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LAW UPDATE

Latest Legal News and Developments from the MENA Region

Shaping the Future: The Future of Transport in Dubai

Innovations and IP Protection in Transport: From Industrialisation to Computerisation

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Minor to Major: The Transfer of Youth Soccer Players

Accessibility: Disability and the Law

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Contents

Jurisdiction Update

Focus on Transport & Insurance

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MIDDLE EAST AWARDS 2017

Iraq Law Firm of the Year

Qatar Law Firm of the Year

UAE Law Firm of the Year

We are proud of our success at the

International Financial Law Review (IFLR) Middle East Awards 2017

The firm was also awarded the following accolades:

Restructuring Deal of the Year - Adeem Investment and Wealth Management restructuring
M&A Deal of the Year - Adeptio AD Investments / Americana

Thank you to all of you, our clients and friends, for your continued support.

In this Issue

Welcome to the October edition of *Law Update*.

I am very proud to announce our achievements at the IFLR Middle East Awards held in Dubai in October. We won the Law Firm of the Year award in the UAE, Iraq and Qatar and followed this success with awards for Restructuring Deal of the Year and M&A Deal of the Year.

These awards highlight the experience, knowledge and forward-thinking nature of our lawyers and I am very proud of our teams for achieving such success. I also take this opportunity to extend my sincere thanks to you, our clients, for your continued support of the firm.

Over the past few years, we've seen transport feature heavily as a part of the development strategy of various governments in the region. In this edition of *Law Update*, we focus on the transport sector and cover some very interesting topics related to this across the region. We consider various aspects of the shipping, aviation and insurance industries starting with a ship finance review on page 60, the future of logistics in Oman on page 66 and a discussion of agency law in Kuwait on page 68. The Montreal Convention in the UAE and its implications on the airline industry are explored on page 50. Insurance wise, we consider how insurance claims are perceived by the UAE courts on page 55.

From industrialisation, right through to computerisation, we consider the various innovations that have taken place in the transport sector and discuss how IP protection continues to play an essential role in providing businesses with a competitive edge on page 62.

We also look ahead and discuss the future of transport in the UAE on page 47, as the journey of the Dubai's development continues in conjunction with the RTA's revised Strategic Plan 2017-2021.

Arbitration generally offers an attractive forum for resolving many types of transport-related disputes and these are discussed in 'Can Arbitration Deliver the Goods' on page 57.

As part of our monthly jurisdictional updates, we explore the relationship between disability and the law in Jordan on page 70 and our team in Kuwait highlights the application of the Electronic Media Law, which has recently been enforced the by State of Kuwait's Ministry of Information, on page 75.

As always, we hope that you find this edition of *Law Update* to be a compelling and informative read.

We very much value your feedback so please do get in touch if you have any comments or questions.

All the best,

Husam Hourani
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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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Arbitration at QICCA: Update

A dispute arose between the partners of a limited liability company ("the Company") incorporated in Qatar. These two partners concluded two agreements, namely 1) the Articles of Association and 2) the Shareholders Agreement ("the Two Agreements").

The Two Agreements included arbitration clauses. The arbitration clauses were identical as to the scope of matters subject to arbitration, but they differed as to the arbitration forum. The arbitration clause inserted in the Articles of Association provided for an ad hoc arbitration, while the arbitration clause inserted in the Shareholders Agreement provided for an institutional arbitration under the auspices of Qatar International Center for Conciliation and Arbitration ("QICCA").

In relation to a dispute that arose between the partners, the local Qatari partner of the Company ("the Claimant") filed a claim before the Qatari Court of First Instance requesting the said court to appoint an arbitrator, on the basis that the foreign partner ("the Defendant") failed to agree on an arbitrator. Accordingly, the Claimant submitted that this triggers the application of Article 195 of the Qatari Civil and Commercial Procedure Law. The Claimant relied on the ad hoc arbitration clause in the Articles of Association, but disregarded the institutional arbitration clause in the Shareholder's Agreement. Al Tamimi represented the Defendant before the Qatari Court of First Instance.

The Defendant pleaded that the mechanism agreed upon between the parties, as per the arbitration clause inserted in the Shareholders Agreement – with regards to the appointment of the arbitrators – should be duly respected. The Defendant argued that arbitration is of a consensual nature and that all elements of the same should be subject to the mutual agreement between the concerned parties. Given that the parties had agreed on the rules applicable on the procedures of the arbitration proceedings, including the mechanism of the appointment of the arbitrators, then their agreement must be adopted and adhered to. The Defendant argued that based on such analysis, the court is not competent to decide in this case. The Court of First Instance upheld the defense and rejected the case.

The Claimant challenged the case before the Court of Appeal based on the same arguments submitted to the Court of First Instance. In addition the Claimant argued that he had tried to effectuate the institutional arbitration clause by filing a case before the QICCA, but the Defendant did not cooperate with the former in appointing an arbitrator and refused to comply to the arbitration proceedings.

The Court of Appeal reversed the judgment of the Court of First Instance in turn cancelling such judgment, and appointed an arbitrator. The Court of

Appeal ignored or overlooked the institutional arbitration clause and consequently failed to rely on the mechanism of appointment of arbitrators determined in the procedural rules agreed upon between the partners. The Court of Appeal instead relied on Article 195 of the Civil and Commercial Procedures Law. Article 195 of the Civil and Commercial Procedures Law provides that the scope of its application extends only in the case of ad hoc arbitration, and not institutional arbitration which was not the case at hand.

The Defendant challenged the judgment rendered by the Court of Appeal before the Court of Cassation based mainly on the aforementioned argument. The Defendant argued that the conditions enumerated in Article 195 are that there must have been an absence of any agreement between the concerned parties as to the mechanism of appointment of the arbitrator(s), as well as the failure of the concerned parties to reach an agreement as to the name of the arbitrator.

The Court of Cassation, in applying such conditions to the case at hand, found that the Claimant had failed to reach an agreement with the Defendant as to the name of the arbitrator and had instead directly filed the case before the court to appoint an arbitrator. The court stated that this was done by the Claimant despite the terms of the arbitration clause in the Shareholders Agreement, which states that the arbitration proceedings shall be subject to the rules of QICCA. The QICCA rules address the mechanism of appointment of an arbitrator(s) where parties have failed to do so, under Article 9.

Accordingly, on February 7, 2017, the Court of Cassation cancelled the judgment of the Court of Appeal and upheld the judgment rendered by the Court of First Instance.

It is noteworthy that this judgment was rendered before the promulgation of the New Arbitration Act No. 2/2017 in Qatar, which was promulgated on 7 February 2017. Article 195 of the Civil and Commercial Procedures Law and the other articles governing arbitration under the Civil and Commercial Procedures Law, were cancelled upon the issuance of the New Arbitration Act. However, the judgment of the Court of Cassation establishes the principle that the Court has no competence in appointing an arbitrator in lieu of an agreement by the concerned parties as on a certain mechanism for such purpose. Otherwise, this would be considered a contradiction to the will of the parties, and a violation of the principle of pacta sunt servanda.

“It is noteworthy that this judgment was rendered before the promulgation of Qatar’s New Arbitration Act”

Al Tamimi & Company’s Dispute Resolution team regularly advises on arbitration matters taking place in QICCA. For further information please contact Dr. Hazem Hussien (h.hussien@tamimi.com) or Hani Al Naddaf (h.alnaddaf@tamimi.com) of our Qatar office.

New Ruling on Definition of Maritime Debt by the UAE Union Supreme Court

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In follow-up to our March 2017 Law Update article, 'UAE Court Dismisses Physical Bunker Supplier Claim Against Ship Owner', this article provides an overview of the subsequent determination of the UAE Union Supreme Court's judgment (Appeal 655 for the year of 2016 / Commercial) in relation to the bunkering matter. The case deals with the issue of insolvency of a contractual supplier of bunkers during the performance of a contract, and the legal consequences and prospects of recovery when a ship-owner requested a supply of bunkers from a contractual supplier, who in turn ordered bunkers from a physical supplier. The physical supplier was not paid the value of the supplied bunkers due to the subsequent insolvency of the contractual supplier. Therefore, the question before the UAE Union Supreme Court was whether the physical supplier of bunkers can recover the unpaid bunkers against the ship and the ship's owner.

Background

The company owning the ship (the 'Ship Owner') requested from a contractual supplier of bunkers (the 'Contractual Supplier') to supply a ship (the 'Ship') with bunkers, marine fuel oil, and marine gas oil (the 'Bunkers'). After this request, the Contractual Supplier sent a purchase order for bunkers to a bunkering company (the 'Physical Supplier') and requested the latter to supply the Ship with the Bunkers. The Physical Supplier then supplied the ship directly with the ordered Bunkers and the ship's Master / Chief Engineer signed and stamped the bunker delivery note confirming receipt of the Bunkers. Subsequently the Contractual Supplier of bunkers became insolvent, and did not pay the price of the provided bunkers to the Physical Supplier.

The Nature of the Claim

On 19 May 2015, the Physical Supplier bunkering company obtained an arrest order from the Fujairah Court against the Ship's sister ship (the 'Arrested Ship'), which was at Fujairah Port at the time. The Physical Supplier based the arrest order request on the purchase order, the Bunker delivery notes and the commercial invoices for the Bunkers. On 26 May 2015 the Physical Supplier filed a substantive claim before Fujairah Court of First Instance against the Arrested Ship, the Ship Owners, the managers of the Arrested Ship, and the insolvent Contractual Supplier (the 'Defendants'). The claim was for USD 175,196 for the unpaid cost of the supplied Bunkers, and also requested the Court to validate the arrest order against the Arrested Ship.

Fujairah Court of First Instance

On 25 October 2015, Fujairah Court of First Instance rendered its judgment by holding the Ship Owners, the managers of the Arrest Ship, and the Contractual Supplier jointly liable to pay the Physical Supplier the sum of USD 175,196 plus interest from 26 May 2015 until the full payment is made. The Court also validated the attachment order over the Ship Owner's counter security monies that was deposited in the court by the Ship Owner to release the Arrested Ship.

Fujairah Court of Appeal

In November 2015, the Ship Owners and the Contractual Supplier (the 'Appellants') challenged the Court of First Instance's judgment by filling appeals before the Fujairah Court of Appeal. The Appellants argued that the Ship Owners did not have the capacity to be sued in this claim as it was evidenced by the case file that there was no contractual relationship between the Ship Owners and the Physical Supplier with respect to the Bunkers. Furthermore, it was argued that the contractual relationship in relation to the Bunkers was between the Contractual Supplier and the Ship Owner. Therefore, the Physical Supplier's claim should be dismissed against the Ship Owners based on Article 252 of the Civil Transactions Law, which states, '[a] contract may not impose an obligation upon a third party but it may create a right in him.'

Fujairah Court of Appeal Decision

On 9 November 2016, Fujairah Court of Appeal handed down its judgment and decided to revoke the Court of First Instance's judgment and to dismiss the Physical Supplier's claim against the Ship Owners, determining that there was no contractual relationship between the Ship Owners and the Physical Supplier with respect to the Bunkers. The Court of Appeal based its judgment on the abovementioned Article 252 of the Civil Transactions Law. Moreover, the Court held that the insolvent Contractual Supplier should be liable for the cost of the unpaid Bunkers, as the contractual relationship in relation to the Bunkers was established between the Ship Owners and the Contractual Supplier.

The Union Supreme Court

On 24 November 2016, the Physical Supplier challenged the Court of Appeal's judgment by filling an appeal before the UAE Union Supreme Court. The Physical Supplier argued that the Bunker delivery note was signed by the Ship's Master / Chief Engineer and stamped by the Ships's stamp confirming receipt of the Bunkers. Since the Master of the Ship represents the owner of the Ship, the Physical Supplier argued it is evidenced that there was a direct contractual relationship between the Ship Owner (via the Master of the Ship) and the Physical Supplier. Therefore, the Physical Supplier argued that the Court of Appeal' judgment should be overturned. The Physical Supplier relied on Article 137 of the Commercial Maritime Law, which provides:

'The owner of the vessel shall be responsible at civil law for errors of the master, crew, pilot and any other person in the service of the vessel committed by them during the performance of or by reason of their duties. The owner shall have a right of recourse against the person at fault. . . .

Likewise the owner shall be responsible for the obligations of the master arising out of dealings affected by him and contracts entered into by him within the limits of his lawful powers.'

The Union Supreme Court Decision

On 18 April 2017 the Union Supreme Court rendered its judgment and decided to uphold the Court of Appeal's judgment. The Union Supreme Court based its judgment on the following:

1. It is evidenced from the case file that the contractual relationship with respect to the Bunkers was between the Contractual Supplier and the Ship Owner and this contractual relationship was based on the purchase order;
2. It is evidenced from the case file that there was no contractual relationship with respect to the Bunkers between the Ship Owners and the Physical Supplier;
3. Article 151 of the Civil Transactions Law which provides 'a person makes a contract on his own and for his own account then he shall be bound by the provisions of it to the exclusion of other persons.';
4. Article 252 of the Civil Transactions Law, which states '[a] contract may not impose an obligation upon a third party but it may create a right in him'; and
5. The subject matter between the Physical Supplier and the Contractual Supplier, which is the price of the supplied Bunkers, is not deemed as 'a maritime debt' and, therefore, the UAE Maritime Commercial Law does not apply to this matter.

Comment

By virtue of Article 115 of the UAE Maritime Commercial Law (Law No. 26 of 1981) a ship cannot be arrested, unless her debt is deemed 'a maritime debt'. Article 115 of the UAE Maritime Commercial Law defines what shall be considered a 'maritime debt', including:

'1. It shall be permissible to effect a preservatory arrest against a vessel by an order of the civil court having jurisdiction. Such an arrest shall not be made save for the satisfaction of a maritime debt.

2. The expression "maritime debt" shall mean a claim in respect of a right arising out of any of the following causes:

(a) Damage caused by the vessel by reason of a collision or otherwise.

(b) Loss of life or personal injuries occasioned by the vessel and arising out of the use thereof.

(c) Assistance and salvage.

(d) Contracts relating to the use or exploitation of the vessel under a charterparty or otherwise.

(e) Contracts relating to the carriage of goods under a charterparty, bill of lading, or other documents.

(f) Loss of or damage to goods or chattels being carried on board the vessel

(g) General average.

(h) Towage or pilotage of the vessel.

(i) Supplies of products or equipment necessary for the utilization or maintenance of the vessel, in whichever place the supply is made.

(j) Construction, repair or fitting out of the vessel, and costs of it being in dock.

(k) Sums expended by the master, shippers, charterers or agents on account of the vessel -or on account of the owner thereof.

(1) Wages of the master, officers and crew, and other persons working on board the vessel under a contract of maritime employment.

(m) A dispute as to the ownership of the vessel.

(n) A dispute in connection with the co-ownership of the vessel, or with the possession or use thereof, or with the right to the profits arising out of the use thereof.

(o) A maritime mortgage.'

Accordingly, the ruling of the UAE Union Supreme Court in this case is consistent with recent UAE Court judgments in relation to bunkering matters. However, the new approach in this judgment is that the Supreme Court found that the relationship between the Physical Supplier and the Contractual Supplier in relation to the bunkering supply contacts is not deemed to be a 'maritime debt' and therefore does not fall within the framework of the UAE Maritime Commercial Law. Hence, this judgment suggests that physical suppliers would not be able to seek action against the ship or ship owners for the unpaid bunkers that are supplied to their ships based on the contractual suppliers' orders or requests. Furthermore, the physical suppliers' claims would be strictly limited to recovery against the contractual suppliers.



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The Lawful and Reasonable Excuse and the Importance of Incident Notification under Life Insurance Policies: A Recent Case in the Dubai Court of Cassation

This article will review and consider a recent case in the Dubai Court of Cassation surrounding the topic of notification obligations of a beneficiary in a life insurance policy.

The article clarifies how notification periods set by the insurer are dealt with by Courts of law in the UAE and how the Courts may interpret "lawful excuses" in respect of a lapse of time for notification.

In this particular Court of Cassation case, an insurance company (the "Defendant") refused an indemnify to a beneficiary (the "Claimant") under a life insurance policy (the "Policy").

The Dubai Court of Cassation considered and examined whether the Claimant may still be indemnified by the Defendant, despite the failure of the Claimant to notify the Defendant of the occurrence of the insured's death within the time frames under the policy , due to a "lawful excuse" for the delay in notification.

Facts of the case

On July 2000 the Claimant's brother, the insured person, passed away following a car accident. On January 2015 the Claimant notified the Defendant of the death of the insured and claimed the insurance value. The Defendant refused the claim.

On October 2015, the Claimant filled a substantive case against the Defendant after the Defendant had refused to indemnify the Claimant under the Policy. The Claimant's claim was on the basis the Claimant was mentioned as a beneficiary under the Policy between the deceased and the Defendant.

The Claimant filed a plenary civil claim against the Defendant in which he claimed an amount of USD 250,000 together with legal interest of 9%.

The Defendant had refused to indemnify the Claimant and rejected to pay any amounts under the Policy for the following main reasons:

1. The Claimant had failed to notify the Defendant in accordance with the Terms and Conditions of the Policy which clearly provided that on the occurrence of death, the insurance company must be notified in writing within (7) days from the date of the death, and in case of failure to fulfill this requirement, the insurance company may refuse to indemnify the beneficiary; and
2. The claim is considered to be barred under law by the elapse of time, referring to Article 1036/1 of the UAE Civil Transactions Law which provides: "Claims arising out of contracts of insurance shall not be heard after the expiration of three years from the occurrence of the incident out of which the claim arose, or from the person concerned having knowledge of the occurrence thereof".

The Claimant's Argument – lawful and reasonable excuse

The Claimant argued that the term of the Policy in relation to the notification period, which states that the beneficiary's right shall subsist if due notification is not given in accordance with the Policy, is arbitrary and that the Claimant had not agreed to it. The Claimant also argued that he was not aware of the insurance policy at the time of the incident.

The Claimant relied on two Articles from the UAE Civil Transactions Law, firstly, Article 481 of the UAE Civil Transactions Law, which states:

1. The running of time for prescription shall be suspended if there is a lawful excuse whereby the claim for the right could not be made.
2. The period during which that excuse subsisted shall not be taken into account in the prescription period."

And secondly, the Claimant relied on Article 1028 of the UAE Civil Transactions Law, which provides:

"(1) Any of the following provisions appearing in a policy of insurance shall be void:

(b) a provision whereby the right of the assured shall lapse by reason of his delay in giving notice of the incident insured against to the parties which should be notified or to provide documents in the event that it appears that there is a reasonable excuse for the delay.."

The Claimant filed his claim before the Dubai Court of First Instance on the above mentioned basis and claimed that he is therefore entitled to be indemnified under Articles 481 and 1028.

The Courts Decision

On February 2016, the Dubai Court of First Instance rendered and based its judgment on the following basis:

1. The Court considered the Claimant's excuse to be valid under law;
2. The Court found that the Claimant had a lawful excuse in failing to notify and file the claim within the time specified by Article 1036/1 of the Civil Transactions Law. The Court found that the time limit under Article 1036/1 shall be suspended in the event of a valid lawful and reasonable excuse. Accordingly, any period of "excuse" should not be taken into account when calculating the limitation period stated in Article 1036/1 of the Civil Transaction Law.
3. However, the Court dismissed the Claimant's claim despite finding the Claimant's excuse to be lawful and valid. The Court found that the Claimant had still failed to comply with the terms and conditions of the Policy after the period of excuse since it was established that the Claimant notified the Defendant of his claim some seven months following the expiration of the excuse period. It was determined that the Defendant should have been notified in writing within seven days from the date of the expiration of the excuse period under the Policy. The Court considered that the Defendant had the right to refuse paying the insurance value to the Claimant due to this reason. Had the Claimant notified his claim within 7 days of the end of the excuse period, the Court may have considered the case differently.
4. The Dubai Court of Appeal and Court of Cassation upheld the Dubai Court of First Instance's judgment by accepting it was established based on a valid legal reasoning.

Comment

The importance of this judgment is twofold. It demonstrates that any lawful or reasonable excuse accepted by the Court should also suspend the limitation period mentioned in Article 1036/1 of the UAE Civil Transactions Law.

Moreover, the Court of Cassation applied Article 1028 and Article 481 of the Civil Transactions Law. Accordingly, notwithstanding that a beneficiary under an insurance policy may have missed the contractual stated deadline to notify the insurers, provided that a lawful or reasonable excuse is demonstrated to the satisfaction of the Court, an insurance policy may still be valid.

However, the existence of a lawful excuse will not prevent the Court from applying the incident notification period stated in insurance policies and any such contractual period may be deemed to commence after the excuse period has lapsed. In this particular case, due to the fact that the Claimant failed to comply with the contractual notification period set out in the Policy after the excuse period had lapsed, the Court could not find the Claimant to be entitled to be indemnified by the Defendant.

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A New Implementation of Article 22 of Montreal Convention in the UAE

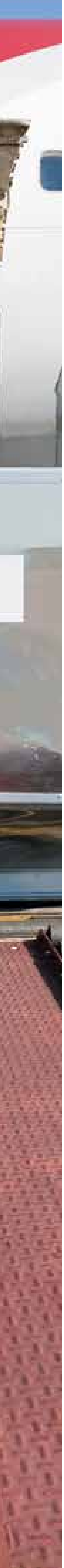
This article provides an overview of a recent judgment passed by the Abu Dhabi Courts in relation to air carriers' liability. The case involved a compensation claim that was filed against an air carrier for a lost consignment that was allegedly shipped from the US to the UAE. The question before the Abu Dhabi Court was whether the carriers' limit of liability as provided by the Montreal Convention 1999 should apply to the respondent carrier or not.

Background

A shipper contracted with a carrier to ship cargo from New York to Abu Dhabi. After the shipment was declared 'lost', the consignee was compensated by his insurance company to an amount equivalent to the cargo value. The insurer consequently filed a subrogation claim against the carrier. The relevant air waybill ("the Air Waybill") for the shipment in question included a declaration of the cargo value under the box marked "Declared Value for Customs". However, there was no value inserted into the "Declared Value for Carriage" box.

In principle, any contract of carriage from New York to Abu Dhabi is governed by the provisions of the Montreal Convention 1999, which is formally known as the Convention for the Unification of Certain Rules for International Carriage by Air. The Montreal Convention has become domestic law in the United Arab Emirates by virtue of Federal Decree No. 13 of 2000, which was published in the Official Gazette on 31st January 2000.

The Montreal Convention provides an exclusive and uniform framework for liability in international air carriage. Article 22.3 of Montreal Convention provides that "In the carriage of cargo, the liability of the carrier in the case of destruction loss damage or delay is limited to a sum of 19 Special Drawing Rights per kilogramme, unless the consignor has made at the time when the package was handed over to the carrier a special declaration of interest in delivery at destination, and paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the consignor's actual interest in delivery at destination."



> **“Air carriers might be obliged to take preventive measures and to revisit their terms and conditions of carriage and the particulars of their air waybills.”**

Based on this article, a carrier’s liability is limited to 19 SDRs per kilogramme. However, if the consignor has made a special declaration in the Air Waybill regarding the cargo’s value and paid supplementary fees to the carrier, the carrier will be liable to pay the declared cargo value and the limit of liability will no longer apply.

The carrier in this case argued that Article 22.3 of the Montreal Convention should apply to the claim and that the carrier’s liability should be limited to 19 Special Drawing Rights (SDRs) per kilogramme. SDRs are an international type of monetary reserve currency created by the International Monetary Fund and are used by the Montreal Convention to set liability limits. The current value of one SDR in US dollars is approximately $1.423140 (this figure is revised daily).

The carrier argued that the declaration made by the consignor under the Air Waybill was solely made for customs purposes and that no special declaration of interest or value for carriage purposes had been made under the Air Waybill, nor had a supplementary sum been paid to the carrier. On the fact of the document the box entitled “Declared Value For Carriage” had been filled with the letters “NVD” meaning ‘no value declared’, and the box marked “Amount of Insurance” was filled in with “XXX”. Consequently, the carrier asserted that the limit of liability of 19 SDRs/kilogramme should apply to the claim at hand. It is pertinent to mention that, under Article 10.1 of the Montreal Convention, the consignor was responsible for the correctness of the particulars and statements relating to the cargo inserted by it.

Assuming that the Montreal Convention limits of liability applied, the carrier’s liability would be calculated as follows:

Weight of Cargo (ex. 100kg) X 19 SDRs (USD 1.423140) = approximately USD 2703

In contrast, the claimant argued that the Montreal Convention limits of liability should not be applied and that the declared value for customs should be taken into account, resulting in the carrier being obliged to pay the declared sum or value of the cargo. In the case at hand the declared value for customs was around USD 140,000.

Whilst accepting that the Montreal Convention applies to the contract of carriage, the Abu Dhabi Court of First Instance held that the carrier should be liable to pay the declared value of cargo and that the limit of liability provided under Article 22.3 of the Montreal Convention should not apply in the present case for two reasons: firstly, because the value of the cargo had been declared under the Air Waybill (i.e. the declared value for customs), and, secondly, because the carrier did not prove that a supplementary fee was applicable on the shipment and that the consignor failed to pay such fee.

The Court of First Instance’s judgment is not yet conclusive as it is subject to two stages of appeal. Nonetheless, it may be alerting to air carriers if it is ultimately upheld by the higher courts in Abu Dhabi, the Court of Appeal and the Court of Cassation. The judgment appears to propose that any declaration of value on the Air Waybill might qualify as a special declaration for the purpose of Article 22.3 of the Montreal Convention. The verdict also appears to suggest a strange burden of proof on the carrier that an extra insurance fee is applicable on the cargo. This may eventually mean that air carriers might be obliged to take preventive measures and to revisit their terms and conditions of carriage and the particulars of their air waybills in order to maintain the limits of their liability in accordance with the Montreal Convention. Such measures may include the addition of new terms and boxes on the contractual documentation. For instance, it might be expedient to introduce a new box entitled “Special Declaration per Article 22.3 of Montreal Convention”, or to clearly state under the terms of carriage that the declared value for customs is strictly made for customs purposes and requirements and that it does not qualify as a special declaration within the terms of Montreal convention.

