement has to include not only references to the sought after demographics but must include direction as to the type of content and perhaps even, for some brands, an approval process for it to maintain control over the way that the brand is used. As an aside, the manner in which the brand is used – number of mentions, logo use or not – can still be a point of contention for brands who always want more than publishers are happy to deliver. It is important for brands to understand that this form of advertising is generally only effective if it contains minimal and subtle brand inclusion.

True Content Marketing

Content marketing has found its true place with the growth of digital marketing and, in particular, the ability of the internet to carry larger pieces of content directly to consumers. Content marketing, even more subtle again that native advertising, is a distinctive form of marketing that requires a brand to provide free content to the public in a manner that is designed to create a relationship between a potential customer and the brand. By creating content that may be valuable to the targeted consumer, the brand is anticipating a return by way of brand loyalty at a time when the product might be required. Interestingly, with content marketing, the focus is usually on a subject that is entirely removed from the brand itself, and may not mention the brand at all. The commonly cited example is the Red Bull content. It is clearly looking for a particular demographic but does so without ever discussing the actual product itself. Red Bull is now one of the most recognised beverage brands in the world due in a large part to this content marketing strategy.

The agreement required to establish this form of marketing is distinctly different to any other form of media buying agreement, most notably because the focus is entirely removed from the "advertising" element of the campaign and is focused on the content alone. Because of this, an agreement for content marketing should be treated as having two distinct components. It resembles a production services agreement in that it needs to include details about the creation of the content itself such as the hosts, the budgets, rights clearances and ultimate copyright ownership. But these agreements still require the essential media distribution elements – where is the content being placed and by whom. In addition, any brand would certainly require clear KPI's regarding demographics and targets: Who is the brand trying to reach with this content? How often? What data is the brand trying to create? How will it be analysed? This is going to be a more complex agreement than the industry was using for banner ads, and even more complex than agreements for native advertising. Content marketing campaigns are multi-layered, and require careful consideration as to timing, content, tone and creative direction. The agreements that are created need to be similarly well crafted.

The days of 'simple media' agreements are now long behind us. As media plans have diversified into the various media streams that are now available, your agreement must be reviewed and updated to ensure that all parties are clear as to the scope and intentions of the brand in relation to the campaign on an ongoing basis. To do otherwise is just so 1997.

Al Tamimi & Company's Technology, Media & Telecommunications team regularly advises on advertising and content matters both on-line and in traditional media, acting for producers, media agencies and publishers.
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The Rise of the Keyboard Shopper: Basic Legal Issues in Setting up E-Commerce Sites in the UAE

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In 2016, the GCC was in the global top five for purchases via mobile devices. It is becoming clear that people in the UAE, and the broader GCC region, are increasingly e-shopping and entering into electronic transactions, whether it's for goods or services. Amazon's acquisition of souq.com, and the highly-anticipated launch of the noon.com e-commerce platform, shows that there is a lot of interest in e-commerce in the market.

But establishing an e-commerce business, whether on its own or as an extension of a retail business, is not a simple matter of acquiring a domain name and adding a payment process. There are many legal matters that must be considered and developed before an e-commerce site can be launched.

Trade Licence Requirements for E-Commerce as an Activity

It is important that the operator of any e-commerce business is in fact able to undertake e-commerce activities as part of their current trade licence. If these activities are not listed (or cannot be considered to be a legitimate part of the activities that are listed), then it is imperative that the company extends its business activities to cover e-commerce. When adding activities, some authorities will make a determination as to whether the new activities are compatible with the activities already listed. If they decide that is not the case, then they may refuse to extend the trade licence to cover these activities; in this case a new trade licence may be required.

Many companies, even when e-commerce is permitted under their current trade licence, may nonetheless choose to set up a separate entity to own and operate their new e-commerce platforms. This has the advantage of centralising the e-commerce operations but also of ensuring that any risk associated with the new enterprise is contained within a separate entity.

Terms and Conditions, Privacy Policies

It is common practice, both locally and internationally, to attach terms and conditions to the use of a website. These will then govern the way that the business and its customers will interact with each other.

The terms and conditions might include details relating to delivery, refund policies, termination of accounts, and interactions between the users. But more importantly the terms and conditions must contain any terms that are required by the operators of the payment gateway. Over time, we have seen an increase in the number and scope of these requirements but it is important to note that the payment gateway will not allow the e-commerce site to commence operations until it has seen the final version of the terms and conditions.

In addition, an e-commerce site must have a privacy policy that is appropriate for the countries in which it operates. The most important role for the privacy policy is to provide customers with the confidence that their data will be properly stored, used and protected.

It is important to note that the payment gateway operator will also expect that certain terms are included within that policy. One term commonly required is the provision that data (such as credit card details) will in fact be used by third parties that are assisting with the provision of certain services. In operating an e-commerce business, it is very important to have clear terms and conditions to reduce any ambiguity and increase customer trust.

Content

Website content, including content on e-commerce sites, can fall broadly into three categories:

A. content created by the operators of the e-commerce site – this will include the description of goods but might also include editorial content or reviews;

B. content that is provided by third parties for use on the e-commerce site, such as press releases or articles about the products sold on the site; and

C. content that is created by the customers, commonly known as user-generated content, which could include reviews or comments in forums.

These Advertising Standards contain numerous conditions that will apply to advertising within an e-commerce site and, in that regard, it is important to note that they are broadly worded and address a wide range of issues.

It is important to recognise that, with all of these three types of content, the site operator is considered to be the publisher of the material, and so may be found liable for that content if it is found to breach the rights of another party, or breaks any laws or regulations. Whilst content regulation is quite a complex area of law that requires separate attention, note that Federal Law No 15 for 1980 (concerning Publications and Publishing) ("P&P Law") contains a list of material that is unacceptable for publication within Chapter 7. In addition, Federal Law No 5 of 2012 (on Combating Cybercrimes) ("Cybercrimes Law") contains other matters that are not permitted in relation to activities on the internet.

Not only does the operator of an e-commerce site have to consider these laws in the creation of its own content but also when using the content of others. More particularly, this becomes problematic when the site allows user generated content to be created and shared. Customer reviews and contributions to forums can become confrontational and may inadvertently constitute a breach of the P&P Law or the Cybercrimes Law. For this reason, many entities monitor user-generated content before they permit it to be published.

Copyright

A person (or company) that creates content usually has the legal right to determine whether or not a third party can use that content. This position is generally the case across the world and certainly applies in the

UAE and across the GCC. This means that, if the operator of an e-commerce site is commissioning a freelancer to produce content for the site, then it needs to enter into an agreement with that freelancer – the agreement will determine the ownership of the material created as well as the use that can be made of the material by both parties.

For ad hoc content, the operator should obtain a written licence from the owner of the material before using it. The only time that content could legitimately be used without a written licence would be for material that is clearly a press release or some other form of publicity – these are specifically provided in order to be used by third parties and therefore judicious use of that content (that is, within the expected usage and within a reasonable time from the date of the press release) will be unlikely to raise claims of copyright infringement.

Finally, be careful with the use of stock image libraries and music libraries. These libraries do have some limits on the use that can be made of their materials and it is wise to check the fine print in all cases. There have also been numerous cases of 'bait and switch' tactics with music libraries, where "unlimited use of music" was advertised but was not reflected within the standard terms that are sent to, and signed by, the user.

Advertising Regulations

As the e-commerce site will fundamentally contain promotions for goods or services, it will be considered to be advertising and as such will be subject to the regulations that apply to such content. The main advertising regulations are contained within Resolution No.35 of 2012 (on the Standards of the Media Advertisements Content) ("Advertising Standards").

These Advertising Standards contain numerous conditions that will apply to advertising within an e-commerce site and, in that regard, it is important to note that they are broadly worded and address a wide range of issues. These standards cover false and misleading claims, and the need for advertising to be clear and unambiguous. They also include provisions about clearly determining the identity of the advertiser in each case, and separating editorial and advertising content. Most important however is the following:

> *The advertiser, the product and the publishing means shall bear the legal responsibility and consequences of delivering as per the claims related to promises, guarantees, pledges and compensations mentioned in the advertising.*

This clearly notes that responsibility for the claims made in advertising can be attributed to the publisher – in this case, the operator of the e-commerce site. Yet not all operators of such sites will be in a position to verify the content of all advertising or classifieds that are contained within the e-commerce site. This means that they will need to set up documentation and processes that properly protect them from the inclusion of such content on the site.

Conclusion

The establishment of e-commerce sites can be considered to be a logical extension of a retail brand or a simple way for a company to create and maintain a direct relationship with their customer base. However, e-commerce means extending usual business operations beyond the retail sector and into the publishing sector. As many retail operators are generally unaccustomed to considering matters such as liability for the publishing of content, or the management of data in accordance with a privacy policy, it is important that they not only set up appropriate documentation in each case but also establish protocols to ensure internal compliance with the various laws that will apply to their new business operations.

Al Tamimi & Company's Technology, Media & Telecommunications team regularly advises on establishing e-commerce sites as well as all issues relating to content, terms and conditions, privacy policies and data use. For further information about these matters, please contact Fiona Robertson (f.robertson@tamimi.com) or Amna Qureshi (a.qureshi@tamimi.com).

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Accelerators and Incubators Pave the way for a World: Leading Startup Ecosystem in the UAE

There have recently been a lot of developments in the innovation and tech space in the UAE. The last few years have seen the UAE transform into an innovation hub for the MENA region, with the launch of numerous incubators and accelerators. Some are industry specific, with a focus on media or fintech for example, while others take a cross-sector approach.

The words ‘accelerator’ and ‘incubator’ often appear to be used interchangeably, but these programs actually offer a different role and can have different implications for startups.

Accelerator programs are usually short term programs in which startups are often provided with a capital injection (usually in return for equity), mentorship and other useful resources with the aim of accelerating the growth of the business. Each accelerator program usually will have a cohort of numerous other startups, and the businesses go through the program to graduate together. Incubators often take a longer term view and focus on developing the foundation and core of the business. They are less likely to offer any funding or take equity, and are sometimes funded by governments or universities.

Here are some of the UAE’s leading incubators and accelerators that you should know about:

- ***AstroLabs Dubai*** – AstroLabs is a community, co-working space and tech hub based in Dubai and a member of the Google for Entrepreneurs network. The hub also has a strategic partnership with Dubai Multi-Commodities Centre (DMCC) free zone, which assists members with obtaining a fast-tracked free-zone company licence. AstroLabs also runs high quality training classes, which include digital marketing, Google analytics and Search Engine Optimisation.
- ***Dubai Future Accelerators*** – A Dubai government initiative accelerator program whereby startups are given access to the resources and expertise of Dubai’s government entities, and tasked with addressing solutions to challenges faced by these entities (such as automated transport systems as a solution to air pollution and congestion). A number of high quality names have come out this leading accelerator.
- ***FinTech Hive*** – The region’s first fintech-focused accelerator program, located in Dubai International Financial Centre (DIFC) free zone, provides participating startups with direct access to the world’s leading financial firms, as well as workshops and panel discussions on topics such as regulation and industry trends.
- ***Flat6Labs*** – Based in Abu Dhabi, Flat6Labs (with support from twofour54 media free zone) works with start-ups at seed, early and growth phases, focusing on media and digital content. The core program runs over the course of four and a half months, and provides entrepreneurs with seed funding, mentorship, office space, and business training and support.

"The last few years have seen the UAE transform into an innovation hub for the MENA region, with the launch of numerous incubators and accelerators."

- ***Hamdan Innovator and Incubator*** – HI2 is part of the Mohammed Bin Rashid Establishment, with the goal of fostering locally-driven businesses run by Emirati entrepreneurs. The incubator runs across three key stages, the Idea Lab (idea development), the Incubator (execution) and the Seed Fund (accessing capital). This incubator is not sector-specific and has supported many entrepreneurs since its launch in 2002.
- ***Impact Hub*** - A co-working space and community of entrepreneurs, tech, creativity and innovation. "Hubsters" are given access to a large range of mentors and networking events.
- ***in5*** – Launched by the TECOM Group in 2013, in5 is an enabling platform focused on tech, media and design which provides mentorship, training, networking opportunities to students, entrepreneurs and early stage startups, as well as assistance with set up and access to investors.
- ***RegLab*** – Abu Dhabi Global Market launched RegLab in November 2016, with its FinTech legislative framework designed to create a progressive regulatory environment to allow for the growth of the FinTech industry and innovation in the UAE. FinTech participants are able to develop their proposition over the course of 2 years and applicants are welcomed from the MENA region and beyond.
- ***Silicon Oasis Founders*** – A business incubator owned by the Government of Dubai, focused on the seed phase. The program runs for 6 –12 months and focuses on developing local entrepreneurial talents in the web and mobile applications space, as well as related technologies.
- ***Turn8*** – Launched in collaboration with DP World, Turn8 offers a growth accelerator program and a follow-on investment fund. Participants are given investment, mentorship, training and 1 year of business development support. The follow-on investment fund aims to assist the startups with scaling and international growth. The programs run for 4-5 months. Focus areas include storage solutions, 3D printing, renewable energy and internet of things.

Whether you are interested in getting your startup/ SME into an accelerator or an incubator, or being part of a startup community - partaking in networking events, workshops or learning and development initiatives, the UAE's startup ecosystem offers an extensive range of options. These are just amongst some of the world class initiatives that are fostering innovation and contributing to the thriving tech industry in the UAE.

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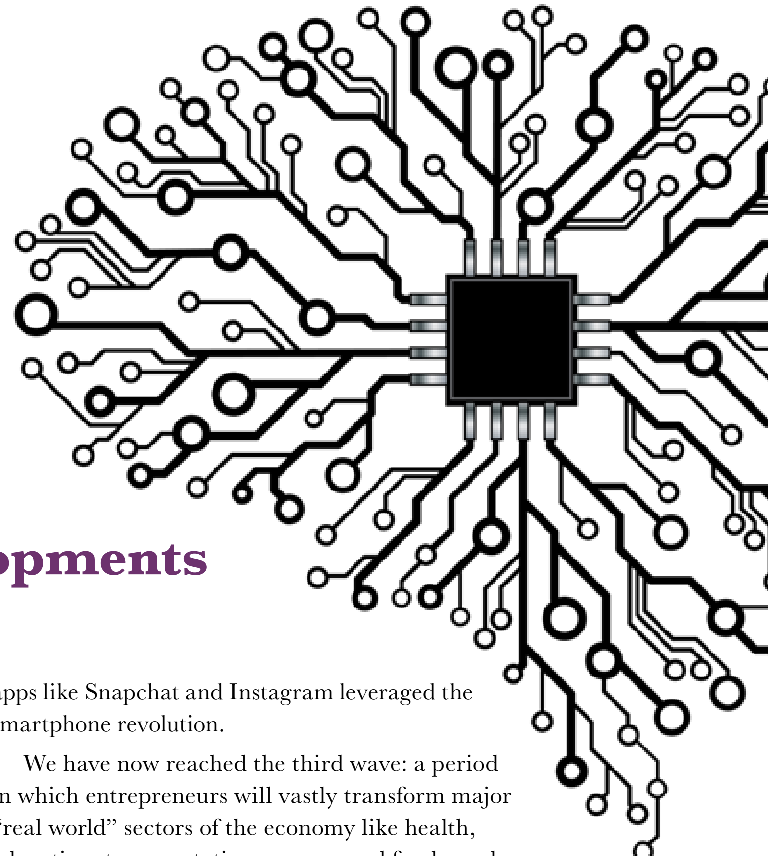

Artificial Intelligence and Innovative Developments in the UAE

Artificial intelligence ("AI") can be loosely defined as "intelligence as exhibited by machines". When people think about AI there are several assumptions that derive from how AI has been portrayed in popular movies, such as "Terminator", "I, Robot" and "Ex Machina", that all depict robots as a threat to humans. AI is not all just robots. It also applies to anything that fits the above definition. The Internet of Things ("IoT"), virtual personal assistants, smart cars, Google searches, Apple's Siri and Amazon's Echo are just some examples of current AI applications.

