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LAW UPDATE

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Bitcoin - Infiltrating the Financial System Bit by Bit: What Does the Rise of Cryptocurrencies Mean for Financial Crime?

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In this Issue

Welcome to the August edition of *Law Update*.

In this month's issue we turn the spotlight to our Financial Crime practice, where we feature a number of very interesting articles exploring important issues relating to financial crime in the region. Measures against financial crime now occupy a central space at the forefront of many international governance agendas, as the speed in which opportunities and methods for such crimes are evolving demands ongoing efforts to strengthen legislation and increase awareness. Highlights of key topics covered by our team include an in-depth look at the infiltration of Bitcoin into the global financial system (page 28), a review of fundraising practices and methods to combat terrorist financing (page 31) plus a review of recent amendments to INTERPOL Red Notices (page 37).

Our team in Bahrain cover the recently introduced crowdfunding laws and regulations (page 40) and we investigate Cybercrime legislation in Iraq (page 46). We look at the global rise of eSports and the importance of considering local laws to ensure success on page 42 and on page 18, we continue our ongoing focus on the all-important issue of tax in the region, with our Tax practice providing an in-depth comparison between VAT regimes in KSA and the UAE.

Earlier this year Al Tamimi & Company in collaboration with the Dubai Land Department (DLD) proudly published a real estate guide, 'Know Your Rights for Real Estate Investors in Dubai'. The guide provides companies and individuals with the vital information they need when considering investing in real estate in Dubai (you can download a copy from our website). Over the course of the next few months, our Real Estate team will be sharing a series of articles aimed at keeping you informed on the real estate laws in Dubai. Here, we feature part 1 of the series on page 14, which focuses on 'Key Issues Investors Need to Know when Buying Real Estate Off Plan'.

I hope you find the information of great interest and, as always, should you have any feedback, or would like further information, please do not hesitate to get in touch.

All the best,

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Judgments

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

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Dubai Court of First Instance Judgment: Do the UAE Courts apply foreign law?

There is a common misconception that the UAE Courts will only apply UAE law when determining disputes between parties, notwithstanding an agreement to apply foreign law. In theory, it has always been possible for the UAE Courts to recognise an express choice of foreign governing law in contracts following Article 257 of the UAE Civil Code, which provides that "*the basic principle in contracts is the consent of the contracting parties and that which they have undertaken to do in the contract.*"

However, in practice, the UAE Courts do not always apply foreign law. This is mainly because the requirements for its application are not met due to various practical difficulties. These hurdles include, but are not limited to, the requirement that the party requesting the application of foreign law must prove the foreign law's existence and content to the court as an issue of fact. This requirement is coupled with the tendency of the UAE Courts not to readily accept submitted evidence regarding the content and effect of such foreign law. As a result, the UAE Courts often disregard the parties' chosen law and simply apply UAE law. This application is not even: the Courts frequently apply foreign law in matters of personal affairs but not in commercial disputes, for instance.

In this article, we analyse a recent judgment of the Dubai Court of First Instance (Commercial Full-Bench - Case No. 1484/2016), issued in May 2017, in which Al Tamimi acted for the successful Defendants against a claim seeking to invalidate personal guarantees given by the Claimant in order to secure loans for a group company. This case is interesting because the court was prepared to, and very nearly did, apply foreign law to a dispute to be determined in the Dubai Courts, but only declined to do so on the basis that a complete and certified Arabic translation of the foreign law was not provided by the party seeking to rely on the foreign law.

The Court of First Instance also considered in this case whether the conclusion of a contract in a consulate amounts to concluding the contract in the state of the consulate under the 1961 Vienna Convention on Diplomatic Relations.

Facts

The Claimant argued that he was entitled to invalidate the guarantee deeds that he gave to the Defendant on the basis that he was misled as to the amount of the loans and therefore the value of the guarantee deeds. He claimed that he did not receive the full amount of the loan and therefore was not bound by the guarantee under the provisions of Indian law which he said applied to the loan and guarantee agreements.

The agreements provided that the laws of India should govern any related disputes. Sections 5, 19, 39 and 142 of the Indian Contract Act, 1872 provided that any guarantee which had been obtained by means of misrepresentation made by the creditor or with his knowledge and assent, concerning a material part of the transaction, was invalid. Under the Indian Contract Act, when consent to an agreement is given by fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so induced.