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Confident in International Arbitration's Confidentiality?

In the 1990s, one of the leading treatises on international arbitration noted that "[o]ne of the fundamental principles – and one of the major advantages – of international arbitration is that it is confidential." This is no less true today. Confidentiality remains a key benefit of arbitration, and it is often cited as one of the most significant reasons parties choose to arbitrate instead of litigate.

At the same time, however, the scope of confidentiality in international arbitration can vary from one jurisdiction to another and from one stage of the arbitral process to another. Moreover, the relevance of confidentiality is today broadly discussed in the international arbitration community. Indeed, two leading practitioners have recently argued that the implied duty of confidentiality under the law of England & Wales should be brought to an end. While they do not depict the confidentiality of the arbitral process as something that is necessarily negative, they maintain that, rather than being a presumption, confidentiality should be a choice for the parties.

In view of this evolving legal landscape, this article provides an overview of confidentiality in international arbitration and highlights some circumstances in which aspects of the arbitral proceedings or the award itself may become exposed.

Confidentiality in the UAE and the Broader Gulf Region

In the UAE, domestic law provides no general duty of confidentiality. Nevertheless, in Case No. 157/2009, the Dubai Court of Cassation held as a general principle that arbitration is a private process to be conducted in secret unless the parties agree otherwise.

The procedural rules of arbitral institutions in the UAE reinforce this notion. The Dubai International Arbitration Centre (DIAC) provides for the confidentiality of arbitration proceedings "save and to the extent that disclosure may be required of a party by legal duty, to protect or pursue a legal right or to enforce or challenge an award." Similarly, the Abu Dhabi Commercial Conciliation and Arbitration Centre (ADCCAC) has rules on the confidentiality of awards (Article 28) and hearings (Article 33).

Confidentiality in the UAE's so-called "offshore" jurisdictions is even more robust. In the Dubai International Financial Centre (DIFC), Article 14 of the DIFC Arbitration Law, DIFC Law No. 1 of 2008, provides that "[u]nless otherwise agreed by the parties, all information relating to the arbitral proceedings shall be kept confidential, except where disclosure is required by an order of the DIFC Court." This standard is reflected in Article 30 of the rules of the DIFC-LCIA Arbitration Centre, which provide that "the parties undertake as a general principle to keep confidential all awards in the arbitration, together with all materials … and all other documents produced," while Article 19(4) of the DIFC-LCIA rules provide that "all hearings shall be held in private, unless the parties agree otherwise in writing."

The Arbitration Regulations of the Abu Dhabi Global Market (ADGM) likewise take a robust approach to confidentiality. Section 40 of the ADGM Arbitration Regulations states that "unless otherwise agreed by the parties, no party may publish, disclose or communicate any Confidential Information [defined as "any information relating to: (a) the arbitral proceedings under the arbitration agreement; or (b) an award made in those arbitral proceedings"] to any third party" and then provides a list of limited exceptions (e.g., pursuing a legal right or having a legal obligation to disclose the information to a governmental or regulatory body, court, or tribunal), which could lead to the publicity of some information related to the arbitration.

The situation in the Gulf Region more broadly is not dissimilar, though national arbitration laws tend to be silent on the matter of confidentiality.

In Bahrain, Arbitration Law No. 9 of 2015, like the UNCITRAL Model Law that it mirrors, is silent on the question of confidentiality. However, Article 20(4) of the rules of the Bahrain Chamber for Dispute Resolution (BCDR-AAA) states that "[h]earings are private unless the parties agree otherwise or the law provides to the contrary."

Like the Bahraini law, the new Qatar arbitration law is silent on confidentiality. Under Article 41 of the rules of the Qatar International Centre for Conciliation and Arbitration (QICCA), however, every step of the arbitration is described as confidential and no publication is made without the prior written consent of all parties.

Article 43.2 of the Saudi arbitration law provides that the arbitral award shall remain confidential unless the parties agree otherwise, but the law does not have a provision relating to the confidentiality of the proceedings. The Saudi Centre for Commercial Arbitration (SCCA) covers both of these bases through its rules. Article 38 of the SCCA's arbitration rules provides that "[c]onfidential information disclosed during the arbitration by the parties or by witnesses shall not be divulged by an arbitrator, nor by the Administrator" and goes on to state that "[e]xcept as provided in Article 22 [relating to privilege], unless otherwise agreed by the parties or required by applicable law, the members of the Tribunal and the Administrator shall keep confidential all matters relating to the arbitration or the Award."

Confidentiality in International Arbitration Beyond the Gulf Region

Broadly speaking, confidentiality is also recognized in arbitral proceedings in most of the prevailing international arbitration jurisdictions, although there are some differences in the contours of the confidentiality provided. Many countries provide for a duty of confidentiality either implicitly (e.g., England and Singapore) or explicitly (e.g., Switzerland and Hong Kong). Other countries, such as the United States and Australia, are more reluctant to edict a principle referring to arbitration as a confidential method of dispute resolution, leaving it to the parties or the courts to decide. Sweden, where arbitration is public unless the parties agree otherwise, sits at the far end of the spectrum.

Some countries lack precision on the matter. For example, France clearly provides for a duty of confidentiality in domestic arbitration, but whether such provision applies to international arbitration is still unclear and debated amongst French practitioners.

The procedural rules of most of the key international arbitral institutions also generally refer to arbitration as being confidential unless the parties agree otherwise. The London Court of International Arbitration (LCIA), International Centre for Dispute Resolution (ICDR), Singapore International Arbitration Centre (SIAC), and Hong Kong International Arbitration Centre (HKIAC) all provide a mandatory duty of confidentiality unless otherwise agreed by the parties.

Article 28(3) of the UNCITRAL Arbitration Rules provides for confidentiality of hearings "unless the parties agree otherwise," and Article 34(5) states that "an award may be made public with the consent of all parties." The use of "may be" instead of "must be" has not gone unnoticed and invites for flexibility.

Although the arbitration rules of the International Chamber of Commerce (ICC) do not expressly provide for a duty of confidentiality, Article 22(3) states that "[u]pon the request of any party, the arbitral tribunal may make orders concerning the confidentiality of the arbitration proceedings … and may take measures for protecting trade secrets and confidential information."

Challenges to the Preservation of Confidentiality in International Arbitral Proceedings

While the confidentiality of arbitration is usually well preserved, especially if parties consider it as *sine qua non*, there are times when confidentiality might be endangered.

The difficulty of approaching the concept of confidentiality in arbitration not only results from the multiplicity of actors involved who might not be bound by the arbitration rules (e.g., witnesses and translators) or the multiplicity of rules dealing with confidentiality in different ways but also because arbitration runs through different stages that might not all fall under the scope of an applicable rule on confidentiality. For example, as noted above, some laws or rules explicitly provide for confidentiality of the award but remain silent on the matter of the confidentiality of the proceedings.

The preservation of confidentiality can be a particularly acute challenge during the enforcement stage. Enforcement of an arbitral award in a foreign country requires recourse to a state court, and the treatment of confidentiality is not uniform at this stage of the process across jurisdictions.

In the UAE, enforcement of arbitral awards is treated like a regular litigation. If a party seeks enforcement of an arbitral award, it has to present its claim to the Court of First Instance where the award-debtor has assets. The enforcement process remains confidential, meaning that judges are not allowed to disclose the award they have been provided. Nevertheless, they sometimes provide information on the case in their final decision that makes references to the award, names and arguments of the parties, and the amount awarded. Since this final decision is publicly accessible, the confidentiality of the award may not always be fully preserved.

With respect to the DIFC, the DIFC Courts issued a Practice Direction supporting for the confidentiality of arbitration-related proceedings in 2013 (Practice Direction 2/2013). Pursuant to DIFC Court Rule 43.41 and Practice Direction 2/2013, all arbitration-related proceedings are to be held in closed court unless one of the parties applies for the matter to be held in open court or the court "is satisfied that those proceedings ought to be heard in open court." Practice Direction 2/2013 also provides that a court "must not make a direction permitting information to be published [in such a closed-court proceeding] unless – (a) all parties agree that the information may be published; or (b) the Court is satisfied that the information, if published, would not reveal any matter (including the identity of any party) that any party reasonably wishes to remain confidential."

Section 30 of the ADGM Arbitration Regulations has substantively identical provisions, though it provides for closed-court proceedings unless the parties agree that the matter should be heard in open court or the court concludes that the proceedings should be held in open court.

Coupled with the rules of an arbitral institution that provides for a high degree of confidentiality, these DIFC and ADGM provisions provide for the possibility of nearly airtight private arbitral proceedings.

In some jurisdictions, however, the arbitral award becomes part of the public record with few limitations during the enforcement stage. In the United States, for example, when a party seeks enforcement of an arbitral award, a copy of the award must be provided to the court, and the ensuing litigation is, most of the time, conducted in public proceedings. In Mead Johnson & Co. v. Lexington Ins. Co., the court concluded that "[o]nce a confidential settlement agreement or arbitration decision becomes the subject of litigation, it must be opened to the public just like any other information." Such rules may result in the confidentiality of the arbitration process not being preserved.

Another consideration that enters into the equation is exactly how one enforces a confidentiality obligation or the appropriate redress once confidentiality is breached. In terms of enforcing confidentiality, a party may apply to the arbitral tribunal for an order prior to the issuance of an award, though ultimately the tribunal may have difficulty enforcing its order other than through imposing costs on the breaching party. Therefore, the best scenario may involve seeking an injunction through the local courts in the jurisdiction where the disclosure is likely to be made, meaning that, once again, the applicable rules may vary depending on the jurisdiction.

Conclusion

While international arbitration is not confidential by nature, arbitral proceedings and awards are still frequently considered confidential in practice. However, not all national arbitration laws and institutional rules have incorporated confidentiality provisions. As a result, the degree of confidentiality can vary from one jurisdiction to another, and confidentiality might be jeopardized in the event that a party seeks the enforcement of an arbitral award in another country.

However, arbitration is a consensual method of dispute resolution where the parties' convenience is at the heart of the process. The solution is for parties, who might want to reassure themselves that proper protection of confidentiality is in place, to insert a precise clause providing for the confidentiality of arbitration proceedings and awards in their commercial contracts. It is important that such parties diligently choose seats and rules providing for a strong policy on confidentiality.

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> **"Not all national arbitration laws and institutional rules have incorporated confidentiality provisions. As a result, the degree of confidentiality can vary from one jurisdiction to another, and confidentiality might be jeopardized in the event that a party seeks the enforcement of an arbitral award in another country."**

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Recovering Employee Training Costs in the UAE

In the ever-evolving world of aviation, the training of staff is paramount, not only from an employee relations and best practice perspective, but to ensure compliance with international commercial standards, such as those set by the International Air Transport Association and the General Civil Aviation Authority. But one of the key concerns for employers, including those outside of the aviation industry, is where staff leave shortly after money has been expended on training them. What measures can be put into place to avoid or disincentivise staff from leaving before the company reaps the rewards of their investment in training, which can be a significant sum?

What does the Law say?

As a general starting point, the UAE Labour Law does not contain any express provisions regulating the manner, terms, and circumstances under which employers can introduce, implement, and put into place training schemes in the workplace. It is also silent on the reimbursement of training costs. However, such training schemes are fairly common in the UAE and it is not unusual for the employer to include claw-back provisions in the employment contract in the event of termination within a defined period. The difficulty in practice with such schemes is the enforcement of claw-back provisions and actually recovering the costs borne by the employer.

Recovery mechanisms – what are they?

Article 135 of the UAE Labour Law provides that employers may deduct from the employee's end-of-service gratuity payment (the "ESG") any amounts owed by the employee to the employer on termination. Therefore, as long as an agreement is signed between the parties, setting out clearly the amounts owed and the repayment obligations, it is lawful for the employer to deduct the training costs from the ESG upon termination.

In contrast, during the employment, deductions from the employee's salary are restricted to 10% of the employee's gross monthly salary and are generally limited to the recovery of loans, advances, or salary overpayments. However, the key point to bear in mind is that such training reimbursement and claw-back provisions should be clearly documented and signed by the parties from the outset to ensure transparency. It is fairly common for employers who incur training costs to require employees to enter into a written agreement confirming that the employee will repay the costs of the course in the event that he resigns within a set period (commonly 1 year). Sometimes employers will not require reimbursement where the employment is terminated in certain circumstances, such as redundancy dismissals. In other cases, employers may enforce claw-back provisions in cases of termination by the employer (excluding, for example, redundancy) and employee resignation.

Ordinarily, the repayment amount reduces over the service period on a sliding scale basis to avoid it constituting a penalty clause. For example, 100% of the training costs would usually be repaid where the employee resigns within the first 6 months, 75% if they resign after the next 6 months, 50% thereafter, and so forth. Alternatively, the repayment obligation can be tied to other factors. For instance, in the case of a course with examinations, if the employee fails to pass the relevant examinations or obtain the relevant qualification; or in the case of a course without examinations, if the employee fails to attend the course. Another trigger for repayment of training costs is if the employee ceases employment before attending the course, but the employer has already incurred liability for the costs. In such cases, ordinarily 100% of the costs, or such proportion of the costs that the employer cannot recover, shall be repaid.

Employers will generally experience difficulty in deducting payment where the costs are not actually incurred by the employer. For instance, if the training is conducted in-house, then it's unlikely that the costs of the training will be recoverable since they are difficult to quantify.

In terms of actual recovery, another difficulty arises if the employee has yet to reach the 1 year service mark for ESG eligibility and resigns, after training costs have been incurred by the employer. In such a case, there will be no ESG pot from which to make the deductions and recovery by way of a civil claim against the employee may be costly, difficult, and lengthy. Similar difficulties arise where the employee has accrued enough service for ESG entitlement, but the actual ESG pot is insufficient to cover the whole of the training costs eligible to be clawed back.

Concluding remarks

Generally, the employer's aim in getting employees on training programmes are to underscore its investment in the employees' future, leadership, and abilities, and as a means of incentivising them to stay in the employment of the employer. Claw-back provisions, particularly if on a sliding scale and clear, have the effect of operating as a useful deterrent and getting the employee to commit to service over a specific period. Although it cannot be guaranteed that employees will not use the training programme as a means of enhancing their skills for alternative employment, claw-back provisions serve as a lawful means of protecting an employer's investment, albeit with limitations. For the aviation sector, where training costs are often substantial, the use of claw-back provisions should be carefully considered.

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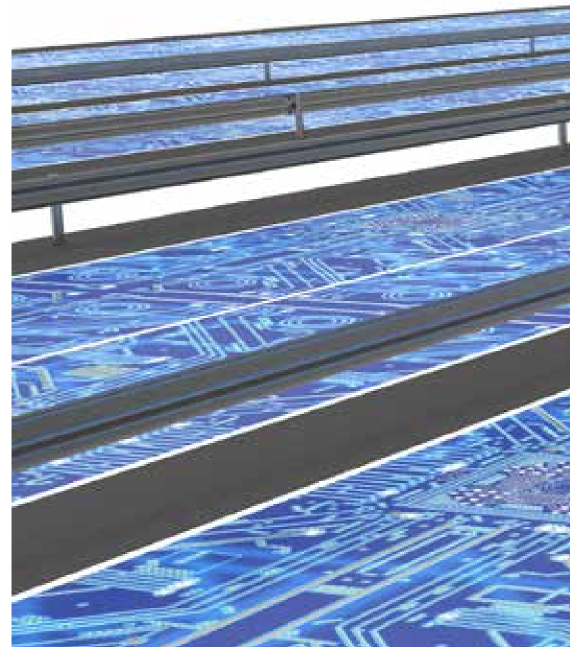

UAE: Avoiding Legal Liability Obstacles on the Road to Autonomous Driving

"You can't go on thinking nothing's wrong. Who's gonna drive you home tonight?" "Drive", the Cars, Ric Ocasek

Autonomous (or driveless or self-driving) car technology is being tested in several countries including Singapore, the United States and Britain. In the UAE, the Roads & Transport Authority of the Government of Dubai is leading the transition to driverless mobility by implementing the Dubai Smart Autonomous Mobility Strategy launched by His Highness Sheikh Mohammed bin Rashid Al Maktoum, Vice President and Prime Minister of the UAE and Ruler of Dubai. That strategy envisions that 25% of all Dubai travel will be driverless by 2030.

According to SAE International (formerly the Society of Automotive Engineers), there are six levels of automated driving: where Level O is where you do all the driving and there is no automation and Level 5 is when the vehicle can handle all driving tasks and travel anywhere under any circumstances without any human intervention.

The commercially available technologies now approximately fall within Level 3, where driverless automation is available for limited periods in normal circumstances but still require the driver's intervention under certain conditions.

Vehicles in current research and studies fall between Level 4 and Level 5, where some companies are currently testing driverless vehicles on pre-defined or non-defined routes.

Researchers estimate that autonomous cars could, by midcentury, reduce traffic fatalities by up to 90 percent (as studies show that most car crashes are caused by human error). According to the World Health Organisation there are some 1.2 million traffic fatalities annually worldwide. Earlier this year, UAE-wide figures published during GCC Traffic Week indicated that 725 people were killed in traffic accidents in 2016.

If autonomous cars can deliver on their potential to eliminate the vast majority of fatal traffic accidents, the technology will rank among the most successful public health initiatives in modern history.

Whether autonomous cars will replace conventional vehicles will depend not only on technical improvements, but also the laws that will need to be put in place. Those rules have only started to emerge.

A major legal issue facing the adoption of autonomous cars revolves around the issue of who is responsible when a self-driving vehicle gets into an accident.

With conventional human driven vehicles, the driver who is at fault for the accident is responsible for it. But what if there is no human driver to be held accountable?

Around the world government authorities, the courts and car manufacturers are all working to come up with answers to these liability questions. However the options for attributing liability are complicated. Let us consider the following scenarios:

1. The Owner of the Car is Liable

The default option is that owner of the vehicle is liable for incidents caused by their autonomous vehicles. Currently in

many countries car owners are required to have third party liability insurance as a minimum.

However, what if the owner is not at fault and an accident occurs as result of an error or failure in the autonomous car's systems? Self-driving cars are controlled by software that tells the car how to behave in certain situations. What if there is an accident because the car made a choice that the driver would never have chosen. Traditionally the legal basis for liability in road accidents has been negligence. Accordingly it would present as unjust to attribute incident to the car owner if they are not at fault.

2. The Manufacturer of the Vehicle is Liable

The next alternative is to hold the company that produces the self-driving car responsible for accidents it causes. If that software that controls the car malfunctions and causes an accident, then the manufacturer should be liable.

The problem with this scenario is that it commercially discourages participants in the self-driving car industry. If every company that produces self-driving cars is legally liable for any accidents they cause, what company would be willing to take on that level of risk?

3. The Car is Liable as a Legal Person

A "legal person" is a distinct concept from the common understanding of "personhood." A notable example of non-human legal persons are companies. Indeed, recently a New Zealand river revered by the Maori people has recently been recognised as a legal person by law.

By recognising autonomous vehicles as legal persons they can be treated as insurable entities similar to companies and people. That way, the autonomous car's legal liability would be self-contained. This scenario would likely require expanding compulsory insurance to cover the autonomous vehicle to prevent avoidance of personal responsibility. For example, in the UK the government in considering establishing a single insurance model whereby the driver is covered when they have activated self-driving features.

Proposed Legislation – what next for the UAE?

It appears likely (based on laws that have already been enacted e.g. in California) that initially car owners will remain liable for incidents caused by their autonomous vehicles – but this presupposes that car owners and drivers retain some control and interaction and consequently retain some responsibility. This may be fine under legal principles where the level of automation still requires the driver's intervention under certain conditions, but when the technology becomes truly fully automated the attribution of liability to the car owner would really just be a pragmatic solution or social policy to balance the greater good of reduced fatal accidents that would need to be captured in specific legislation. It remains to be seen what approach the UAE government will take in balancing these interests.

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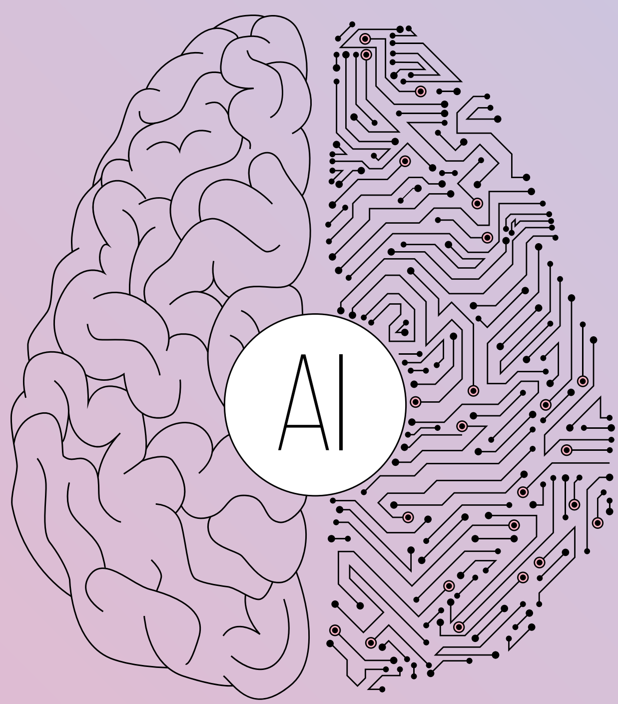
Intellectual Property in the wake of Artificial Intelligence

Introduction

Artificial intelligence systems ("AI") have been a hot topic in recent years and, although we might not yet be aware, aspects of AI have already found their way into our daily lives. AI is already being used in ways we may not expect such as in music composition or in writing of the news articles we read daily. It is certain that the use of innovative AI, particularly in terms of content generation, will grow to unimaginable heights in the coming years.

This begs the question, what does the future hold for intellectual property ("IP") with the onset of such innovations? A decade ago, discussions about AI may have come across as science fiction – not so today. Many of today's leading scientists argue that it is no longer a question of "if" AI may start becoming more autonomous and independent but "when". On the transport front for instance, the onset and prevalence of autonomous driverless cars in the next decade is a foregone conclusion. Yet, autonomous cars seem to be only the beginning. However, as the IP arising from AI is a relatively new field, little is currently known as to how AI developers should best protect their IP assets. Moreover, because AI is under-regulated, concerned parties in this region may find themselves baffled and may consequently risk losing some potentially valuable IP. Nonetheless, while the AI sector evolves globally, based on the regional public records searched/available, there is no record of a Middle East based information technology ("IT") developer attempting to patent an AI invention.



AI Skeptics v Optimists

In an interview with CNN, Elon Musk states, "we just don't know what's going to happen, once there's intelligence substantially greater than a human brain". Left unchecked Musk sees a bleak horizon with the dawn of AI. Bill Gates and Stephen Hawking are likewise concerned about what AI will (not may) become. Mark Zukerberg on the other hand is more optimistic in believing that AI will be for the good of the people on all fronts including IP.

Interestingly, earlier this summer, news reports surfaced about Facebook's emergency shutdown of two AI computers, which apparently started writing their own codes and developing a language to communicate with each other. Facebook had initially launched this project to develop robots, which would be good at negotiating with humans. Facebook's developers then observed that the machines appeared to be forming their own ideas and improvising their communications to express them. Apparently, the machines developed a new language that only the machines understood. Facebook officially denied these reports but admitted its team did not understand the new code or language the computers wrote.

Facebook's story is one example of what may become of IP resulting from AI. New source codes and new languages can be subject to patent and copyright protection respectively. However, if the developers of the AI cannot understand or explain the works which the AI wrote, how can they claim ownership of, let alone use, the IP to such works?

AI's IP Potential

Turning back to Facebook's official denial, in what may seem to be a publicity stunt, news and media outlets at the time queried whether the machines started to think and decide for themselves. While machines are currently far from attaining the level of human intelligence, quantum computing may rapidly change things on all fronts including IP. Briefly, quantum computing uses sub-atomic phenomena obtained from quantum mechanics to store and process data at a much faster rate than that of today's computers. Quantum computers may be able to solve very complex problems that even the best computers of today will never be able to solve. Combined with the current progress of AI, quantum computing, in theory, may enable AI to self-improve and self-learn exponentially and result in inconceivable amounts of IP. An AI may be able to produce thousands of years of human intellectual work within one week and with quantum computing, the numbers may become staggering.

How Current IP Arguably Applies to AI

To put things back into perspective, some readers may know that like other software, an AI software's standalone algorithms and code are themselves unpatentable under several jurisdictions including those of the Gulf Cooperation Council. Instead, IT developers should copyright any newly written codes if they want to protect their IP in them. However, while an IT innovation such as AI may result from the software code, its patentability fundamentally centres on its functionality i.e. how the developer designed the software to work. In this respect, the software's system or architecture within which the algorithms work together and what rules, operations and mechanisms apply, are at the core of the patent in question. Arguably, much of these same conditions should apply to patenting an AI.

Conversely, a copyright to a software code does little in terms of protection beyond preventing third parties from replicating the same code. Without a patent, a third party developer can arguably, and legitimately, write a different code that nonetheless results in an AI software with the same functions of the copyrighted software.

What to look for

AI is currently under-regulated in many jurisdictions around the world including the Middle East. Indeed it's likely that governments will always be lagging in regulating AI. This is even truer with respect to IP regulations. When asked about AI at the last World Government Summit 2017 in Dubai, Elon Musk advised the government attendees to "play close attention" to it.