AI can transcend across all sectors (i.e. banking, education, healthcare and transport) and is slowly becoming a very natural part of our everyday lives. One such example is a British student has compiled software that is essentially an "AI lawyer" that can sort out what to do with the received parking ticket based on a few questions. As of June 2017, it had successfully appealed between 160,000 of 250,000 parking tickets in both London and New York, giving it a 64% success rate.

Many commentators believe that AI is an evolution in computing that is more important than the shifts to mobile or cloud computing.

Steve Case (the famous entrepreneur and co-founder of AOL) in his book "The Third Wave: An Entrepreneur's Vision of the Future" describes the new era we are entering of immense technological advancements that are transforming virtually every non-digital sector of the economy, including education, healthcare, our food system, and beyond.

The First Wave was the creation of the internet and the foundation of our online world.

The Second Wave saw companies like Google and Facebook build on top of the Internet to create search and social networking capabilities, while apps like Snapchat and Instagram leveraged the smartphone revolution.

We have now reached the third wave: a period in which entrepreneurs will vastly transform major "real world" sectors of the economy like health, education, transportation, energy, and food - and in the process change the way we live our daily lives. Case's Third Wave is about applying the Internet and technology, including AI (artificial intelligence) to solve important issues such as hunger, disease and crime.

The examples given below, illustrate how the UAE is already in the process of undertaking the Third Wave.

UAE, AI and Internet of Things: a golden opportunity?

Why are AI and the IoT important for the UAE? In March 2014, the Dubai Government announced the Smart Dubai initiative to make Dubai a leading smart city. AI has been the trigger and the technology behind the facilitation of Smart Dubai.

This was undoubtedly also based on the predictions that over the next five years the smart cities market will increase from over $400 billion to $1.5 trillion. This would set Dubai on a global pedestal as a nest for innovation and technological advances in fields such as education and healthcare and would provide a steady growth incline for the UAE as a whole.

Smart Dubai has a three pronged approach:

1. Smart Life
2. Smart Economy
3. Smart Tourism

The one that is perhaps the most interesting is Smart Life. Smart Life deals with health, educational, transport, communications, public utilities and energy services. Smart Life not only offers innovation to the region but it offers a strong economic gain if it is steered properly.

Healthcare (as highlighted by Steve Case) is at the forefront. If you are able to capitalize on both the technological advancements alongside healthcare then you are able to breach this Third Wave. (SAP, IBM, Dell, Apple, Hewlett-Packard, Sentient Technologies are just a few of the companies investing heavily.) AI has allowed algorithms to be used to identify patterns in data which help to detect fraud, diagnose diseases and improve living standards in remote areas affected by healthcare issues. AI also facilitates:

- Data management; including data storage and collection so as to streamline medical records. (One example of this is Google Deepmind).
- Designing treatment plans: such as IBM Watson's special program for oncologists that analyze structured and unstructured data in medical records and clinical notes to create bespoke and select treatments.
- Online consultants, health assistance via virtual appointments or nurses including drug creation and medical expertise.

These are just some of the areas where the UAE is well placed to capitalize. The way in which these are implemented is through the creation of the right medium between a strict and flexible legal framework.

Innovation

The introduction of driverless cars has been anticipated since Dubai's transport authority, the RTA bought 200 Tesla vehicles. Driverless, due to the disruptive nature of the technology, is a prime example of where the law needs to evolve.

Self driving cars and other devices that connect to telecommunication networks to enable AI and IOT need to seek type approval from the Telecommunications Regulatory Authority ("TRA"). The TRA provides a safety net, one that is trying to strike the balance between allowing flexibility for innovation and creating infrastructure to protect the general public.

This approach is much more preferable to the alternative which allows devices to go rogue, potentially giving rise to accidents such as the one involving Tesla in its very infant stages. Interestingly, Tesla's press release in respect of this incident stated: "This is the first known fatality in just over 130 million miles where Autopilot was activated," said the company. "Among all vehicles in the US, there is a fatality every 94 million miles. Worldwide, there is a fatality approximately every 60 million miles."

The Law

The more advanced the AI environment becomes the greater pressure there is for the legal environment to change. There are two opposing arguments, one which demands less formalization of rules and regulations and allows the technology to evolve naturally and the other, which tightens regulation and constricts the parameters by which technology is bound. Lawmaking by its nature is reactive to changes in society rather than being proactive. No matter how quick governments try to be with implementing regulations that deal with up to date issues we will always be lagging. Suggestions that can aid the growth of technology within a safe legal environment, such as the incubator regimes for FinTech in the DIFC and ADGM financial free zones, are likely more productive.

Conclusion

It is clear that the UAE is committed and dedicated to innovation and technology. Mubadala alone was reported to be investing US$15 billion in a technology fund, and with Smart Dubai shifting focus away from the traditional sectors the UAE, with the combination of legal support and push for innovation, is poised to become a hub for innovation.

However the spread of AI and IOT raises questions that our laws will need to adequately address: whether it is from a moral perspective, a resource perspective, an emotional perspective or one of innovation.

It is not just restricted to a world where our fridge tells us what we are missing and what items need to be bought, where our car knows when to slow down or take an alternative route due to traffic - but extends to healthcare or where robots fight our wars based on pre programming of what is right and wrong.

Al Tamimi & Company's Technology, Media & Telecommunications team regularly advises on AI or IoT commercial and regulatory related issues. For further information please contact Eleonore Kressner (e.kressner@tamimi.com).

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The QMUL Study on Resolving TMT Disputes: What Lessons for the UAE?

The School of International Arbitration, which is part of the Centre for Commercial Law Studies at Queen Mary University of London, carried out an International Dispute Resolution Study in 2016 ("Study") entitled "An Insight to resolving Technology, Media and Telecoms ("TMT") Disputes". The School of International Arbitration is one of Europe's leading research centres on International Arbitration and Litigation. The Study provides practitioners in the Middle East and North Africa ("MENA") region an insight into the global trends of TMT disputes. This article draws lessons from the Study for MENA related TMT disputes and discusses how these lessons can be implemented in practice.

Background of the Study

The Study was conducted as part of an investigation into international dispute resolution practices. It mainly focused on TMT disputes and ways to resolve them efficiently. The Study presents a global view of the TMT dispute resolution market, involving findings from many countries (with 10% of the participants operating in the MENA region). The participants comprised of private practice lawyers, in-house lawyers, arbitrators, mediators and academic counsel.

Types of TMT disputes

The Study revealed that the most common TMT disputes are related to intellectual property rights, joint venture disputes, licensing, information technology implementation programmes, competition, merger and acquisition agreements, non-disclosure agreements, data-related issues, outsourcing programs and reputation management issues.

Similarly, MENA arbitration centres have been receiving an increase in TMT disputed contracts over the last few years. As an example, the Cairo Regional Centre for International Commercial Arbitration experienced a 75% annual increase with 91 new arbitration cases filed in 2016. Out of the 91 arbitration cases filed, 11% involved media and entertainment, 3% related to telecommunications (3%), and 1% related to IPRs.

Preferred Dispute Resolution Method

The Study assessed the responses on an all-participant level to determine the preferred Dispute Resolution method. Arbitration ranked as the most preferred resolution method in TMT disputes. However, litigation scored as the most used method in practice. IT and Telecoms suppliers were less in favor of arbitration, and instead preferred litigation and expert determination, respectively. In addition, the findings indicated that 41% of TMT disputes were settled via amicable settlement.

Participants in the Study indicated that the most significant factors in deciding whether or not to initiate proceedings are (1) legal costs, (2) strength of legal position, (3) parties' relationship, (4) business convenience, (5) recoverable damages, (6) ease of enforcement, (7) strength of evidence, (8) settlement negotiation tactics, (9) solvency of the respondent, and (10) reputation.

Suitability of International Arbitration

The Study revealed that 92% of its participants indicated that international arbitration is well suited for TMT disputes, despite some criticism and acknowledgement of opportunities for improvements. The Study also revealed that 82% of its participants believe there will be an increase in the use of international arbitration.

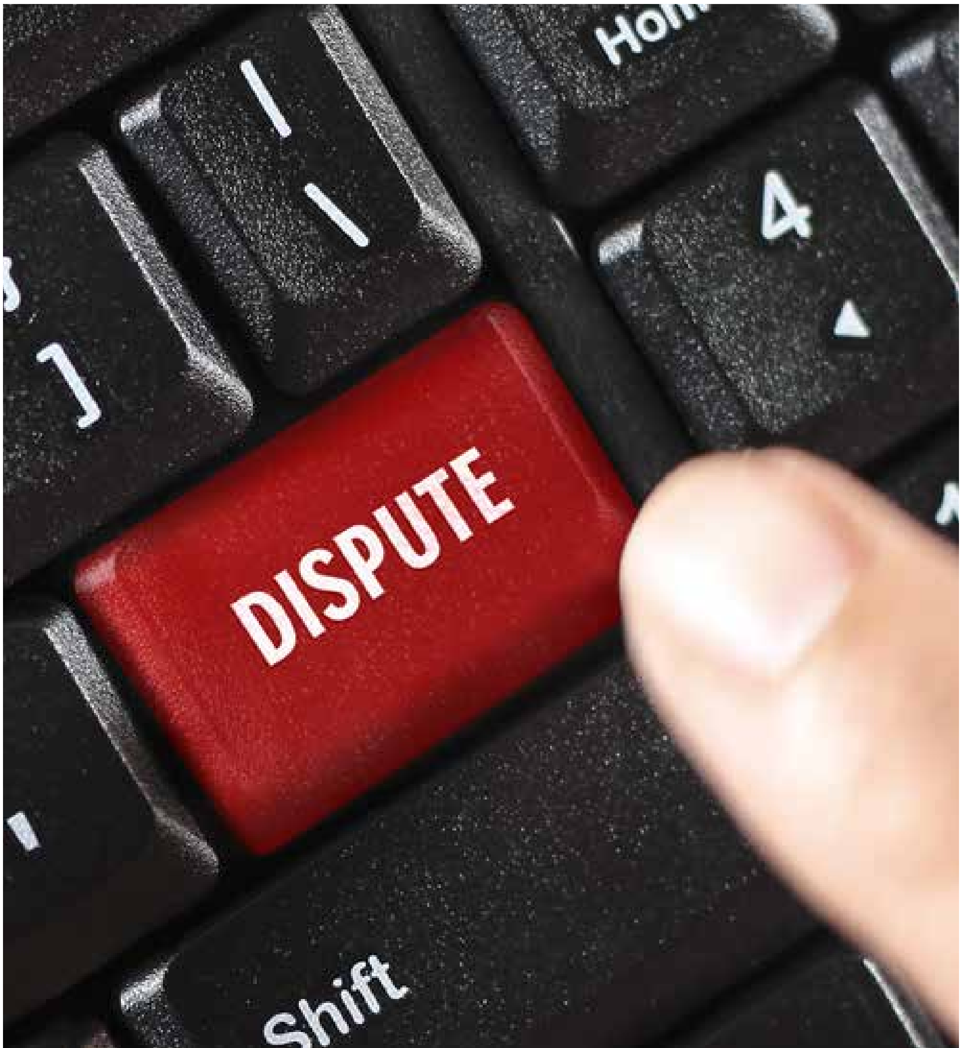
The participants stated that arbitration is the "go-to" option because of the TMT disputes' complex nature. The most attractive features of international arbitration are: (1) enforceability, (2) the ability to avoid foreign jurisdictions, (3) confidentiality, (4) expertise of the decision maker, and (5) desire to use technology to improve the international arbitration process.

The Study also revealed four key elements with regard to suitability. Firstly, TMT contracts and supply chains have increasingly become more international, causing multi-jurisdictional disputes to arise. Therefore, arbitration is an attractive choice since it facilitates enforcement in foreign jurisdictions. International arbitration provides a huge advantage in regards to enforcement, as a result of the New York Convention 1958.

Secondly, parties usually share confidential information throughout their TMT business. Therefore, parties aim to ensure that confidential information remain private and thus try to steer related disputes away from public forums. Parties often choose arbitration because it limits the reputational damage that often results from public disputes, and it ensures that sensitive information remains confidential within the proceedings.

Thirdly, TMT disputes are complicated in nature and require the decision maker to be an expert in the field. Participants stated that, in choosing an arbitrator as a decision maker, the arbitrator's knowledge of the subject matter is more important than knowledge of the arbitral process. The most important factor for choosing a decision maker is the commercial understanding of the TMT industry, followed by the knowledge of the applicable law of the contract.

Fourthly, international arbitration is particularly dependent on interconnectivity. A typical TMT arbitration dispute may involve parties from two different countries, counsel from a third country, and arbitrators from different parts of the world. The use of Online Dispute Resolution (ODR) tools is key in resolving TMT disputes through international arbitration. 63%



of the Study's participants expected an increase in the use of ODR in TMT disputes in the next ten years. The use of technology can improve international arbitration in many ways including, but not limited to, (1) more efficient e-disclosure, (2) e-case management, (3) reduce the need for physical hearings and meetings, and (4) e-briefs and dematerialized submissions. In the European Union, the Directive on Consumer Alternative Dispute Resolution and the Regulation on Consumer Online Dispute Resolution are increasing the use of Online Dispute Resolution in the consumer context, especially for cross-border matters.

Challenges for resolving TMT disputes through arbitration in the UAE

In the United Arab Emirates ("UAE"), there are a handful of challenges which may make arbitration unsuitable for TMT disputes. Firstly, parties involved in arbitration proceedings may incur high legal costs, which include arbitrator fees and administrative fees (and in some cases, expert fees), especially where the amounts in dispute are large and the arbitration costs are calculated on an ad valorem (percentage) basis or where the issues in dispute are complex. Moreover, in the absence of voluntary compliance, the party who obtains an arbitral award in its favor will have to apply to the Court of First Instance (in the respective Emirate that has jurisdiction) for ratification and enforcement the arbitration award. This process can be costly, since the fees are calculated as a percentage of the value of the claim (i.e., the awarded amount) (which in some, but not all cases, may not be capped). In addition, the parties would be liable to pay additional court fees if the enforcement of the award is appealed to the Court of Appeal and the Court of Cassation.

Secondly, there is no general concept of interim or injunctive relief available in the UAE, save for an attachment of assets. Therefore, depending on the precise wording of the contract at issue, it may be difficult for parties to request and obtain injunctive relief on an ex parte basis.

Thirdly, there is likely a limited pool of UAE-based arbitrators with the requisite TMT expertise, since other types of disputes (e.g., construction, energy, etc.) tend to predominate. Therefore, parties would likely need to appoint international arbitrators outside of the UAE with TMT experience. However, international arbitrators may be dissuaded from arbitrating in the UAE, as a result of the latest revision of Article

"The study revealed that 92% of its participants indicated that international arbitration is well suited for TMT disputes, despite some criticism and acknowledgement of opportunities for improvements. The Study also revealed that 82% of its participants believe there will be an increase in the use of international arbitration."

257 of the UAE Penal Code No. 7 of 2016. Article 257 has caused serious concerns to be raised by recognized arbitration practitioners because this provision allows parties to pursue criminal proceedings against arbitrators by alleging contravention of the requirements of neutrality and integrity. This possibility has scared some international arbitrators away from the UAE and unless the provision is revoked or significantly amended, it may ultimately detract from the attractiveness of arbitration to resolve TMT and other technical disputes, at least as far as the UAE is concerned.