The Dubai Court of First Instance referred the matter for investigation, placing the burden on the Claimant to establish the details (including the place and date) of offer and acceptance of the alleged terms in relation to each guarantee, and proof of agreement.

The Claimant brought his claim under Articles 21(3) and 24 of the UAE Civil Procedure Law (Federal Law 11 of 1992) and Article 19(1) of the UAE Civil Code (Federal Law 5 of 1985). The parties were required firstly to establish basic facts for the application of Article 19(1) of the UAE Civil Code, which provides:

'The form and substance of contractual obligations shall be governed by the law of the state in which the contracting parties are both resident if they are resident in the same state, but if they are resident in different states the law of the state in which the contract was concluded shall apply unless the contracting parties agree, or it is apparent from the circumstances that the intention was, that another law should apply.'

Separately, there was also a jurisdictional challenge based on the Vienna Convention on Diplomatic Relations. Even though the facility agreement was signed by the parties in the Indian Embassy in Dubai, and the parties had agreed to the jurisdiction of the Indian Courts to adjudicate the dispute, the Claimant had brought his action before the Dubai Courts. The loan and overdraft facilities were also issued and paid in India in Indian Rupees. The Defendants argued that, because the guarantee deeds were signed in the Indian Consulate, Indian law should be applied. The Claimant responded that, as the legal obligations under the agreements were centred on Dubai and they were physically signed in Dubai, the case should be before the Dubai Courts.

Court of First Instance

The Dubai Court applied UAE law, ruled in favour of the Defendants and held that it was clear that the Defendants did not make a request to the Claimant to pay the full amount of the guarantees. The Court found that the terms of the guarantees were clear, as they complied with UAE law and were not contrary to UAE public order. The guarantees reflected the intentions of the parties and therefore there was no justification to invalidate the guarantees.

Furthermore, the Court applied Article 21(3) of the UAE Civil Procedure Law, which says that the courts shall have jurisdiction to consider the claim on the foreigner who has no home or residence in the state if the claim is related to an obligation made or executed in the state or by a contract that shall be registered therein or an incident occurred therein. Article 24 of the same law provides that any agreement in violation of the articles of this chapter shall be void.

The Court determined that the agreement was entered into in the "State" and found in the Claimant's favour on the question of jurisdiction, on the basis of the above provisions. This invalidated the agreement of the parties to choose a foreign court to determine the dispute.

The Defendant's jurisdictional challenge, asserting that the Court of First Instance had no international jurisdiction and that jurisdiction belong to the courts of India, was dismissed on the grounds that the Claimant's action was for the invalidation of guarantees signed by the Claimant in Dubai (the dispositive fact occurred in Dubai). This meant suing the Defendants before the Dubai Court was appropriate according to Articles 21 and 24 of the UAE Civil Procedure Law.

In addition, the court rejected the Claimant's request to apply foreign law because the Claimant had failed to submit a complete and certified Arabic translation of the foreign law.

As to the substance of the case, the action against the Defendants was dismissed on the following grounds:

a. The Court held that the holding of security in respect of the main agreements was an obligation ancillary to the principal obligations and ran parallel to them. As such, the security imposed a personal obligation on the Claimant guarantor to the extent of the amount received by the principal and no more, even if otherwise provided for by the original contract, which stated the value of the bank facilities.
b. The principal debt limited the scope of the guarantor's obligation, i.e. the scope of the guarantee that must be satisfied on demand.
c. This was also the limit of the creditor's claim when the borrower defaulted on the payment of his debt to the creditor.
d. The Court found that the Defendants had not demanded payment of the full amounts under the guarantees, which were valid in terms of specifying the guarantee, the principal, the creditor, and defining the scope of the guaranteed liabilities. The guarantees were valid and contained nothing contrary to public policy. The guarantees therefore operated to bring about the legal effects intended by the parties. As such, there was no cause to invalidate the guarantees under UAE law.

Summary

It is rare for the UAE courts to apply foreign law to a dispute in which it can be argued that UAE law is applicable, particularly in commercial transactions.