Based on where we may be heading if the IP field remains unregulated in terms of AI, things may also become murkier when it comes to IP protection of AI if we are hypothetically dealing with an intelligent entity. Protection strategies will also evolve over time as AI evolves, and considerations will have to be made in terms of copyright, patent protection or even trade secrets, and which route will provide the developer/inventor the broadest and most robust means of IP protection.

Al Tamimi & Company's Intellectual Property team regularly advises clients on strategies for IP protection. For further information please contact Bachir Chakra (b.chakra@tamimi.com) and Ahmad Saleh (ah. saleh @tamimi.com).

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The Age of Registration: An Update on the Moveable Assets Security Law

Federal Law No. 20 of 2016 on Mortgaging of Movable Assets as Security for Debts (the "Moveable Assets Security Law") has been in effect in the UAE for seven months. In that time we have seen a number of developments, both technical and practical, as market participants adjust to the new framework.

Following the law's enactment, two key issues were pending resolution — the introduction of regulations via a Cabinet Resolution to support the law's implementation and the establishment of a security register which is to record all security interests created pursuant to the law.

In July it was announced by the Ministry of Finance (the "Ministry") that Emirates Development Bank was appointed to create the security register for the Moveable Assets Security Law. Importantly, it was made clear that the register will be electronic and accessible by the public. This is a radical shift from current security registration methods across the Emirates as they are principally paper based and third parties do not have ready access to registers maintained by government departments and free zone authorities.

An electronic register readily provides a number of benefits: costs associated with searching and registration will be significantly less than a paper based system; individuals and organisations will not require specialised legal or technical advice to undertake a search or register a security interest so bank operational teams will easily be able operate and interact with the system; bulk registration of security interests will be more easily facilitated (an important feature when the system initially goes live); the general public will, for the first time, have ready access to a new source of information about movable assets they are contemplating acquiring. Financial institutions will certainly use this resource, in conjunction with the Al Etihad Credit Bureau, when undertaking its due diligence of potential borrowers offering their movable assets as security.

The agreement between the Ministry and Emirates Development Bank contemplates the electronic registry being managed in accordance with international best practices. There are a number of Western-common law jurisdictions that use electronic registers for the registration of security interests in moveable assets, including New Zealand, Australia, Canada, the United Kingdom and the United States — the Canadian system has been in place for multiple decades. Experience from these jurisdictions indicates that electronic registers are kept simple and user friendly, with access akin to any other online service. Low cost for registration and undertaking searches of the register are also a prominent feature, meaning that the service is available to all and not just large organisations capable of absorbing significant transaction charges. Overall, the goal is to rely on ease of use and a low cost model to make the taking of security over movable assets and access to information as frictionless as possible — thus lowering the cost of doing business and encouraging economic growth.

The law mandates that regulations are to be implemented within six months from the date of it coming into force, which was at the end of September. At the time of printing, the regulations were drafted and under consideration by the interested government authorities but were yet to be enacted. The regulations are important as they will provide more information on the functioning and operational aspects of the register so will act as a key guide to how the market responds to implementation of the Moveable Assets Security Law.

Emirates Development Bank has begun public education forums to update the market on current status. We expect that these will be helpful in giving market participants an introduction to the register and how it will benefit their business. Wide and extensive market education is a critical

factor in the success of a new asset security regime and the public reaping its benefits. This is clearly illustrated by the first case examples following the introduction of similar laws in other jurisdictions which are an exposition of the "old way of doing things" being in competition with the new framework. In such cases, both parties lay claim to the priority interest in the same collateral but one party will have protected its interest following traditional procedures and not registered on the security register (and will commonly be the interest created first in time) while the opposing party will have taken security and registered using the new system. Of course, in these circumstances the party following the "old ways" is not rewarded — the judgment is not in their favour as they discover their assumed right of priority to the collateral in question is non-existent under the new law. In summary, early understanding of the law and its implications are very important and changes to existing practices should already be underway.

Encouragingly, we have seen a number of bank clients in the process of determining their approach to the Moveable Assets Security Law in the context of corporate and commercial lending and, in some cases, commence updating their documentation to take the new law into account. Two divergent approaches warrant consideration.

The first, and most straightforward, approach would be to maintain current market practice and existing documentation. Accordingly, security providers would continue to see the existing menu of options such as account pledges, assignment agreements and asset pledges (with asset pledges possibly becoming more prominent on establishment of the register). Amendments to these documents would simply introduce the core advantages of the legislation, such as confirming the rights to enforce directly against the assets without the need for reference to court, taking security over existing and future assets and registering the security interest on the register once established. We have seen and assisted clients that want to update their documents in this manner. In transactions, specific further assurance obligations are being inserted so that security providers must cooperate and update or replace security once the register is established. These courses of action have the benefit of simplicity but may not yield the full advantages of the Moveable Assets Security Law.

The Moveable Assets Security Law gives banks the opportunity to take "all assets" security against corporate borrowers. This means the borrower (or its credit support provider) grants a security interest over all of its present and future moveable assets. This would be akin to corporate debentures or general security agreements that are common to other jurisdictions. The closest analogue in the UAE is the commercial business mortgage — a form of security contemplated by the Commercial Transactions Law (Fed. Law 18 of 1993) which grants security over a commercial company's existing tangible and intangible assets.

The commercial business mortgage is not commonly employed due to the cost and complexity of the perfection process making it an unwieldy solution outside of large, project based transactions. The potential under the Moveable Assets Security Law, with a low cost and simple registration process, is for customers to grant security over all movable assets in a far greater range of circumstances than possible under the previous legal framework. Banks may, consequentially, have a different risk assessment of customers where this form of security is granted. This assessment should gain further legal certainty from the new Bankruptcy Law (Fed. Law No. 9 of 2016) which affords secured parties the right to enforce their rights against collateral in the event of insolvency (subject to receiving court approval and the asset not being deemed critical to the operation of the business in the case of a preventative composition or restructuring).

Where a bank is taking security over a defined asset, in place of the various categories of security agreements, a specific security agreement could be employed. Such an agreement would provide general covenants applicable to all types of collateral alongside tailored provisions where necessary for different categories of collateral (e.g. account pledges, tangible assets etc).

Once the regulations are made publicly available, the likelihood of implementing a new approach to taking security over moveable assets can be better determined. The regulations are to set out the procedures of registration, the fees, and the information to be included at registration and how collateral may be described in the security document. This information will feed into how market participants fully adopt the Moveable Assets Security Law into their business. It is essential to emphasise that the importance of the Moveable Assets Security Law is not limited to financial institutions. The law also applies to hirers of goods on a long-term basis (one year or more) and owners of goods on sale (i.e. consignees).

The market remains in a transitional phase pending the release of regulations for the Moveable Assets Security Law and the creation of the security register. However as the law is in force, experience from other jurisdictions highlights that it is essential to understand and address its implications now to avoid adverse consequences in the future. Preliminary steps can be taken by amending current documentation to gain the benefits of the law while simultaneously requiring security providers to take additional steps once the register is established. Most important, all market participants will need to understand the practical impact the Moveable Assets Security Law may have and the benefits it can bring to their business.

Al Tamimi & Company's Banking & Finance team regularly advises on the Moveable Assets Security Law and . For further information please contact Mark Brow (m.brown@tamimi.com).

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Is Abu Dhabi Global Market an Option for Your business?

Introduction – Overview of Abu Dhabi Global Market

Under its constitution, the United Arab Emirates ('UAE') is a federation of seven emirates. Although a number of powers remain reserved for the federal authorities of the UAE, certain responsibilities fall under each emirate's scope of authority. This unique feature makes the UAE a natural choice for businesses providing services or selling products to customers based in one emirate and to find new licensing requirements introduced into their respective emirate attractive if they wish to expand.

Abu Dhabi is the capital of the UAE and the largest of the seven emirates, contributing two thirds of the approximate USD 400 billion of the UAE economy. With an average GDP growth of 11 per cent since 2005, Abu Dhabi has matured into a robust and sophisticated financial service sector, with highly capitalised banks, and several of the world's largest sovereign wealth funds.

The Emirate of Dubai's success story of the Dubai International Financial Centre became an inspiration for the capital. The Abu Dhabi Government realised that there is global interest in having Abu Dhabi businesses operating under a dedicated free zone umbrella.

Accordingly, the Emirate of Abu Dhabi introduced their first financial free zone known as the Abu Dhabi Global Market ('ADGM') to complement the offerings of the UAE and help diversify its economy. Located within the Al Marayh Island, ADGM is an independent free zone jurisdiction with its own rules and regulations, comprised of three independent authorities, the Registration Authority ('Registrar'), Financial Services Regulatory Authority ('FSRA'), the ADGM Courts, and the (soon to open) Arbitration Centre, creating an environment that enables companies to conduct business with confidence and ease.

ADGM is designed to be a diversified financial services hub for local, regional and international institutions. Entities established within ADGM can have 100 per cent foreign ownership and are subject to a civil law commercial and regulatory environment, similar to that of the United Kingdom. The Registrar notes that its functions include 'the registration and licensing of ADGM establishments, including companies, partnerships and branches, as well as receiving notifications of a change in the particulars of an ADGM establishment, such as a change in business name, director or registered address, and also for striking off or restoration of ADGM establishments'.

As detailed by the Registrar, it is also responsible for 'monitoring compliance with and, where necessary, enforcing the requirements under ADGM's commercial legislation, including issuing financial penalties, directions, suspension or withdrawal of a licence, depending on the severity of the breach'.

The FSRA, on the other hand, is accountable for a stable financial system, with a high level of regulatory transparency and engagement. The FSRA undertakes various regulatory functions; the key departments are policy and legal, banking and insurance, capital markets, enforcement, international affairs, and financial centre development.

Activities offered by ADGM

Although ADGM offers numerous solutions to financial service providers by offering licences to banks, brokers, dealers, asset managers, corporate financers, wealth managers, insurers, insurance companies, etc., ADGM also caters to businesses not engaged in the financial services sector. What attracts ADGM to a wide range of foreign investors is that it provides a broad spectrum of business activities, including professional, commercial, family businesses, corporate headquarters, and various other management functions. AGDM also caters to the establishment of holding companies, special purpose vehicles, and other structures for holding and protecting assets.

The business activities offered by ADGM are categorised into financial, non-financial, and retail activities. All financial activities are regulated by the FSRA. These include businesses such as banks, brokers, insurance intermediaries, assets managers, etc. The non-financial activities broadly cover controlled activities and professional activities, as well as general service provisions. The non-financial activities provided by ADGM range from manufacturing, construction, real estate, information and communication, to education and transport activities. Retail activities consist of manufacturing of textiles, jewellery and food products, to the trade of motor vehicles, food and beverage, and other goods. ADGM's retail activities also include photography, rental and leasing of vehicles and machinery, arts galleries, restaurants, and other related activities.

Incorporation Process

Although a particular incorporation process may be subject to certain specific requirements that will direct the incorporation process a certain way, broadly speaking the incorporation process of a private company limited by shares whose incorporators intend to carry out non-financial activities includes the following:

No.	Step	Key description
1	Reserve Company name	The proposed name of the Company must be compliant with the ADGM Business and Company Names Rules 2016.
2	Choose registered office	Registered address must be located in Al Maryah Island, Abu Dhabi, UAE.
3	Prepare incorporation documents and business plan	Access to the online ADGM portal will be granted at this stage.
4	Prepare and submit Application for Registration of a Company	Legal documents, such as the articles of association and shareholders resolution, will need to be submitted on the ADGM portal.
5	Issuance of incorporation documents	If the Registrar is satisfied with the documents and information provided, a certificate of incorporation and commercial license will be issued.

Attractive features of ADGM

ADGM's diverse range of business activities is not the only factor that attracts business to establish a presence within Abu Dhabi's financial free zone. ADGM's English based legal system and sophisticated legislative regime are attractive to foreign investors doing business in the Middle East. Foreign investors can peacefully conduct business with the comfort that they are able to enforce contracts and resolve disputes in the English language with a familiar precedent based court system. Further, there are no restrictions on foreign ownership, meaning that foreign investors may establish operations in ADGM without the need to have 51 per cent of the shares held in the name of a UAE national (or company wholly owned by UAE nationals). ADGM also benefits from zero tax rates with the ability to repatriate profits and capital. ADGM is also proven to have a seamless incorporation procedure, which is all electronically submitted through their online portal.

Conclusion

ADGM is an appealing financial free zone to many businesses. The simplified incorporation requirements, sophisticated legislative regime, along with the eclectic range of commercial activities with business-friendly infrastructure makes ADGM an attractive place to do business for all investors, not only the financial sector.

The establishment of ADGM has been applauded by the business community, particularly in Abu Dhabi, as well as professional advisors such as lawyers, accountants, auditors, and management consultants. The continued growth of the Dubai International Financial Centre and development of ADGM suggest there is an extensive business appetite for the offering of these financial centres.

Although ADGM is a relatively new jurisdiction, it is already attracting businesses who wish to combine, under one operation, the global standards and the local availability of a common law regime with the facilities located in the UAE's capital.

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

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Minor to Major: The Transfer of Youth Soccer Players

With more than USD 4.79 billion spent in sports player transfer fees in 2016 alone, the global transfer market for footballers continues its upward trajectory and the recent Euro 222m transfer of Neymar shows it is gaining pace.

As the acquisition of established talent becomes prohibitively expensive, football clubs are increasingly interested in acquiring younger football talent. FIFA has put in place safeguards for the transfer/registration of underage players (referred to as minors) by means of Article 19 of FIFA's Regulation on the Status and Transfer of Players ('RSTP').

This article will look at the current application and enforcement of Article 19, examining:

(i) the introduction and amendment of Article 19;
(ii) the exceptions available under it;
(iii) enforcement and recent case law; and
(iv) shortfalls and limitations.

A Stricter Approach

Article 19 was first introduced in the 2001 edition of the RSTP, restricting the international transfer of players in the 10 to 18 years of age bracket. A small number of exceptions to the general rule were provided, which allowed an international transfer of a minor in cases where:

(i) the player's parents move to the country where the offering club is based for reasons unrelated to football;

(ii) the player is aged 16-18 and the transfer is within the European Union or the European Economic Area; and

(iii) the player's domicile is within 50 km of a national border and no further than 100 km from the club's headquarters.

The club needs to apply for exemption approval from FIFA's Status Committee, through their country's national football association, to register the player.

Additionally, Article 19 extends the restriction to players registering with a club for the first time (i.e. not a transfer), if the player is not a national in the country whose club with which they wish to register. The RSTP was drafted in accordance with previous negotiations between FIFA and the European Commission, thereby providing an impression of Article 19 operating in amenability with European law.

In 2009, RSTP was amended to include clubs who were not registered with their national association.

Additionally, in 2009 the 'Sub-Committee' was created, tasked with overseeing the enforcement of Article 19. All applications for international transfers and first registration of minors are now required to be assessed by the Sub-Committee and must be submitted through FIFA's Transfer Matching System. In the event that a submission is rejected by the Sub-Committee, an associated club can appeal to the Court of Arbitration for Sports ('CAS') within 21 days of receiving the grounds of the Sub-Committee's decision.

Challenges and Exceptions

The jurisprudence of both CAS and the Sub-Committee has allowed for the creation of additional exceptions to Article 19. For example, foreign minors who have been living for more than five consecutive years in the country in which they wish to register, as well as exchange students seeking to register for up to one year, have had their first-time registration approved. Other exceptional circumstances have been dealt with on a case-by-case basis by CAS, such as situations involving minor players seeking registration in a country where they are currently residing as refugees.

Ultimately, one of the biggest and most controversial challenges facing CAS is in relation to cases where a player's parents move to the country in which the new club is located and determining whether it is for 'reasons unrelated to football'. Famously, FC Barcelona brought Messi and his parents to Spain when he was 13 years old. This predated Article 19.

CAS has held that an aunt (or any similar relative) may not normally substitute a minor's parents in order to trigger this exception.

The Gulf region is interesting in that a huge percentage of the population are non-nationals, meaning that there are a large number of youth players whose parents have come to the region for non-football related reasons, i.e., they may be able to avail of the exception and successfully sign for a local club.

"The opportunity to obtain an exemption for the transfer of youth players is probably higher in the Gulf than any other area in the world due to the demographics and the exception provided in the event the player's parents move to the country for reasons unrelated to football.

Enforcement

A number of recent cases involving European clubs have demonstrated the severity of sanctions, imposed in line with the FIFA Disciplinary Code, on violations of Article 19. One such case that received extensive media coverage involved FC Barcelona, which was brought before the disciplinary committee in 2013 for registering 10 minors in violation of the RSTP. The club received a transfer ban prohibiting it from signing any new players for two transfer windows; this ban was later upheld by CAS in 2014 upon appeal by the club. More recently, the FIFA Disciplinary Committee sanctioned Real Madrid and Atletico Madrid for breaching the RSTP following the conclusions of investigations concerning minor players involved with each club. Both clubs received a transfer ban restricting the registration of any national or international players for two transfer windows, commencing January 2017, with Real's ban being reduced by CAS to one transfer window, so it has now expired.

Shortfalls

Despite the strict enforcement and interpretation of Article 19, abusive transfer practices that fall outside the coverage of the RSTP's coverage still persist.

There has been concern that large groups of players who had just turned 18 were trafficked and sent to mass football trials in Europe, with the players left unattended and without a ticket to return home should they fail to be selected.

Moreover, despite FIFA lowering the minimum age limit for international transfer certificates from 12 to 10 years of age (following the 2013 FC Barcelona investigation), concern remains that the age threshold is still too high. It has been suggested that clubs will simply look to even younger players and there is some evidence of this; in 2013, Real Madrid and FC Barcelona signed nine year olds Takuhiro Nakai, from Japan, and Sandro Reyes, from the Philippines.

Coming of Age

The RSTP further provides that minor players cannot sign a professional contract with a term of more than three years. This means that when the contract term expires after the player's 18th birthday (so this moment cannot be later than the day before his 21st birthday) the player is free to sign with any club he may choose. The prior club cannot force the player to sign a new professional contract with itself. From the club's perspective, this provision may appear harsh, in that they have trained and developed the player and expended considerable time and money doing so; however, the club may be entitled to 'training compensation'. Training compensation is paid according to a particular formula, to a player's training clubs, when he first signs a professional contract and each time he is transferred until the end of the season of his 23rd birthday.

Conclusion

The Neymar transfer brings us into unchartered waters as regards evaluating the worth of a player. The continued upward trajectory in transfer fees will lead to inevitable pressure on clubs to consider recruiting more cheaply by investing in youth players. However, it is not a free and open market due to the sensible restrictions FIFA has put in place. Yet, the opportunity to obtain an exemption for the transfer/registration of youth players is probably higher in the Gulf than any other area in the world due to the demographics and the exception where the player's parents move to the country for reasons unrelated to football. On the other hand, local football associations have quotas in place in relation to the number of foreign players allowed to play first team football. Ultimately, it is a matter for local football associations and their clubs to consider whether allowing a greater number of resident youth players aligns with their objectives.

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Sports/Leisure Facilities & Urban Development

Sports facilities and leisure attractions have a role to play in leading the way towards urban development. For example, over the last decade, the residents of Abu Dhabi have witnessed Yas Island transform into an iconic destination for tourists through the strategic anchors of Yas Marina Circuit, Ferrari World Abu Dhabi, and the Yas Links Golf Course. These facilities have continued to be an integral part of the Emirate's development efforts and there have been positive ancillary effects as residential units and retail offerings have sprouted up near them. Additional world-class attractions such as a Warner Bros. theme park and a SeaWorld are lined up to open in the next few years. Doubtless these will mark new milestones in the Emirate's efforts to combine business with sports and leisure. There is no doubt that the number of visitors to the island will continue to grow over the next decade.

This move to develop, promote, and integrate sports facilities and attractions into UAE life appears to proliferate in other countries in the region, for example, similar elements will be important for the progression of Saudi Vision 2030, Qatar's hosting of the upcoming 2022 World Cup, and the Sultanate of Oman's active pursuit of development as a tourist destination in the Gulf.

For the purposes of this article, we will consider some common legal issues that stakeholders such as developers, community authorities, local leaders, and advisors should take into account when they plan sports facilities and attractions, with a particular focus on urban development.

Key considerations

1. *Site Selection*. Identify optimal sites for a facility from a development perspective regarding the entire area. The location should be the most favourable site for all stakeholders. The main factors to consider include transportation accessibility, land availability, land cost, proximity to the core market, neighbourhood, room for expansion, etc. These factors have historically been amongst the principal criteria for siting sports/leisure facilities, and additional factors such as land use regulations and environmental impact considerations must also be taken into consideration. For example, the Executive Regulations of Law No. 4 of 1983 concerning Regulation of Construction Works requires contractors in Abu Dhabi to take necessary precautions to protect neighbouring buildings. The ultimate goals of the community and the owner/operator of the facility need to be mutually achievable on the selected site, within the framework of applicable land use regulations.

2. *Approvals, Permits & Licenses*. Regardless of the type of facility, approvals, licenses, permits, and certifications from relevant government authorities should be considered at the earliest stages of the design/planning phase. For example, at the time of planning and executing the design of any buildings and facilities in Dubai, consultants and contractors must comply with all the requirements set out in the Circular No. 161 of 2008 regarding the Implementation of Green Buildings Standards, including ensuring use of suitable ventilation, water-saving faucets, energy-saving light bulbs, control systems, etc. In Abu Dhabi, consideration should be given to issues such as managing recycled water, which can require coordinating with several government agencies including the Regulation and Supervision Bureau (RSB), Abu Dhabi Sewerage Services Company (ADSSC), the Abu Dhabi Food Control Authority (ADFCA), the Department of Municipal Affairs (DMA), and the Municipality of Abu Dhabi. As large projects like sport/leisure facilities require a number of reviews on various regulatory issues, the owners, who are primarily responsible for construction costs and other infrastructure upgrades, need a high level of certainty and transparency in the approval process, consistent procedural timelines, regulatory implementation, and documentation requirements. Any unexpected delays by local authorities, changes in legislation, or similar uncertainties may lead to project suspensions, which negatively impact and jeopardise deadlines and contractual obligations already in place.

3. *Specific Sector Knowledge*. Understanding the nature of sports and leisure business is key. It is worth noting that each sport has its own characteristics and the owner/operator of relevant

facilities should understand ideal requirements and what is realistically achievable for a successful event at the facility. For example, in order to host the F1 Grand Prix, an operator should expect the transportation of freight includes many high-tech vehicles and parts from the airport to the circuit, all customs clearance, on-site handling of the freight with extra care, and bespoke insurance requirements. The scope and nature of such issues depends upon the nature of the relevant event and the facilities team require a certain level of knowledge and experience in that specific field and the related legal requirements.

4. *Community Integration.* Make sure that the facility is designed so that it is not only fit for purpose but that it also complements the surrounding area and meets the needs of the whole community. Even if part of the facility will be mothballed during any off-season period, there needs to be more frequent demand to use for the facility and the local leaders must pay close attention to the needs of their community for such use. For a case in point, Yas Marina Circuit is receiving positive responses from the local community by hosting various events at the circuit, including weekly offerings for public use of the circuit for recreation, such as running and cycling.

5. *Project Phase Preparation.* It is very important to ensure that all aspects of each phase of the project (e.g. construction, operation, and maintenance) are covered by well-drafted contracts with relevant parties. Principles of contract law retain their importance in the creation, formation and enforcement of a wide variety of agreements necessary for optimal use of the facility. These agreements will include construction contracts, financing arrangements, leases, sponsorships, broadcasting/media contracts, IP/licensing agreements, and other commercial agreements, including servicing and maintenance agreements. It is always recommended to conduct due diligence to select the right partners and have all the contracts reviewed by reliable advisers to make better-informed decisions regarding contractor selection and agreement terms and conditions.

6. *Economic Sustainability.* The final piece may lie in the economics of the sports facility to be built. The availability of public financing and the level and diversification of predictable revenues accessible over the predicted life of the facility from attendance, concessions, media broadcasting, merchandising, sponsorship, etc. will be of central significance. Private companies engaged in the project, including contractors and suppliers, who may bear some of the burden of financing the facility's offerings, should also be encouraged to invest in their services and, correspondingly, feel some level of relief from anticipated economic gains.

Conclusion

Sports facilities and urban development will continue to be inextricably linked. With innovative ideas and stiff competition to develop a most favoured destination status amongst tourists and prospective residents, it is desirable for the public and private sectors to combine ideas with venue managers, event organisers, and key contractors so as to work together to create facilities that serve the community and take into account a variety of needs. An in-depth understanding of project licensing, approval, development processes, and strategic goals is necessary to smooth transitions through each phase of an urban planning project. This is particularly critical in the case of sports and leisure facilities that can carry the additional reputational risks and stresses that accompany high-profile, mass public attendance sites. We recommend establishing teams to conduct regular reviews of existing and potential concerns with part of their role being to identify, prepare for, and secure any and all upcoming licenses and permits, as well as to monitor any other regulatory developments and requirements. The importance of advanced consultation with local regulators and advisors prior to undertaking a new project for any sports and leisure facility cannot be over emphasised.