Moreover, if one of the parties commences a criminal complaint, pursuant to Article 257 of the Penal Code, against the arbitrator or arbitral tribunal, this could place the confidentiality of the arbitration at risk. It still remains unclear whether the facts of the arbitration can and will be kept confidential or whether they would be disclosed in the UAE criminal courts. However, there is a risk that the merits of the case would no longer remain confidential. Considering the importance attached to confidentiality in resolving TMT disputes such potential disclosure could dissuade parties from arbitrating TMT disputes in the UAE.

In-house Dispute Resolution Policy

The Study revealed that 75% of organizations have a Dispute Resolution policy. In general, 50% of participants chose mediation as the “most encouraged” Dispute Resolution mechanism, while 47% of participants chose arbitration. However, the choice varied by sector, as (1) telecoms sector participants chose expert determination, (2) IT sector participants chose litigation, (3) energy, construction and manufacturing sector participants chose arbitration. Nevertheless, when all participants (not just in-house) were asked about their preference, the majority of the participants chose arbitration over any other method. It is evident that IT and Telecoms sectors usually encourage litigation and expert determination, but the opposite is true of some of their potential customers. These results can suggest that customers and suppliers could find the drafting of the dispute resolution clause in commercial contracts a contentious point.

Improving International Arbitration

The Study invited the participants to contribute suggestions on improving arbitration mechanisms. The top three suggested changes to make international arbitration more appealing are: (1) lower costs, (2) specialized arbitrators, and (3) a neutral system for the accreditation of specialist arbitrators.

The above suggested changes could be used as a checklist to improve arbitration in the UAE. First, as demonstrated above, depending on applicable institutional and court rules or fee scales, there are excessive costs associated with UAE arbitrations. Arbitration might become more attractive if the legal costs and fees are lowered. There is a variety of ways to reduce costs including, but not limited to, (1) the use of technology, (2) better disclosure processes, (3) permitting only limited evidence, (4) submissions with page limits and a focused structure, and (5) limited cross-examination.

Secondly, there is a lack of TMT specialized arbitrators, and international arbitrators with the relevant expertise may well be dissuaded from arbitrating in the UAE for the reasons discussed above. Therefore, it is clear that there is a need for emerging arbitrators with sufficient TMT expertise. 87% of participants stated that it is likely that there would be increased specialism of TMT arbitrators in the next 10 years.

Thirdly, Article 257 should be revoked or significantly amended if it is hoped to attract TMT arbitration to the UAE for the reasons stated earlier.

Most-used Arbitration Institutions

Participants indicated that the most used institutions for TMT disputes are the International Chamber of Commerce (ICC), World Intellectual Property Organization (WIPO), London Court of International Arbitration (LCIA) and Singapore International Arbitration Centre (SIAC).

There are a number of well-known arbitration institutions in the MENA region, including Dubai International Arbitration Centre (DIAC), Dubai International Financial Centre – London Court of International Arbitration (DIFC-LCIA), Lebanese Arbitration and Conciliation Centre (LAMC) and the Cairo Regional Centre for International Commercial Arbitration (CRCICA). However, 67% of the Participants operating in the MENA region chose the ICC as the most-frequently used institution. MENA arbitration institutions ought to reflect on the reason why the ICC, an international arbitration centre, ranked as the most-frequently used in MENA instead of the regional well-known institutions.

Commentary

In recent years, the growth of the TMT sector has been remarkable. Following such growth, TMT disputes are naturally expected to increase. The UAE, as a dispute resolution jurisdiction, its UAE arbitration centers, and its UAE-based arbitration practitioners should reflect on and draw some lessons from the Study, in order to be prepared to accommodate the likely rise in TMT disputes. It is important for all such stakeholders to take into consideration the views of the participants in order to attract TMT disputes to the UAE.

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E-Trading Business Activities in Dubai

The Dubai Department of Economic Development (DED) has recently introduced a number of E-Trading activities evidencing Dubai's efforts to establish itself as an E-Commerce hub. Traders will have the opportunity to obtain a license for their online trading platform. This new E-Commerce initiative has sparked some questions in relation to whether or not an E-Trading license is necessary, and if so, what an E-Trading license can allow you to do.

Is an E-Trading license necessary?

When activities are conducted via an online platform, it generates a lot of confusion in terms of whether or not these activities constitute conducting commercial activities within the UAE, given that they are online.

Article 6 of Law no. 13 of 2011 regulates the conduct of economic activity within the Emirate of Dubai and Article 328 of the Commercial Companies Law of 2015 ("CCL") states that a foreign company should not conduct activities inside the UAE without obtaining a licence.

Article 355 of the CCL prescribes a penalty between AED 100,000 and AED 500,000 on a foreign company if it does not register itself with the Registrar.

Therefore the strict application of law requires a foreign company to be fully incorporated and hold a valid license to conduct activity in the UAE. Failure to do so, risks a penalty between AED 100,000 to AED 500,000.

Some may argue that an online business does not need to have a registered office nor does it need to employ staff in the UAE to carry out any activity on the ground, thus, Article 328 and Article 355 do not apply. However, it is difficult to predict how the Authorities will address this argument given their discretion is not structured by statute or practice. The strict approach is that in order to conduct any commercial activity within the UAE, the appropriate license must be obtained. A prerequisite to obtaining a license is to obtain and maintain a registered office. Therefore, the Authorities can in their discretion apply the strict approach to a company seeking an E-Trading license in the UAE.

In practice, there may be many unlicensed online platforms trading across the UAE. However it cannot be guaranteed that the regulator will not identify these unlicensed online traders and impose a penalty between AED 100,000 to AED 500,00.

The DED has recently introduced the following E-Commerce activities:

1. Jewellery and precious stones E-Trading;
2. Garments, Textiles and Gifts E-Trading;
3. Publications and Media Materials E-Trading;
4. Household, Professional and Personal Goods E-Trading;
5. Vehicles and Transport means E-Trading;
6. Equipment E-Trading;
7. Sport and Recreational Events Tickets E-Trading.

An E-Trading license provides traders the opportunity to sell to the general public over the internet without needing any human interaction, using any of the applications that rely on the internet. It involves co-ordinating with payment service providers which offer online electronic payments by a variety of payment methods including credit card, smart cards and digital money E-cash.

At present there is no general E-Trading activity available, however the activity 'General Trading' will allow a company to perform and undertake all types of trading whether physically or via an online platform. Typically, if a company is licensed to trade in a particular industry, that trading license will qualify the company to also trade online.

E-Trading activity in the free zone

Unlike Dubai mainland which is subject to the CCL, free zones have their own set of regulations when it comes to licensing business activities. Free zone companies cannot conduct commercial activities outside of the free zone. Therefore, for a trader to freely trade and sell its products online, into the wider UAE, the trader must also obtain a license to do so from the DED. Some free zones do offer E-Commerce activities, but the scope of a free zone E-Commerce activity is limited to facilitating a sale through an electronic medium, rather than directly conducting retailing activities. In short, a free zone company with an E-Commerce activity can only act as a middleman, unless it also obtains a license from the DED to allow the free zone company to trade freely across the UAE.

Introduction of the DED's E-Trader Scheme

Another development by the DED is the introduction of the 'e-trader' scheme whereby online business established via various social media applications such as Instagram, Snap Chat, Whatsapp, Facebook etc can now be licensed by the DED. The conditions are that the license holder must be a UAE national, over the age of 18 and the license cannot be used to open a physical store, nor can it issue visas. This development was introduced with a view to "promote consumer confidence when shopping for products and services on social networking sites" said Omar Bushahab, Chief Executive of the DED's Business Registration and Licensing Department.

Al Tamimi & Company's Corporate Structuring team regularly advises on corporate structures and incorporation requirements. For further information please contact Noff Al-Khafaji (n.alkhafaji@tamimi.com).

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Practical Guidelines to Minimize Risks from Cyber Attacks

With the increase of technology, criminals use malicious software programs for their own benefit. This includes malicious software programs that blocks access to data and electronic devices, known as "ransomware".

With this type of software, a victim could be locked out of his computer or other electronic devices until a certain ransom is paid to the hacker. The victim receives a request to pay a sum of money, in order to be able to access their locked data. The device remains blocked pending the payment of the specified ransom, hence the name "ransomware". Even if the victims pay the requested amount, this does not guarantee that access will be restored.

Global Cyber Attacks

Last month, the world witnessed one of the biggest global cyber attacks ever recorded. "WannaCry", a ransomware, affected numerous international services. Sources argue that it affected 100,000 entities over 150 countries, including Taiwan, Ukraine, United Kingdom, Russia, India, China, Romania, Italy, Brazil, Egypt and others. The entities affected included FedEx, Spain's Telefonica, Renault, and some NHS hospitals whose services were slowed down and patients' appointments had to be canceled.

Recent cases in the Middle East

In less sophisticated fraudulent acts, criminals simply impersonate others and request payment of money from third parties in lieu of offering a service or a commodity. Many of other cyber crimes commence by a simple email or even a private message on social media platforms.

In one case, a customer received a fraudulent email from a business' head of office requesting the customer to transfer funds to a specific bank account. The customer, unaware of the fraudulent scheme, transferred the funds to the specified bank account and received nothing in return.

In another case, a branch manager received an email purporting to be from the CEO of the company, requesting the branch manager to connect the CEO to the local travel agency so that he could book tickets for business trips. The branch manager complied with the request and unknowingly connected the fraudster via email to the travel agency who then booked 35 plane tickets for various people. Later on, the branch manager and the travel agency discovered that the real CEO never made such requests and that the previous correspondence was made with someone who impersonated the CEO's identity. A total of 35 passengers flew between two countries with the business and the travel agency left to pick up the costs.

There have also been a number of other incidents where criminals attempted fraud by establishing websites and emails almost identical to those of legitimate businesses, with the aim of impersonating them and deceiving third parties.

Minimizing Risks

In the UAE, the relevant authorities, including the public prosecution offices, are very effective in deterring cyber crimes. Moreover, a new department, the Federal Public Prosecution for Information

Technology Crimes, specialised in information technology crimes, was established earlier this year. In a previous Law Update Articles, we explained how this signifies the UAE's determination to safeguard individuals, the community and the Emirates from these types of crimes.

Given the difficulty in locating and identifying cyber criminals, the key is to have in place protective measures against cyber attacks, particularly ransomwares and other viruses that reach devices through the internet or when downloaded mistakenly through a malicious file. It is thus recommended to:

1. Check the validity of requests received via email or text messages. This could be done by contacting the entity who sent the email by phone or even paying them a visit to meet in person;
2. Do not click on internet links that you do not recognise;
3. Do not download files from sources you are not sure of their credibility;
4. Do not open attachments or any files sent to you through emails you do not recognise;
5. Make it a regular habit to install software updates and anti-virus programs;
6. Be doubtful and suspicious towards any requests you receive through technological platforms;
7. Establishments and all corporations should provide regular training to ensure that they undertake the necessary actions;
8. Specialised IT systems should be in place to increase cyber security.

In the unfortunate event your company is impacted by cyber crime, report it as soon as possible to the authorities. Cyber incidents and viruses that may seem insignificant to you (if for example it affected an old PC) are nevertheless worth reporting to the authorities as every piece of information helps authorities to assess the magnitude of the attack and can assist in tracking and combating the virus before it spreads further.

Al Tamimi & Company's Litigation and TMT teams regularly advise on cyber security issues. For further information please contact Nick O'Connell (n.oconnell@tamimi.com) or Omar Khodeir (o.khodeir@tamimi.com).

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Criminal Penalties for Commenting on the Qatar Situation and Liability for Posting, Re-Posting and Sharing Content on Social Media & Electronic Platforms

Following the severance of ties with Qatar by several countries, including the United Arab Emirates ('UAE'), there was a recent affirmation that legal action could be pursued against those who show sympathy with Qatar or those who object to the position of the UAE in this context. This extends to expressions made through social media, or any type of written, visual, or verbal form.

We note that the existing Criminal and Cyber Crime Laws already penalise acts that may affect the national unity, public order, or social stability. For example, an English translation of Article 24 of the UAE's Cyber Crime Law states the following:

> 'Any person who established, operated or supervised an Electronic Site or published information on an Information Network or any of the Information Technology Tool to promote or favor any programs or ideas that may stir sedition, hatred, racism or sectarianism or hurting national unity or social peace or prejudice of public order or public morals shall be punished by temporary imprisonment and a fine not less than (AED 500.000) and not exceeding (AED 1.000.000).'

Apart from the above and generally speaking, millions of users of social media and other electronic platforms 'share' and 're-post' content on their newsfeed on a daily basis.

Without a doubt, an author creating illegal content (for example, negative comments towards the situation of Qatar in the developing context) and uploading it on social platforms may be legally liable. In fact, the legal risk could extend beyond the author, in some circumstances. Reposting or sharing materials available on one's newsfeed could result in penalties and the user could find himself involved in a criminal case.

The large number of users, posts, and word count on social platforms also gives the user a false sense of security that his/her words do not matter and that no one would take notice. In many heated discussions over the internet, users may insult others or use defamatory language. They may use words that they think are appropriate, as it is in their home country, not knowing that it may constitute a crime in another country.

Crimes Associated with Re-posting and Sharing

There are obvious risks if certain content was published, for example, where someone re-posts another user's status that invites the public to purchase from him illegal drugs and narcotics. However, the matter becomes tricky if the 're-post' concerns something that seems positive, on the face of it. For example, someone inviting the public to help the poor and donate to the unfortunate. In this regard, there are several restrictions in the UAE regarding collection and promotion of donations through media and technological platforms, including a requirement to obtain approval from the relevant authority prior to the same. Violating those restrictions could lead to criminal penalties, which could also extend to someone who shared or re-posted messages or content about the charity organisation.

In other scenarios, some statements could be seen by users as a normal way of expressing views; however, these statements sometimes include mockery and criticism of others, whether ordinary persons, high ranking officials, or governments. It can be held that such statements amount to a criminal offence.

This is not necessarily restricted to involving persons the government of the UAE, per se, and could extend to other countries. The UAE law prohibits publishing content disparaging or showing a negative aspect of a president of an Arab, or a neighbouring, country and content that may adversely affect the relationship between those countries and the UAE.

"Reposting or sharing materials available on one's newsfeed could result in penalties and the user could find himself involved in a criminal case."

Also, offensive pictures uploaded on social media can constitute a crime. Similarly, publishing a picture of someone who did not approve its publication is also a crime.

Insults and Use of Defamatory Language

In one incident, a number of users expressed their rage against a company, their former employer, by typing statements that contained insults and defamatory language. The statements were posted on a well-known website providing business and employment networking service. In reliance on the UAE Cyber Crime Law, the employer in question has the right to initiate criminal proceedings against those employees for insulting the company on an electronic platform.

In another case, work colleagues were discussing business and work oriented issues via internal emails. The discussion heated up, leading one of the colleagues to use inappropriate words that he believed to be acceptable in his home country. However, the recipient filed a criminal complaint against him arguing that those words constituted insults under the UAE Cyber Crime Law.

Similarly, liability can also be established for insults and defamatory language that one sees frequently in a simple comment on a picture or a discussion between others on a newsfeed. Needless to say, the same liability would also arise when the offensive content is sent directly to a smaller group of people in an email.

Whilst it is far-fetched to deem that a user who re-posts defamatory language that was posted by another user has committed a crime, it is nevertheless arguable as outlined in the context of this article and the below judgment.

Collecting and Re-publishing

In one case, a claimant filed a case against a renowned company before the Abu Dhabi Court to claim for compensation. The defendant was an owner of a website providing access to information on politically exposed persons, entities, and individuals with high risk around the world. The database on the website assisted users in checking the background of various individuals to identify whether they carry high financial, reputational, or legal risk.

The defendant did not create the information, but rather compiled the database from other credible sources, such as renowned news and media companies. While arguing his case, the claimant noted that the defendant published inaccurate information about him being sentenced in a criminal case, describing him as a 'terrorist'', as being related to someone who is involved in criminal conduct, and other information that showed that he had a 'high risk' profile.