This case provides a good example of the courts considering the application of foreign law if completed and certified Arabic translations of the foreign law are provided.

In addition, issues surrounding the applicability of the Vienna Convention in relation to jurisdiction could also have significant implications on how transactional documents are executed.

This Court of First Instance judgment is subject to appeal.

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DIFC Courts Consider First Case on Sovereign Immunity and Service under the Riyadh Convention

In (1) Pearl Petroleum (2) Dana Gas PJSC (3) Crescent Petroleum Company International Limited v The Kurdistan Regional Government of Iraq [DIFC ARB /003/2017], the DIFC Courts considered sovereign immunity and service under the Riyadh Convention in proceedings for the enforcement of London-seated LCIA partial final awards claiming over US$2 billion.

Background

In 2007, Crescent Petroleum, the oldest privately-owned oil and gas company in the Middle East, agreed with Dana Gas, one the leading publicly-listed natural gas companies in the region, to create a joint venture called Pearl Petroleum (together, "the Consortium"). The Consortium entered into an agreement with the Kurdistan Regional Government ("KRG") for the development of the Khor Mor and Chemchemal petrochemical fields in the Kurdistan region of Iraq. The KRG were and remain engaged in a political dispute with the Federal Government of Iraq, meaning that the Consortium were unable to export gas produced by the developed fields. As a result, the KRG became liable under its contract with the Consortium to pay a minimum guaranteed price, but it failed to make the required payments in full.

In 2009, Crescent and Dana each sold a minority part of their shareholding in Pearl to two major European energy companies. The KRG demanded payment of part of the sums paid by the buyers, which the sellers refused, causing the KRG to evict the Consortium from the Chemchemal field at gun point. The Consortium continued to manufacture gas and liquid petroleum products at Khor Mor.

In 2013, the Consortium submitted a request for arbitration to the London Court of International Arbitration concerning allegations of breaches of contract by the KRG. Eminent arbitrators were appointed, including two former judges of the UK House of Lords, the predecessor of the Supreme Court ("the Tribunal"). The KRG dragged out the subsequent arbitration, including strongly resisting the Consortium's application for, and subsequent enforcement of, an interim order to pay $100m USD to the Consortium after the KRG cut off payments for continuing supplies of gas to one of the claimants thereby exposing it to the risk of insolvent collapse before the arbitration could continue.

In July 2015 the Tribunal issued its first partial final award on the KRG's liability to the Consortium, and in November 2015 and January 2017 issued its second and third partial final awards, which covered quantum. Taken together, the awards ordered the KRG to pay over $2bn to the Consortium as compensation for the KRG's failures to pay for the gas and other products produced. Consequent enforcement proceedings in England and in the United States District Court of Columbia were stalled by the KRG, who refused to accept service of proceedings through its appointed lawyers in the arbitration.

In May 2017, the Consortium's ex parte application to recognise and enforce the second and third partial final awards was granted by Justice Sir Jeremy Cooke in the DIFC Courts ("the May order"). He also permitted alternative service of the English enforcement proceedings and other documents on the KRG's London solicitors. The KRG subsequently applied for the May order and for the enforcement proceedings to be set aside on the ground that the DIFC Courts had no jurisdiction to make such orders. The Consortium cross-applied for an order for disclosure, which the KRG said was invalidly served.

Cooke J heard the applications on 8-9 August, and judgment was handed down on 20 August.

Sovereign Immunity

The contract between the Consortium and the KRG was governed by English law and provided explicitly that "*the KRG waives on its own behalf and that of [The Kurdistan Region of Iraq] any claim to immunity for itself and its assets*". The KRG argued that the questions of whether sovereign immunity existed as a doctrine in the UAE and the DIFC, the scope of that immunity and whether the KRG had waived its immunity, were not ones for the DIFC Courts but were a matter for the UAE Federal government. The KRG relied on jurisprudence from the Court of Final Appeal of the Hong Kong Special Administrative Region, where the Court had found that a defence of sovereign immunity raised by the Democratic Republic of the Congo was a matter of public policy and thus unjusticiable by the common law courts, and instead an issue reserved to the Chinese National People's Congress.