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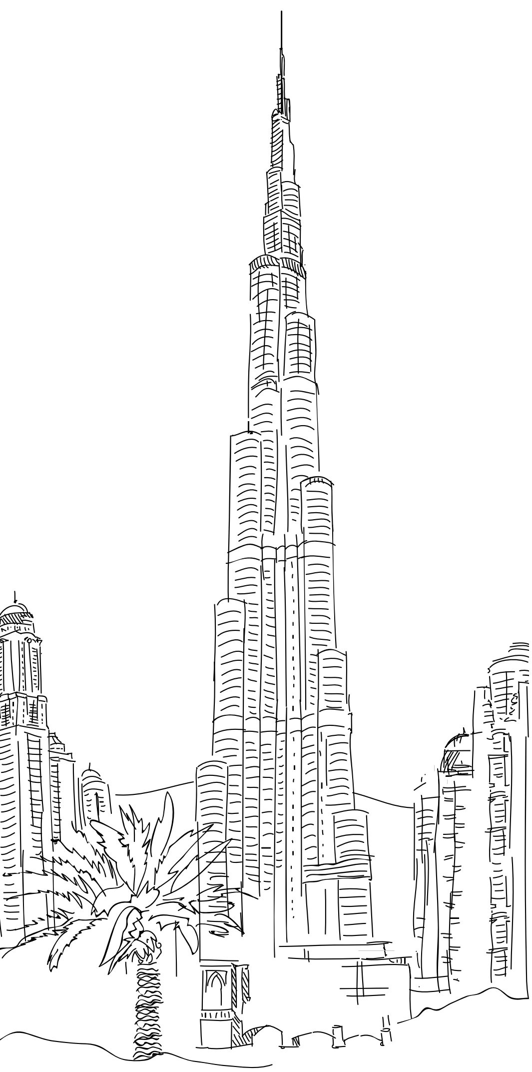

Who can own Real Estate in Dubai and Where?: Part 2 of *Know Your Rights for Real Estate Investors in Dubai* Guide

Al Tamimi & Company proudly published a real estate guide called 'Know Your Rights for Real Estate Investors in Dubai' in collaboration with the Dubai Land Department on 3 April 2017 ('Guide'). The Guide provides companies and individuals with the vital information they need when considering investing in real estate in Dubai and seeks to answer some of the important questions that investors have regarding their real estate investments and dealings with Dubai Land Department ('DLD'), Real Estate Regulatory Agency ('RERA'), developers and other relevant parties. The Guide has been published in English and Arabic and can be found at (https://www.dubailand.gov.ae/Style%20Library/download/KnowYourRightsRealEstateInvestor.pdf).

Over the course of next few months, we will be producing a series of articles aimed at keeping our clients informed on Dubai real estate laws and current DLD and RERA policies by exploring a number of legal topics mentioned in our Guide.

Part 1 of the series dealt with 'Key Issues Investors Need to Know when Buying Real Estate Off Plan' and was published in the previous edition of Law Update.

This article is Part 2 of the series and will focus on real estate ownership rules for UAE/GCC nationals and foreign nationals and designated areas in Dubai and the DLD policy about the right of foreign companies to own real estate in Dubai.

Who Can Own?

The DLD was founded in May 1960 and is authorised to register any real rights over property such as freehold title, usufruct, musataha and long term leases over real estate in Dubai. The only exception is Dubai International Financial Centre ('DIFC') free zone which has its own property laws and maintains its separate property register for the real estate located within the DIFC.

On 13 March 2006, the Government of Dubai issued Law No. 7 of 2006 concerning Real Property Registration in the Emirate of Dubai ("Property Ownership Law") which governs property ownership by individuals and companies in the Emirate of Dubai.

UAE and GCC nationals and companies incorporated in the UAE (excluding the free zones) that are wholly owned by UAE or GCC nationals have the right to own freehold title to real estate and to acquire all types of real estate interests such as usufruct, musataha and long term leases up to 99 years located in any area in the Emirate of Dubai pursuant to Article 4 of the Property Ownership Law. Furthermore, public joint stock companies are allowed to own properties anywhere in Dubai. From our experience, we are aware that public joint stock companies that are listed in Dubai or anywhere in UAE or GCC are accepted by the DLD to own real estate anywhere in Dubai.

If a company incorporated in the UAE has non-UAE or GCC shareholders, it will not be considered a UAE or GCC national for the purposes of Article 4 of the Property Ownership Law. Article 4 of the Property Ownership Law allows non-UAE or GCC nationals and companies to own freehold title, a long lease or a usufruct right up to 99 years in the areas in Dubai that have been designated for foreign ownership under regulations issued by the Ruler of Dubai ('Designated Areas').

Article 4 of Property Ownership Law is further complemented by the DLD policies which are not formally published and are subject to change from time to time. A brief summary of the current DLD policy is set out below:

1. Foreign offshore companies (such as Cayman, BVI) are currently not permitted to directly own real estate in the Designated Areas. However, offshore companies that owned property in the Designated Areas before this policy came into force are entitled to maintain their ownership, and are able to perform various real property dispositions (e.g. sale, mortgage, lease, gift, etc), but will not be able to make further property acquisitions;
2. Foreign onshore companies are also currently not permitted to directly own real estate in the Designated Areas. However, a foreign company can establish a company in the JAFZA or such other free zone approved by the DLD from time to time, and can register the real estate it intends to acquire in the name of the Dubai free zone company so established;
3. Free zone companies incorporated in other Emirates, such as Ajman and Ras Al Khaimah are currently not permitted to directly own real estate in the Designated Areas. However, a non Dubai free zone company that owned property in Designated Areas before this policy came into force is entitled to maintain its ownership and is able to perform various real property dispositions (e.g. sale, mortgage, lease, gift, etc), but will not be able to make further property acquisitions;
4. Pursuant to a recent memorandum of understanding signed between the DLD and DIFC authority, companies incorporated in the DIFC are now permitted to directly own real estate outside the DIFC free zone within the Designated Areas;
5. Foreign trusts or funds (offshore or onshore) are currently not permitted to own real estate in the Emirate of Dubai;
6. UAE/GCC nationals and onshore companies wholly owned by them (such as limited liability company, sole establishment registered with DED) can purchase real estate directly in their individual capacity in the Emirate of Dubai;
7. Non UAE/GCC nationals can purchase real estate directly in their individual capacity in the Designated Areas; and
8. Non UAE/GCC nationals and/or companies can incorporate a free zone company in Dubai such as the JAFZA and other free zones approved by DLD to register the real estate it intends to acquire within the Designated Areas only in the name of the Dubai free zone company so established.

It is important to be aware of DLD's instructions and related procedures regarding companies which are allowed to own real estate in Dubai before signing a sale and purchase contract which can be found at the DLD website (http://www.dubailand.gov.ae/English/Pages/Default.aspx) or by visiting the DLD offices in Deira, Dubai. It is also essential to note that DLD policy is to change any time and specific legal guidance on a proposed ownership structure should be sought prior to entering into any property transaction in Dubai.

Where Can You Own?

Regulation No. 3 of 2006 on the Designation of Areas in which Non-UAE nationals may own real estate in the Emirate of Dubai identifies the specific areas where foreign nationals (non-UAE/GCC nationals) can own freehold land and property and other real property rights such as usufruct and long-term lease rights for up to a period of 99 years. The Designated Areas for foreign ownership of real estate are determined by the Ruler of the Emirate of Dubai by way of decrees and regulations issued from time to time. Below is a list of the most important Designated Areas:

-The Palm Jumeirah

-The World Islands

-Downtown Dubai
-Old Town
-Burj Khalifa
-Business Bay
-Dubai Marina
-Emirates Hills
-Jumeirah Lakes Towers
-Jumeirah Beach Residence (JBR)
-Discovery Gardens
-Arabian Ranches
-Midriff (specified plots)
-Dubai Investment Park
-Falcon City
-Dubai Sports City
-Dubai Motor City
-International City
-Jumeirah Islands & Jumeirah Village

As we near Expo 2020 and Vision 2021, Dubai's real estate sector is entering into an exciting phase. With the launch of several new real estate projects, most of Dubai has become available for foreign ownership (except certain old parts of Dubai). The DLD is constantly reviewing and updating its real estate regulations and policies and adapting it to suit the investor interests. Should you require any legal advice regarding the issues raised in this article, please contact us at the Al Tamimi Real Estate team (http://www.tamimi.com/en/industry/our-industries/real-estate.html).

Al Tamimi & Company's award-winning Real Estate Practice provides a comprehensive range of legal services across the Middle East including Dubai, covering all areas relevant to the property industry including real estate ownership advisory and transactional work assistance.

"The *Know Your Rights for Real Estate Investors in Dubai* is prepared by Al Tamimi in collaboration with the DLD which provides developers and investors with the vital information they need when considering investing in real estate in Dubai and seeks to answer some of the important questions that investors have regarding their real estate investments in Dubai."

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How will the Introduction of Value Added Tax (VAT) in the UAE impact your existing Construction Contracts?

How will the introduction of Value Added Tax ('VAT') in the UAE impact your existing construction contracts?

With the publication of the UAE VAT law in August, it has now been confirmed that VAT will be imposed on the supply of goods and services in the UAE with effect from 1 January 2018 (the 'Effective Date').

Many contracts for the supply of goods and services, especially those relating to construction contracts, are intended to remain in place for a fairly significant period of time. Herein, we answer the question: How will VAT be applied where your existing contract extends beyond 1 January 2018?

The VAT law contains transitional rules that accommodate this type of scenario, but not all scenarios are addressed by these rules. The executive regulations, which will provide further details on the transitional rules, are expected to be issued during the fourth quarter of this year.

In general, the Law provides that if the supplier receives a payment or issues an invoice for goods or services prior to the Effective Date, but the goods or services are supplied after the Effective Date, the date of the supply shall be deemed to be 1 January 2018, in certain circumstances, thus, the goods and services would attract VAT. The Law further provides that if the contract has been concluded prior to the Effective Date, and does not contain 'clauses related to tax', and the supply occurs on or after the Effective Date, the contract price shall be treated as being inclusive of VAT.

We expect that the executive regulations, forthcoming, will provide an exception in circumstances where the recipient is also VAT registered and can recover the VAT, in which case the supplier would be entitled to add VAT to the contract price and shift the VAT burden to the recipient, who in turn would be entitled to deduct the input VAT in their VAT return.

The general rule appears to be, however, that the supplier will bear the burden of VAT, unless the contract states otherwise, or the executive regulations provide exceptions allowing a supplier to charge VAT where the supply is made to a VAT registered recipient.

On what price is the VAT calculated?

Once the contract price is deemed to be VAT inclusive and the supplier has, in effect, been burdened with the VAT obligation, the further disadvantage is that the VAT payable is calculated on the original contract price, regardless of whether it has made a provision for VAT. In other words, the VAT payable to government is calculated on the original contract price even though the contract price never included VAT.

What does it mean to have 'clauses related to tax' in your contract?

It is still to be determined if a typical price escalation clause in the case of a 'change in laws', such as Sub-Clause 13.7 of the FIDIC Red Book, would be broad enough to constitute a 'clause related to tax' or would otherwise independently allow suppliers to increase the contract price on account of VAT.

This sub-clause of the FIDIC Red Book makes provision for an adjustment of the contract price to take into account any increase or decrease in cost 'resulting from a change in the laws of the country (including the introduction of new laws and the repeal or modification of existing laws) made after the base date, which affect the contractor in the performance of obligations under the contract'.

The potential challenge lies in the activation of that sub-clause since it is arguable that the change in law by the introduction of VAT will not 'affect the contractor in the performance of obligations', since the obligations (to provide the goods or service) will not be affected by the increased price. This means that such a sub-clause may not be sufficient in itself to protect a supplier who will be seeking to pass on the VAT cost to the recipient.

What will the executive regulations say?

The VAT law also provides that the executive regulations of the Law will set out special provisions relating to the implementation of the law where a contract has been concluded before the Effective Date but the supply under the contract is wholly or partly made after the Effective Date.

The executive regulations are expected to be published in the latter part of this year, and it is anticipated that they may flesh out, in more detail, how the transitional rules will be implemented in practice. It is important to note that these executive regulations may have a significant impact on how the VAT obligation is intended to be applied to a host of construction specific issues, such as variations, delays in the supply caused by the employer or any receiver, or long lead items, such as elevators or control systems.

If businesses are entering into new contracts or renewing existing contracts before 1 January 2018, it is advisable to ensure that adequate provision is made for the application of VAT in respect of the supply of goods and services.

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Using EPC Contracts

The overriding objective is for production facilities ("facilities") (such as factories, refineries, power plant and desalination plants) to satisfy prescribed performance and efficiency requirements. Depending on the desired outcome, there is a range of different contract approaches that can be adopted including EPCM and 'traditional' construct only.

However, engineering, procurement and construction ("EPC") remains the preferred form of procurement for faclities.

EPC obligations

Under an EPC structure, the contractor is responsible for the design, construction and completion of the facility for a fixed contract price and by a fixed time for completion. In other words, on completion the owner is simply required to 'turn a key' to start operating the facility, which should satisfy the output requirements as set out in the contract.

EPC contracts are typically used because they are 'bankable'. Indeed, transferring most of the construction risk to the contractor means that, in a properly drafted EPC contract, the contractor should have limited ability to bring claims for extensions of time and additional cost.

Such certainty is highly desirable from a lender's perspective as this means that the facility should be completed on time and within budget. If this is not the case, the consequences of time and cost escalations should be borne by the contractor (who is likely to be liable for performance and delay liquidated damages) and not the owner (i.e. the borrower).

Although 'bankability' will vary depending on the specific nature of the facility, the EPC contract will typically be required to address the issues listed below.

- Single point responsibility – The contractor should be solely responsible for all design, procurement, engineering, construction, testing and commissioning of the facility. This means that the contractor will be liable for any defects or problems with the facility, removing the possibility of the contractor seeking to deflect blame to a third party. If the contractor consists of more than one entity (which is frequently the case in large scale projects), it is important that each entity is jointly and severally liable to the owner.

- Full design responsibility – The contractor is usually fully responsible for the entire design of the facility. The contractor will thus be responsible for errors in any preliminary design or FEED (even though the preliminary design or FEED is likely to have been prepared by separate design consultant engaged by the owner). It is equally likely that the contractor will be required to provide a fitness for purpose warranty (which should be covered by professional indemnity insurance). This is consistent with the fundamental principle that the facility is, as an absolute obligation, required to satisfy the output specification as set out in the contract.

- Employer's Requirements – As the contractor takes on the design risk the owner will control what is to be delivered by a document usually titles "Employer's Requirtements". This will describe the facility and standards to be achieved as well as the performance requirements. The more detailed the Employer's Requirements the more likely that the owner will get the facility it wanted. However, the owner will also be more exposed to claims for variations and extensions of time for changes to the Employer Requirements.

- Fixed contract price – The risk of cost overruns (and equally savings) are normally on the contractor's account. As such, the contract price should only be subject to increase in specific and narrowly defined circumstances (such as variations and acts of prevention by the owner).

- Fixed completion date – The contractor should be under an obligation to complete the facility (including satisfying all tests on completion) by a prescribed date. Failure to complete should entitle the owner to claim delay damages (which are typically subject to an agreed cap). As with escalations in the contract price, the time for completion should only be extended in certain narrowly specified circumstances.

- Tests on completion – The requirements which need to be satisfied in order for the Works to be taken over need to be clearly stated. The tests on completion should be used to demonstrate that the prescribed output requirements of the facility have been satisfied. As a minimum, the contractor should also have obtained all consents and approvals (including the building completion certificate) for the facility to be legally operated for its intended purpose as a condition precedent to take over.

- Performance guarantees – Revenue will only be generated if the facility is effectively operated and satisfies the prescribed output requirements (including in terms of reliability and efficiency). It is therefore important that EPC contracts contain guarantees and that these guarantees are backed by performance liquidated damages if the required standards are not met. As with delay damages, performance liquidated damages are typically subject to an agreed cap.

- Caps on liability – Many contractors will not enter into any contract which does not contain an aggregate cap on liability (which may be the contract price or a percentage of it) with certain categories of loss excluded from that cap (i.e. public liability claims, gross negligence as well as consequential and indirect losses). Caps on and exclusions of liability are typically subject to commercial negotiation but in most jurisdictions in the GCC there may be scope for agreed liability caps to be opened up and reassessed by the competent court or arbitral tribunal so that the compensation payable equates with the true loss suffered. However, in our experience, such agreed liability caps are typically respected and upheld.

- Performance security – The contractor is normally required to provide an unconditional payable on demand performance bond, as security for the owner should it have a claim against the contractor, including for delay or performance liquidated damages. A parent company guarantee may also be required if there are concerns regarding the financial strength or technical capabilities of the contractor.

- Intellectual property – It is imperative that the owner has clear rights (i.e. through the granting of a license or the transfers of IP rights) to use the contractor's designs for any purpose in respect of the facility (including in respect of the maintenance and the expansion of the facility). The contractor should indemnify the owner against any loss suffered arising out any intellectual property breaches.

- Contractor's Rights of Termination/suspension – The contractor typically has limited rights to terminate (i.e. in respect of non payment, prolonged suspension at the owner's convenience and force majeure) with the exercise of any such right by the owner usually being subject to the lender's step-in rights.

- Owner's Rights of Termination/suspension - The owner usually has far broader rights of termination, including in respect of any material breach (which has not been remedied upon the expiry of the relevant cure period) or upon the exhaustion of the cap on delay or performance liquidated damages. The owner may also have a right of termination for convenience. Additionally, the consequences of termination (including the payment/compensation regime and practical steps) should be set out. The Owner will also typically require the right to suspend the works to take into account unforeseen circumstances which occur during the construction phase (i.e. the unavailability of financing).

- Defects liability period – A defects liability period of between 12 and 24 months is common. However, the defects liability period is sometimes extended if defects are corrected during the defects liability period and it is important that the owner ensures has adequate security in place (i.e. retention monies or a performance bond) that it can call upon if the contractor fails to remedy defects during the defects liability period. Owners should also be aware of attempts by contractors to exempt themselves from all further liability regarding the facility on the expiry of the defects liability period, which is contradicting statutory limitation periods.

Other key facility documents

The facility needs to be looked at holistically and there are various other documents, in addition to the EPC contract, usually need to be in place. These documents may include:

- Finance documents.

- Supply agreements for the operation of the facility. For example, a supply of natural gas will usually be required to operate a methanol plant.

- Offtake agreements for the sale of the product produced by the facility. A power purchase agreement is likely to be entered into with the local power provider if the facility is a power station. If the offtake agreement is on a 'take or pay' basis, it is vital that the facility is in a position to deliver the product from the commencement date under the offtake agreement otherwise it is likely that financial penalties will be imposed.

- An operation and maintenance agreement to ensure that the facility continues to operate effectively and to meet the desired output specification.

It is therefore imperative that the EPC contract is not drafted in isolation. Any EPC contract should, contain specific drafting to address the interface between the EPC contract and the other project documents.

Take home comments

Whilst there are considerable advantages to using an EPC contract (particularly on account of the contractor's single point responsibility), EPC contracting tends to be an expensive method for the construction phase of procurement as the construction risks which the contractor accepts (which may or may not materialize) are inevitably priced and contingencies are built into the contract price. On the other hand, the owner should not be required to make significant payments to third parties (such as designers) if EPC procurement is adopted on the basis that the contractor offers a convenient 'one stop shop'.

A sensible approach to risk should be adopted and specific risks should be accepted by the party best placed to manage a risk. For example, the owner may be accept the risk of ground conditions if it has undertaken a detailed site investigation report but, alternatively, the owner may be happy to pass this risk to the contractor (and accept the premium charged by the contractor) if the ground conditions cannot be easily determined.

EPC contracting remains a tried and tested method of delivering facilities, which is likely to increasingly be the case for the foreseeable future.

Al Tamimi & Company's Construction & Infrastructure team regularly advises on EPC contracts and all other construction related documentation. For further information please contact, Scott Lambert (s.lambert@tamimi.com) or Euan Lloyd (e.lloyd@tamimi.com).

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Have you done your Due Diligence? Preparing for a Corporate Acquisition

"The benefits of a legal due diligence review are that it enables the party commissioning it to assess the rights, dues, obligations and liabilities of the target or the target group of companies or their business, which are the subject of the transaction."

A legal due diligence review preceding a corporate or business acquisition deal is often perceived as being a lengthy and burdensome exercise, which can prolong the timeframe of a transaction and delay its closing. Whether the transaction is an acquisition, disposal, merger or reorganisation (commonly referred to as 'mergers and acquisitions' or 'M&A' transactions), the parties involved are usually eager to finalise the transaction within a short period of time and in the most cost-effective way possible.

Overview

When preparing for an M&A transaction, it is highly prudent for the parties to carry out an evaluation of the strengths and weaknesses of the target legal entity or entities and their respective businesses prior to entering into the transaction documentation. The purpose of this exercise is not only to provide the party undertaking the review with reliable and up-to-date information about the target entity, but also to identify and highlight any significant deficiencies or short-comings (i.e. 'red flag' items) that they were not previously aware of. Any legal or financial repercussions arising from the review that may hinder or prevent the closing of the transaction or that might have an impact on the anticipated return on investment will also be key to identify. A due diligence review will typically comprise a financial review (undertaken by accountants) and a study of the entity from a legal perspective (undertaken by lawyers) and possibly other types of review (e.g. tax, commercial and others).

Matters to be reviewed during the legal due diligence exercise will typically include the legal structure of the target entity, including corporate and regulatory matters (e.g. licences, constitutional documents, compliance with relevant legislation), the target's management structure and powers of attorney in place, business agreements binding on the company, banking facilities and liabilities of the target (review of the loan agreements and banking arrangements, guarantees, etc.), employment contracts and practices, supplier agreements, outstanding warranties, insurance policies, titles to and leases of real estate, environmental permits and compliance practices, ongoing or anticipated litigation and so on. The objective of this review is to gain an appreciation of the target's business as well as to uncover any irregularities or actual or potential liabilities to consider how they may best be dealt with.

It is good practice for a review to be focused and efficient. A due diligence review will rarely be general and all-encompassing, so as to cover the whole range of legal and

contractual aspects of a business. It is more likely that it will be limited in scope, in order to identify those particular issues of concern or material importance in the context of the organisational structure and business of the target. Accordingly, the scope of the review will vary depending on the nature of the transaction, whether it is an acquisition, disposal, restructure, merger or another form of transaction and whether the business of the target relates to either retail sales, telecommunication, construction, the provision of services or another field of activity. In each instance, the parties will have a particular interest in the structure, business and assets of the target and will be concerned to identify any deficiency in these and how the value of them can be maximised. There will (or ought to) be a direct correlation between the extent of resources committed to a due diligence review and the value of the transaction. This is because a transaction involving the acquisition of a small company for a small purchase price will typically not justify an extensive, all-encompassing due diligence review. Whereas, when an acquisition involves the payment of a significant purchase price, a more thorough investigation of the target will likely be justified, such that the depth and breadth of the due diligence review will be proportionate to the overall value of the transaction.

By way of example, if a target company is a provider of telecommunications services, the due diligence review will typically focus on the licences of the target entity (including whether they adequately cover the scope of activity of the target business and whether they are still valid), agreements and arrangements in place with the target's customers and suppliers, and the state of its assets (i.e. whether they are in good condition, have benefitted from proper supporting arrangements, are not life-expired or close to being so and so on).

Where a transaction involves a business providing professional services, then the key value is likely to derive from the competence and experience of its employees. In this situation, particular attention would typically be directed not merely towards licences and business agreements (i.e. customer and supplier agreements, licences, lease contracts, etc.), but particularly to the contracts of employees (and mainly key employees), their salaries and benefits (including incentive arrangements), employment practices, capture of know-how and protection of intellectual property.

If the focus of the target company's business is the sale of products, then it is particularly important to review the target's ability to acquire, produce and sell them, such that the due diligence review should include detailed consideration of the supplier and customer contracts, title to factory and warehouse premises, equipment and machinery, relevant intellectual property rights required for production of products and in relation to new products under development (i.e. copyrights, patents registrations, licences and other registrations).

Process

Whilst a legal due diligence review involves all parties to the transaction, in a sale and purchase transaction, it is the prospective seller's responsibility to make available to the purchaser all those agreements, licences, reports and other items requested to undertake the necessary review. The seller will often facilitate this process by preparing a data-room, either a physical or virtual one, in which it will make available all those documents and items requested by the purchaser and its lawyers. Where the seller does not effectively assist in providing the requested documents, the due diligence exercise risks becoming a longer and more difficult exercise. For this reason, it is important that the parties to a prospective transaction agree, ideally during the preliminary discussions when considering the key terms of the transaction (i.e. when negotiating the 'memorandum of understanding' or 'letter of intent') the extent of obligations of the parties during the due diligence phase. It should be clearly agreed that there will be a prompt and transparent disclosure of information and documentation and there should be provision for the extension of time for the due diligence period if the seller does not adequately respond to requests for documents and information.

Time-frame

The time-frame for completing a due diligence largely depends on the volume of documentation and information to be reviewed and the timing of when the bulk of this documentation is made available for review. The seller will either need to produce copies of documentation or create a data-room and provide sufficient access to it to the lawyers, accountants and other professionals reviewing the documentation for the purchaser. The seller should also provide answers to queries raised by the purchaser's advisors during the review that arise out of the materials provided. Where this is the case, then the due diligence can be completed within a reasonable timeline taking into consideration the size of the transaction, the business of the target and its activities. The timeline will most likely need to be extended where a seller is not sufficiently cooperative and is reluctant to providing materials and information requested or fails to do so promptly.

Sometimes parties will agree to split a due diligence review into distinct phases. Each phase would involve a review of specific documents or facets of the target company or business. Where this occurs, the parties will fix milestones for the progress of the review, for example by agreeing to move on to the next phase of the due diligence exercise when the purchaser is satisfied with the outcome of the preceding phase, so that the seller discloses information it feels comfortable in sharing in tandem with progress being made towards concluding the transaction.

Benefits

The benefits of a legal due diligence review are that it enables the party commissioning it to assess the rights, dues, obligations and liabilities of the target or the target group of companies or their business, which are the subject of the transaction. In a sale and purchase transaction, it is most notably beneficial for the purchaser as it will assist the purchaser to evaluate the risks of entering into the transaction, the assets, liabilities and responsibilities of the target company or business and the extent of the further investment that the purchaser will need to make in the target in order to realise its objective in acquiring that target.