The information about the claimant on the website led to the rejection of the claimant's requests for bank facilities and loans that the claimant had applied for, cancellation of visa for a country he needed to visit, as well as affecting many aspects of his business and social life.

The Abu Dhabi Court of First Instance ruled against the defendant, obliging it to pay compensation for the damages sustained. The judgement was upheld by the Court of Appeal and Cassation.

In its defence, the defendant asserted that it was not the author of the information in question, it only re-published the information already available from other sources on the internet. The defendant explained, as an analogy, that the service provided by it is similar to the search engines available on the internet. A user types the keyword and information from other sources are revealed to him, which includes negative and positive information provided by third parties. The search engine should not be liable since they are not the 'author' of such information.

The Abu Dhabi Court of First Instance ruled against the defendant, obliging it to pay compensation for the damages sustained. The judgement was upheld by the Court of Appeal and Cassation.

Whilst there is no system of precedents in the UAE, the foregoing judgment still provides for some vagueness towards imposing liability on 'non-authors' who collect and compile previously published information in the one place. The same concept may apply to re-posting and re-publishing.

Recommendation

As a general rule, we recommend the following:

1. Do not post or re-post content on social or any other platform when you are not sure of the accuracy of the content.
2. Avoid using personal data or infringing rights to privacy of an individual. This extends to individuals' social statuses, personal or contact details, as well as personal photos or any other similar data.
3. Avoid publishing or re-publishing content that:
   a. Encourages discrimination or acts of violence;
   b. Adversely affects or may affect public order or social stability.
   c. Infringes intellectual property rights of others;
   d. Violates children's rights;
   e. Includes negative reference to religions; or
   f. Promotes illegal activities.

In all cases, we recommend seeking legal review of the content before publishing or re-publishing material that may be questionable. Consulting with a lawyer will also provide you with insights and a proper assessment of risks to know the possible liabilities that may be faced.

Al Tamimi & Company's Litigation team regularly advises on Cyber Crimes. For further information please contact Omar Khodeir (o.khodeir@tamimi.com)

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Real Estate Considerations Regarding Data Centres and Co-Location Agreements in the UAE

In simple terms, a data centre is a building that contains computer servers and equipment that provides end users located elsewhere with access to large telecommunications networks and a stable electricity supply.

With the ever increasing consumption and processing of data, and the resultant need for secure and efficient storage solutions, the prevalence of such facilities will only continue to grow in the foreseeable future. According to datamap.com there are currently eight co-location data centres in the UAE.

Some typical types of transactions/arrangements associated with this burgeoning asset class that require consideration from a real estate perspective include:

- The acquisition of an existing facility or construction of a new data centre by a specialist data centre and co-location service provider ("Data Centre Service Provider");
- The sale and leaseback of data centres by owners of such facilities in order to release capital;
- The long term leasing of a data centre by a Data Centre Service Provider from an owner or master developer that may require significant works / retrofitting to be carried out by such Data Centre Service Provider;
- The "wholesale" leasing or granting of rights of use by the Data Centre Service Provider relating to all, or substantially all, of the space in the data centre to a single end user with heavy usage requirements, such as to a large cloud provider. Such type of data centre may have been constructed on a build to suit basis to a particular end user's specific requirements. Through such "wholesale" arrangements, organisations can access large scale networks for storage, processing and distribution of data without the corresponding capital investment otherwise required for such activities; and
- The "retail" leasing or granting of rights of use by a Data Centre Service Provider to multiple, different end users that have smaller power and space needs. Such end users typically lease or are granted exclusive rights over physically separated, often caged racks which house servers and equipment.

This article will primarily focus on the agreements entered into by a Data Centre Service Provider with an end user on either a "wholesale" or a "retail" basis ("Co-Location Agreements").

Key considerations in locating and constructing a data centre

A large number of commercial, physical and legal factors will be considered by Data Centre Service Providers in planning and locating a data centre. However, some key essentials for operating a successful facility attractive to end users include:

- the availability of access to uninterrupted power. The power requirements for a data centre are significant given the high density of hardware contained within, and its cooling requirements. Without a constant supply of power a server simply cannot function. For this reason, there will be back up systems and generators to ensure an uninterrupted supply of electricity that is also insulated from any sudden surges in current or voltage. The "rent" paid under a Co-Location Agreement is often calculated in accordance with power usage rather than the physical area of space or number of racks used;

- keeping the data centre as a cool environment with low humidity to allow servers to function at their most optimum. Given the climatic conditions of the UAE, there are added cooling costs to consider when compared with data centres located in other parts of the world with lower year round ambient temperatures;
- having a reliable and fast telecommunications infrastructure allowing the flow of data in and out of the data centre. With trading firms for example, who have taken space in a data centre, delays or "latencies" of mere milliseconds in the transfer of information can be significantly damaging in terms of their competitive position;
- ensuring that data is available, accessible and secure at all times with comprehensive data recovery procedures in place in the event of a failure of the data centre - for example due to a power outage, an event of damage or destruction or a cyber attack; and
- as well as maintaining data security, ensuring that the data centre is physically secure by adopting a range of procedures limiting individual access to the data centre and particular servers or racks.

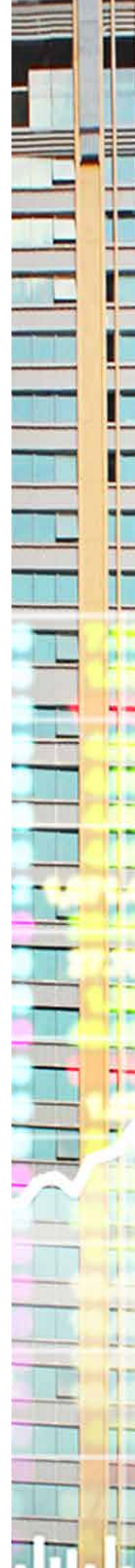
As high specification data centres become more prevalent in the UAE, there are several unique legal considerations in the UAE from a real estate perspective that Data Centre Service Providers and end users should be aware of when agreeing the terms of any Co-Location Agreement

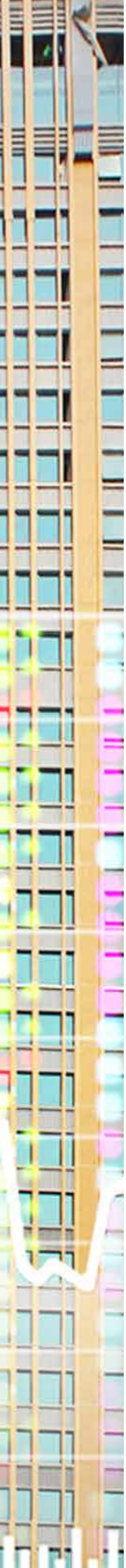
Key drafting issues relating to Co-Location Agreements in the UAE

(a) Are Co-Location Agreements leases or contractual rights of access?

Although it may be preferable for some end users for such Co-Location Agreements to be expressed as a lease that establishes a formal landlord and tenant relationship (for example, to take advantage of the generally tenant friendly lease laws in the UAE), in our experience it is not usual for Co-Location Agreements to take the form of a lease. Instead, they are usually structured as contractual rights of access, albeit with many characteristics commonly seen in lease agreements, such as:

- exclusivity of use by the end user and a right of "quiet enjoyment" for the duration of its term;
- limitations on the Data Centre Service Provider's rights of access to the end user's designated space;
- respective repair and maintenance obligations;
- rights of renewal;
- provisions relating to assignment and sub-leasing/contracting;
- a description of the services to be provided by the Data Centre Service Provider;
- provisions regarding the end user's rights to make alterations to the designated space;
- reinstatement and termination rights upon





- the occurrence of events of damage or destruction;
- reinstatement obligations at the end of the term; and
- rights of first refusal regarding additional space in the data centre.

From a Data Centre Service Provider's perspective, such contractual rights of access are preferable to a formal lease arrangement as it gives greater flexibility on the issue of landlord's access rights. This is particularly important when hosting a number of servers for multiple tenants on a "retail basis". It is also uncertain as to whether, if such Co-Locations Agreement were drafted as leases, whether they would be capable of registration in the Ejari and Tawtheeq short-term, online lease registration systems applicable in Dubai and Abu Dhabi. In Dubai, there are also particular licensing issues and other RERA requirements that need to be satisfied in order for an entity to legally sub-lease property which are likely to be an unattractive option for a Data Centre Service Provider (if it is itself subject to a superior lease).

Notwithstanding the above, Data Centre Service Providers should be aware that, under UAE law, there is less of a clear distinction between leases and licences (or other contractual arrangements) to occupy/use/access than in some common law jurisdictions. If tested, there is a risk that a Co-Location Agreement could be construed as a lease by the relevant judicial authorities (even if there is express wording to the contrary in the agreement that no lease or landlord and tenant relationship is created). If deemed to be a lease, this could provide the end user with a greater level of protection relating to such matters as security of tenure / rights of renewal, termination and rent control by bringing the agreement within the remit of laws governing the landlord and tenant relationship.

(b) End user's right to make alterations and use of the premises

As end users are usually fully responsible for the maintenance of their own equipment in data centres, they will typically want wide scope to make alterations or additions within their designated space. These rights are necessary during the term of a Co-Location Agreement to ensure that relevant upgrades can be made to their technology. Therefore, it is important that an end user has the right to make those upgrades as often as required and to not be restricted by the usual provisions in commercial leases which often require a landlord's consent to any tenant alterations.

A standard commercial lease will also place certain restrictions on the tenant's use of its premises, such as observing weight requirements on floor plates and restricting the use and storage of dangerous goods in the premises. In a Co-Location Agreement, a Data Centre Service Provider should consider more strict requirements, particularly in "retail" data centres where multiple servers are housed for the benefit of multiple different organisations, each with a high dependence upon the uninterrupted functionality of their servers and equipment. This may include an obligation on an end user to not do anything that would interfere with another end user's right to use and enjoy the data centre (including generating electrical interference).

(c) Server outages and maintenance

Another issue that a Data Centre Service Provider should consider is what happens if a server fails. The potential for damages in these circumstances are significant as an outage could significantly disrupt or prevent the business operations of an end user. Therefore, an end user should consider inserting appropriate remedies at the outset such as releases, indemnities or liquidated damages to minimise the risk of damages for a Data Centre Service Provider and adequately protect the end user in the case of a server outage.

A Data Centre Service Provider may want to limit their exposure in the case of server outages and instead insert a remedy for the end user in the form of "rent" credits (a credit of "rent" paid pursuant to a Co-Location Agreement) or service credits (a credit of service fees sometimes paid pursuant to a separate Service Level Agreement ("SLA")). Any such SLA, will usually sit alongside the Co-Location Agreement for the same term. It deals with the performance quality of the data centre and usually guarantees the level of its performance.

"Rent" or service credits are often capped at the current "rent" or service fee payable by the end user for that month. A common practice is for a claim to be capped at one credit per day regardless of how many service outages occur during that day. An end user may want to negotiate this cap and insert clear criteria when defining what constitutes a server outage (if a Data Centre Service Provider is insistent upon the end user's remedies in such circumstances being limited to such "rent" or service credits).

A Data Centre Service Provider will usually also have certain maintenance obligations in relation to the building, the common areas, cooling equipment and other key service systems. However, given the importance of servers and equipment being kept continuously operational, an end user will need to consider whether it may require (and the degree of) step-in rights in the Co-Location Agreement if a Data Centre Service Provider has not properly discharged its obligations in relation to maintenance or in the case of an emergency.

(d) "Rent"

The key purpose of a Co-Location Agreement is to enable the tenant to access the power available for its IT equipment. In the early days of such agreements, "rent" under a Co-Location Agreement was calculated on the area of the premises being leased, as is usual for general commercial leases. However, in recent years, the "rent" payable under Co-Location Agreements has, more appropriately, been calculated on the supply of power to the tenant's equipment. Commercial discussions between the parties should therefore be focussed on calculation of rent based on power supply rather than area since the premises required depends on what power is available in order to provide an end user with reliable and fast telecommunications connections.

(e) Grant of security interests

An end user should ensure that there is a provision in the Co-Location Agreement that prevents the Data Centre Service Provider from creating any security interests over an end user's assets that are located in the data centre.

(f) Meet Me Rooms

A unique feature of some data centres is connection rooms called "Meet Me Rooms" that allow end users to connect to other telecommunications carriers or third party networks. A Data Centre Service Provider may elect to house "Meet Me Rooms" as an attractive offering for end users to enable them to access telecommunications carriers at a low cost as the connection is within the Data Centre (rather than the end user having to travel out of the Data Centre to access telecommunication points).

If a Data Centre Service Provider includes "Meet Me Rooms" as part of their service, one issue is who should retain control of the connection from the carrier side and the end user side. Usually a Data Centre Service Provider will engage a third party management company to access both connection points. However, this does raise security concerns in relation to both data security and physical security for end users where a third party has access to their equipment.

One issue when supplying "Meet Me Rooms" in data centres in the UAE is that the Telecommunications Regulatory Authority may view these cross connects as a regulated activity which only Etisalat and Du are licensed to perform.

Conclusion

As we expect to see data centres and Co-Location Agreements becoming more prevalent in the UAE, the above are unique considerations to be mindful of when drafting a Co-Location Agreement.

Al Tamimi & Company's Real Estate team has experience in advising on legal issues relating to leasing and co-location arrangements relating to data centres, and works closely with specialists in our Technology, Media & Telecommunications team. For further information please contact Ian Arnott (i.arnott@tamimi.com) or Andrew Fawcett (a.fawcett@tamimi.com).

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The Legal Horizon for Telecommunications in Iraq

At present, Iraq does not have much legislation that is specifically directed to matters related to the telecommunications sector, including those related to internet and mobile phone services. However, the recent release of several draft regulations for public consultation indicates that this is about to change.

The Iraqi Communications and Media Commission ('Commission') was established by Coalition Provisional Authority Order No. 65 in 2004 to license and regulate telecommunications, broadcasting, information services and other media in Iraq.

As of the date of this article, the only way to interpret the available laws with certainty is by direct inquiry with the Commission or other government bodies. A process that, when fruitful, takes a few months at best. To address the needs of this rapidly developing sector, the Commission has recently published a number of public consultations detailing draft future regulations pertaining to various aspects of the Commission's legal domain.

While these consultations are not in force as law, they give a good indication of the Commission's likely future regulatory requirements. This article provides a brief summary of three key public consultations on competition, lawful interception, and quality of service.

Competition Regulation Draft and the Market Reviews Consultation (Published in June 2016)

This proposed telecommunications specific competition regulation builds on the Competition and Monopoly Prevention Law (Law No. 14 of 2010) ('Competition Law'). That said, the Commission's draft regulation is quite different from the Competition Law. The Commission's anticipated regulation will apply only to holders of licenses issued by the Commission because regulation of non-licensed parties requires involvement of other regulatory bodies. The draft regulation contains both preventative and remedial competition preserving measures. Preventative measures or ex-ante regulations are unique to the telecommunication industry in Iraq and aim to intervene in the market before anti-competitive behaviour can occur or cause significant damage to competition. Remedial measures or ex-post regulations in the Commission's competition regulation draft are largely derived from the Competition Law. The telecommunication specific ex-post competition regulation includes prohibitions on licensees from entering into non-retail agreements with parties who are not end customers, anti-competitive tying or bundling of services, customer discrimination, and other forms of abuse of dominant market power. The draft competition regulation states that the Commission will seek enforcement action against licensees for violations of ex-post regulation in a court with jurisdiction under the Competition Law as provided for under Article 15 of that law.