The Consortium contended that there was no general law of state immunity under UAE law, confirmed by the Court of Cassation in a case involving the Central Bank of Sudan, and that the UAE courts were obliged to exercise their jurisdiction if there was no express exclusion of that jurisdiction.

The Judge dismissed the KRG's arguments. He found the KRG had waived its sovereign immunity in its 2007 agreement with the Consortium. Whilst the UAE's recognition of other states was a matter of foreign policy which the DIFC Courts could not rule on, construing the KRG's waiver of immunity was a question of law and not public policy. As a result, it was "inherent" in the arbitration agreement between the Consortium and the KRG contained within the overall contract that the KRG waived any claim to immunity from the English High Court, who had supervisory powers over the LCIA arbitration. Because the KRG had agreed to submit to arbitration, it had agreed to submit to the mechanisms that made the arbitration effective. The Judge rejected the comparison with Hong Kong, whose Basic Law, which reserved to the Chinese government all "acts of state" including matters pertaining to defence and foreign affairs, had no analogue in the DIFC.

Service

In his May order, the Judge had granted an order for alternative service of the order on the KRG. In reply, the KRG said that it should be served via diplomatic channels as stipulated under the Riyadh Convention. The Judge found that service in accordance with the Riyadh Convention was mandatory under UAE law. The Convention covered inter alia requests between signatory states for evidence on commission, for recognition and enforcement of judgments in civil, commercial, administrative and personal status actions. At Article 6, it provided for the international service, transmission or notification of judicial and other documents or legal and non-legal documents. Article 8 set out the enclosures to accompany a request for notification and the information to be given when doing so. Article 10 of the Convention provided that "*no request for the publication or notification may be denied in accordance with the provisions of this agreement except where the contracting party receiving such request considers that it may* *be detrimental to its sovereignty or public order therein.*" It applied not only to the state receiving a request, but, said the Judge, "*generally where the requested subject is a person resident in the state in question*".

The Consortium protested that the KRG had a "track record" of "*stalling and obstructing the progress of the arbitration*". They said the KRG would purport to exercise its rights under Article 10 if the Courts in Erbil were sent any request for service under the Convention, and in any event, those courts were under the "influence and control" of the KRG and would refuse to implement the request. In these circumstances, it was argued that the Convention was permissive, not mandatory, in providing for service or notification by the means set out. If the Convention was mandatory it did not set out the documents which had to be served or notified in the prescribed manner, which was a matter for the DIFC Court. There had to be a way to enforce the two partial final awards if the KRG had no sovereign immunity from suit: it could not be allowed to "*stymie service or notification under the Riyadh Convention by effectively claiming sovereign immunity unjustifiably*".

The Judge considered a number of common law precedents on state immunity and service, and the English principle that the court could order alternative service other than in accordance with the terms of a treaty in exceptional circumstances. However, a crucial difference between the position in England and the DIFC was that international conventions "*achieve the force of law in the UAE by ratification and are deemed to be part of the applicable domestic laws of the state, so that UAE judges must give effect to them*" including in connection with the enforcement and recognition of foreign arbitration awards. UAE civil and commercial laws are not applicable in the DIFC, but it remains bound by the terms of the Treaties which form part of the law of the UAE. As such, service of DIFC proceedings had to be in full accord with the Riyadh Convention.

"The DIFC Courts' decision shows, firstly, the importance of valid service under all material rules, domestic and international. It also demonstrates a bullish attitude on the part of the DIFC Courts to the enforcement of awards and judgments against sovereign states, providing access to justice for claimants seeking redress."

Conclusion

The Judge concluded that his order for the enforcement and recognition of the second and third London partial final awards stood, but the order had to be validly served in accordance with the Riyadh Convention. The ex parte orders for alternative service of the enforcement order and the Consortium's application for disclosure were set aside.

Following the handing down of the DIFC Courts' judgment, the parties published a joint press release at the end of August saying that they had agreed to "*fully and finally settle all their differences*" with the KRG, and that the LCIA arbitration and related court proceedings would end. Amongst other terms, the KRG has agreed to pay $600 million USD immediately with a further $400 million USD to be "*dedicated for investment*" in the two gas fields. The balance of the sums awarded by the Tribunal – over a further $1.2 billion USD – has been "*reclassified*" as outstanding cost recoverable by the Consortium from future revenues.