Based on the results of the due diligence review and having obtained awareness and insight into the business and its liabilities, the lawyers advising the purchaser will be able to analyse the position of the target and advise the purchaser on the best course of action. For example, where a liability, potential liability or deficiency in the target is identified for the first time, the purchaser may want to negotiate a reduction in the purchase price it is now willing to pay the seller. A deficiency may also be addressed in the drafting of the final acquisition agreement either through the provision of an indemnity or an appropriate, specific warranty. The purchaser may call on the seller to remedy the issue before the transaction proceeds. Alternatively, the purchaser may take out appropriate insurance to cover the issue or it may decide that the issue is so serious that it does not wish to proceed with the transaction at all. Where a due diligence review is conducted pre-transaction by a seller, then it affords the opportunity to remedy issues in advance or to prepare an explanation of them with a view to lessening the impact of them on the sale negotiations.

Conclusion

The due diligence review is typically considered a crucial step to be undertaken in nearly all M&A transactions. The risks associated with entering into transactional documentation without conducting at least a reasonable degree of pre-transaction due diligence can be significant (for both parties). The review will aim to allow the relevant parties to be informed as to the true nature and features of the target company or companies and their respective businesses, thereby helping to ensure that all relevant precautions are taken when negotiating and preparing the transaction documentation. Recently, there has been a trend more and more towards parties obtaining warranty insurance cover to mitigate the risks associated with M&A transactions. Subject to certain exclusions, this insurance will protect the insured parties against expenses associated with errors or oversights arising in the due diligence process by the party responsible for providing documentation and information to the other. Accordingly, a properly structured due diligence review with a timeline, scope and structure agreed in advance by the parties to it is a very important element of any M&A transaction. Although the review is a significant part of the transaction in terms of commitment of time and resources, if properly managed and if properly advised by one's lawyers, then it is typically possible to tailor the review to the circumstances of the transaction and the target involved. Accordingly, the results of the review will be produced as efficiently and cost-effectively as possible within a timeframe that meets the objectives of the parties to the transaction.

Dear all,

We welcome you to this October 2017 monthly edition of *Law Update* which focuses on shipping, aviation, and insurance.

It goes without saying that the shipping and aviation sectors, and associated services, face challenging times, particularly affected by fluctuating oil prices and regional economic and political volatility. We dare say that the present status quo does not appear to be in line with ordinary and expected industry cycles, customarily occurring every ten to thirty years, but rather there appears to be an altogether new market, which all participants will need to adapt to. The shipping, aviation, and insurance industries are too big, or at least too important, to permanently fall or fail, and we remain confident that soon enough, if not already, these sectors will start to pick up and refocus for the future.

In this issue we have tried to spread the joy as much as we can with a focus on what we think are important current issues facing the shipping, aviation, and insurance industries. Shipping wise, we address, amongst other topics, the future of logistics in Oman, agency law in Kuwait, and maritime debts and arrest in the UAE. On the aviation front, we have considered the implementation of some articles of the Montreal Convention in the UAE and delays caused by airlines stopovers. We have also discussed how insurance claims are generally viewed by UAE courts. Finally, we outline our views of the future of transportation in the UAE.

Best regards,

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Shaping the Future: The Future of Transport in Dubai

The Roads and Transport Authority (RTA) has recently approved its revised Strategic Plan 2017-2021 to align with the Dubai Government's Drive Dubai (10X Initiative), the UAE National Agenda and the Dubai 2021 Plan.

Through the revisions, the RTA's strategic goals have been reclassified into three core drivers: Community, Transit Systems and Internal Efficiency. In simpler terms, this translates to developing smart solutions for transport, roads, and traffic; ensuring integration between mobility and urban planning and make roads and transit systems friendly to all.

In this Article, we consider recent developments in the legislative landscape of transport in Dubai. In specific, we look at the legal developments and initiatives introduced or materialised in the year 2017 that offer 'smart' solutions for mass transport and mobility.

New Laws and Developments

1. The Dubai Integrated Mobility Platform -

Bylaw No. 130 of 2017 issued pursuant to Executive Resolution No. 6 of 2016 Regulating Passenger Transportation by Vehicles

We have previously touched upon the matter of App-based (e-hail) taxi services in Dubai in our Law Update issue of June-July 2016. App-based taxi service providers had operated in legal vacuum until Dubai Executive Council Resolution No. 6 of 2016, Regulating Passenger Transportation by Vehicles ("Resolution No. 6") mandated that the activity of providing passenger transportation by vehicles through phone calls, electronic means, smart applications or any other channel is to become a licensed activity.

Under Resolution No. 6, a company that offers transportation services to its customers through a smart application ("e-hailer") in Dubai must apply to the Public Transport Agency at the RTA to obtain a permit that would allow it to offer passenger transport services through electronic means and smart applications (the "Permit"). The fee to issue or renew the Permit, which is valid for a renewable term of one year, is AED 500. A penalty of AED 5,000 will be imposed if transport services are offered through electronic or smart means without having the requisite Permit.

On 26 February 2017, Bylaw No. 130 of 2017 (the "Bylaw") was issued by the RTA's Board of Directors to further specify the conditions and requirements of transporting passengers in Dubai, whether by taxis or luxury (limousine) cars, including those pertinent to the issuance of the Permit for e-hailers.

In what can be considered an important upgrade to the affair of passenger transport in Dubai, the Bylaw introduced the concept of the "Electronic Platform" or what is otherwise advertised as the

"The Dubai Integrated Mobility Platform is intended to provide Dubai residents and visitors with easy access to all mass transit systems available in Dubai through a single window (smart mobility application). The said mass transit systems will include the RTA's multi-modal transit systems such as the metro, tram, buses, marine transit and taxis."

Dubai Integrated Mobility Platform. This Platform is intended to provide Dubai residents and visitors with easy access to all mass transit systems available in Dubai through a single window (smart mobility application). The said mass transit systems will include the RTA's multi-modal transit systems such as the metro, tram, buses, marine transit and taxis.

In addition, the Dubai Integrated Mobility Platform is projected to integrate the RTA's mass transit systems with transit systems of other entities in Dubai, such as luxury car service of the Dubai Taxi Corporation, Palm monorail and more importantly to integrate the electronic taxi booking services such as Uber, Careem, and others. An important element to consider in the proposed integration of systems between the RTA and e-hailers is that of a realised partnership between the public and private transport sectors in Dubai aimed to offer innovative and economic mobility solutions.

With a view of this projected integration, the Bylaw provides that to obtain the Permit an e-hailer must:

a. Make available the systems, electronic means and smart application(s) necessary to provide the e-hailing service;
b. Connect its systems, electronic means and smart application(s) which are necessary to provide the e-hailing service with the Electronic Platform (the Dubai Integrated Mobility Platform); and
c. Install and connect its systems, electronic means and smart application(s) which are necessary to provide the e-hailing service through the Electronic Platform on/with the smart taximeters recommended by the RTA (which are available in the approved taxis and luxury cars).

By the same token, the Bylaw specifies the conditions applicable to entities desirous of obtaining a permit to transport passengers by taxis and luxury cars, which also include connecting the applicant's electronic systems to the Electronic Platform (the Dubai Integrated Mobility Platform).

Made to coincide with the well known Gitex event, the RTA launched the mobility application named S'hail. As of now , the available transport options are the metro, tram, bus, waterbus, taxi, e-Hail, Uber and Careem services. Dubai's marine transport options, the Palm Monorail, Downtown's Dubai Trolley and the two-seater Autonomous Air Taxi (AAT) service will be integrated at a later stage.

2. Transport and Rental Activities

Executive Council Resolution No. 47 of 2017 relating to road transportation and vehicle rental activity in Dubai.

On 15 June 2017, the Executive Council issued Resolution No. 47 of 2017 ("Resolution No. 47") under which activities involving transport by road and rental of vehicles have now become regulated and licensed activities. This Resolution came as a measure to set standards for and to monitor the companies operating in this sector and to control the quality of the services offered.

The scope of Resolution No. 47 covers an array of transport activities, which includes transport of passengers (in buses on international routes), goods, valuables, packages, foodstuff, furniture, dangerous and radioactive material and other items by specialised companies; and rental activities such as the rental of buses, trucks, recreational vehicles, motorcycles and bicycles. The Resolution also applies to the services of transport of the elderly and sick in non-emergencies, mobile maintenance (mechanical, electric, tyres, and air conditioning) services, vehicle registration, home delivery, logistics, home gas distribution, vehicle fuel distribution and the management of vehicle fleets.

The activities subject to this Resolution, with a total of 52 activities, are listed in Annex 1 of the Resolution.

Resolution No. 47 stipulates that in order to undertake any of the transportation or rental activities listed, the interested party must obtain a permit from the Licensing Agency at the RTA. The permit is valid for a renewable term of one year and must be renewed within 30 days of expiry. Amongst other fees, fees related to the issuance, renewal, amendments of, cancellation or suspension of permits are listed in Annex 2 of Resolution No. 47 and range between AED 50 to AED 5,000. Additional details about the issuance of the permit, such as the terms, conditions, process and required documents will be mentioned in a follow-up bylaw.

Save for government entities, which are exempt, all entities undertaking road transportation and vehicle rental activity must comply with the provisions of Resolution No. 47 within one year of its date of issuance (extendable if deemed necessary by the RTA's General Director and Chairman). This includes entities based in special development zones, free zones, and the Dubai International Financial Centre.

Finally, Resolution No. 47 also defines the fines and penalties for any violations committed and list them in Annex (3). The violations notably include failure to undertake road transportation and vehicle rental activities without permits (fine of AED 10,000), taping or posting any advertisements or promotional material on vehicles without the prior approval of the RTA's Licensing Agency (AED 5,000) and using the vehicle for non-permitted activities (AED 4,000). The Resolution also provides for a grievance procedure, which allows the concerned person/entity to file a complaint within 15 days of being notified of the decision/procedure/measure to be complained against and provides that a (final and conclusive) decision must be issued in the matter of grievance within 30 days of date of complaint.

3. Pay-by-the-Hour Car Rental Activity

Executive Council Resolution No. 49 of 2016 regarding the regulation of pay-by-the-hour car rental activity in Dubai.

As a result of Executive Council Resolution No. 49 of 2016 and bylaw no. 107 of 2017 issued pursuant to it (together, "Resolution No. 49"), Dubai residents may now elect to benefit from the concept of car sharing, whereby they can pick up a car from any location and drop it anywhere else in Dubai and pay for the service by the minute or on an hourly basis.

Resolution No. 49 aims to provide a premium mode of transport at low cost, thus affording Dubai residents with an alternative transportation solution suitable to their needs and budgets. The Resolution also aims to apply best-adopted practice worldwide in car sharing while concurrently seeking to regulate it in an efficient and flexible manner.

Pay-by-the-hour car rental service is a licensed activity, and the requisite license must be obtained from the Licensing Agency at the RTA. Bylaw No. 107 defines the procedures for issuing and renewing the license for the car rental companies and the cars in service. Individuals renting the car should similarly hold a valid driving license recognised by the RTA.

Pay-by-the-hour car rental services are now offered by the RTA in partnership with two firms, Udrive and ekar. The pay-by-the-hour car rental service is one of the 'last mile solutions' afforded by the RTA in addition to feeder buses and taxis. It should be noted, however, that according to Resolution No. 47 pay-by-the-hour car rental services will be allowed for a maximum period of six hours per day.

Looking Forward

Dubai's journey of development continues, as conceptualised in the RTA's revised Strategic Plan 2017-2021 and the different initiatives it has undertaken to realise the vision of making Dubai a global capital of the future, which offers its residents and visitors an effective and seamless transportation experience. One of the key components in realising this vision would naturally mean having the right legal framework to formalise and implement it. While we have seen future forward legislation introduced to regulate the different transport projects envisaged by Dubai, we continue to look forward to laws and regulations that usher in the next chapter in Dubai's innovative and smart development.

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EC Regulation 261/2004: Stopovers do not Increase Compensation, but Further Decisions are Awaited

All Gulf based airlines departing from airports within the European Union [EU] are subject to the provisions laid out in EC Regulation 261/2004 (Regulation 261) which deals with the denied boarding of passengers, cancellations, delays and rules on compensation and assistance to passengers.

Regulation 261 was originally designed to protect passengers who were denied boarding and for cancelled flights, but not specifically delays to the passenger's flight. However, the scope of Regulation 261 was extended in 2011 by the European Court of Justice (ECJ) judgment in Sturgeon v Condor [C 402/7 and C 432/7] so that a passenger who suffers a delay in excess of three hours is entitled to compensation under Article 7(1) Regulation 261 so that:

- For cancelled flights, denied boarding, and flights delayed by three hours or more at the point of destination, compensation is payable:

-250 Euros for flights, 1500 kms or less

-400 Euros for all other intra EU flights, and all other flights between 1500-3500 kms

-600 Euros for all other flights over 3500 kms

- For cancelled flights and flights delayed by five hours or more rights to reimbursement or re-routing
- For cancelled flights and flights delayed by two hours or more (depending on the distance) rights to care (refreshments, meals, accommodation)

By Article 7 (2) Regulation 261, if the carrier offers re-routing in the event of a cancellation, denied boarding or delay then the above amounts can be discounted by 50%. Further, the right to compensation is subject to an "extraordinary circumstances" defence for the carrier so that carriers are not obliged to pay compensation if they can prove that the cancellation is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.

By Article 7(4) Regulation 261 the above distances are to be measured by "the great circle route" being the shortest arc connecting two points on the surface of a sphere, but what is the position if connecting stopovers are involved in the passenger's overall journey and there is more than one flight in that journey?

Further clarification has been given as to the calculation of distance and compensation payable to the passenger in the event of delay in a recent judgment handed down by the ECJ in September 2017, and this may be particularly relevant to Gulf and other non EU carriers, as it also deals with the concept of overall journey and individual flights which make up that journey.

In Bossen v Brussels Airlines C559/16 (Bossen), the ECJ has ruled that the calculation of compensation should be based on the radial distance between the airport of departure and the airport of destination, rather than the actual distance covered. Thus, any calculation of distance should ignore any stopovers taken by the passenger, and the distance should be calculated (using a regular parlance) "as the crow flies", and this should not include any additional miles incurred due to a connecting stopover.

In Bossen, the passengers travelled from Rome to Hamburg via a connecting flight from Brussels. The flights were operated by the EU carrier Brussels Airlines entirely within the EU. The first leg (Rome to Brussels) was delayed so that the passengers arrived some 40 minutes late, and they therefore missed the onward flight to Hamburg. The passengers were placed on the next available flight to Hamburg, but by the time they reached destination they had suffered a delay of 3 hours and 50 minutes. The delay and right to compensation was admitted by the airline and it was also admitted that the Regulation 261 applied to the whole journey.

If the calculation of distance was based on Rome to Hamburg directly this would be a distance of 1173 km, and this would mean that the passengers would only be entitled to EUR 250 in compensation. If the calculation of distance was Rome to Brussels and then onwards to Hamburg, this would be a distance of 1656 km, and the passengers would be entitled to EUR 400.

The ECJ decided that the difference highlighted above between a journey with a connecting flight and a journey consisting of a direct flight "did not exacerbate the inconvenience suffered by passengers "and 'therefore when determining the amount of compensation, account should be taken of the distance between the first point of departure and the final destination excluding any connecting flights". Thus the passengers claim was calculated based on direct distance between Rome to Hamburg (a distance of 1173 km) and the passengers would only be entitled to EUR 250 in compensation.

Clarity is given by Bossen for flights which occurred within the EU on an airline operated by an EU community carrier, but the question remains for Gulf carriers and other non EU operators, what is the position for delay claims where connections are missed outside of the EU? Also, Bossen may have interesting consequences if a claimant seeks to argue that Regulation 261 should apply to the passengers' entire journey including outside the EU, rather than to individual component flight sectors.

As far as Gulf based carriers are concerned (and indeed any non-community carriers), it is important to look at the scope of Regulation 261 and when it will apply to them and this is set out in Article 3.1 so that:

"This Regulation shall apply:

1. To passengers departing from an airport located in the territory of a Member State to which the [EC] treaty applies
2. To passengers departing from an airport located in a third country to an airport situated in the territory of a Member State to which the [EC] treaty applies, unless they received benefits or compensation and were given assistance in that third country if the operating air carrier of the flight concerned is a community carrier".

Thus, Gulf based carriers are potentially liable under Regulation 261 if a flight is cancelled, passengers are denied boarding or delayed when leaving any EU airport. Conversely, Gulf based carriers are not Community carriers under Regulation 261, Article 3.1 (b) and, they are not liable for flights delayed when the flight starts from a country outside of the EU. But what about connecting flights where the flight starts from an EU airport?

Gulf carriers have tended to argue that each flight is a separate unit of their transport and needs to be considered separately for the purposes of compensation under Regulation 261, whereas it is not unusual for a journey starting in the EU and operated by a Gulf carrier to comprise of two or more flights, the first from any EU Member State to a non Member State (e.g. London to Dubai) and then there is a connecting flight between two non member states (e.g. Dubai to Sydney).

Further decisions are awaited which deal with these concepts, including a recent case involving a Gulf carrier in the Court of Appeal of England and Wales, whereby a final decision is soon to be handed down. The Court of Appeal of England and Wales will need to consider, among several issues in dispute, whether Regulation 261 applies to delayed flights which are operated by non EU carriers and where a second connecting flight arrives more than three hours late following departure from an airport outside Europe. The decision is eagerly awaited and we shall hopefully obtain clarification on an issue which is of immense importance to all Gulf and non EU airline carriers.

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'Can I Arrest a Ship in the UAE as Security for Foreign Substantive Proceedings?'

For the last few years, the shipping industry has had to tighten its belt and ride out a tough and testing economic cycle. Debt collection has been challenging and litigation has been on the rise. Such a climate has resulted in increased enquiries as to whether a creditor can arrest a vessel in UAE waters to secure its substantive claim in a foreign jurisdiction.

In this article, we consider vessel arrest in two different scenarios: firstly, where the creditor must bring court proceedings in a foreign jurisdiction, and second, where the creditor must commence arbitration in a foreign jurisdiction.

Establishing Jurisdiction

We proceed on the assumption that a creditor can arrest a vessel for a maritime debt under UAE law and that the UAE Court considers itself seized of jurisdiction to grant such arrest. However, although the UAE Courts may have jurisdiction under Federal Law No. 26 of 1981 (the "Commercial Maritime Law") to order the arrest of a vessel, jurisdiction may not automatically extend to hearing the substantive claim.

Article 21(3) of Federal Law No. 11 of 1992 ("the Civil Procedure Law") confers jurisdiction upon the UAE Courts where a claim concerns obligations concluded or performed in, or the execution of the obligation was conditioned in, or the incident giving rise to the claim occurred in, the UAE. Article 21(7) provides for jurisdiction of the UAE Courts to hear claims where the defendant is domiciled or resident in the UAE.

Article 21(2) of the Civil Procedure Law stipulates that the UAE Courts shall have jurisdiction to hear a claim against a foreign defendant who has no domicile or residence in the UAE where the subject-property is in the UAE. The Arabic interpretation of the word 'property' is understood to extend to a vessel within the territorial waters of the UAE.

In addition to the circumstances set out in the Civil Procedure Law above, the UAE Courts will have jurisdiction to hear the substantive claim after granting a vessel arrest in the following instances, as prescribed by Article 122 of the Commercial Maritime Law:

1. If the claimant has a usual place of residence or head office in the UAE.
2. If the maritime debt arose in the UAE.
3. If the maritime debt arose during a voyage during which the arrest was affected on the vessel.
4. If the maritime debt arose out of a collision or assistance over which the Court has jurisdiction.
5. If the debt is secured by a maritime mortgage over the arrested vessel.

Once an arrest has been granted, an arresting party must file a substantive claim before the applicable UAE Court within eight calendar days from service of the arrest order against the ship. What constitutes service differs between the Emirate courts. If

a foreign dispute resolution clause applies, the arresting party must still file an application on or before the eighth calendar day to seek confirmation or verification by the UAE Court of the arrest. The same day the arresting party must also either file submissions on the merits of the claim or to request to stay the substantive proceedings pending a foreign court judgment or arbitral award.

Failure to file such an application within the eight-day deadline will give the arrestee the right to apply to the UAE Court for the lifting of the arrest. Additionally, a fresh arrest application by the arresting party would be required, including corresponding court fees, in order to re-arrest the ship.

Court proceedings if the arresting party evidences commencement of foreign court proceedings in accordance with the parties' contractual agreement. The UAE Court will only assess whether the evidence of foreign litigation is sufficient proof that the parties are resolving the dispute as per the contractual agreement. It will not look to seize jurisdiction at that point. Incidentally, the UAE Courts do not typically determine the question of jurisdiction at the outset of the claim, but will only consider jurisdiction at the time of handing down judgment.

However, if the claimant seeks to resolve the dispute substantively through the UAE Courts, according to UAE law the UAE Courts are likely to accept jurisdiction if jurisdiction is conferred on it under UAE law. Where jurisdiction is not otherwise conferred upon the UAE Courts, the UAE Court will dismiss the claim for lack of jurisdiction at the time it delivers judgment. The attitude of the UAE Courts to accepting jurisdiction can be described as broad and amenable.

"Arresting parties should consider whether arresting a vessel in the UAE to secure a foreign court action is likely to yield the desired result at the UAE execution stage"

Foreign Court Proceedings

The general practice of the UAE Courts is to disregard a foreign litigation jurisdiction clause where the UAE Courts have jurisdiction according to UAE law and when the claimant/arresting party seeks to proceed with UAE litigation.

For example, in the instance of a dispute arising from a maritime mortgage, Article 122(e) of the Commercial Maritime Law stipulates that the UAE Courts have jurisdiction over mortgages without specifying whether those mortgages are foreign-registered or UAE-registered. The UAE Courts have typically interpreted this article to confer jurisdiction upon the UAE Courts in respect of disputes arising from all mortgages, whether UAE or foreign registered. The UAE Courts have accepted jurisdiction regardless of the presence of a foreign governing law and jurisdiction clause, for example when the contract stipulates that it is governed by English law and that disputes shall be heard in the sole jurisdiction of the High Courts of England and Wales.

Whether the UAE Court in the concerned Emirate disregards the parties' jurisdiction clause largely depends on whether the claimant seeks a stay of UAE proceedings or not. In our opinion, the practice of the UAE Courts appears to be that it will accept a request by the arresting party to stay UAE

If a foreign litigation dispute resolution clause is disregarded, the defendant can contest jurisdiction in its defence submissions or can file a grievance (challenge) to the court on the grounds of jurisdiction. However, as explained above, where the UAE Court has jurisdiction pursuant to UAE law, regardless of the jurisdiction clause, the defence and grievance are likely to fail. Additionally, neither the defence nor the grievance would provide prompt relief because the grievance usually takes 2-3 months to conclude and the question of jurisdiction is only considered at the time of judgment.

Equally, if the defendant wishes to frustrate foreign court proceedings, it could seek to have the merits heard before the UAE Court. However, such a scenario may pose problems for a claimant if an anti-suit injunction is sought by the defendant through the courts of the jurisdiction agreed to in the contract, such as the English Courts for example.

Notwithstanding the above, the biggest deterrent for claimants/arresting parties arresting vessels bringing claims in foreign courts is the difficulty encountered at the execution stage through the UAE Courts. Without reciprocal enforcement agreements in place between the UAE and the foreign jurisdiction where the action is pursued, attaining recognition and enforcement of the foreign court judgement before the UAE Courts is likely to be problematic. Accordingly, the arresting party may fail to procure an enforceable foreign judgment which it can actually execute against the arrested vessel, nullifying the purpose of the vessel arrest and rendering the foreign judgment ineffective.

Reciprocal enforcement agreements are in place between the UAE and Gulf states in addition to other Arab States within the Arab League. However, no bi-lateral agreement exists between the UAE and England and Wales where many maritime matters are adjudicated. Furthermore, recent decisions of the Joint Judicial Committee set up by Decree 19 of 2016 suggests that it is now unlikely that a foreign court judgment will be recognised and enforced in onshore Dubai through DIFC Court reciprocal enforcement mechanisms.

Foreign Arbitration

Where an arbitration agreement exists between the parties, the process of arresting a vessel as security for a foreign arbitration claim is similar, procedurally, to a foreign court action. As with a foreign court action, where there is a maritime debt as defined by the Commercial Maritime Law, the UAE Court will still automatically assume jurisdiction to arrest the vessel, regardless of a foreign arbitration clause in the parties' agreement. Importantly, there are two implications where a foreign arbitration clause exists that result in increased prospects of success for claimants wishing to secure its foreign claim.

Firstly, the UAE Courts will not disregard a foreign arbitration clause even if they would otherwise have jurisdiction to hear the claim under the Civil Procedure Law and Commercial Maritime Law. This is because the UAE Courts tend to recognise the overarching agreement of the parties to arbitrate, as opposed to litigate, a dispute. To disregard a foreign arbitration clause where the UAE Courts would otherwise have jurisdiction would be to deny the parties the right to arbitrate, a right recognised in Article 203 of the Civil Procedure Law. Consequently, parties wishing to secure a foreign arbitral claim can be confident that the UAE Court will not intervene in the jurisdiction of the foreign arbitral institution to hear the merits of the claim.

Secondly, where the foreign arbitration is conducted in a State that is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 enforcement of the foreign arbitral award in the UAE tends to be straightforward (subject to applicable State reservations in the text of the Convention). Therefore, generally speaking, and subject to the arresting party adhering to the Civil Procedure Law before referring to foreign arbitration, arresting parties are unlikely to encounter difficulties in executing their foreign arbitral awards against the secured vessel or substitute security.

Conclusion

Where the claimant/arresting party arrests a vessel in the UAE in order to secure a foreign litigation claim, it is likely to be able to maintain the UAE arrest for the duration of the foreign court proceedings until final foreign judgment, on the condition that it satisfies the UAE Court, within eight calendar days from the arrest, that foreign litigation has been properly commenced.