The Commission introduces a number of new concepts in its ex-ante regulation of competition in telecommunications and information services. One such new concept is 'Significant Market Power'. The Commission uses data it collects from licensees as well as definitions and tests set out in a market review policy issued by it to determine Significant Market Power. The Commission published a public consultation on market review in 2015 and a draft policy followed in June 2016 along with the draft Competition Regulation. The market review consultation defines each market using two parameters (1) having demand-side or supply-side substitutability of products, and (2) geographic areas where the conditions of competition are similar. It is important to note that the Kurdistan region was not included in the Commission's consultation document because the Commission was unable to procure the necessary data from the relevant Kurdistan telecom authority to conduct its review. Due to this disconnect between the relevant authorities and for other practical reasons, the Kurdistan region is likely to be considered a separate market for market review purposes.

"The Iraqi Communications and Media Commission ('Commission') was established by Coalition Provisional Authority Order No. 65 in 2004 to license and regulate telecommunications, broadcasting, information services and other media in Iraq."

According to the most recent draft market-review policy published by the Commission, the decision whether a given market is susceptible to ex-ante regulation is based on a three criteria test. If all three criteria are met, the market is considered susceptible to Ex-ante regulation. If at least one of the criteria is not met, the market is not susceptible to ex-ante regulation. The three criteria are:

- presence of high and non-transitory barriers to entry:
- the market does not tend towards effective competition within the relevant time horizon; and
- insufficiency of competition law alone to adequately address the market failure(s).

When a determination that a market is susceptible to ex-ante regulation, designation of licensees with Significant Market Power will follow. Market share is the most important criterion to designate licensees with significant market power. For example, the June 2016 consultation concluded that Asiacell, Korek and Zain are licensees with Significant Market Power in the mobile market. Designation of Significant Market Power imposes regulations aimed at keeping the market open to new competitors and achieving the best market dynamics possible. For the three licensees mentioned above the market review consultation imposed the following obligations:

- to allow access to and use of specific network facilities;
- not to unreasonably bundle;
- non-discrimination;
- transparency;
- price control;
- cost accounting; and
- separate accounting.

Assistance for Lawful Interception and Data Retention Regulation Draft (Published in June 2016)

The Assistance for Lawful Interception and Data Retention Regulation Draft builds on existing interception law and provides more clarity on compliance requirements. The draft includes some data retention requirements for providers of communications services, as well as operating procedures and standards relevant to interception. The draft regulation defines the type of authorization required to disclose information and contains obligations not disclose information to unauthorised persons. In addition, the draft regulation contains provisions on cost allocation of its implementation and the penalties for failure to comply. Finally, the draft regulation addresses technical matters such as the use of encryption and what information needs to be collected, retained, and made available on properly authorised request.

Quality of Service Consultation (Published in June 2016)

The Quality of Service Consultation contains a Quality of Service Policy, a Retail Quality of Service Regulation and a Wholesale Quality of Service Regulation. The Commission used the information it received from service providers since the Commission was established to draft those documents. The Commission intends QOS regulation to improve the choice, price or quality of services offered in Iraq and to provide information about quality that will help consumers to make choices and service providers to maintain quality when there are too few choices available. The two regulations and the Quality of Service Policy cover measurements standards, reporting periods and areas, representative samples for reporting of measurements, governance and dispute resolution, sanctions and compliance measures, and measures aimed at ensuring customer awareness.

The Commission published the Quality of Service Consultation because the quality of service commitments in the existing licenses were poorly defined. While the Commission had copious amounts of information from service providers, it was not easy to compare the quality of service between service providers or verify the information. In addition, some of the new developments were motivated by the Consumer Protection Law (Law No 1 of 2010) and aim to keep the quality of service consistent with prices charged by service providers and claims made by them. The Commission's regulatory requirements do not prevent consumers from exercising preferences that might actually to be to have low prices with low quality or high prices with high quality. However, when consumers are unable to exercise their preferences because there are too few service providers the Commission's regulatory requirements aim to ensure sufficiently high quality and sufficiently low prices.

Conclusion

By publishing public consultations and asking for the input of stakeholders, the Commission seems determined to keep the Iraqi telecommunications industry competitive and open to new service providers by offering a level of predictability to future regulations. The Commission aims to regulate only as and when deemed necessary and has made efforts to ensure transparent implementation of its rule making by publishing a draft Rules of Procedure Regulation that will govern its processes. Institutional independence and accountability of the Commission make the new developments a positive step towards better regulation in line with international standards.

Al Tamimi & Company's Technology, Media & Telecommunications team regularly advises on the regulation of the telecommunications sector across the Middle East, and works closely with the various teams in our regional offices, including in Iraq, to advise on issues of this nature. For further information on the topic in this article, please contact Andrew Fawcett (a.fawcett@tamimi.com) and Ali Al Dabbagh (A.AlDabbagh@tamimi.com)

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Aspects of Trade Mark and Data Exploitation and Protection in Oman

As Oman's economy develops and diversifies, the commercial operations and contractual arrangements of both international and local businesses become more sophisticated and complex. This article considers an important area that can often be overlooked, namely the legally compliant exploitation and protection of intellectual property and information.

Data Protection Considerations in Oman

Overview

There is no specific data protection legislation in the Sultanate but elements of the Cyber Crime Law and Electronic Transactions Law apply.

The Information Technology Authority ("ITA"), which oversees such matters, has announced in previous years that it plans to prepare a data protection law but the current status of such proposed legislation is unclear.

Beyond the general principle of tortious harm contained in the Omani Civil Code, Article 48 of the Electronic Transactions Law prohibits prejudicing a data subject's interests and this could form the basis of an action before the Omani courts.

Specifics

The Cyber Crime Law makes it an offence to violate the privacy of individuals using technology, but does not impose any obligation on those who collect private data.

The Electronic Transactions Law has some data protection measures that only apply to those who deal with electronic transactions (defined widely as 'Any action or contract concluded or to be partially or wholly executed by electronic message') but not those who collect personal data in any other context or collect non-electronic data.

Chapter 7 of the Electronic Transactions Law provides that government bodies and authentication service providers (persons expressly so licensed) can use personal data only for the specified purpose it has been submitted for, by the data subject, unless express consent of the data subject is obtained (Article 43). The following matters form exceptions to the prohibition on collateral use:

- investigation of crime
- collection of tax
- order of the court; and
- protection of the data subject's interests.

Article 48 provides that no processing that prejudices the data subject's rights is allowed.

Articles 49 stipulates that consideration of the security of the data must be made when transferring such data abroad, expressly considering:

- nature of personal data
- source of information and data
- purpose and duration of processing
- destination country and its international obligations
- relevant rules in destination country; and
- security measure employed in destination country.

Extra-territorial effect

Article 2 of the Cyber Crime Law provides that 'The provisions of this law shall apply to cyber crimes, even if committed wholly or partially out of the Sultanate whenever damage to its interests is ensued, or if the criminal result is ascertained within its territories or being intended to be ascertained therein even though not yet ascertained'.

Worthy of note, however, is that foreign authentication service providers under the Electronic Transactions Law will only have their certificates recognised if a ministerial decision has confirmed such recognition.

Enforcement and Sanctions:

The employees of the ITA have quasi-judicial powers in the application of the provisions of the Cyber Crime Law and the Electronic Transactions Law.

The Cyber Crime Law provides that juristic persons shall be subject to double the maximum limit of the fine applicable to natural persons but extreme caution should be exercised in terms of authorised managers and directors being personally liable for offending acts of juristic entities. Assisting and abetting are punishable in the same way and to the same extent as actual commission of the crimes.

Trade Mark Registration in the Sultanate for brand owners appointing distributors and agents

Overview

The impact of changes to the law, made in 2014 but now becoming apparent, relating to the appointment of commercial agents and distributors, should alert brand owners to the increased importance of registering all their relevant trade marks in the jurisdiction in order to ensure certainty as to the terms on which any such trade mark is licensed to the local agent or distributor.

Specifics

Agency and distributorship agreements in Oman are governed by the Law of Commercial Agencies promulgated by Royal Decree ("RD") 26/77 and the amendments thereto (the "Law") contained in RD 73/96, RD 66/2005, and RD 34/2014. Commercial Agency is defined in the Law as –

> *"any agreement whereby a manufacturer or supplier outside Oman assigns one or more merchants or commercial companies in Oman to sell, promote or distribute goods and products or supply services whether in his capacity as an agent, representative or intermediary for the product of the original supplier who has no legal presence in Oman, against a profit or commission."*

The original law, established in 1977, contained numerous provisions protective of agents/distributors. The commercial agency regime was significantly liberalised in 1996, when amendment of the law removed the restrictions against the appointment of multiple agents and appointments on a non-exclusive basis. Further significant changes to the Law were introduced to the Law by Royal Decree 34/2014, effective from 21 July 2014, which amended the law in three major ways:

- The Law no longer expressly provides for compensation on termination of registered agents. The parties to relevant agreements can now decide the terms of renewal and termination of those agreements. The parties can expressly exclude liability for/entitlement to compensation on termination in accordance with the contract terms. Agents can, of course, still mount claims for breach of contract.
- A registered agent no longer has rights to claim commission from parallel imports and the agent no longer has a right to demand commission from the principal in respect of such imports.
- Although the power was not previously used due to WTO treaty obligations, the Minister of Commerce and Industry no longer has the statutory authority to ban the import of goods where a dispute between the registered agent/distributor and the principal results in termination of the agency without cause.

Article 11 of the Law sets out a requirement for registration of any agency/distributorship agreement with the Commercial Agencies Department at the Ministry of Commerce and Industry. Failure to so register a relevant agreement would render it enforceable only as a civil contract between the parties and not in accordance with the Law.

Conclusion

Notwithstanding the current more principal-friendly provisions of the Law and the Article 11 obligation, relevant agreements often expressly provide that registration of the agreement is prohibited. Whether relevant agreements contain any such negative stipulation and regardless of well drafted termination and non-exclusivity provisions being included in all agreements, brand owners should:

- ensure their trade marks are registered in the Sultanate; and
- consider stand-alone licences of such trade marks to any agent.

While such advice is broadly protective of principals, well-advised distributors and agents should benefit from the contractual certainty secured by such contractual discipline.

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What Vision 2030 Means for the Information and Communication Technology Sector in Saudi Arabia

Saudi Arabia's Vision 2030 is the Kingdom's vision for the future. It is an ambitious blueprint setting out long-term goals and expectations. The government has flagged that it will pursue public-private partnerships, continue to facilitate the flow of private investment and improve the nation's competitiveness. Legislative authorities have been tasked with reviewing current regulations with the aim of improving the business environment.

The 'thriving economy' aspect of the plan is largely reliant on the Kingdom's ability to diversify its economy and reduce its reliance on oil. The transformation of the economy will have wide ranging implications for the Image result for the information and communication technology sector, including the recalibration of the regulatory framework, increased demand for talent and new opportunities for technology-focused businesses.

In this article, we provide an overview of some of the interesting information and communication technology related programs under Vision 2030.

Developing Digital Infrastructure

Vision 2030 notes that sophisticated digital infrastructure is integral to today's advanced industrial activities. Digital infrastructure attracts investors and enhances the competitiveness of the economy. For this reason, the government will partner with the private sector (including telecommunications operators) and support local investments in order to help develop the telecommunications and information technology sectors and ultimately lead the digital economy. A particular area of focus is improving the quality and expanding the coverage of high speed broadband to 90 percent of housing in densely populated cities and 66 percent in other urban zones.

The governance of digital transformation will be strengthened through a national council and improved regulations.

Leader in E-government

The Kingdom aims to become a global leader in e-government by expanding online services and improving its governance standards. It is hoped that this, in turn will boost transparency and reduce delays. To date, a good deal of progress has been made in e-government with the scope of online services having been expanded over the last decade to include employment programs, online job searches, e-learning services, traffic, passports and civil affairs, online payment services and online issuance of commercial registers.

The scope of current online services will be expanded further to include areas such as geographic information, health care and education. Quality is slated to improve by streamlining processes, and diversifying communication channels. The government will also support the wider use of online applications in government agencies, such as cloud applications, data sharing platforms and HR management systems.

Although not specifically referred to in Vision 2030, the development of 'Smart Cities' also appears to be an area of focus. Recently, the first annual Saudi Smart Cities conference took place in Riyadh with over 700 participants from ministries and governmental bodies from across the Kingdom attending. The Ministry of Municipal and Rural Affairs (MoMRA) used the conference as a platform to bring together key stakeholders and initiate discussion about best-practices and leading technologies and services that could feature in the proposed Smart Cities. It has been reported that the Kingdom will invest over US$500 billion into modernising its infrastructure across the 285 municipalities in line with global standards in order to provide the best quality of life for its citizens.

Investing in Emerging Technologies

The ongoing privatisation of state-owned assets, including leading companies, property and other

assets, will bring in new and more diverse revenues for the Saudi government. This will further enhance financial resources to allow it to maximise its ability to invest in large international companies and emerging technologies from around the world.

Localising Defence Industries

The Kingdom is the world's third biggest military spender, having just recently signed a deal in Riyadh with the United States for arms to the value of US$350 billion over 10 years, with US$110 billion that to take effect immediately. Lockheed Martin, one of the world's largest defence contractors and whose technology was part of the deal, said in a statement that the deal "will directly contribute to [Saudi Arabia's] Vision 2030 by opening the door for thousands of highly skilled jobs in new economic sectors."

The Saudi government plans to manufacture half of its military needs within the Kingdom to create more job opportunities for citizens. Currently only two percent of its military spending occurs within the country, with the national defence industrial sector being limited to only seven companies and two research centres. Localisation is slated to be achieved through direct investments and strategic partnerships with leading companies in these sectors. It is hoped that this will result in the transfer of knowledge and technology, and the development of national expertise in the fields of manufacturing, maintenance, repair, research and development.

The proposed increase in local defence expenditure is expected to also stimulate other sectors such as industrial equipment, communications and information technology, which in turn will help create further job opportunities.

Supporting Small and Medium-sized Enterprises

It has been identified that small and medium-sized enterprises contribute only 20 percent towards Saudi Arabia's GDP whereas, in certain advanced economies, the figure is around 70 percent. It has been identified that SMEs endure unnecessarily slow and complex legal and administrative procedures. They also struggle to attract the required skills and funding as financial institutions currently provide, at almost five percent of total funding costs – again, a far lower percentage than the global average. To address this, the recently established SME Authority plans to review and revise laws and regulations, remove obstacles, facilitate access to funding, and enable youth and entrepreneurs to market their ideas and products. Additionally, the government will facilitate access to funding for SMEs and it will encourage financial institutions in the Kingdom to allocate up to 20 percent of overall funding to SMEs by 2030.

Lastly, the government will establish new business incubators, specialised training institutions and venture capital funds to help entrepreneurs in developing their skills and networks. SMEs will also be supported in marketing and exporting their products and services, by leveraging e-commerce and collaborating with international stakeholders.

E-commerce in retail sector

The Vision has identified that traditional retail dominates about 50 percent of the market in the Kingdom compared to 20 percent in a number of countries in the Gulf Cooperation Council (GCC), with the retail market suffering from limited penetration of modern trade and e-commerce. The government aims to increase the contribution of modern trade and e-commerce to 80 percent in the retail sector by 2030. This is planned to be achieved by attracting both regional and international retail investors, increasing financing of small retail enterprises to stimulate their growth and development and by easing restrictions on ownership and foreign investment.

Conclusion

Vision 2030 offers a great opportunity for the development of the Kingdom's information and communication technology sector and technology focussed businesses operating in the region are well-placed to benefit from this game changing initiative over the coming years. The potential for Vision 2030 to achieve its stated aims will largely depend on the ability of government entities to work with private sector stakeholders to improve the business environment, including by changing the regulatory framework, facilitating the flow of private investment, developing and nurturing local talent and expediting licensing procedures.