The DIFC Courts' decision shows, firstly, the importance of valid service under all material rules, domestic and international. It also demonstrates a bullish attitude on the part of the DIFC Courts to the enforcement of awards and judgments against sovereign states, providing access to justice for claimants seeking redress.

Al Tamimi & Company regularly advises on the enforcement of foreign arbitral awards in the DIFC and wider UAE jurisdictions. For further information please contact Naief Yahia (n.yahia@tamimi.com), Rita Jaballah (r.jaballah@tamimi.com) or Tarek Shrayh (t.shrayh@tamimi.com)

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Understanding the Effect of Deductibles in Insurance Policies

To a layperson, understanding insurance policies can be a daunting task.

This is particularly true of insurance policies taken out for business purposes. While there has been some progress towards making many consumer policies like motor vehicle and home and contents insurance clearer and more user-friendly, we are still a long way away from finding plain language used in common forms of commercial insurance policies like professional indemnity insurance and pubic and products liability insurance.

In addition, it is not always clear even to experienced business people what the legal consequences can be of common features of insurance policies.

Take the deductible. The deductible is the amount that a policyholder must bear of the value of any claim that the policyholder makes under the policy. In a way, it is the cost that the policyholder must pay for making a claim.

For instance, if you have insurance that insures your home and contents for AED 1 million and your home suffers, say, AED 950,000 worth of fire damage, the policy may contain a deductible of AED 10,000. Once the damage has been professionally quantified, the insurer will be liable to repair your damaged home up to AED 940,000 or to pay you out that sum in lieu of repair. The AED 10,000 difference represents the cost of the deductible that the policy requires you to bear yourself.

The amount of the deductible will vary depending on the perceived riskiness of the policyholder or of the thing insured. Sometimes the amount of the deductible can be very large when considered in relation to the total amount insured under a policy.

If the deductible is very large, it can have the effect of making a policyholder think twice about whether it is worth making a claim under the policy. This is particularly the case where to make a claim is likely to result in an increase to the policyholder's insurance premium when it comes time to renew the policy.

Somewhat rarer is the case where the value of the claim is less than the amount of the deductible. This was the subject of a Dubai Cassation Court judgment in 2009 .

In that case, the claimant underwent surgery to remove a polyp in the claimant's nose which resulted in damage to the claimant's olfactory nerve. The claimant sued the surgeon and the hospital and sought AED 4 Million in damages. The surgeon and the hospital sought to join their professional indemnity insurer to the proceedings.

On appeal, the court rejected the doctor's and the hospital's joinder application on the ground that their professional indemnity policy contained a USD 50,000 deductible. As damages awarded to the claimant at first instance were only AED 100,000 or around USD 27,250, that meant that the damages fell within the deductible which the doctor and the hospital had to bear themselves.

On further appeal to the Dubai Court of Cassation, the court increased the claimant's damages award to AED 150,000 which equated to USD 40,850. As that award still fell within the deductible, the net result was that the insurer still had no liability to the doctor or the hospital under the policy. That left both of them having to pay the damages awarded to the claimant out of their own pockets as well as their own and the claimant's court fees.

This outcome was due to the fact that the amount of a policy's deductible gives an insurer a defence to any claim by a policyholder up to the amount of the deductible. That is, the insurer does not become liable under the policy unless and until the loss or damage suffered by the policyholder exceeds the amount of the deductible.

In most cases, it will be clear whether the loss or damage to the policyholder is likely to exceed the amount of the deductible. But in other cases it won't be. That is what occurred in the case above of the doctor and the hospital, resulting in them having to pay not only the damages awarded to the claimant but also the court costs of the claimant and the insurer in the failed to attempt to defend the claimant's claim and to join the insurer to the proceedings.

The doctor and the hospital could possibly have avoided this situation had they obtained legal advice on the likely value of the claimant's claim against them. Armed with that advice, it might then have been possible for the doctor and the hospital to have tried to negotiate an amount under the policy with the insurer before any court judgment had been handed down.

Even if the amount that the insurer was prepared to pay was low or was unlikely to cover the amount of damages awarded to the claimant, the result would have been better than the one that the doctor and the hospital ultimately obtained.