However, unless there is a bi-lateral convention for recognition and enforcement of foreign judgments in place or the executed verdict is issued by a GCC or Arab League member state, execution of a foreign judgment against an arrested vessel in the UAE Court is likely to be, at the very least, difficult. This means arresting parties should consider whether arresting a vessel in the UAE to secure a foreign court action is likely to yield the desired result at the UAE execution stage. In considering enforcement prospects, arresting parties should also be cognisant that substantive claims may be heard before the local courts if the UAE Courts have jurisdiction under UAE law, notwithstanding the foreign jurisdiction clause.

Where a party arrests a vessel to secure its foreign arbitration claim, the arresting party is able to sustain a vessel arrest pending procurement of a final foreign arbitral award subject to compliance with the Civil Procedure Law. It will be able to do so without the risk of the UAE Courts dismissing the foreign arbitral award and claiming jurisdiction itself, or of encountering difficulties executing the foreign award against the vessel due to the UAE Courts' ratification of the New York Convention.

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Insurance Law: Requirements for the Validity of Exclusion Clauses

When Form Trumps Substance

Article 1028(c) of the UAE Civil Code (Federal Law No.5 of 1985) provides that a provision in a policy of insurance is void if it:

1. "relates to a circumstance that leads to the avoidance of the contract or to the lapse of the right [to indemnity] of the assured"; and
2. is not "shown conspicuously".

Article 28 of the Insurance Regulation Law (Federal Law No.6 of 2007)) has a similar affect, but goes further in its protection of the insured. It requires that "terms discharging [an insurer] from liability in the policy must be highlighted in noticeable writing and contrasting colour and must be approved by the insured". By "approved" Article 28 appears to mean 'acknowledged' by the insured. In practical terms, it means that the insurer should have the policyholder place its initials or signature next to any term that discharges the insurer from liability under the policy.

Compared to Article 1028(c) of the Civil Code, Article 28 of the Insurance Regulation Law imposes a more onerous obligation on insurers. If a provision intends to exclude or limit the liability of the insurer to indemnify the insured, then, in order to be enforceable, the text of that provision must be:

1. in a different font size from other provisions in the policy; <u>and</u>
2. in a different colour from other provisions in the policy; <u>and</u>
3. "approved" by the insured.

All this sounds straightforward enough.

And yet, in most insurance policies issued in the UAE, these requirements are rarely complied with. The result is that any provision in an insurance policy that excludes or limits the insurer's liability to the insured will not be enforceable if those provisions do not comply with Article 28 of the Insurance Regulation Law and/or Article 2018(c) of the Civil Law.

The law is extremely clear on this point. So it is surprising how many policies in the UAE continue to be entered into that contain provisions that clearly do not comply with Article 28 of the Insurance Regulation Law and/or Article 2018(c) of the Civil Law.

The reason for this near-universal non-compliance is not immediately clear. It may be due to the fact that many insurance wordings used in UAE policies are

"Any provision in an insurance policy that excludes or limits the insurer's liability to the insured will not be enforceable if those provisions do not comply with Article 28 of the Insurance Regulation Law and/or Article 2018(c) of the Civil Law".

borrowed from wordings drafted abroad – usually in the UK – which, when incorporated into local policies, are not then amended to comply with local laws. Many local insurers also reinsure 90% or more of their local risks with large offshore reinsurers and often these reinsurers insist upon their own wordings being used in the underlying policy, apparently ignorant of the formatting requirements that UAE law requires exclusion clauses to adopt.

Whatever the explanation, the fact remains that any insurer in the UAE who has denied or reduced, or proposes to deny or reduce, their liability to the insured on the basis of a provision caught by Article 28 of the Insurance Regulation Law and/or Article 2018(c) of the Civil Law is vulnerable to a successful legal challenge by the insured if that provision or those provisions do not comply with the requirements set out above.

For that reason, UAE insurers would be well advised to review their current policy wordings and, where these wordings do not comply, they should amend them to meet the formatting requirements set out above.

Announced Changes to Minimum Ownership Levels of UAE Insurers

On 14 May 2017 the cabinet of the UAE Federal Government announced changes to the law that previously restricted foreign ownership to not more than 25% of the share capital of a UAE insurance company.

Under Cabinet resolution No.(16) of 2017, non-GCC foreigners will now be able to own 49% of the share capital of a UAE insurer subject to any conditions and regulations set by the UAE Insurance Authority. The Insurance Authority is yet to pass a resolution setting out these conditions and regulations. We will provide a further update once it has done so.

The change is a welcome development for foreign insurers wanting to gain greater exposure to what remains a very underpenentrated insurance market relative to other established insurance markets.

At the same time, the change in the law continues to limit non-GCC foreigners to a minority ownership interest in UAE insurers. For that reason, measures that have been used to date to allow foreign shareholders to exercise practical control over their investees, such as nominee and management agreements, none of which are ideal or without risk, will continue to have a place unless and until a change in the law occurs permitting non-GCC foreigners to own a majority interest in a UAE insurance company.

Al Tamimi & Company's Insurance team regularly advises on the effect and enforceability of exclusion clauses in insurance policies. For further information please contact Yazan Saoudi (y.saoudi@tamimi.com) or Justin Carroll (j.carroll@tamimi.com).

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Transportation Disputes: Can Arbitration Deliver the Goods?

Introduction

The transport sector has witnessed a great deal of growth across the MENA region. Following such growth, transport disputes are naturally expected to increase. Transport contracts and/or cases often involve a complex and specialised set of laws and rules. Given the complex nature of transport disputes, such disputes can be caught up in litigation for years, with possible stages of appeal.

Arbitration provides certain advantages in the resolution of transport disputes. Parties can appoint an arbitrator who is specialised and knowledgeable in the relevant transport field. Moreover, the arbitral procedure is usually private and confidential (on which, please see our colleagues' article in this edition of the Law Update), and is more suitable for sensitive commercial transport matters. Arbitration can also be cost effective and faster than litigation, since there is usually no appeal. In addition, an arbitration award can be enforced in multiple jurisdictions, pursuant to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("the New York Convention") and/or regional or bilateral treaties. Recognising the advantages offered by arbitration, parties are encouraged to consider arbitration as a forum to resolve transport disputes.

This note reviews the extent to which arbitration is utilized in resolving disputes across different modes of transport, namely maritime, aviation, and land sectors (the interesting area of space transport is not considered here).

Maritime

The United Kingdom has a long history of maritime transport and has been viewed as a key jurisdiction for resolving maritime disputes. The London Maritime Arbitrators Association ("LMAA") is considered to be a prominent association of maritime arbitrators. The LMAA aims to support maritime arbitrations, but does not administer or supervise the arbitration proceedings. Unlike other organisations (such as the Chambre Arbitrale Maritime in Paris, which is discussed below), the LMAA will only appoint arbitrators when the arbitration agreement provides for it. The LMAA Terms (2012) govern the majority of London maritime arbitrations.

The Chambre Arbitrale Maritime in Paris ("CAMP") is another prominent and leading arbitration centre. The CAMP supports international maritime arbitrations and supervises arbitration proceedings. The CAMP offers Arbitration Rules (2014) which govern the arbitration proceedings.

The LMAA and CAMP have been popular venues for maritime arbitration and attract disputing parties from the MENA region to resolve their disputes pursuant to its Rules.

Until recently, there were no specialised maritime arbitration institutions in the MENA region. Parties would usually opt to arbitrate their international maritime disputes in the LMAA or CAMP (or to a lesser extent with the Hong Kong Maritime Arbitration Group or the Transport and Maritime Arbitration Rotterdam-Amsterdam foundation).

However, in 2016, the Emirates Maritime Arbitration Centre ("EMAC") launched in the United Arab Emirates ("UAE"), becoming the only specialised arbitration centre in the MENA region. EMAC thus filled a gap in the international maritime arbitration market by establishing the first regional maritime arbitration centre.

EMAC is based in the Dubai International Financial Centre ("DIFC"), a financial free zone in the emirate of Dubai. The DIFC is the default seat of EMAC arbitration and the DIFC Courts will have supervisory jurisdiction (unless parties agree otherwise). The DIFC Courts and the Dubai Courts entered into a Memorandum of Guidance which, together with the Dubai Law No 12 of 2014, provides for the reciprocal enforcement of judgements and awards without the review of their merits. An EMAC award ought to be enforceable in the emirate of Dubai, and subsequently throughout the UAE.

Moreover, MENA parties opting into EMAC arbitration will enjoy the advantage of an internationally enforceable award, as any final award rendered in the DIFC Court ought to be enforceable in any New York Convention state pursuant to the New York Convention (subject to the limited grounds for challenge under the New York Convention).

Aviation

Aviation disputes occur at different levels, namely interstate, business-to-business and business-to-consumer disputes.

Aviation transport is largely governed by the Convention on International Civil Aviation ("Chicago Convention"). The Chicago Convention developed a unified mechanism for technical and economical regulation of international air transport. It also developed the International Civil Aviation Organization ("ICAO"), a United Nations agency specialised in managing and administrating the Convention. ICAO works with the member states of the Chicago Convention and industry groups to reach consensus on international civil aviation Standards and Recommended Practices ("SARP") in support of the civil aviation sector. The International Air Transport Association ("IATA") is the trade association for the world's airlines; it supports many areas of aviation activities and helps formulate industry policies on critical aviation issues. However, these bodies are not usually considered in the resolution of account disputes.

In relation to interstate disputes, the leading international dispute resolution forums for resolving international aviation disputes are the ICAO Council and the Dispute Settlement Body ("DSB") in the World Trade Organization. The World Trade Organisation may have jurisdiction over certain aviation disputes pursuant to the General Agreement on Trade in Services ("GATS"), which governs air transport services excluding traffic rights and services directly related to traffic. While private parties have no right to directly access proceedings before the DSB (much of whose procedures resembles a court or arbitral tribunal), they may enjoy indirect access through established complaint mechanisms (e.g., private complainants may raise WTO-based objections about the regulations of other countries pursuant to the European Trade Barriers Regulation).

Aviation disputes require specialised knowledge of technology, science, and air law. Scholars have identified the trend of choosing arbitration in bilateral agreements since 1962. For instance, the Open Skies Agreement between the US and the EU has stipulated that arbitration is the sole dispute resolution mechanism to resolve any dispute.

In the case of business-to-business and business-to-consumer disputes in the MENA region, parties involved in an aviation dispute tend predominantly to resolve their cases through litigation. Aviation disputes, specifically disputes arising out of airport operations and liability claims (such as claims related to loss and destruction of cargo or baggage, injury and death, and delays in transport), are often resolved through the courts of competent jurisdiction (the courts of England & Wales tend to be a popular jurisdiction for aviation disputes); in instances of death or injury (or any case that relates to the jurisdiction's public policy), parties will tend resolve their dispute in the court/jurisdiction where the incident occurred.

In relation to business-to-business transactional disputes, parties can choose to include an arbitration clause in their agreements. For the

"Recognising... the advantages offered by arbitration, parties ought to be encouraged to consider arbitration as a forum to resolve transport disputes"

reasons stated earlier, parties may be well-served to resolve their aviation disputes arising out of transactional agreements (such as leasing and financing) through arbitration. Unlike the maritime sector, there is no specialised arbitration centre for resolving aviation disputes in the MENA region. Parties can resolve their disputes through ad hoc or institutional arbitration (e.g., before leading arbitration centres such as the London Court of International Arbitration ("LCIA"), International Chamber of Commerce ("ICC"), and Dubai International Arbitration Centre ("DIAC")).

Land Transport

Similar to the aviation sector, there is no specialised arbitration centre for resolving land transport disputes in the MENA region. While arbitration (both ad hoc and institutional) remains a popular choice for resolving transport disputes, the parties often opt in to other foreign jurisdictions with specialised arbitration centres (or settle for ad hoc arbitrations in their jurisdiction). Parties also often choose to arbitrate their land transport disputes in local non-specialized MENA arbitration centres, such as DIAC.

In the Netherlands, the Transport and Maritime Arbitration Rotterdam-Amsterdam foundation ("TAMARA") provides a platform for arbitration in the areas of shipping, shipbuilding, transport, storage, logistics and international trade. It is also a popular forum for the resolution of maritime disputes. The TAMARA offers parties the possibility of e-arbitration, where parties conduct the arbitration proceedings on an online platform.

In addition, the International Arbitration Court for Transport Justice ("IACTJ") in Romania is another independent body specialised in arbitration in the area of transport and other related activities such as customs brokers' and freight forwarders' activities, storage and handling of goods, postal and courier services. The IACTJ is operating at the Romanian Association of International Road Transport according to the rules applicable to all the disputes submitted to its jurisdiction pursuant to a given arbitration agreement.

Investment Treaty Arbitration

With the advent of bilateral investment treaties ("BITs") (and free trade agreements ("FTAs")), there has been an explosion in dispute settlement arrangements creating direct access for private investors in investment-related disputes with host States (unlike, say, interstate WTO disputes). Hence, foreign investors who have invested in the transport sector of a given host State may have direct access to international arbitration against the relevant host State where it violates the terms of the applicable BIT or FTA in its treatment of the transport-related investment.

Conclusion

In concluding this brief review, we observe that arbitration generally offers an attractive forum for resolving many types of transport-related disputes at various levels, especially at the business-to-business level. However, the precise choice of forum for the resolution of disputes must be considered with specialized external or in-house counsel on a case-by-case basis, having regard to all relevant factors. EMAC is to be congratulated on setting a wonderful precedent by providing MENA-based parties in the maritime transport sector with a specialized arbitration centre in the UAE; it remains to be seen whether similar developments will follow in other transport sectors in the MENA region.

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Ship Finance Review: Considering "SHIPTERM" & the UAE Secured Transactions Law

In this article the authors consider developments affecting regional ship finance. The article starts by assessing a new standardised term-sheet by BIMCO, which is aimed at ship finance transactions. Attention is then given to developments in the UAE regarding secured transactions law.

1. BIMCO Enters Ship Finance with Standardised Term-Sheet

Regional banks and financial institutions in most ship finance transactions were accustomed to either the standard Loan Market Association ("LMA") or Asia Pacific Loan Market Association ("APLMA") term-sheets, or ad hoc terms sheets internally developed within such banks and financial institutions. These ad hoc arrangement led to significant time constraints, often requiring substantial input from different stakeholders to fully cover the bespoke ship related terms and conditions (e.g.; security packages, marine insurances, covenants, and undertakings).

Earlier this year a new standardised term-sheet aimed specifically at bi-lateral ship finance transactions was introduced by the Baltic & International Maritime Council ("BIMCO"). The standard form document, named SHIPTERM, is the first of its kind by BIMCO which has otherwise avoided the ship finance sector. BIMCO explain that the term-sheet is intended for secured term loan ship financing transactions between a single lender and one or more affiliated borrowers. The term-sheet is intended to be indicative only and accordingly non-binding in nature.

Operation

BIMCO have retained its familiar standard form style in SHIPTERM. Part I requires input in boxes, many of which are cross-referenced to Part II provisions, being the substantive clauses, followed by Annexures. Interestingly SHIPTERM does not provide for signatures by the parties, purportedly testament to its non-binding nature.

In terms of length, SHIPTERM spans only sixteen clauses. BIMCO's subcommittee, which were tasked with its drafting, explain that a balance was sought regarding length; being aware market practice does vary. The subcommittee further explain its caution against a document that was too long, which may risk simply becoming a first draft of the forthcoming facility agreement.

SHIPTERM includes many provisions common to generic term sheets. Its distinguishing factor is the inclusion of bespoke maritime elements. Clause 12, for example, outlines covenants. Here parties will find a section labelled "Vessel Covenants" which contains 10 characteristic ship finance covenants. These include, amongst others; maintaining registrations, restrictions on change of ownership, class maintenance, restrictions on modifications, inspections, and encumbrances.

Other central clauses also seek to address maritime specific issues. Clause 9 considers security. The clause outlines a traditional ship finance security package, containing; a first preferred ship mortgage, assignments of insurances and earnings, assignment of charterparties, and share pledges. Clause 10 continues to address insurances. The nature of cover required similarly caters to a ship finance setting, requiring; hull & machinery, P&I, war risks, and loss of hire.

Application

Most banks and financial institutions in the region have their own in-house term sheets, many of which seek to incorporate standard LMA or APLMA provisions. The difficulty often encountered in such templates is the insufficiently of shipping specific provisions. The authors suggest it is unlikely that SHIPTERM will act as an entire substitute, but more probable that it will play an important role as a check-list for amendments to the standard in-house term sheet. This is especially likely for banks and financial institutions with limited exposure to the ship finance sector.

2. Developments in UAE Secured Transactions Law

In addition to vessel mortgages and share pledges, it is typical in ship finance transactions to secure loan facilities by way of an assignment of earnings (or receivables), an assignment of insurances, and a pledge over collection accounts. Historically it has been challenging to structure security or collateral over cash flow arising out of the revenues of a mortgaged vessel, due to the floating nature of the assets. There has been a welcome change to the secured transaction law through the promulgation of Federal Law No. 20 of 2016 concerning the Mortgage of Moveable Assets to Secure a Debt ("Movable Assets Security Law"). The Movable Assets Security Law stands to fundamentally change the ability of lenders to take effective security over moveable assets, a problem both lenders and debtors have struggled with for some time.

Here the authors consider the Movable Assets Security Law's particular relevance to ship finance transactions. A more general update on the legislation, and progress regarding its implementation, may be found in this edition of Law Update's article entitled "The age of registration: An update on the Movable Assets Security Law".

Recognition of Certain Securities

The Movable Assets Security Law now recognises the assignment of rights and receivables as well as security over current and operating accounts - such securities being integral to ship finance transactions. This reform now allows lenders to take security over rights or receivables (e.g. charterparty earnings) that exist, or may arise in the future. Such receivables also need not be fixed or identifiable, which previously was a notable requirement. Further, given the specific inclusion of current, savings, and operating banks accounts under the Movable Assets Security Law, it is now possible to create security over bank accounts with a fluctuating balance, provided such security fulfils the registration requirements discussed below.

Establishment of Security Registry

The Movable Assets Security Law requires the establishment of an official security registry where recognised security interests (including the assignment of earnings and account securities) should be registered. Such registration affixes priority over the security instruments in favour of the mortgagee. It is important to note that any security over such assets created prior to the enactment of the Movable Assets Security Law need to be registered within twelve months from the date of the enactment of the law. Lenders should be mindful of these registration requirements as and when securities are officially set up. The Movable Assets Security Law does not permit registration of insurance assignments, unless intrinsically linked to the registered movable asset. Therefore, if any pledge over movable assets connected to a vessel (e.g. tools, spares, or assets of an under construction vessel) is registered, then assignment of any insurance connected with such pledge may possibly also be registered.

The security registry will not be a closed registry and lenders and other interested parties will be able to directly obtain search certificates from it to verify the particulars of any existing security (and any priorities) over movable assets of the debtors. Finally, in terms of enforcement, the Movable Assets Security Law provides different options ranging from 'self-help remedies' (in the form of set-offs, repossession, private sales, etc) to more structured court led enforcement processes.

Recommended Steps

Whilst the Movable Assets Security Law will likely be supplemented by Cabinet resolutions and executive regulations (which will provide further insights into the process and practice), it is recommended for banks and financial institutions to review their existing ship finance security packages or standard security documents in light of the Movable Assets Security Law. It is further recommended that any existing or standard security documents (e.g. assignment of earnings, account pledges or asset pledges) should be amended to enable registration as and when the security registry is established.

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Innovations and IP Protection in Transport: from Industrialization to Computerization

Evolution and improvements in technology have allowed man to travel, expand and explore far reaching territories. The history of transport has involved boundless technological innovations, and just like many other industries, the innovation in the transport industry is quickly evolving at a rapid pace with industry leaders striving towards more efficient, smarter, safer and consumer friendly solutions, It is crucial for companies in this industry, and particularly start-ups, to be aware of the necessity and importance of protecting their innovative products and processes through securing intellectual property "IP" rights in order to ensure their staying power in the industry and boost their competitive advantage over an already crowded market.

This article explores innovations in the transport field and provides various examples of the IP protection strategies of current innovators and market leaders, and discusses how IP protection plays an essential role in providing a competitive edge to businesses.

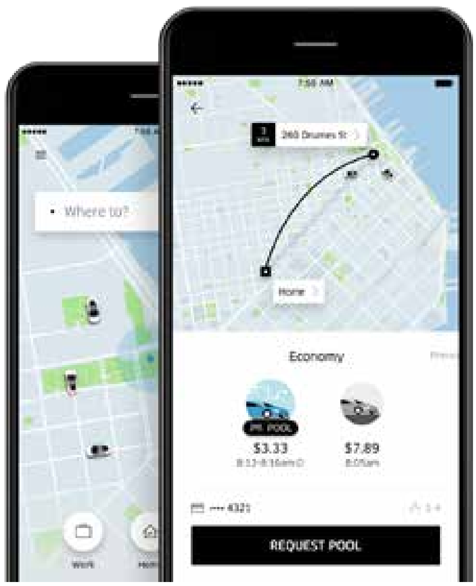
The first important technological advancement in transportation occurred with the industrial revolution in the industrial age which began around 1760 and brought fundamental innovations replacing hand-tools with power-driven machines. Most innovations at that time were on the mechanical and automation side of things. Another important flow of innovations came with the information revolution at the information age which brought an important realignment in the direction technology has been evolving, with the shift from industrialization to computerization.

Industrial Transportation Era

In 1769, Nicolas-Joseph Cugnot, a French military engineer, built a steam-powered tricycle for hauling artillery – leading to one of the initial inventions in the transport industry. The tricycle's single front wheel performed both steering and driving functions, and it could travel at 2.25 miles per hour (with four passengers) for about 15 minutes. Years later, two men, Karl Friedrich Benz and Gottlieb Daimler, filed their patents on the same day — January 29, 1886. Karl Friedrich Benz's three-wheeled vehicle included an internal combustion engine with an integrated chassis. Gottlieb Daimler along with Wilhelm Maybach invented a motorized carriage – a four-wheeled automobile with a gasoline engine. Later on, Henry Ford in 1942, patented an automobile made almost entirely of plastic, attached to a tubular welded frame.

Karl Friedrich Benz: Three-wheeled vehicle

Gottlieb Daimler: Motorized carriage



Modern Transportation Era

As time passed, countless inventions and discoveries arose as solutions to transportation limitations leading to reduced travel time and capability to transport larger loads. Innovation in transport has since progressed by leaps and bounds to the most recent interest of researchers, autonomous vehicles.

Google has been testing self-driving car technology since 2012 under the 'Google X' project and has driven over a million miles. Several other car manufacturing and technology companies actively developing the autonomous vehicle technology are - Apple, Baidu, Toyota, Robert Bosch, Nissan, General Motors, etc. News reports forecast that nearly 21 million driverless cars will be driven on roads globally by the year 2035. The UAE government in its pursuit of global competition has also committed to the implementation of autonomous vehicles in the coming years. Indeed for the UAE, the possible benefits of autonomous vehicles are enormous: the Dubai Future Accelerator estimates a 90 per cent reduction in UAE traffic fatalities, 80 per cent reduction in tailpipe emissions and 90 per cent reduction in traffic congestion. Google has been granted a patent for the "autonomous car" under patent Number US8078349B1 to secure ownership and exclusivity of this innovation.

The transportation services industry has also taken notice of the innovations in autonomous vehicles, with companies like Lyft and Uber currently testing autonomous vehicles around the world to replace drivers. These companies began with an innovative concept to make use of the smart phones that consumers are constantly relying on for daily tasks. With applications like Uber, smartphone users can now make finding a taxi much more convenient. Users can estimate the fare, pay for the taxi through an already linked credit card, leave a tip and get a receipt, all at the touch of a button.

In efforts to diversify their assets and stay ahead of the curve in terms of innovation, Uber has also recently expanded to offering food delivery services. Though Uber started with black cars at the push of a button, it now deals with on-demand carpooling to food delivery and presently operates in 633 cities worldwide. At the heart of any company's resilience and competitive edge, is its branding and innovation strategy and how strongly they protect their intellectual property assets.

Uber's Intellectual Property

Uber has received substantial protection for its logos, app icons and designs. This reduces the risks of competitors infringing on Uber designs and interfaces. Uber has trademarked logos of the various services it offers as well as several icon designs. Since user interfaces are not eligible for protection under the trademark law, Uber has obtained design patent protection for its user interfaces. This protection helps in eradicating customer confusions by preventing competitor companies from mimicking the Uber app interfaces.

Uber changed its logo to the image on the right in 2016 to showcase the brand's flexibility and evolution. Uber states that it is inspired by the basic building blocks of technology and the world.

Uber's main strategy in protecting its intellectual property is through its utility patent protection. Uber currently owns utility patents related to business methods. These have come under severe scrutiny in patent litigation and within the United States Patent and Trademark Office. The earliest filing of an Uber patent in the US was in March 1996 and the most recent patent publication in the US was on July 11, 2017.

Initially, patents filed by Uber dealt with dynamically adjusting prices for services, determining a location related to on-demand services through use of portable computing devices, dynamically providing position information of a transit object to a computing device etc. Later on, Uber patents were filed based on splitting a fee for an on-demand service, optimizing selection of drivers for transport requests, providing notifications to devices based on real-time conditions related to an on-demand service and trip planning and implementation. However recent Uber patents are focused on autonomous vehicle with features like providing remote assistance to an autonomous vehicle, autonomous vehicle operated with guide assistance of human driven vehicles, autonomous vehicle with independent auxiliary control units, intelligent lens masking system etc..