Al Tamimi & Company's Technology, Media & Telecommunications team regularly supports clients on information and communication technology matters in the Saudi market. For further information please contact Haroun Khwaja (h.khwaja@tamimi.com) or Nick O'Connell (n.oconnell@tamimi.com).

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Busting the Myth on Cheques in Bahrain

For many years it has been market practice for banks in Bahrain (and in the wider GCC region) to take undated, signed cheques (generally for the full amount of the loan) from customers as security for loans and other facilities. In the event of default by the customer on their repayment, the banks generally date the cheque(s) in their possession and present it for clearing, and in some cases, even with the knowledge that there are insufficient funds in the customer's bank account. This results in the cheque(s) being dishonored and the issuer being criminally liable. This allows the banks to then file a criminal case against the customer for the dishonoured cheque(s). Although this is market practice, this is unlawful under the commercial laws of Bahrain and could result in the banks also potentially being criminally liable.

Requirements for a valid cheque under Bahrain law

The Bahrain Law of Commerce states that a cheque should contain the following:

1. The word 'cheque' should be written on the instrument;
2. An unconditional order to pay a sum certain in money;
3. The name of the person who should pay the drawee;
4. The place of payment;
5. The date and place of drawing the cheque;
6. Signature of the maker (drawer) of the cheque; and
7. The name of the person to whom or to whose order payment shall be made.

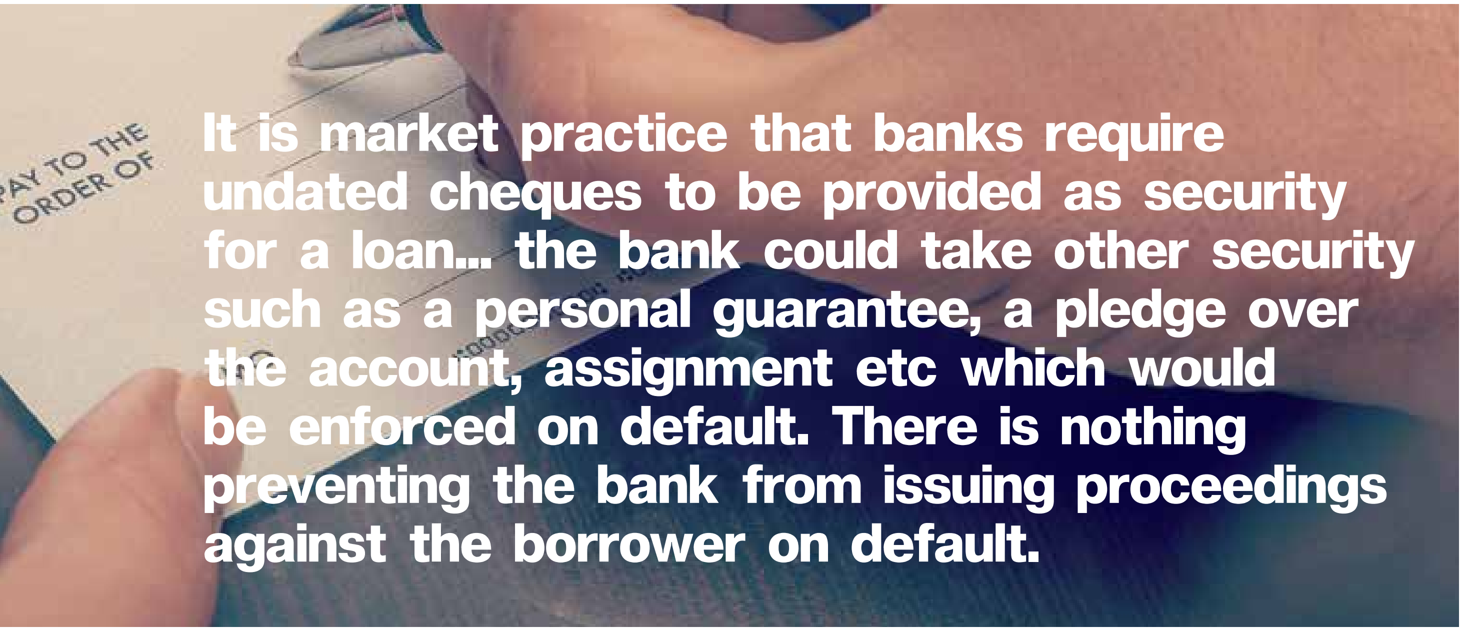
If an instrument does not contain any of the information listed above, it shall not be deemed to be a valid cheque except in the following cases:

If the place of payment if not indicated, the cheque shall be payable at the place shown next to the drawee's name. If several places are indicated next to the drawee's name, the cheque shall be deemed to be payable at the place first indicated. When these or any other particulars are not stated on the cheque, it shall be deemed to be payable at the head office of the drawee. When the place of drawing the cheque is not indicated, it shall be deemed to have been drawn at the place shown next to the drawer's name.

The Law of Commerce states that cheques cannot be predated. A predated cheque is deemed to be a forgery. There is no guidance on post dated cheques, although it is common practice for post dated cheques to be used.

Criminal liability for signing cheques in respect of a bank account with insufficient funds

The Bahrain Penal Code, as amended, states that: "*a prison sentence or a fine or both shall be the penalty for anyone who issues in bad faith a cheque which is not adequately covered by a cash consideration that is payable or if he recovers, after the issue of the said cheque, all or part of the said consideration, so that the balance would not cover the amount thereof, or if the drawee orders the stopping of the payment thereof or if he deliberately writes or signs it in a manner preventing the encashment thereof. The same penalty shall be applicable to any person who endorses a cheque to another or delivers thereto a cheque with the knowledge that it is worthless or is not payable. The same penalty shall be applicable to any person who forces another to give or endorses thereto a cheque with the knowledge that it is worthless or is*



not payable. If the offender's act in the preceding paragraph was to cover a conventional loan (i.e. with interest) or to cover unlawful debt, it shall be deemed as an aggravating circumstance".

In light of the above and based on case law in Bahrain, in our view, the person signing the cheque would be held personally if they knew that there was insufficient funds in the bank account or generally issues it under circumstances as described in the Bahrain Penal Code.

When providing a loan, it is common practice for banks to request the account holder to provide signed but undated cheques covering the amount of the loan as security. This allows the bank to date the cheques and present them for clearing upon an event of default by the customer. Presumably once these cheques are dishonoured due to insufficient funds being held in the customer's account, the bank would be able to issue criminal proceedings against the person who signed the cheques.

Despite this being common practice in Bahrain, the bank is also likely to be held criminally liable under the Penal Code on potentially two grounds, firstly, by making a physical modification to the cheque (caused by dating it) which has not been made by the issuer and secondly, at the time of obtaining the signed cheques or at the time of presentation, the bank was aware that there were insufficient funds in the account to clear those cheques. The second scenario is particularly relevant where post-dated rather than un-dated cheques are given. The issuer could bring proceedings against the bank on these basis and the banks adopting this practice are therefore at risk. It is common practice by the banks in Bahrain to procure cheques in this manner in order to grant any kind of facility, despite being unlawful under the Bahrain Penal Code. In addition, the use of cheques as a form of security is contrary to the purpose and nature of cheques under the laws of Bahrain (i.e. equivalent of cash).

Instead of taking signed undated cheques, the bank could take other security, such as a personal guarantee, a pledge over the account, or an assignment, which could be enforced on default. The bank would not be prevented from issuing proceedings against the borrower on default.

Return of post-dated and un-dated cheques

When a customer fully repays their loan or settles their debt with the bank, the bank must immediately return all of the customer's cheques taken as collateral or destroy such cheques and inform the customer in writing.

Dishonored cheques

In addition to criminal liability associated with dishonoured cheques, the Central Bank of Bahrain will impose penalty charges of seven Bahraini Dinars ("BD") on each returned cheque for the reasons of 'Refer to Drawer', 'Not Arranged For', 'Present the cheque again', and 'Account Closed' payable by the bank. Banks in Bahrain are entitled to charge customers no more than fourteen BD in respect of each dishonoured cheque.

Al Tamimi & Company's Banking and Finance team regularly advises on security creation and enforcement in Bahrain. For further information please contact Natalia Kumar (n.kumar@tamimi.com).

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Finally, a Comprehensive Sports Law in Egypt

On 31 May 2017, Law No. 71 for 2017 promulgating the Egyptian Sports Law was published in the Egyptian Gazette, Vol. 21 bis (b) (the "Sports Law"). The long anticipated law was unanimously approved by the House of Representatives. It is the first law to comprehensively regulate sports related matters in Egypt. It significantly reduces discretionary powers previously held by the Ministry of Youth and Sports (the "Ministry") and repeals other conflicting legislation, notably certain sports specific articles of Law No. 77 for 1975 regarding Sports and Youth Institutions. Here the authors consider some key aspects of the new Sports Law.

Overview

The Sports Law comprises of 95 articles addressing a range of sports related issues. It is divided into 10 Chapters covering various topics including:

- Sports institutions;
- Sports activities;
- Sports at companies and factories;
- Sports at schools, educational institutes and universities;
- Sports dispute resolution; and
- Investment in sports.

The Sports Law introduces several new concepts and fills several existing gaps in the regulation of sports in Egypt. Firstly, it fills the prevailing legal vacuum regarding companies which operate sports facilities, including private clubs, by regulating such companies. Secondly, it establishes an arbitration centre specialising in sports related disputes. Thirdly, the Sports Law recognises the standing of international codes and statutes, such as; the World Anti-Doping Agency (WADA) and the Olympics. Finally, it refers relevant matters to the Egyptian Olympic Committee and the Egyptian Paralympics Committee.

The enactment of this law highlights the previous lack of sufficient regulation surrounding sports in Egypt, and begs the question why appropriate steps were not taken sooner. It may be that certain entities stood to benefit from the lack of regulation and accordingly sought to frustrate any sought reforms. For example, the Ministry was the authority authorised to supervise many public sports organizations, and has been largely left to its own devices, save for minor regulations. This situation afforded the Ministry significant discretion to promulgate, and enforce, its own decrees. The Ministry was, essentially, both a legislative and executive authority in matters relating to sports.

Sports Dispute Resolution

The previous law governing youth and sports organizations was issued and amended over forty years ago. It had become outdated in terms of the types of transactions taking place and the types of entities it covered. The previous law failed to provide a particular mechanism for the resolution of sports related disputes. The Sports Law fills this gap, providing in Article 66 for the establishment of an independent Egyptian Sports Arbitration Centre, residing in the Egyptian Olympic Committee (the "Centre"). The Centre enjoys jurisdiction over disputes where one party is an entity, a person, or an organisation governed by the Sports Law.

Article 66 further provides that the dispute resolution mechanisms applied at the Centre shall be mediation, conciliation, and arbitration. Whilst the Sports Law permits these recourses, it does not establish appeal procedures.

Article 67 of the Sports Law provides that agreements referring disputes to the Centre are to be concluded in arbitration agreements, submission agreements or stated in a sports related statute. It further states that disputes referred to the Centre may relate to, amongst others; (i) disputes arising out of the application of the Sports Law or the statutes of the Egyptian Olympics and Paralympics Committees, (ii) disputes arising out of television rights and broadcasting agreements, sponsorship agreements, intellectual property rights used during sports competitions, coaches' contracts, athletes' contracts, sports agents/intermediary agreements, and other sports related disputes.

We suggest that, considering the prevailing preference for sports arbitration above traditional recourse to courts, arbitration under the Sports Law will be favourably received. Further, the Sports Law does not make arbitration compulsory, so parties accordingly permitted to seek recourse through the courts, a position which is consistent with the Egyptian Constitution.

According to Article 68 of the Sports Law, the board of directors of the Centre shall be chaired by the chairperson of the Egyptian Olympic Committee and shall consist of; (i) a representative from individual sports, (ii) a representative from team sports, (iii) a representative from the Ministry of Sports, and (iv) three individuals of legal and technical backgrounds.

It is worth noting that the Centre should be particularly favourable for litigants with administrative law disputes, as disputes arising from this niche branch of law fall within the jurisdiction of the Centre. The Centre's jurisdiction extends to all matters relating to public organizations, authorities, and establishments that deal with public goods. This can include sports federations, sporting clubs, and other authorities and committees charged with some kind of public good. Accordingly, such jurisdiction should provide a compromise in matters where administrative law may be biased towards public authorities (which may receive certain privileges based on the service they provides). This makes it far more difficult for private parties to enter agreements with the public authority as the law may not afford the parties equal weight. An arbitration clause in an agreement or executive regulation may avoid such challenges arising from dealings with administrative courts.

Article 69 of the Sports Law provides that the board of the Egyptian Olympic Committee shall issue a decision in compliance with the bylaws of the Centre and the specified rules for the type of procedure (arbitration, mediation, or conciliation).

Although the Centre will be established as an independent entity, it will be seated in the Egyptian Olympic Committee, its board of directors will be chaired by the committee's president, and its bylaws and rules will be drafted by the committee. This may raise concerns as to the impartiality and independence of the Centre, especially in instances where one of the parties involved in a dispute may be the Egyptian Olympic Committee itself.

Investing in Sport Services

Before the Sports Law, there was essentially no regulation or distinction between quasi-public entities, such as sporting clubs, and private entities that establish a sporting club, health club, gym or other type of sports services. Private companies that established clubs or similar facilities, legally found themselves limbo. There was uncertainty whether they were subject solely to the laws regulating companies conducting regular activities, or whether they fell within the legal framework governing 'sports entities.' Sports entities were previously strictly regulated by the Ministry. Private companies, on the other hand, remained largely governed by general Egyptian company, civil and commercial laws.

The legal uncertainty was most apparent in cases where private companies owned and operated a facility, such as a health club. Health clubs could reasonably be within the paradigm of sport, nonetheless do not strictly fall within the framework governing sports entities. This problem was exacerbated by the increase in diversity of sports enterprises, such as football academies as well as health and fitness clubs. Thankfully, Articles 71 to 78 of the Sports Law clarified some confusion by distinguishing between sports entities and companies that conduct sports services, establishing a guiding framework under which such companies may operate.

All companies that conduct sports services must be joint stock companies. Sports services are not defined in the Sports Law and may include managing, marketing, or operating private clubs and academies, health clubs, and fitness centres. Accordingly, small sports-related businesses (such as spas and gyms) may be obligated to abide by this legal structure.

These companies, under the Sports Law, are entitled to issue their shares through a public offering and list themselves on the Egyptian Stock Exchange Market, if such action does not affect its sports services. The Sports Law does not define the issues that are considered to affect the companies' sports services. An individual interpreter may have discretionary power to determine whether or not a company may issue its shares through a public offering or be listed.

Additionally, sports entities may form joint stock companies with investors and members, or set up branches established by joint stock companies. All such companies remain subject to approval by the competent authorities in terms of activities while remaining compliant to the provisions of the Sports Law. They are also subject to financial oversight, including submitting financial statements to the competent authorities, and minimum and maximum fees for the provision of their services by the Minister of Youth and Sports.

Upon issuing the rules governing the status reconciliation by the Minister of Youth and Sports, the aforementioned companies will have to reconcile their status within two years in order to ensure their compliance with the Sports Law.

Fan Conduct

The Sports Law establishes sanctions and fines for different actions, including actions of fans, unless the penal code or other law provides for tougher sanctions. Actions sanctioned by the Sports Law may include establishing or managing sports groups. This may be interpreted as a provision criminalising the ultras groups (i.e. dedicated supporters of football teams) who, in accordance with Article 90, will be subject to imprisonment and fines (with a minimum of EGP 50,000 and a maximum of EGP 200,000). Although ultras groups will be subject to stringent fines and imprisonment, regulation of and sanctions relating to executive management of sports legal entities (as stated in Article 93) remain vague.