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The UAE's Bankruptcy Regime: An Employment Perspective

The UAE government issued a new bankruptcy law, UAE Federal Decree Law No. 9 of 2016 ("Bankruptcy Law") which came into force on 29 December 2016. The introduction of the Bankruptcy Law is regarded as an important step towards bringing more clarity to the UAE's insolvency regime. The Bankruptcy Law outlined a more modernized approach to company restructuring and insolvency management.

This article focuses on the employment aspects of the Bankruptcy Law, in particular, how it affects employers with regard to the payment(s) to be made to employees (and where employees rank as creditors) in the event of the employer being declared bankrupt. The article further compares (again from an employment perspective) the position in onshore UAE (following the introduction of the Bankruptcy Law) with that of the DIFC and ADGM which have their own separate insolvency regimes.

New Bankruptcy Law (applicable onshore and in all free zones aside from the DIFC and ADGM)

When a company is declared bankrupt, the courts will order that its assets are liquidated and its debts are paid off in accordance with the order of preferential debts as set out in Article 189 of the Bankruptcy Law. From an employment perspective, the Bankruptcy Law provides some degree of protection for employees by ranking payments owed to employees as second in the order of preferential debts (the first being any expenses of the winding up process and any fees of experts and trustees).

The Bankruptcy Law (Article 189 (B)) provides that end of service gratuity, unpaid wages and salaries due to employees which are paid regularly (not including allowances, bonuses, other contingent payments, or any other benefits either financial or in kind) are to be paid out provided that they do not exceed in total the "salary" of three months as a maximum. There is no definition of "salary" and it is not presently clear whether this is referring to a maximum of three months' total remuneration or a maximum of three months' basic salary only. Given that Article 189 expressly states that any allowances and bonuses etc are not to be included, we consider that the three month cap refers to basic salary only as opposed to total remuneration.

Article 189 (B) further states that "The Court shall decide to pay the wages and salaries entitled for the employees and workers of the debtor for a period not exceeding (30) thirty days from any available amounts of the debtor's assets". It is not entirely clear whether this is in addition to the aforementioned three month capped payment. However, we consider that it implies that the court may award an additional amount of 30 days' salary to an employee if there are further monies left following the realisation of the company's assets (i.e. that it may pay a further 30 days' salary in addition to the three month capped payment, but only if funds are available). As the new Bankruptcy Law is largely untested in terms of its application before the courts, it is not possible to say with certainty that this will be the case and our view is formed from a literal reading of the wording of Article 189 (B) only (we will have more clarity and direction once the new Bankruptcy Law has been tested).

DIFC Position

The DIFC has its own Insolvency Law (DIFC Law No.3 of 2009) which should be read in conjunction with the DIFC Insolvency Regulations (which are enacted pursuant to Article 140 of the DIFC Companies Law No. 2 of 2009 (as amended) and Article 93 of the DIFC Insolvency Law) and the DIFC Preferential Creditor Regulations. The DIFC Insolvency Regulations set out the manner (order) of distributing assets as follows: (i) the expenses of the winding up process, (ii) any payments to preferred creditors and (iii) payments of all other debts which are unsecured or secured. The DIFC Preferential Creditor Regulations specify that employees are to be regarded as preferred creditors.

The payments to be made to employees are classed as preferential debts and are set out in the DIFC Preferential Creditor Regulations as follows:

- Any sum owed by the company which is a contribution to a pension scheme on behalf of the company's employees or any end of service gratuities;
- Remuneration of company employees for a period of up to four months;
- Any payments in lieu of notice; and
- Payments in respect of accrued but untaken annual leave.

ADGM Position

The ADGM has its own Insolvency Regulations (ADGM Insolvency Regulations 2015). The ADGM Insolvency Regulations set out the manner (order) of distributing assets as follows: (i) the expenses of the winding up process, (ii) any preferential debts and (iii) payments of all other debts which are unsecured or secured.