A new security feature has been introduced by Uber in the UAE earlier this year (after a successful pilot test in the US) – to protect both drivers and passengers. A driver verification system will prompt drivers to verify themselves by uploading their "selfie" photograph, which is then compared to the driver's profile photo to ensure a match. This feature will hence make rides safer and prevent fraudulent acts. Some other important innovations from Uber include: an affordable black-car service, offering 'semi-luxury' and 'luxury' on-demand vehicles, incentivizing Uber drivers through a star-rating system for responsible driving and for keeping their cars clean, a 'Surge Pricing' system which incentivizes more drivers to come on the road when times are busy, and the idea of a no-tipping car-service. In September 2016, Uber launched its first self-driving car services in Pittsburgh, using a fleet of Ford Fusion cars each equipped with 20 cameras, seven lasers, GPS, LIDAR (Light Detection and Ranging) and RADAR (Radio Detection And Ranging) equipment that enables the car to create a three-dimensional map utilizing landmarks and other contextual information to keep track of its position. In December 2016, Uber also began using self-driving Volvo XC90 SUVs in its hometown of San Francisco.

Uber Efforts Beyond Transportation Advancements

Uber is clearly making broad efforts to grow its IP portfolio in the future and hence protect their business. A number of its patented features have been recently implemented by Uber.

Uber launched a new patent purchase program, called UP3 to accelerate the process of purchasing patents with an open application window which was open from April 24, 2017 to May 23, 2017. The idea is to get Patent holders were to willingly propose a price to Uber for their patents along with the patent family details. The program allows sellers to submit portfolios of up to five patent families in one submission Uber then decides whether to accept or reject the offer (decisions communicated to the sellers by July 7, 2017), thus eliminating the long and complicated process of buying and selling intellectual property. From submission to close, Uber states that the whole process should take around four months, which dramatically reduces the typical pace at which these deals usually happen.

Launching of the UP3 program seems to be part of an overall strategy to increase Uber's IP holdings through acquisition and its own engineering efforts, in order to protect the company from legal actions.

Ride-Sharing in the UAE

In January 2017, Uber signed an agreement with the Roads and Transport Authority of Dubai under which Uber will be entitled to deploy about 14,000 vehicles around the city. The Roads and Transport Authority (RTA) and Uber announced the trial of UberX in April 2017. UberX provides Dubai riders access to safe and affordable rides. This will lay the foundations to the development of advanced products like UberPool and UberElevate, paving the way for a fully integrated, multi-modal transport network that smart cities of the future are building.

Ever since Uber made an entry into the transport industry, numerous ride-sharing and taxi applications have emerged. Multiple new features are introduced by start-ups in the transport field as a step to override and compete with dominant transport companies in the field.

Transport and ride–sharing start-ups have recently introduced children friendly features to ensure child safety in their vehicles and security enhancing features including Facial Recognition technology to verify drivers' identity. Companies also have built their own mapping systems for making it easier for drivers and customers to locate various destinations and each other. However, it seems innovation is not enough for a company to maintain a relevant stand in the industry. In a competitive market environment as today's, IP protection of innovative features is crucial for companies to emerge and maintain a competitive edge.

Emerging Transportation Technologies

As noted earlier, autonomous or driverless vehicles are the most recent groundbreaking innovations in the transportation industry.

NEXT is an advanced smart transportation system based on groups of modular self-driving vehicles. Each module can join and detach with other modules on standard city roads. When joined, they create an open, bus-like area among modules, allowing passengers to stand and walk from one module to another.

Modules can be called by users using a Next App in order to reach a selected destination. NEXT's smart routing system autonomously drives vehicles and is capable of joining modules together, including service modules (bar, shop, toilet, restaurants) which directly reach and join a required module, without stopping. Designed in Italy, this project enables joining one or more modules where doors between the modules fold and create a walkable open space. Optimum occupancy rate, reduced energy consumption and traffic footprint are amongst NEXT's relevant features.

Some other major transportation network companies include Lyft (based in San Francisco and launched in 2012) and Grab (based in Southeast Asia and founded in 2012).

Lyft offers four types of rides - Lyft Line, which matches passengers with other riders if going in the same direction, Lyft - the basic and most popular offering that matches passengers with nearby drivers, Lyft Plus – offers passengers with a six-seater car and Lyft Premier – which matches passengers with a luxury car. Lyft and Uber, both major competitors, are among the most highly valued start-ups in the world. Some innovations that Lyft has offered to the ridesharing market include the idea of a friendly ridesharing company, a system called Prime Time (similar to Uber's Surge Pricing), which ensures that Lyft's prices do not rise above a particular range, and a service which includes built-in discounts for when times are slow. Lyft's patents deal specifically with improving rider experiences. Lyft's patented features include a driver jukebox system for receiving a rider music preference from a rider's device, a system for dispatching a driver, driver screening including mentoring to determine if a driver is approved to drive and ride chaining - a system for coordinating ride sharing between a set of drivers and a set of riders.

Grab or GrabTaxi, known as MyTeksi in Malaysia, offers ride-hailing services in Malaysia and its neighbouring Southeast Asian nations- Singapore, Indonesia, Philippines, Vietnam and Thailand. Grab operates in more than 50 cities across 6 nations in Southeast Asia. Private car services (GrabCar), motorcycle taxis (GrabBike), social carpooling (GrabHitch) and last mile delivery (GrabExpress) were later on added by Grab. A unique feature about GrabCar includes displaying a fixed price for a ride, after setting the pickup and drop-off routes. Hence, the fare remains unchanged even if the driver happens to take a longer route or in the event of traffic. GrabTaxi patents deal with vehicle booking system (2015) and method for multiple-round driver selection (2016).

NEXT is subject to patent protections which would increase the value of the business and provide a competitive edge to the business and restrict competition from misappropriating or exploiting NEXT innovative technologies without authorization.

Importance of Intellectual Property

As can be seen by the various examples discussed in this article, the innovation in the transport industry is quickly evolving and driving towards more efficient, smarter, safer and consumer friendly solutions, As with any industry, companies in this field, and particularly start-ups have to be aware of the crucial importance of protecting their innovative products and processes through securing IP rights in order to secure a market monopoly in the use of these innovations and boost the commercial value of their businesses. The possession of IP rights is crucial for making economic decisions in today's business world. Considering the occurrence of a company merger or acquisition, sale or even an investment, Intellectual Property assets have the power to considerably increase the value of an enterprise. According to a WIPO (World Intellectual Property Organization) IP is the essential element in obtaining venture funding (a form of financing provided to early-stage, emerging firms that are deemed to have high growth potential or which have demonstrated substantial growth). Having a diverse and robust IP portfolio is important and provides substantial support for companies to thrive, have longevity, innovate, stay competitive in the global market and to endure as leaders in the their particular industry.

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Oman: A Future Logistics Hub of the Middle East

The growth and development of Oman's transportation and logistics infrastructure has recently received a number of catalysts with the aim of building on Oman's ability to compete with other players and potentially acting as a key logistics hub in the Middle East. While the road, air, port and rail sectors have all been prioritised for growth by the Government, it is the port sector that has benefited the most from external investment and recent political developments in the Middle East. Set out below is a description of recent activity which has taken place in the transportation sector in Oman along with key legislation that applies to certain specific sectors.

Sea

Historically, the prominence of the port at Muttrah in Muscat was acknowledged by the Greek geographer Ptolemy who saw Muscat's importance in acting as the last watering place for ships heading out of the Gulf to India, East Africa and beyond. Nowadays, the port at Muttrah is used predominantly for tourism purposes after commercial operations were relocated to Sohar.

The main commercial ports in Oman are situated in Sohar, which lies midway between Muscat and Dubai, and Salalah, which sits on the southern coast of Oman ensconced on the Arabian Sea. Readers will immediately recognise that the geographical locations of these ports offer quite different benefits to the transportation of goods by sea and these benefits were fully acknowledged when Oman was considered a pioneer in seafaring and maritime transportation during the 18th and 19th centuries. As the Government of Oman realigns various facets of its economy away from hydrocarbons, this historical feat may repeat itself with evidence in recent months highlighting that trade between Oman and Qatar has increased by 2000% since June 2017 as logistic companies continue to be attracted to Sohar.

The current major investment story in Oman is the development of the Port of Duqm which was established as a joint venture between the Government of Oman and the Consortium Antwerp of Belgium and recently attracted an $11bn investment as part of China's One Belt One Road initiative. Although very much a long term project, the opportunities at Duqm are large scale and its key advantage is that it is not positioned near the Straits of Hormuz and consequently does not suffer from the usual problems which are associated with busy trade routes.

The Sohar freezone was created by Royal Decree No. 123 of 2010 and the emergence of Sohar Port as a serious logistical hub in the Gulf region is demonstrated by an 11% increase in container volumes and a 24% increase in dry bulk cargo during Q2 2017, when compared with the same quarter of 2016. Sohar as a city has received significant investment in highway development to enable it to be connected with the UAE and Saudi Arabia, attracting the attention of the region's third party logistics operators. It is also home to one of Orpic's oil refineries and Sohar Aluminium which has an annual production capacity of 375,000 tonnes of high quality aluminium.

Since opening in 1998, the Port of Salalah which has quietly remained one of the largest integrated ports in the region, recently jumped 14 places in the Lloyd's Maritime Intelligence List of the world's top 100 ports following a 29% increase in activity during 2016. As noted above, Salalah benefits from its unbridled location on the southern coast of Oman, joining India and the East with Africa.

To attract growth to the port areas, the Government has offered a range of business incentives including 100% ownership, low share capital requirements, corporation tax breaks, a single licence window and lower Omanisation requirements as well as a favourable customs framework. These and other incentives are set out in the Ministry of Commerce and Industry Ministerial Decision No. 35 of 2016 in relation to the Sohar Freezone and Royal Decree No.62 of 2006 in relation to the Salalah Freezone.

Air

For many years, capacity at Muscat International Airport was limited to receiving a few million passengers annually. From 2018 the Ministry of Transport and Communications ("MOTC") expects the new Muscat International Airport to be fully operational and with the capacity to accommodate over 12 million passengers annually. Plans are already afoot to gradually increase annual passenger load to 48 million passengers per year so that the Government can fulfil its vision of having Muscat airport among the world's top 20 airports by 2020.

Following the development of Salalah airport, which can be expanded to accommodate six million passengers annually, links will be enhanced with Duqm, Muscat and the wider GCC. Following the establishment in 2016 of SalamAir, Oman's first low cost airline, Oman's overall air transportation infrastructure has vastly improved for businesses and tourists alike.

The regulatory and legislative aspects of civil aviation matters in Oman are assumed by the Public Authority for Civil Aviation which was established by Royal Decree No. 33 of 2012 and is also the responsible body for issuing licences, enforcing bilateral air agreements between Oman and other countries and developing policies for the security and safety of airports and air transport.

Roads

Oman's roads were recently ranked by the World Economic Forum in the top eight globally and second in the GCC which reflects the sizeable financial commitment the Government has made to achieve and maintain high quality road infrastructure. High quality road infrastructure shortens travel distances, facilitates movement of goods and people within Oman and to neighbouring countries and improves the efficiency of an economy.

Several large scale road projects have been planned which will have the effect of enhancing the transportation network, including the Batinah Expressway. Some of the projects involve linking roads to neighbouring countries, major cities and the air / sea ports in Oman as well as improving the overall network of road infrastructure inside the country. These initiatives, coupled with the creation of a public transport regulatory authority, are aimed at reinforcing Oman's potential as a major logistics hub served by a strong road transport sector.

Currently the regulatory and legislative aspects of road transportation in Oman are assumed by the MOTC.

Rail

Although funding constraints postponed the plan adopted by the member states of the GCC to create a rail network linking each GCC member state, Oman recently announced through Royal Decree No. 24 of 2017 the creation of a 400km railroad to join the mineral mines in Salalah with Duqm. Both Salalah and Duqm are considered by the MOTC as central areas of development for the country. This project is only a smaller part of the wider Oman national railway network which is estimated at 2,135km in length and has been designed to serve mixed freight and passenger traffic connecting the major ports at Sohar, Duqm and Salalah to the rest of Oman.

Oman Rail is the body responsible for rail transportation in Oman under the overall supervision of the MOTC.

One Belt One Road Initiative

As outlined above, China has been working with Oman (among other countries) in an attempt to revive the Maritime Silk Road which was an ancient trading route created many centuries ago. The One Belt One Road initiative involves boosting trade by improving the infrastructure used to transport goods between China, Central Asia, Persia, Arabia, Africa and Europe. A total of $150bn has been committed by China to countries that have agreed to be part of the initiative. In Oman, the prime beneficiary of this initiative is Duqm which recently received an $11bn commitment from China to develop a port, a dry dock, refinery, storage house for construction material, methanol plant, vehicle assembly plant and a hotel.

The One Belt One Road initiative is a welcome catalyst to the Omani economy. Coupled with the Government's plan to move forward with the projects outlined above in the various transportation sectors, the future of Oman's logistics capability is promising.

Al Tamimi's Oman office regularly advises companies on tenders issued by Government bodies particularly in relation to the air, maritime, rail and road sectors. For further information please contact Arif Mawany at a.mawany@tamimi.com.

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Shipping Agents in Kuwait: Applicable Law & Potential Liabilities

Introduction

The Kuwait Civil Law (No. 67 of 1980)(the "Civil Law") generally recognises the concept of agency. It affords a principal the option of directing a third party to act in its stead, and accepts that the actions of such agent may bind the principal to legal obligations.

The new Kuwait Agency Law (No. 13 of 2016)(the "New Agency Law") defines commercial agency:

'as the agreement according to which the person who has the legal right shall assign to a trader or a company in the state to sell, to promote or to distribute commodities, products or to render services in his capacity as the agent, distributor, a having the franchise or the license for the product or the original importer against a profit or a commission.' (translation of prevailing Arabic text)

Kuwaiti law recognises commercial agency in different forms, each carrying its own definition, required elements, operation, and consequences. Some popular examples include; contractual agency, distribution agency, commission agency, and shipping agency. Here the author addresses issues specific to shipping agency.

Shipping Agents

Shipping agency generally arises in situations where a designated person, or entity, is considered to be responsible for the handling of shipments and cargo. It does so whilst seeking to protect the general interests of its appointor's customers, at ports and harbors worldwide. The agent's actions may be in concert with other parties to the shipment, for example; ship owners, managers, or charterers, any of which may be the de facto principal. There are several sub-categories of shipping agents, for instance: port agents, cargo brokers, liner agents, and own agencies, each rendering specific services depending on the shipping company they represent.

A ship agent may accordingly be considered to be any person or company that carries out the functions of an agent, irrespective of whether they are in business as a ship agent, or they perform such functions as an adjunct to, or conjunction with, other activities, such as ship owning or operating, providing cargo handling, or similar.

The appeal of shipping agents is their ability to handle certain key tasks of a shipping company more quickly and efficiently. For instance, agents ensure that essential supplies, crew transfers, customs documentation, and waste declarations are expediently arranged with port authorities. Further, they generally provide their principal shipping company with updates and reports regarding activities at the destination port so that real-time information is available to them whilst goods are in transit.

Shipping Agents Right's Protected under the Maritime Law

Notwithstanding the above, the Kuwait Maritime Trade Law (No. 28 of 1980)(the "Maritime Law") deems shipping agents to be commercial agents. The Maritime Law provides its own definition in Article 136, stating that a shipping agent is "the agent of the furnisher in places where the furnisher has no branches".

The Maritime Law continues, noting that a shipping agent may receive cargo before the commencement of an ocean voyage for the purpose of shipping and delivery. Further, a shipping agent is

entitled to charge a transportation fare (ie; freight). The agent may also be entrusted with the usual duties relating to the requirements of the ship or the voyage, within its scope, some of which may otherwise be the responsibility of the ship's master. Any debts arising from its performance of such duties are preferentially secured against the vessel, as provided in item 5 of Article 47 of Maritime Law.

Shipping Agents in Legal Proceedings

In Kuwait a shipping agent, as is common in most maritime jurisdictions, is deemed liable to the same extent as an ordinary agent before its principal. Further, recourse against a shipping agent by a shipper or consignee is generally not permitted, except where harm arises as a direct result of the agent's personal fault.

Should legal proceedings be initiated, the shipping agent is deemed, and cited, as a representative of the principal (ie; the marine carrier). Accordingly, any legal provisions affecting the responsibility of the principal, any relief therefrom, as well as provisions concerning prescription (time bar), shall be extended to the shipping agent in respect of lawsuits resulting from their activities.

Potential Liability of Shipping Agents

The Maritime Law has however extended the potential liability of a shipping agent beyond what is ordinarily expected in a traditional agency relationship. This extension appears unique to only Kuwait and Colombia. It essentially seeks to extend some liability, upon delivery of a judgment against a principal, to its shipping agent. Article 139 states:

1. The agent must deposit with any Kuwaiti bank a cash deposit or a bank guarantee to ensure the execution of the legal judgments issued against his Principals.
2. The Minister of Communications, after consultation with the Ports Public Authority, shall issue a resolution concerning the organization of ship agents record and the determination of deposit amount or the bank guarantee to be deposited.'

In the light of above article, the Ministry of Communication issued Ministerial Decree No 282 of 1980 confirming the amount required for bank guarantee, as should be deposited with a Kuwaiti bank. The Decree also reiterates the shipping agent's responsibility in cases where court judgments are awarded against its principals.

Conclusion

We suggest that Article 139(2) may need to be reconsidered to bring the liability of shipping agents within international standard practice. The allocation of risk in this regard should be matched with the various international marine conventions and approaches of most jurisdictions worldwide.

We otherwise remain available to consider any assist shipping agents with any inquiries or concerns they may face in Kuwait and to offer appropriate legal solutions.

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Accessibility: Disability and the Law

The Rights of Disabled Persons Law Number 20 of 2017 (the "Law"), effective from 30th August 2017, repeals and replaces the previous law issued in 2007. The Law introduces a robust legislation offering rights and protection to disabled persons in education, healthcare and workplace, amongst other things. The Law also emphasises the importance of raising public awareness of the rights of the disabled.

For the purposes of the Law, a person is deemed to be disabled if he/she has a long-term incapacity (i.e. a disability lasting for a minimum of 24 months from treatment or rehabilitation) in physical, sensual, mental, psychological or neurological functions resulting in preventing that person from performing basic life activities or exercising their rights and basic freedoms independently.

In order for the disabled persons with long-term incapacity to enjoy the protections and rights granted by the Law, they must be Jordanian citizens and obtain an "identification card" that encompasses personal identification as well as details pertaining to the disability, its nature and degree. These protections and rights include the following:

Education

Every disabled person is entitled to education. As such, the Law prohibits any educational institution from excluding any individual based on, or due to, their disability. In the event an educational institution fails to accommodate to the needs of disabled persons, including but not limited to accessibility and availability of Braille, the Ministry of Education shall be obliged to offer such persons with alternative solutions or institutions.

Additionally, the Ministry of Education (in association with the Higher Council for the Rights of Disabled Persons (the "Council")) has, inter alia, the following responsibilities:

- Incorporating the educational requirements for disabled persons into public policies, strategies and educational programmes;
- Acceptance and integration of disabled persons in educational institutions;
- Providing accessibility solutions in public educational institutions, and ensuring that private educational institutions provide the same. The Ministry of Education shall not license any private educational institution which fail to offer such solutions; and
- Revising educational curricula and integrating awareness on the rights of disabled persons and their inclusion in society.

The Law further incentivises the involvement of disabled persons in education by setting a cap to the fees for enrollment in public institutions for higher education at 25%.

Healthcare

Hospitals and medical centres are required, under the Law, to ensure that their facilities are accessible to persons with a disability. The Jordanian government has emphasised the importance of adhering to this obligation, whereby failure to comply would deny hospitals and medical centres from licensing or the renewals thereof. As such, all hospitals and medical centres are required to rectify their status as per the provisions of this Law within a maximum of five (5) years.

The Law identifies various actions that must be undertaken to ensure the rights of disabled persons are protected. For example, all medical, technical and administrative staff working in hospitals are required to receive training for effective communication with disabled persons (including seeking their informed consent for medical procedures, and

supplying leaflets in Braille), as well as methods for detecting and handling physical and mental abuse.

In securing the availability of healthcare to disabled persons, the Ministry of Health, in coordination with the Council is required to issue an insurance card for each disabled person with an identification card. The insurance covers medical and rehabilitation services, including medical surgeries, medication, artificial limbs, hearing and visual aids, physiotherapy, psychological and behavioral treatment. The Law ensures that insurance companies do not exclude disabled persons from medical or life insurances based on, or due to, their disability by deeming any such condition void.

Work

As for education and healthcare, the Law prohibits the exclusion of a person from work, training or the opportunity of progression in their careers based on, or due to, their disability. Additionally, given that work is deemed an essential right for disabled persons, no job listing shall require that the applicant be free from any disability.

The Ministry of Labour and Vocational Training Corporation, in coordination with the Council, shall:

- Incorporate measures that guarantee assimilation of disabled persons into the policies, strategies, plans and programmes related to work, vocational and technical education in order to facilitate equal opportunities; and
- Prepare vocational training curricula in Braille.

In addition to the above, Jordanian law has incorporated quotas for the employment of disabled persons depending on the size of the corporation, whether public or private. Corporations employing 25 to 50 individuals must hire at least one (1) disabled person. In the event the corporation employs more than 50 individuals, up to 4% (or as decided by the Ministry of Labour) of such corporation's workforce must consist of persons with disabilities. To ensure compliance with such requirements, the Law requires that private institutions prepare periodic reports to the Ministry of Labour relating to the number of disabled employees, the nature of their work, the salaries they obtain and the accessible facilities and services offered to them.

To further encourage the financial independence of disabled persons, the Development and Employment Fund (in coordination with the Council) shall, amongst others, allocate a percentage of facilitated loans to finance projects for disabled persons and their families, as well as promote the participation of organisations concerning disabled persons and local communities in designing and executing anti-poverty projects, programmes and other occupational opportunities.

The Law does not merely insist on protecting the rights of disabled persons in educational institutions, medical centres or corporations, but also advocates for the political participation of persons with disability whether through nomination or voting at municipal, parliamentarian or general elections. To that end, the Law requires the accessibility of polling stations and providing sign language interpreters, in addition to permitting the companionship of caretakers to ballot boxes. Essentially, the Law protects the right of disabled persons to assembly and association.

Litigation

The Law preserves the rights of disabled persons to litigate, and guarantees due process. Accordingly, the Ministry of Justice and the Ministry of Interior, in coordination with the Council are obliged to train certified experts to facilitate effective communication with disabled persons throughout the investigation and litigation proceedings. To achieve effective communication, the Ministry of Justice and the Ministry of Interior shall make available legal sign language translators, educational experts for persons with mental incapacities, and experts to communicate with blind and deaf individuals.

In the event of violence against disabled persons, individuals are obliged to report such offence to the police. For the purposes of this Law, violence is understood to include any action or omission that results in prohibiting any disabled person from any right or freedom or limiting their exercise of any of such rights or freedoms, in addition to any physical, mental or psychological harm inflicted based on, or due to, the disability. In order to fully guarantee such protection, the Law ensures that any reports on violence against disabled persons remains anonymous during and after litigation proceedings, including allowing anonymous testimonies.

Public Services and Facilities

It is required that all public facilities, including tourist and religious venues, rectify their status to ensure accessibility to disabled persons and comply with the general conditions of the Law, provided that such facilities commence rectification within one (1) year of the effective date of the Law and finalise by no later than ten (10) years. It is worth noting that occupancy permits or licenses would not be issued to public or private buildings, unless such facilities comply with accessibility requirements stipulated under the Law.

Additionally, the Public Civil Defense, in coordination with the Council must provide emergency service in a manner which accommodates to the needs of disabled persons, including personnel with the ability to communicate through sign language.

With respect to traffic and public transportation, new methods shall be implemented within five (5) years of the effective date of the Law to ensure the safety of disabled persons. New methods include the availability of audible traffic lights, and means to allow for accessibility in taxis and public buses.

The Law exempts certain categories of services for disabled persons from tax, subject to certain conditions. Generally, these services include accessibility tools, buses, and private vehicles.

Raising Awareness

In order to combat stigma revolving around disability and the role of disabled persons in society and local communities, the Law requires media and religious awareness by obliging the Media Commission, Jordanian Press Association and other media and journalistic institutions to the following, amongst others:

- Advocate for the rights of disabled persons and use of terminology that is respectful to them;
- Refuse licensing or renewals thereof of any media outlets, including online media presence, unless they are optimised to be accessible for disabled persons; and
- Train journalists and persons in the media industry on how to positively address issues pertaining to disabled persons and the stereotypes associated with them.

On the religious side, the Ministry of Awqaf and Islamic Affairs and the Council of Churches are required to promote the rights of disabled persons and their acceptance in society as part of the general religious rhetoric. Additionally, religious curricula shall be revised, in coordination with the Ministry of Education, to instill the values of diversity and acceptance.

Penalties

The Law sets out the penalties for any person that commits violence against disabled persons, with imprisonment for no more than one (1) year and/or a penalty of no more than JOD 1,000, to be duplicated upon reoccurrence of breach.

With respect to breaches involving employment rights of disabled persons, the Law stipulates that any person that refuses to employ a person based on, or due to, their disability shall be fined with a penalty between JOD 3,000 and JOD 5,000.

As highlighted above, the Law introduces and solidifies the rights and protections granted to individuals with disabilities, a necessary step in combating the marginalisation of such individuals over the past decades. However, awareness and acceptance by local communities remains crucial for the true spirit of the Law to be fully realised, and the fruition of its provisions shall be contingent on the manner in which it is implemented.

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Let the Seller Beware! Jordan: from Caveat Emptor to Caveat Venditor

Introduction

Most of us are aware of the concept of caveat emptor or "let the buyer beware", which is practically known as "sold as is". In other words, the concept of caveat emptor serves as a warning to consumers that they are without recourse to the vendor if the product does not meet expectations.