Revisions and General Provisions

The Sports Law changed the framework governing other sports entities. The most important of these changes is the increased role of general assemblies in governing such entities. Previously the Ministry held this power. Prior to the enactment of this law, sports entities were governed by bylaws uniformly issued by the Ministry. The Sports Law enables such entities to draft and enforce their own bylaws, with the approval of their general assemblies. The Sports Law will also give general assemblies plenary power to remove or change the board of directions without fear of Ministry intervention. The Egyptian Olympic Committee will be charged with providing sample bylaws for reference.

The Sports Law also includes provisions regulating previously unregulated areas of sports. For example, it stipulates that athletes representing Egypt in competitions at home or abroad may not be penalized for absence from work or school during the time of the competition.

The Sports Law brings the Egyptian Organization for Anti-doping, an organization previously untethered from local regulation, under legal framework. According to Article 34 of the Law, this organization will supervise the enforcement of the applicable international anti doping codes in Egypt.

The Sports Law accordingly covers far more areas than those covered by the laws preceding it while amending and expanding various areas already in existence.

Conclusion

The promulgation of the Law is an important step in the evolution of the sports sector in Egypt. Its enactment was necessary following a series of unfortunate events relating to sports that have occurred in recent years. The application and interpretation of the Sports Law, however, remains to be seen and requires careful supervision.

The Sports Law will hopefully be the breath of fresh air the sporting sector needs to grow with confidence. The surge in sports promotion in society and the boom of the global sports market (estimated by PWC globally to exceed US$145 billion in 2015) creates a need a legal framework that enables growth, rather than hinders it.

This article was first published by LawInSport on www.lawinsport.com on 9 June 2017.

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Collision Liability under Kuwaiti Maritime Law

In maritime law, the term 'Ship collision' is given when a physical impact occurs between two ships resulting in an accident which causes damage. The ship collision can occur between a moveable object, such as a ship, and a stable object like a quay or a floating structure like an offshore drilling platform.

When a ship collision occurs the parties are faced with evaluating risks, including loss of life and loss of assets, and consequent damages to the environment.

In Kuwait, liability for ship collision is governed by the Kuwait Maritime Law No. 28 for the year 1980 ('The Maritime Law') and the Kuwait Civil Law No. 67 for the year 1980 ('The Kuwait Civil Law').

Article 227/1 of the Kuwait Civil Law says:

> *"Every person who by his faulty act has caused harm to another person shall be liable to reparation regardless of whether he was perpetrator or incitor and abettor."*

Consequently, there are three main pillars for the application of liability for ship collision at Kuwaiti Law:

1. An act,
2. Damage,
3. A causal link between the act and the damage.

If there is an incident involving a maritime collision in Kuwait, these three pillars must be present to oblige the defendant to compensate the aggrieved party. Furthermore, the person claiming damages has the burden to proof that these three main pillars are present, and that the defendant is liable for damages caused by the ship collision.

What is a Collision?

Article 223 of the Maritime Law defines a collision:

> *1 - Where a collision occurs between mercantile ships or between mercantile ships and inland navigation boats the compensation accruing in respect of the damage caused to ships, items and persons on board the ship shall be settled in accordance with the provisions of this Chapter, regardless of the waters where the collision takes place.*
>
> *(2) The foregoing provisions shall also, where no material collision happens, apply to compensating the damage caused by one ship to another, to items or persons on board such ship, if such damages resulted from the movement of the waves because the ship was manoeuvring or failed to manoeuvre or because of failure to observe the laws or regulations.*

In short, a'maritime collision' is defined under Kuwaiti Maritime Law as the occurrence of a physical impact between two floating establishments (whether this impact was material or not).The rules of collision apply when calculating the damages caused by one vessel to another.

It has been established by case law that the rules of collision are excluded in all cases where the vessel collides with a fixed object such as a pier. It is assumed that the collision takes place between two floating objects and at least one of them will be a vessel regardless of its size, and it does not matter whether the vessel was in motion or anchored.

Articles 224, 225, 227 and 228 of the Maritime Law assist in determining the liability arising from a collision:

Article 224: Where the collision is a result of a force majeure, or where there is doubt as to its cause, each ship shall bear the damages she sustained; this provision applies where the ships or one of them were at anchor at the time of the collision.

Article 225: Where the collision is a result of the fault of any of the ships, such ship shall be bound to pay such damages which resulted from the collision.

Article 227 :The liability stipulated in this Chapter shall apply where the collision was due to the pilot's fault, even though pilotage is mandatory.

Article 228: A fault may not be assumed in regard to liability arising from collisions.

It is clear from the above articles of the Maritime Law that proof of fault is essential. The burden of proving the fault for the collision lays with the claimant in the lawsuit brought by him for compensation. The claimant must show that the defendant has breached the general rules for proving fault of the defendant, whether by taking a wrong action, or by neglecting to follow the laws in Kuwait concerning the regulation of sailing on the seas. Further, the claimant must prove a causal link between the fault and the damage which is claimed.

Types of Collision

1. Collisions arising from unexpected or doubtable reasons:

   Article 224 of the Maritime Law does not differentiate between collisions arising from unexpected reasons (e.g., an act of God orwar) and those collisions which occurred for 'doubtable reasons'. As long as the exact cause of the collision cannot be established, the incident will be considered to have occurred by reason of a 'force majeure.

   A collision arising from a force majeure includes any unexpected accident that cannot be prevented and which has caused damage. In the case of force majeure, the defendant must prove that he was not at fault and that he had taken all the precautions required to prevent the accident under the circumstances of the case.

   A collision will be deemed to have happened for doubtable reasons when the court finds that the data provided to explain the collision does not prove a force majeure, or does not prove the existence a fault of any of the vessels, or a common fault that has caused the accident. In the case of 'doubtable reasons', each vessel shall bear the damage caused to her as if the incident was exactly as if it was a force majeure case.

2. Collisions arising from an individual fault of one of the vessels:

   Article 225 of the Maritime Law clearly states that if the collision occurred due to the fault of one of the vessels, the party at fault will be liable to the other party to the maritime collision. Further, the party at fault will be liable towards any third party, and will be responsible to compensate the third party for the damage which occurred due to the vessel which caused the maritime collision.

3. Collisions arising from a common fault:

   A. *Dividing the damage in case of a common fault:*

      Article 226/1 of the Maritime Law stipulates that '*in case of a joint fault, the liability of each ship shall be assessed commensurately with the fault committed; however, where it is impossible due to the circumstances to assess the percentage of the fault of each ship, or where it appears that the fault was of equal degree, the liability shall be apportioned equally*'.

      In drafting Article 226/1 of the Maritime Law, it would appear that the Kuwaiti legislators determined the apportionment of liability for each ship involved in the maritime collision based on the legal principle as stipulated in Article 227/1 of the Kuwait Civil Law, which states that each person should be responsible for the damage he had caused.

      However, it is often hard to determine liability in cases where there are multiple faults on the part of each party to the maritime collision. It may be the case that all these faults combined have caused the damage, or that a specific fault has caused a higher percentage of damage than the other faults. The legal principle at Kuwaiti Law requires a causal link between the fault and the damage, and not between the fault and the incident, which resulted in the damage. The Kuwaiti Court will determine the division of responsibility for each party based on the seriousness of the fault and the court will examine each fault in accordance with the general rules of civil liability determined by Kuwaiti Law.

      It should be noted that, if the court fails to determine the proportion of faults that occurred from each vessel, and if the court cannot determine the percentage of liability attributable to the specific fault and the contribution to causing the damage, it will conclude that the award of damage should be equally divided between the vessels.

B. *Third party's claim for the material damages sustained from the collision:*

In the case of a maritime collision in which damage may be sustained to the cargo or luggage which has been carried by the vessel, Article 226/2 of the Maritime Law outlines the ability for a third party to file a civil case.

Article 226/2 of the Maritime Law stipulates that '*the ship at fault shall be liable, but not jointly, according to the percentage stipulated in the preceding paragraph, to third parties for damages suffered by ships, goods, luggage or other property belonging to the seamen, passengers or any other person on board of the ship*'.

Therefore the third party should file its compensation claim for losses or damages sustained to cargo or luggage only against the actual carrier according to the agreed contractual conditions between the third party and the actual carrier. The third party does not have the right to file its suit against the vessels involved in the collision jointly.

C. *Compensation for the personal injury sustained from the collision:*

Article 226/3 of the Maritime Law stipulates that '*The liability shall be joint where the damage was the result of the death or injury sustained to persons on board of the ship; where a ship pays more than her share she shall have a right of recourse against the other ships*'.

Therefore, in the case of death or injury, the aggrieved party has the right to commence proceedings jointly against the vessels involved in the collision.

The Court having Jurisdiction over Collision Lawsuit

Article 231 of the Maritime Law sets out several options for the claimant to commence civil proceedings and in the event of a ship collision:

1. An applicant may initiate proceedings before any of the following courts:
   A. The court of the defendant's domicile or the court having jurisdiction over the place wherein lies any of the ship's exploitation centres;
   B. The court of the area wherein an attachment was effected on the defendant's ship which caused the damage or, where permissible, on another ship belonging to him, or the court of the place where attachment could be but was not affected because the defendant produced a guarantee or other security;
   C. The court of the place where the collision happened, where it happens in ports, wharfs or inland waterways.
2. The litigants may agree to initiate proceedings before a court other than the foregoing or to refer the dispute to arbitration.

Therefore, claimants have more than one choice to file its case before one of the courts aforementioned and alternatively, the parties may agree to refer the matter to the arbitration.

It is important to note that the limitation period to file a lawsuit regarding maritime collision is two years from the date of the incident ,

The Evidence Acceptable to Prove a Collision

In maritime collision cases, it is important to note that two processes will take place in the immediate aftermath regarding the collision sustained. There will be a civil action dealing with the compensation claims for the damages sustained, and alongside the civil proceedings, a criminal investigation shall take place covering the investigations into liability for the collision.

The criminal investigation is undertaken by the Kuwait General Prosecution. The General Prosecutor will conduct the investigations into the circumstances of the incident and identify the responsible party who caused the damage due to his fault. Whereas the prosecutor is not specialized in the maritime field, the prosecutor will rely upon the survey reports which are carried out in respect of the collision. The criminal prosecutor may also appoint an expert to submit his opinion on the circumstances of the collision.

The civil process will be started when an injured party file his case before the Kuwaiti court's seeking compensation for the losses sustained to him. The civil court will investigate the material and moral losses sustained which shall be proved by the claimant and shall determine the compensation in accordance with the sufficient documents submitted by the parties. Article 9 of the Kuwait Evidence Law applies to civil and commercial matters which are dealt with before the Kuwaiti Civil courts and the provision states that :

"Official documents are binding evidence to all people, including matters made by the public officer within the limits of his mission or signed by the concerned parties in his presence, unless indicated as falsified via legal route.

Article 8 of the Kuwait Evidence Law defines the documents which shall be considered 'official documents':

Official documents are what a public officer or a person assigned to public service has obtained on his hands from the concerned parties, in accordance with the legal conditions and within the limits of his powers or his competency.

It should be stressed that in accordance with the above provisions, the court will give priority to 'official documents' issued from governmental entities rather than any other documents which may be submitted by the parties to support their defences.

Conclusion

In the light of the above, we advise that a party involved in a maritime collision should try to obtain survey reports which are issued from governmental authorities and/or be keen to conduct a joint survey undertaken by the parties involved in the collision (i.e vessel and vessels). This is important because both the General Prosecutor in criminal proceedings and the Kuwaiti civil courts investigating the basis of the compensation and defining the act, the damage and the causal link between them, usually rely on the conclusions of the official survey reports carried out regarding the collision.

It is also important to note that the conclusion of criminal proceedings, the General Prosecutor will impose a fine on the vessel at fault in case that she caused material damages, and in such case the party who has suffered harm shall be entitled to claim for compensation from the party responsible for this act in later civil proceedings.

In order to prove loss arising from the maritime collision, it will be important for a claimant to collate the original invoices that determine the losses sustained by the claimant in determining the amount of the compensation, and to make reference to the survey reports issued by the governmental authorities in connection with the criminal investigation into the maritime collision. If no official survey report is available, it is recommended that the claimant submit a joint survey report undertaken by the parties involved in the collision (i.e., vessel and vessels) as evidence.

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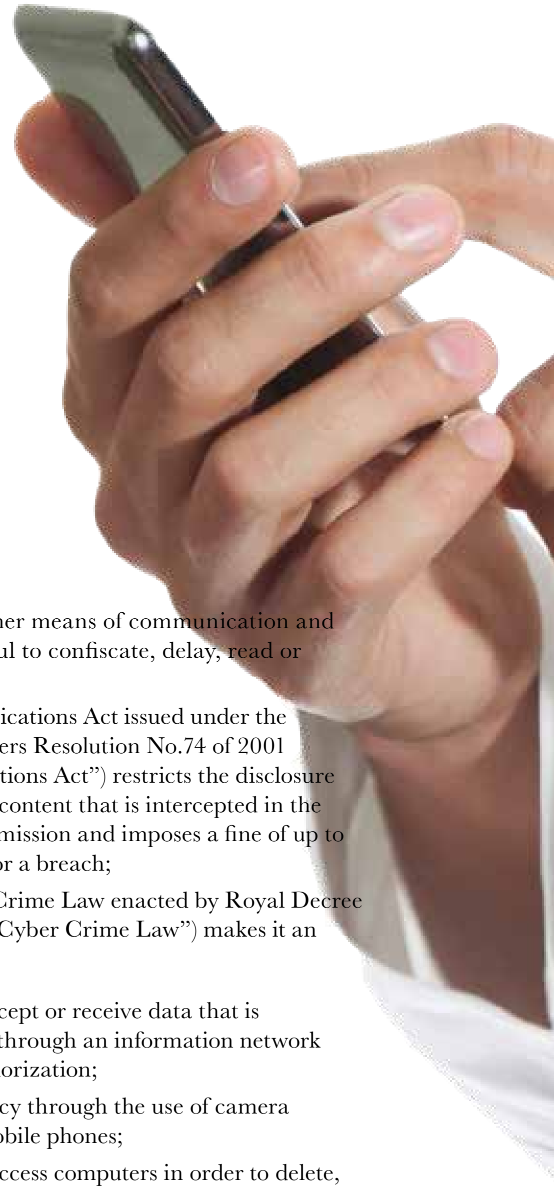
Socialising at Work: The Implications of using Social Media in the Workplace in KSA



Social media usage is prevalent and growing in the Kingdom of Saudi Arabia (the "KSA"). It has not only revolutionised communication in our personal lives but its impact and potential is also keenly felt in the workplace where the private lives of employees have never been more accessible to employers. As the use of social media continues to grow so too does the business opportunities for employers alongside the associated legal risks.

Introduction

The KSA ranks seventh globally in terms of individual accounts on social media with an average of seven social media accounts for each individual. Facebook, Twitter, Whatsapp, Instagram and YouTube are in frequent use. Saudis account for over 40 per cent of Twitter users in the MENA region with the average Saudi user tweeting up to five times a day. The KSA ranks fourteenth in terms of Whatsapp users and has the highest per-capita YouTube use of any country in the world.

As a business tool, social media offers a high level of connectivity with customers and the ability to generate brand name recognition and exposure. In the workplace, social media can be an invaluable human resource tool for employers at all stages of the employment cycle; from pre-employment screening to post-termination interactions. However, its misuse by employers and employees could have serious implications for both. This article considers some of the important issues that can arise from the use of social media in the workplace and how these can clash with the rights of the individual to privacy and to protection from defamation under KSA laws.