Preferential debts are described in the ADGM Insolvency Regulations as any amount which is owed by the company to a person who is or has been an employee of the company and are payable by way of non-discretionary salary (including agreed holiday remuneration) or contributions to a pension scheme in respect of the whole or any part of the period of three months before the relevant date. The relevant date for these purposes means:

- in relation to a company which is being wound up by the court, the date of the appointment of a provisional liquidator or, if no such appointment is made, the date of the winding-up order;
- in relation to a company which is being wound up voluntarily, the date of the resolution for the winding-up of the company; or
- in relation to a company which is in administration, the date on which it entered administration.

Summary

In summary, employees are offered protection under all three jurisdictions (onshore UAE, the DIFC and the ADGM) in that they are regarded as preferential creditors and are second in line to be paid once the company's assets have been liquidated. Any onshore UAE employers who are going through bankruptcy/have been declared bankrupt should ensure that they are aware that, under the new Bankruptcy Law, payments to be made to employees are subject to a cap of three months' salary as a maximum (although note above what seems like a possible additional 30 day salary payment). The DIFC position is more favourable for employees in that, although there is also a cap on the amount of salary to be paid, it is of four months and this relates only to the remuneration of the employees and DIFC employees are also entitled to receive their gratuity, notice pay and a payment in respect of accrued but untaken annual leave as expressly set out in the DIFC Preferential Creditor Regulations. Finally, the ADGM position is that the salary and agreed holiday remuneration of any employee shall be paid in respect of part of or up to a full period of three months.

Al Tamimi & Company's Employment team regularly advises on all employment related matters. For further information please contact Aisha Khokhar (A.khokhar@tamimi.com) or Gordon Barr (G.Barr@tamimi.com).

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Key Issues Investors Need to Know when Buying Real Estate Off Plan: Part 1 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.

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.

This article is Part 1 of the series and will focus on 'Key Issues Investors Need to Know when Buying Real Estate Off Plan' as stated in page 19 of the Guide.

1. Is the real estate project registered with RERA?

Every real estate project in Dubai must be registered with RERA and the fee for registration is currently set at AED 150,020, which must be paid at the time of submission of the project registration application. The investor can directly check the registration details of the project on the website of DLD (www.dubailand.gov.ae).

Failure to register the real estate project with RERA, or conducting development activity without a licence, can lead to a fine of AED 100,000 or criminal sanctions resulting in a prison sentence pursuant to the Escrow Law (Law No. 8 of 2007 concerning Escrow Accounts of Real Estate Developments in Dubai, 'Escrow Law').

2. Is there an escrow account for the project? What is the escrow account number and the name of the escrow account agent?

Any developer who intends to sell units off plan in the development project is required to open a separate escrow account for the project with an escrow agent (bank or financial institution) accredited by the DLD, pursuant to the Escrow Law. The developer must deposit in the escrow account all amounts received by the third party purchasers of off-plan units and loan payments funded by financiers for the purpose of construction of the development project.

The amounts deposited in the escrow account shall be allocated exclusively for the construction of the development project and settlement of project financing payments. Every developer is required to register in the RERA TAS system, where it must record all financial transactions.

The details of the project escrow account number must be stated in the sale and purchase agreement between the developer and investor, and any funds received from the investor must be directly deposited in the designated escrow account for the project. Furthermore, the investor can directly check the details of the escrow account agent and account number either on the DLD website or by using the 'Mashrooi' application launched by the DLD. The application lists all registered developers in Dubai, together with a list of all its registered projects and important details such as construction status of the specific project, escrow account details, etc.

3. What is the percentage of completion of the project and the expected date of completion?

The DLD website offers a project status tracking service, which allows investors to track the current status of the completion of real estate developments in Dubai by entering details of either the land number, project number or project name. The Mashrooi smart application also contains the project status tracking service.

The expected date of completion must be stated in the sale and purchase agreement between the developer and investor, and the terms of the agreement should address issues relating to default committed by the developer to meet such estimate timeline. It is common for developers to reserve a further period in the agreement, such as up to an additional 12 months from the expected date of completion, to factor in any delay caused in project completion.

4. Is the developer registered with RERA? Does the developer own the development land or is there a development agreement between the owner and the developer?

RERA permits companies that are registered with the Dubai Department of Economic Development ('DED') with the activity of 'real estate development' or a DED Professional Licence holder to be registered as a developer for new development projects.