Until recently, the only protection provided to consumers under Jordanian law was the concept of hidden defects where the vendor shall be held liable if the product was sold with a hidden defect. Indeed, vendors were still able to exclude themselves from liability for hidden defects.

Finally, the Consumer Protection Law (Law No. 17 of 2017) (the "Law") has been passed in Jordan with the aim of preventing retailers from gaining an unfair advantage over consumers. The provisions of the Law require that vendors adhere to their responsibilities towards consumers to ensure that vendors and consumers are bargaining from a much more equal position.

The Law, as with any other consumer protection regulation, regulates private law relationships between individual consumers and retailers, as well as service-providers. Specifically, the Law addresses a wide range of matters, including but not limited to product liability, privacy rights, unfair trade practices and misrepresentation.

Misrepresentation or false advertising is often the main cause of consumer complaints. Prior to the enactment of the Law, the consumer had the right to bring a claim against a false advertiser for fraud pursuant to the Criminal Law (Law No. 16 of 1960). The claim required to establish that (i) the advertiser made false representations regarding the product; (ii) these representations were made with the advertiser's knowledge or negligent failure to discover the falsehoods; and (iii) the consumer relied on the false advertisement and was harmed as a result. However, due to the difficulty in proving an advertiser's dishonesty, prosecutors seldom relied on this legal route.

However, with the enactment of the Law, prosecutors in Jordan may commence lawsuits in respect of false advertisements or other unfair and injurious consumer practices in a much more straightforward manner.

The Law renders any agreement limiting or waiving the vendor or the service provider's liability from its obligations; as null and void.

Who is covered by the Law?

Article 2 of the Law stipulates that consumers include any natural or juristic persons that acquire a product whether in return of consideration or otherwise, for direct or indirect use or ownership.

The Law sets out the definition of 'Consumer' and stipulates that it does not include an individual who acquires the service or product for the purpose of resale. Therefore, the Law does not apply in the event of a dispute between vendors.

What is the scope of the Law?

The Law provides the consumer with effective protection from a vendor's by:

1. Providing the consumer with correct and necessary information with regard to the product or service prior to purchase;
2. Ensuring that the products are safe and fit for purpose meaning that the products must fulfil the intended purpose of their use;
3. Delivering the products and services in a timely manner;
4. Focusing on safety and quality and ensuring that the products and services are compatible with the applicable technical standards;
5. Providing after-sale services; and
6. Refraining from publishing misleading or inaccurate advertisement of the products or services.

Further to the above, it should be noted that the Law, renders any agreement or provision (i) limiting consumers' rights arising pursuant to the Law or (ii) limiting or waiving the vendor or the service provider's liability from its obligations; as null and void.

Additional Considerations

Further to the obligations imposed on the vendor, the Law lists certain contractual terms which should be deemed prejudicial and ultimately rendered null and void, these terms include those that:

1. Lead to inequality between the rights of the consumer and the obligations of the vendor;
2. Waive or limit the statutory obligations or the responsibilities of the vendor;
3. Include a waiver of the consumer's statutory rights;
4. Entitle the vendor to amend the terms or terminate the contract at its sole discretion;
5. Impose a penalty clause on the consumer that is disproportionate to the damage suffered by the vendor;
6. Impose early terminate compensation that is disproportionate to the damage suffered by the vendor;
7. Waive the consumer's right to seek redress to the court or any alternative means of dispute resolution; and
8. Exempt the supplier from providing after-sale-services or guaranteeing the provision of replacement parts to the consumer unless such condition was added to the contract in handwriting by the consumer.

Additionally, the Law called for the formation of the Consumer Protection Bureau, which shall promote consumer protections, help consumers make better choices in the marketplace and receive consumer complaints.

Conclusion

The aim behind the enactment of the Law is self-explanatory; to protect the consumer from unjust trade practices. Vendors are less likely to find a loophole that could possibly limit their liability and allow further profit-making mechanisms whilst taking advantage of consumers' lack of information and bargaining power. Ensuring the welfare of the consumer is a major step towards creation of confidence within the market and encouraging inward investment in Jordan. We consider that the Law is a significant landmark for these reasons.

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Kuwait applies the Electronic Media Law

The importance of media is evidently powerful in the modern world. The present age allows for the availability of information without much difficulty, with the media often termed as 'the fourth pillar of democracy'. Furthermore, electronic media is considered one of the primary components of media systems in the state. The freedom to use it is guaranteed to all according to the rules of the aforementioned law, and there are no primary controls on what is circulated in terms of content across websites and other electronic media outlets. Media can be divided into two distinct categories, print media and electronic media. Certain thoughts are that print media still forms the foundation of media in the modern world despite the prevalence of technology and electronic means. However, one cannot deny the importance of electronic media in modern life today. Accordingly the State of Kuwait's Ministry of Information, in its bid to remain in pace with electronic media development, commenced implementation of Law Number 8 for the Year 2016 Regarding the Regulation of Electronic Media (the "Electronic Media Law"). The legislation was approved by his Highness the Amir of Kuwait, Sheikh Sabah Al Ahmad Al Jaber Al Sabah and published in the Official Gazette on the 7th of February 2016.

Electronic Media Law:

Pursuant to Article 1 of the Electronic Media Law, Electronic Media is defined as "activity which includes the publication or transmission of materials, activities or media services of electronic content that are produced, developed, updated, circulated, transmitted, published or penetrating it through the international information net (the internet) or any other communications net."

The State of Kuwait though its application of the Electronic Media Law, shall be in a position to provide the necessary facilities to be in concomitant with the progressive technological development of electronic media according to what is regulated under the executive regulations of the mentioned law. It intends to do so by supervising and effectively overseeing electronic websites and electronic media outlets that comply with the rules of the Electronic Media Law.

Application of the Law:

Taking into due consideration the rules of other laws; any person who wishes to establish or operate any of the electronic websites or electronic media outlets is obliged to obtain the requisite license from the Ministry of Information. The license shall be valid for a period of ten years and is renewable upon request of the licensee and the subsequent approval of the Ministry of Information.

It is deemed sufficient for websites and electronic media outlets of state authorities, institutions, public organisations and any other governmental body or societies that are for public benefit (syndicates and unions established according to the law); to notify the Ministry of Information of its establishment of the electronic website or media outlet and identify the manager in control within 60 days from the date of the establishment of the website or the outlet, according to what is regulated by the executive regulation of the Electronic Media Law.

The Ministry of Commerce and Industry for the State of Kuwait (the "MOCI") restricts some of the activities under the ministry to the citizens of the State of Kuwait only, including any activity related to the Ministry of Information. The application for obtaining the license shall be submitted to the Ministry of Information according to the format required. It is a condition that the applicant for this license be of Kuwaiti nationality, with full capacity and not be less than twenty one years of age. The same conditions apply to the manager who shall represent the applicant before the Ministry of Information and other government authorities.

The manager in control shall be responsible for the respective website or electronic media outlet/platform, for the content that is published on the said media platform and for any prohibited or violating content on the respective website or electronic media outlet/platform under the law. Therefore the manager shall be responsible for observing accuracy and credibility in all publications of news, information or data. The manager is also obliged to publish any response, correction or refutation that is received by him directly or indirectly from the Ministry of Information or other government agencies, from any juristic or natural person or the legal representative of the subject individual or entity whose name was stated or referred to in writing, a drawing or a code that was published.

Violation of the Law

The competent court is entitled to impose the necessary penalty on every subject, who practice any of the activities set forth under the Electronic Media Law without a license or who consequently violate the law in practice. A minimum fine of five hundred dinars and a maximum of five thousand dinars will be imposed with the potential penalty of blocking the site in its entirety.

The respective Kuwaiti Minister of Information and Minister of State for Youth Affairs, Sheikh Salman Sabah Al-Salem Al-Homoud Al-Sabah asserted that Kuwait was among the first countries which had implemented a comprehensive law on this subject matter. The Ministry of Information called on all electronic media outlets and platforms to abide by the Electronic Media Law in contribution to the growth and development of the media sector. The Ministry of Information also emphasised how helpful such media outlets can be in staving off extreme ideologies, whilst adopting various virtues for the betterment of the nation.

The law works to promote freedom of expression whilst also ensuring unhindered access to information. It aims also to eliminate any potential impediments to sharing information on electronic media outlets in a way that would conserve national values and interests.

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Personal and Corporate Guarantees under KSA Law

The Kingdom of Saudi Arabia ("KSA") is an Arab sovereign state whose fundamental law is the Shari'ah. The Shari'ah is a collection of principles derived from different sources, but principally the Holy Qu'ran and the Sunnah (the witnessed sayings and actions of the Prophet Muhammad PBUH). As the KSA has not adopted a civil law system, there is no primary legislation that governs guarantees in the KSA.

Additionally, the Shari'ah principles relating to contracts are not codified in KSA in the manner known in most modern jurisdictions. Accordingly, the broad and general nature of the Shari'ah means that KSA courts can be expected to apply a combination of discretionary powers and established legal principles in the review and interpretation of contracts generally, including guarantees. Given this flexibility, KSA law generally provides parties the freedom to negotiate the terms of their dealings, unless such dealings relate to activities prohibited under the Shari'ah.

Guarantees are generally recognized under KSA law and are commonly provided by corporations and individuals for third party debts as an undertaking to make payment where the primary obligor has failed to make the payment. While both corporate and personal guarantees justifiably provide lenders with some comfort and recourse to the guarantor there are various aspects a cautious lender must be aware of in respect of guarantees in the KSA. This article seeks to highlight certain nuances and enforceability issues in relation to guarantees in the KSA.

Primary Obligations

The obligations of a guarantor under a guarantee are secondary to those of the primary obligor. Furthermore, if the creditor releases the principal obligor from any guaranteed obligation, the guarantor will also be released from such obligation. In the same vein, if the primary obligations are found to be void, the guarantee will also be void as a result. Lenders should also be aware that if the primary obligor's obligations relate to a transaction that does not satisfy the primary objective of Islamic finance there is a risk that the guarantee may not be enforceable. For instance, derivative contracts are generally not recognised as enforceable from a Shari'ah perspective. Therefore if a guarantee was provided to secure such transactions, it is unclear whether it would be deemed enforceable if the underlying obligations are seen as too uncertain or speculative in nature.

Demands

Any demands under the guarantee contract should be in writing. Furthermore, in certain instances, KSA courts and other judicial authorities of KSA have acted in a manner which suggests that no reliance may be placed on any notice given by facsimile, telex, bank wire or electronically. Accordingly, from an evidentiary perspective lenders should ensure that all communications to guarantors, including demands, are delivered by way of hard copies.

Enforceability

Lenders should note that the KSA courts and judicial committees are likely to interpret guarantees in favour of the guarantor, for the reason that guarantees under KSA law, are considered "voluntary" obligations. By way of example, while KSA law does not stipulate a time period or limitation period during which a demand must be made, the Banking

"A prudent lender should always consult with legal counsel on the efficacy and suitability of any security package to avoid any pitfalls."

Disputes Settlement Committee has in the past found that any delays on the part of a lender to exercise its rights against a guarantor can be construed as a waiver of the lender's rights against the guarantor.

All monies guarantees

The distinction between specific guarantees and all monies guarantees is an important one. Under an all monies guarantee, a guarantor guarantees any and all obligations from the principal debtor to the lender, whether existing at the time of the guarantee or arising in the future. Lenders should be aware that guarantees for 'all monies' may face issues upon enforcement in the KSA. A fundamental rule of Shari'ah is that contracts must be free from uncertainty. In applying this principle, KSA courts generally require that guarantees are issued with respect to a specified debt or a thing certain in amount. Additionally, KSA courts have shown a preference for guarantees to include a maximum amount recoverable and to also have a fixed validity.

Promissory notes

Lenders should also note the importance of promissory notes, a form of quasi-security in the KSA. Promissory Notes fall within the definition of commercial papers as provided for in the Law of Commercial Papers 1964 and are commonly used in KSA as they are generally one of the quickest documents to enforce. Any claims under a promissory note can be filed directly with the Execution Court, which should generally not examine the underlying transaction that the promissory note relates to as promissory notes are treated as independent of their underlying agreements.

A promissory note can be enforced in six months as opposed to a guarantee which can take up to two years or longer for enforcement. For this reason, a market practice has developed wherein promissory notes are taken for financings from both borrowers and guarantors. Provisions for the granting and reissuance of promissory notes can be built into the guarantee providing the lender a more efficient avenue for enforcement. Promissory notes may also be enforced by a foreign lender that is not licensed in KSA although successful enforcement would be limited by the liquidity of the borrower.

Upstream guarantees

With regard to upstream guarantees (i.e. guarantees provided by subsidiaries for the benefit of their shareholders), and the extent to which these are permitted, this is a somewhat controversial issue under KSA law. In particular, there are differing views as to whether Article 10 of the KSA Law No. 999 of 2015 (the "Companies Law"), which states that only profits from distributable profits may be distributed to the shareholders, applies to guarantees. Lenders should be aware that there are two views on this. The more restrictive view considers that where payments under guarantees are not made out of net profits, this would constitute a prohibited distribution of dividends. The alternative view is that payments under guarantees do not constitute a prohibited distribution where made for a proper purpose and there is demonstrable corporate benefit for the guaranteeing subsidiary. As this is a grey area, lenders should consider the impact of including an upstream guarantee in a security package.

Additionally, Article 10 of the Companies Law is not thought to prohibit cross-stream guarantees (i.e. guarantees provided to affiliated companies), although it is generally necessary to demonstrate corporate benefit for this. Similarly, downstream guarantees (i.e. guarantees from parents to their subsidiaries) are not affected by this provision.

Governing Law & Jurisdiction

The KSA courts and other adjudicatory authorities do not traditionally recognise the choice of foreign law irrespective of any agreement between the parties in respect of jurisdiction and applicable laws. Accordingly, lenders should be aware that the KSA courts would not be bound by the choice of a foreign law as the law governing a guarantee, or the consent by the parties to the jurisdiction of foreign courts and may in their own discretion apply KSA law which does not recognise the doctrine of conflict of laws.

Lenders interested in enforcing a foreign law judgment in the KSA should also note that the KSA courts have to date rarely enforced judgments rendered by courts in jurisdictions other than, in some instances, countries which are members of the League of Arab States. For this reason, lenders should be prepared to enforce a guarantee provided by a KSA entity in the KSA.

Conclusion

While there are various factors for lenders to consider before relying on a guarantee, appropriately drafted guarantees can be an important aspect of a security package. Although there are certain grey areas and a lender should ensure that any uncertainty is avoided, the KSA courts approach to guarantees is generally quite clear. That said, a prudent lender should always consult with legal counsel on the efficacy and suitability of any security package to avoid any pitfalls.

Al Tamimi & Company's Banking & Finance team regularly advises on taking security in the KSA, including on the requirements for and the enforceability of guarantees. For further information please contact Arina Gidwani (a.gidwani@tamimi.com) or Agathi Trakkidi (a.trakiddi@tamimi.com).

News & Events

7 SEP

Al Tamimi & Company hosts US-UAE Business Council Financial Services Policy Group Meeting in Dubai

On Thursday, 7th September we hosted the U.S.-U.A.E. Business Council's latest Financial Services Policy Group Meeting. Omar Omar, Partner, Head of Transport & Insurance – UAE, Al Tamimi & Company led the conversation in a robust discussion on the current political environment in the Gulf and its effects on business and the wider region. Omar offered practical advice for how U.S. businesses can remain compliant with current local policy being implemented by the various parties, as well as with U.S. and international law. Danny Sebright, President of the US.-UAE. Business Council, added to the discussion by outlining the implications of the crisis and its impact on the US.-UAE bilateral trade and investment relationship more broadly.

Following the committee's discussion, ADGM's Financial Centre Development Director, Mr. Steve Barnett, provided attendees with a comprehensive review of recent activity and updates from ADGM, as well as ADGM's aims for Abu Dhabi and how U.S. businesses can benefit from the Free Zone more broadly.

The U.S.-U.A.E. Business Council's Financial Services Policy Group is comprised of a range of companies from within the wider financial services sector and related industries and meets on a quarterly basis. Issues before the committee include effective ways in which the US.-UAE Business Council can address such issues as GCC & UAE VAT & excise tax initiatives, netting and enforceability in the UAE and in the Gulf region at-large, as well as discussions over consolidation efforts within the banking sector, institutional investment promotion, venture capital, and entrepreneurship within the UAE.

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20 SEP

ADConnect @ NYUAD: Emotional Intelligence and Inter-Cultural Competence in the Workplace

ADConnect, the Abu Dhabi based HR networking group founded by Al Tamimi, held a seminar at New York University Abu Dhabi (NYUAD) on 20 September on the topic of emotional intelligence and intercultural competence. It was a very interactive and engaging session with multiple speakers sharing their expert knowledge on the subject.

The Al Tamimi employment team regularly organises networking sessions for senior HR Leaders, discussing relevant HR topics, trends and challenges in the current business climate.

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24
SEP

International Contractors Association of Korea (ICAK) Seminar in Abu Dhabi

Al Tamimi's are proud participants at the International Contractors Association of Korea ("ICAK") Seminar in Abu Dhabi which was held on 24 September 2017. ICAK conducted their 3rd Quarter GCC ICAK Conference in Yas Link, Abu Dhabi.

Jongeun (Christina), Head of Korea Group and Mohamed Al Marzouqi, Partner and Head of Litigation spoke on the UAE legal requirements to consider when changing local service agents. Jiwon Ha, Senior Associate-Corporate Commercial and Shiraz Khan, Senior Associate- Corporate Commercial provided an introduction to basic legal provisions for the implementation of VAT in 2018.

The seminar established our strong support for ICAK and attracted a wide range of Korean contractors covering the timely topics for ICAK members in the region.

28-29
SEP

The East Africa International Arbitration Conference (EAIAC)

Al Tamimi & Company sponsored and participated in the Fifth Annual East Africa International Arbitration Conference (EAIAC) that was held on 28 - 29 September 2017 and organised by the Kigali International Arbitration Centre (KIAC) at the Serena Kigali Hotel in Rwanda.

Thomas Snider, Partner, Head of Arbitration, Al Tamimi & Company participated in the discussion where he addressed one of the most important topics 'understanding expert witnesses in international arbitration'. Al Tamimi's Abdallah El Nokaly, Associate – Egypt Office, also attended the conference and was interviewed by Urugoli, one of the leading newspapers in Rwanda. Abdallah shared his thoughts on the important role of Egypt in promoting arbitration in Africa.

The conference highlighted the link between international arbitration and Africa's economy, as well as the role and contribution of African arbitrators and lawyers.

The event was very successful and provided a great opportunity to network with African countries and leading arbitration lawyers from the continent and around the world.

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27
SEP

Young Global Leaders Summit

On Wednesday, 27th September we supported a great initiative which met the objective of driving the debate on leadership, the youth and entrepreneurship.

The Young Global Leaders Summit is a forum of the most respected young global leaders in business, politics and entrepreneurship and is a platform to address current affairs and ways to help build the leaders of tomorrow.

H.H. Sheikh Saud Bin Saqr Al Qasimi, Ruler of Ras Al Khaimah and Supreme Council Member, welcomed attendees by sharing his thoughts on the importance of our youth and investing in them to be great leaders. Essam Al Tamimi, Senior Partner & Founder moderated an interactive panel discussion which touched on entrepreneurship, the challenges and ways to encourage our youth. Key speakers including H.E Sara Al Madani, Entrepreneur and Board Member - Sharjah Chamber of Commerce & Industry, Louis Antoine Muhire, Founder, Mergims.com and Armand Arton, President – Arton Capital presented fresh ideas, practical solutions and ways to engage young people in the emirate and the wider UAE.

Silicon Valley venture capitalist, Guy Kawasaki delivered a keynote speech where he shared stories from his time at Apple with Steve Jobs and gave valuable advice for young entrepreneurs on marketing and the gift of social media.

The Summit was one of the most powerful gathering and attracted great coverage.

2
OCT

Legal 500 Middle East GC Powerlist – Proudly sponsored by Al Tamimi & Company

On Monday, 2nd of October we sponsored and attended The Legal 500 'GC Powerlist – Middle East' cocktail reception, which celebrated and recognised the top 100 general counsel across the region.

The reception was a great success and an opportunity for Al Tamimi & Company to re-connect with the in-house community. To see the full Middle East GC Powerlist visit: www.legal500.com.

11
OCT

Doing Business in the Middle East: Opportunities, Considerations & Successful Strategies – Sydney, Australia

On Wednesday, 11th October we held an informative seminar in collaboration with The Australian Arab Chamber of Commerce & Industry (AACCI), and the Abu Dhabi Global Market (ADGM) which addressed Doing business in the Middle East: Opportunities, Considerations & Successful Strategies.

With the current business interest in the Middle East and continued investment appetite, the seminar was a timely opportunity to hear from senior industry experts who provided valuable insight into the legal framework, foreign investment, considerations and opportunities across the region.

We were fortunate to have Mohamed Hage, State Chairman, NSW – Australian Arab Chamber of Commerce & Industry (AACCI) in attendance for the open remarks where he welcomed over 100 delegates from multiple sectors. Joseph Rizk OAM, CEO & Managing Director, Arab Bank Australia delivered the keynote address and shared his thoughts on the investment appetite and key opportunities across the Middle East.

The seminar also consisted of an interactive panel discussion with leading representatives, including Al Tamimi lawyers Samer Qudah, Partner, Head of Corporate Structuring and Ibtissem Lassoued, Partner, Financial Crime who discussed the mechanisms of doing business in the region and the legal landscape. Other senior speakers included:

- Emmanuel Givanakis Executive Director, Legal & Enforcement, Financial Services Regulatory Authority, Abu Dhabi Global Market
- David Landers, A/Executive Director, International Operations, Australian Trade and Investment Commission
- Akmol Ali, Head of Corporate - Registration Authority, Abu Dhabi Global Market (ADGM)
- Jacqui Walshe, Managing Director, The Walshe Group

The seminar was a great success and reinforced the level of interest for doing business in the Middle East.

United Arab Emirates
Ministry of Justice

47th Year
Issue No. 621
8 Dhu al-Hijjah 1438 H
30 August 2017

FEDERAL DECREE-LAWS

8 of 2017	On VAT.

REGULATORY DECISIONS OF THE CABINET

27 of 2017	On the UAE Regulation for Child Car Seats.
28 of 2017	Approving the List of Terrorists and Terrorist Organizations.
29 of 2017	Amending the Articles of Association of Al Etihad Credit Bureau.
30 of 2017	On the regulation of traffic and traffic safety services.
31 of 2017	On the UAE Council for Fatwa.
32 of 2017	On the organizational structure of the Ministry of Climate Change & Environment.
33 of 2017	On the organizational structure of the Ministry of Economy.
34 of 2017	Amending Cabinet Decision No. (36) of 2012 concerning the fee for pre-inquiring about passengers arriving at UAE airports.

United Arab Emirates
Ministry of Justice

47th Year
Issue No. 622
8 Muharram 1439 AH
28 September 2017

FEDERAL DECREE-LAWS

9 of 2017	Amending Federal Law No. (4) of 2013 regulating notarial practice.

FEDERAL DECREES

117 of 2017	Appointing the Board of Directors of the Federal Authority for Identity and Citizenship.

REGULATORY DECISIONS OF THE CABINET

36 of 2017	On the executive regulations of Federal Law No. (7) of 2017 on tax procedures.
37 of 2017	On the executive regulations of Federal Decree-Law No. (7) of 2017 on excise tax.
38 of 2017	On excise goods, excise tax rates, and the method of calculating the excise price.
39 of 2017	On the fees for services provided by the Federal Tax Authority.
40 of 2017	On administrative penalties for violations of tax laws in the UAE.
41 of 2017	Defining community service work.

MINISTERIAL DECISIONS

- From the Ministry of Justice:

972 of 2017 On the executive regulations of Federal Law No. (23) of 1991 regulating the legal profession, as amended.

- From the Ministry of Climate Change & Environment:

433 of 2017 On the National Rapid Alert System for Food.

ADMINISTRATIVE DECISIONS

- From the Insurance Authority:

32 of 2017 Regulation on tax reporting guidelines.

- From the UAE Central Bank:

  - On the scheme for strike-off, withdrawal (of registration) and closure of money exchanges operating in the UAE.

- From the Securities & Commodities Authority:

  - Certificate of approval of amendment of the Articles of Association of Massar Solutions PJSC.
  - Certificate of approval of amendment of the Articles of Association of Al Khaleej Investment PJSC.
  - Certificate of approval of amendment of the Articles of Association of Al Khazna Insurance PSC.
  - Certificate of approval of amendment of the Articles of Association of Bank of Sharjah PSC.
  - Certificate of approval of amendment of the Articles of Association of National Central Cooling Company PJSC.
  - Certificate of approval of amendment of the Articles of Association of Al Hilal Bank PJSC.
  - Certificate of approval of amendment of the Articles of Association of Gulf General Investments Co. PSC.
  - Certificate of approval of amendment of the Articles of Association of Ras Al Khaimah Poultry & Feeding Co. PSC.

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

720 staff

45 nationalities

Our Accolades

Client Services

PRACTICES
Arbitration
Banking & Finance
Capital Markets
Commercial
Competition
Construction & Infrastructure
Corporate/M&A
Corporate Structuring
Corporate Services
Employment & Incentives
Family Business & Private Wealth
Financial Crime
Insurance
Intellectual Property
Legislative Drafting
Litigation
Mediation
Private Equity
Private Notary
Real Estate
Regulatory
Senior Partner's Office
Tax
Technology, Media & Telecommunications

SECTORS
Automotive
Aviation
Education
Expo 2020
FMCG
Healthcare
Hotels & Leisure
Projects
Rail
Shipping
Sports & Events Management
Transport and Logistics

COUNTRY GROUPS
China
India
Iran
Korea

LAW UPDATE 87

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