Rights of the Individual

There are a number of laws in the KSA that safeguard the rights of the individual to privacy and to protection from defamation where information is transmitted electronically. These are as follows:

i. The Basic Law of Governance No: A/90 dated 27th Sha'ban 1412H ("Basic Law") protects the privacy of individuals by safeguarding telegraphic, postal, telephone and other means of communication and making it unlawful to confiscate, delay, read or breach them;
ii. The Telecommunications Act issued under the Council of Ministers Resolution No.74 of 2001 ("Telecommunications Act") restricts the disclosure of information or content that is intercepted in the course of its transmission and imposes a fine of up to SAR 5,000,000 for a breach;
iii. The Anti-Cyber Crime Law enacted by Royal Decree No. M/17 ("Anti-Cyber Crime Law") makes it an offence to:

- spy on, intercept or receive data that is transmitted through an information network without authorization;
- invade privacy through the use of camera equipped mobile phones;
- unlawfully access computers in order to delete, erase, destroy, leak, damage, alter or redistribute personal information; and
- defame or inflict damage on a person through the use of IT devices.

Where no specific protections are set out in legislation, the KSA courts will apply Shari'ah law. The Shari'ah is comprised of a collection of fundamental principles derived from a number of different sources, which include the Holy Qu'ran and the Sunnah (which are witnessed sayings and actions of the Prophet Muhammed PBUH). Shari'ah law principles protect an individual's right to privacy and prohibit any invasions of it. They also prohibit the disclosure of secrets unless the owner of the secret consents to it or it is in the public interest to disclose it. Liability for disclosure will pass to any third party who improperly discloses personal information that is obtained unlawfully. The extent of the liability and penalties for breaching Shari'ah law principles will be determined on a case by case basis. Penalties may include imprisonment, monetary compensation and/or deprivation of certain rights.

Employers must be careful to ensure that their use of social media does not impact on the rights of individuals.

Implications of Social Media Use in the Workplace

Commonplace issues that often arise from the use of social media in the workplace are:

i. Online Screening

Employers are increasingly reviewing the social media footprints of potential candidates for employment as part of their recruitment process. Sites such as LinkedIn and Facebook can be useful to verify work histories and to assess the character and suitability of candidates through information made available in their social media postings.

Employers in the KSA are not prevented from conducting background checks or using social media in this manner. However, caution should be exercised where any information that could be argued to be private or prejudicial to the reputation of an individual is relied on to reject a candidate for employment; particularly where this information may have been inadvertently made public by the individual.

ii. Employee Monitoring

Employers have a right to protect their reputation, business interests and trade secrets and can feel justified in monitoring employee activity on social media sites that are accessed through the employer's IT equipment. This can either involve prohibiting access of social media during work hours or on work equipment, or monitoring activity or postings on social media.

Where monitoring is taking place without the knowledge or consent of employees then this could be breaching the Basic Law, the Anti-Cyber Crime Law or Shari'ah principles. Any monitoring undertaken by employers should be notified beforehand to employees and preferably set out in the employer's social media policy. Employee consent to monitoring should also be obtained before monitoring is carried out.

iii. Inappropriate Postings

Social media postings by employees that are derogatory, negative or offensive could have reputational consequences for employers where they are made on social media platforms supported by the employer or where they could otherwise be attributed to the employer. There is also a risk that such postings could be considered defamatory or damaging to an individual's reputation.

Employers can regulate the conduct of employees on social media where it is related to their work by forewarning that any postings that bring the employer into disrepute or are prejudicial to others will result in disciplinary action. This can be set out clearly in a social media policy and employees can be prohibited from making any statements or comments that do not fall within the guidelines set by the employer. Employees can also be required to clearly state where they are expressing a personal opinion so as to detach liability from the employer.

iv. Personal vs. Professional Life

There can be a blurring of an employee's personal and professional life on social media where sites such as LinkedIn, Twitter and Facebook which require a personal subscription are also used for work purposes. There will be a risk that employees will assert that any contacts or information retained on these accounts is private and belongs to the employee.

Employers will want to ensure that the boundaries between personal and work life are not distorted and that employees are educated on how to keep their professional contacts and activity separate from their private lives. Consideration should also be given to requiring employees to accept non-compete restrictions to prevent employees from using business contacts obtained through their employment after it ends.

v. Post-Termination Commentary

Employers are increasingly being requested to provide references for employees through social media sites such as LinkedIn. Where managers have established a connection with the departing employee on social media then this could lead to solicited or unsolicited comments being made about the employee. If the employer has adopted a policy of providing only a "neutral reference" (i.e. dates of employment and position held) then this could be undermined and expose the employer to legal action. The employee could be entitled to bring a defamation action or sue under the KSA Labour Law issued by Royal Decree No. M/51 dated 23 Sha'ban 1426 which prohibits an employer from making any comment in a reference that would be detrimental to the employee's prospects of obtaining new employment.

Departing employees could continue to post on social media comments or material that may be attributed to the employer. This could leave the employer exposed to legal action if it is perceived that such material is endorsed by the employer.

Employers should ensure that managers adhere to their policy direction on giving benign references. Departing employees should be informed that they should immediately change their employment status to confirm the termination of their employment and that they no longer have permission to post anything on behalf of the employer.

Conclusion

There is undoubtedly a benefit to the use of social media for work purposes and it can enhance the profile and marketability of a business. However, it can also lead to a blurring between the personal and professional lives of employees who are engaged on social media on behalf of themselves and their employers, which can leave employers exposed to the risk of legal action. Employers are advised to have a comprehensive social media policy and that employees are educated on the appropriate use of social media in the work context.

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Ship Finance Breakfast Seminar

On Tuesday, 2nd May our transport and banking & finance team held a breakfast seminar which addressed options for securing, and enforcing, vessel finance facilities originating in the UAE and wider GCC.

Over the last several years traditional debt finance structures for new and second hand vessel acquisitions have come under remarkable pressure. Over supply of tonnage, coupled with increasingly depressed freight rates, constantly jeopardise borrowers' debt servicing abilities.

Our lawyers Omar Omar, Partner, Head of Transport & Insurance (UAE), Mamoon Khan, Partner, Banking & Finance and James Newdigate, Associate, Transport & Insurance covered the following topics:

- General security packages – including options under the new UAE pledge over movables law;
- Vessel flagging, reflagging and mortgage creation options;
- Enforcement options.

The event was well attended and a great success.

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MAY

The Impact of Culture on International Arbitration

Al Tamimi & Company in collaboration with Middlesex University Dubai hosted an interactive breakfast seminar on the impact of culture on international arbitration.

The event provided a unique opportunity for practitioners and academics to understand how culture can affect the fairness, efficiency and legitimacy of international arbitration.

We were fortunate enough to have guest speaker Professor Won L. Kidane Seattle University, School of Law share his thoughts and some interesting examples.

The second half of the session consisted of lively panel discussion which included Thomas Snider, Partner, Head of Arbitration, Al Tamimi & Company, Laila El Shentenawi, Senior Associate Al Tamimi & Company and Dr Tenia Kyriazi. Middlesex University Dubai, CPC, Law and Politics Programmes.

The seminar allowed attendees to network and re-connect with their colleagues and peers in the arbitration community.

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Women in Arab Arbitration (WIAR) take Gary Born out for Lunch

On Monday, 8th May Al Tamimi & Company sponsored the Women in Arab Arbitration (WIAR) lunch event, which discussed the appointment as arbitrator - breaking the old boys' network.

We were delighted to welcome guest speaker Gary Born – President of the Singapore International Arbitration Centre (SIAC) Court of Arbitration and Chair of the International Arbitration Practice Group, Wilmer Cutler, Pickering, Hale and Dorr LLP.

It was encouraging to see a room full of female arbitrators which is a strong indication on how the female arbitration community is growing!

10 & 16 MAY

Construction & Infrastructure Seminar Series

During the month of May we held two Construction & Infrastructure breakfast seminars in Abu Dhabi, 10 May and Dubai, 16 May.

Both events were a great opportunity to connect with the construction community and discuss the following key topics;

Contract preparation – the first key to a successful project

- Choosing the risk allocation
- FIDIC golden principles
- Tips and traps

New FIDIC Yellow Book 2017

- What will the changes be?
- Understand how the changes will affect you
- What response should you make

Our speakers Scott Lambert, Regional Head of Construction & Infrastructure, Al Tamimi & Company and Euan Lloyd, Senior Associate, Al Tamimi & Company presented to a wide range of attendees and shared valuable insights.

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

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18 MAY

The UAE Bankruptcy Law

On Thursday, 18th of May we held an informative forum on The UAE Bankruptcy Law which attracted major UAE corporate clients and financial institutions.

The new law came into force on 30 December 2016, and there is a general expectation that the law will soon be playing a prominent role in the UAE legal landscape.

Bankruptcy law reform holds out the prospect of rescuing stressed businesses and enhancing transparency for unpaid creditors, and it was a necessary step towards enhancing the UAE's standing in the 'Ease of Doing Business' global rankings.

The forum was a great success and addressed some salient points which everyone in business and banking needed to be aware of.

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18 MAY

Al Tamimi Guides Korean Companies in Bahrain

On the 18th May 2017, Al Tamimi & Company was invited by the Korean Embassy in Bahrain to deliver a seminar at an annual gathering of representatives of 10+ major Korean companies in Bahrain. The presentations were delivered by Foutoun Hajjar, Partner and Head of Bahrain Office and covered the setting up options, relaxation on foreign ownership restrictions and incorporation process in Bahrain.

Given the numerous interests from Korean communities based in Bahrain and the Eastern Province of KSA for the potential investment in Bahrain, the seminar provided a unique opportunity for our team to introduce our capability in the region and dedication to Korean companies in Bahrain. Foutoun was joined by Jonathan Reardon, Head of Al Khobar Office, Jongeun (Christina) Lee, Head of Korea Group and Jiwon Ha, Senior Associate and the feedback received from the Embassy and Korean companies has been excellent.

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24 MAY

Two Salient Issues in International Arbitration: Injunctive Relief and the Enforcement of Foreign Arbitral Awards

On Wednesday, 24th May we held an interesting seminar which addressed two key issues in International Arbitration: Injunctive Relief and the Enforcement of Foreign Arbitral Awards.

Attendees had the opportunity to discuss and get an in-depth understanding on the importance attached to the international nature of the award and challenges brought about by parochialism.

Guest speakers Dr. Youseph Farah, Senior Lecturer, Commercial Law, University of East Anglia, and Dr. Hakeem Seriki, Senior Lecturer Commercial/Trade Law, School of Law, University of East Anglia, shared their insights on the following areas:

- The meaning of a ‘foreign award’ under the New York Convention of 1958.
- Article 4 domestic procedural rules applicable to the enforcement of the award: coping with challenges under UAE rules.
- Challenging the recognition and enforcement of the foreign arbitral award: the debate about the permissive nature of Article V (I) of the New York Convention.
- Public policy: parochialism v internationalism, and the perspective of UAE courts.
- Injunctive relief and arbitration, which will address the following types of injunctions.

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United Arab Emirates
Ministry of Justice

47th Year
Issue No. 615
5 Ramadan 1438 H
31 May 2017

FEDERAL DECREES

42 of 2017	On the appointment of the Director General of the National Electronic Security Authority.
43 of 2017	On the secondment of a member of the diplomatic and consular corps.
44 of 2017	On the appointment of a counselor at the Ministry of Presidential Affairs.

REGULATORY DECISIONS OF THE CABINET

11 of 2017	Amending Cabinet Decision No. (26) of 2010 concerning the rules for classification of establishments that are subject to the Labor Law and applicable bank guarantees.
12 of 2017	On the UAE Regulation concerning the Environment Mark for Systems and Products.
13 of 2017	On a UAE standard specification.
14 of 2017	On UAE standard specifications.
15 of 2017	On service fees and administrative fines of the Ministry of Human Resources & Emiratisation.
16 of 2017	Amending Cabinet Decision No. (42) of 2009 on the minimum capital requirement for insurance companies.
17 of 2017	Amending Cabinet Decision No. (22) of 2014 on the regulation and development of the naturalization, residency and checkpoints sector at the Ministry of Interior.

MINISTERIAL DECISIONS

- From the Ministry of Interior:

298 of 2017 On the exchange of driver's licenses issued in the Republic of Latvia for a UAE equivalent.

- From the Ministry of Justice:

398 of 2017 On the establishment of the Federal Drugs Prosecution.

409 of 2017 On the establishment of the Federal Criminal Conciliation Prosecution.

- From the Ministry of Health & Prevention:

550 of 2017 On the guidelines for determination of death.

- From the Ministry of Economy:

273 of 2017 Announcing a revision of the Articles of Association of Nakheel PSC.

440 of 2017 Announcing a revision of the Articles of Association of Al Benaa Real Estate Investment PSC.

ADMINISTRATIVE DECISIONS

- From the Emirates Identity Authority:

1 of 2017 On the fees for EID express services.

- From the Insurance Authority:

30 of 2016 Promulgating the motor vehicle insurance rates regulation.

- From the Emirates Authority for Standardization & Metrology:

42 of 2017 Approving amendments to the Schedule to the UAE Regulation on the Control of Water Saving Kits.

43 of 2017 Approving the Technical Requirements for the Registration of Aircraft and Unmanned Aerial Vehicle Products and Systems.

44 of 2017 Approving UAE standard specifications.

- From the Securities & Commodities Authority:

- Certificate of approval of amendment of the Articles of Association of United Arab Bank PJSC.
- Certificate of approval of amendment of the Articles of Association of Sharjah Islamic Bank PJSC.
- Certificate of approval of amendment of the Memorandum & Articles of Association of National Bank of Fujairah PJSC.
- Certificate of approval of amendment of the Articles of Association of Dubai Islamic Bank PJSC.
- Certificate of approval of amendment of the Articles of Association of Emirates Driving Company PJSC.
- Certificate of approval of amendment of the Articles of Association of Gulf Medical Projects Company PSC.
- Certificate of approval of amendment of the Articles of Association of Sharjah Islamic Bank PJSC.
- Certificate of approval of amendment of the Articles of Association of Union National Bank PJSC.
- Certificate of approval of amendment of the Articles of Association of National Bank of Abu Dhabi PJSC.
- Certificate of approval of amendment of the Articles of Association of Dar Al Takaful PJSC.
- Certificate of approval of amendment of Article 23 of the Articles of Association of Mashreq Bank PSC.
- Certificate of approval of amendment of the Articles of Association of Invest Bank PSC.

Ministry of Justice

47th Year
Issue No. 616
17 Ramadan 1438 H
12 June 2017

FEDERAL LAWS

5 of 2017	On the use of remote communication technology in criminal proceedings.
6 of 2017	On the restructuring of Emirates Center for Strategic Studies and Research.

FEDERAL DECREES

45 of 2017	On the appointment of a UAE non-resident ambassador to the Republic of Palau.
47 of 2017	On the adjournment of the 2nd Session of the 16th Legislative Term of the Federal National Council.
48 of 2017	On the ratification of the Agreement between the UAE and the Kingdom of Morocco on Security and Anti-Terrorism Cooperation.
49 of 2017	On the ratification of the Agreement between the UAE and the People's Republic of Bangladesh on Security Cooperation.
50 of 2017	On the ratification of the Agreement between the UAE and the People's Republic of Bangladesh on the Extradition of Convicted Individuals.
51 of 2017	On the ratification of the Air Services Agreement between the UAE and the Kingdom of Denmark.
52 of 2017	On the ratification of the Agreement between the UAE and St. Vincent and the Grenadines for Air Services Between and Beyond their Respective Territories.

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
Corporate Structuring
DIFC Corporate Services
Employment & Incentives
Family Business & Private Wealth
Financial Crime
Insurance
Intellectual Property
Legislative Drafting
Litigation
Mediation
Projects
Real Estate
Regulatory
Senior Partner's Office
Tax
Technology, Media &
Telecommunications

SECTORS
Automotive
Aviation
Education
FMCG
Healthcare
Hotels & Leisure
Media & Entertainment
Shipping
Sports & Events Management
Transport & Logistics

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