The title deed of the development land should be in the name of the developer. Alternatively, the developer and the owner of the development land can enter into a project development agreement. The registration fees of the project development agreement between the developer and the land owner is 4% of the current market value of the land and the execution of the project development agreement must be done at RERA. The terms of such agreement can be amended subject to prior approval of RERA. However, in the event that the developer and land owner is able to establish to RERA that the two entities have the same or related ultimate beneficiaries in their corporate structure, the registration fees may be waived by RERA at its discretion.

5. Does the developer have the required permits and approvals from Dubai Land Department and RERA to sell off-plan in the relevant project?

If the developer intends to sell off plan, RERA currently provides the developer with four options, namely:

a. completion of 20 per cent of the construction works of the project by the developer and thereafter applying to RERA for its no objection certificate to sell off plan;
b. cash deposit of 20 per cent of construction value of the project in the designated escrow account and thereafter applying to RERA for its no objection certificate to sell off plan;
c. submission of a bank guarantee to RERA equal to 20 per cent of the construction value and thereafter applying to RERA for its no objection certificate to sell off plan; or
d. submission of application to RERA seeking its no objection certificate to sell off plan without meeting the requirements set out above in (a), (b), or (c) but on the condition that the developer will deposit all received monies from third party sales into the designated escrow account and provided that the developer will not withdraw any money from the escrow account until and unless a target of 20 per cent of the construction works of the project has been successfully completed.

While a detailed analysis of the issues involved in the acquisition of real estate 'off-plan' is beyond the scope of this series and the Guide, we are confident that investors will find these materials a useful guide to their initial investment considerations and directing them to key issues.

We look forward to presenting Part 2 of this series in our next Law Update issue.

Al Tamimi & Company's real estate team regularly advise and assist clients with developer and project registration at RERA and related authorities. For further information please contact Mohammed Kawasmi, Partner (m.kawasmi@tamimi.com) or Aruna Mukherji, Associate (a.mukherji@tamimi.com).

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Marketing Foreign Funds into the UAE: Update

This article summarises the current position as regards the promotion of foreign funds into the UAE on a cross-border basis.

Since our September 2016 update on the new UAE fund regulations (*Chairman Resolution No. (9) R.M. of 2016 Concerning the Regulation on Mutual Funds*) ("2016 Fund Regulations"), the UAE Securities and Commodities Authority ("SCA") has released further promotion regulations which cover the promotion of foreign funds in the UAE (*Chairman Resolution Decision No. (3/R.M) of 2017 Concerning Regulation of Promotion and Introduction*) ("2017 Promotion Regulations").

The 2017 Promotion Regulations have been in place for six months now and, despite some initial uncertainties, by and large the status quo has remained unchanged with regards to the offering foreign funds into the UAE with limited UAE regulatory impact. However, we note *there is now an increasing focus by UAE regulators on cross-border activities and we anticipate there will be some developments in this area in the near future*.

Can foreign funds be privately placed without any form of registration? Are there any specific exemptions?

Traditionally, where a foreign fund was promoted in the UAE on a cross-border basis in line with a fairly standard set of 'dos and dont's' (such as targeting only institutional and sophisticated investors) and as long as such activities did not constitute 'conducting business' in the UAE, neither promoter nor the fund were likely to be caught by any UAE laws or regulations.

Similarly, there has been no requirement to be registered or licensed or use a locally licensed intermediary to market into the UAE where such marketing activities have been conducted pursuant to specific private placement exceptions contained in the relevant regulations.

A 2013 amendment to the old 2012 Fund Regulations introduced specific private placement exceptions. These private placement exceptions were narrowed in scope under the replacement 2016 Fund Regulations restricting the exception to promotion of foreign funds to:

- federal or local government authorities; or
- in instances of reverse solicitation

The 2017 Promotion Regulations also contain exceptions to their application, being:

- promotion of products to 'Qualified Investors' excluding natural persons (ie, investors capable of self-asset management such as government authorities and SCA licensed entities along with investors represented by an SCA licensed manager); or
- in instances of reverse solicitation.

Due to the wide definition of 'Qualified Investors', the narrowing of the exemptions under the 2016 Fund Regulations was effectively reversed under the 2017 Promotion Regulations as regards promotion of foreign funds. At a practical level, how wide or narrow the private placement exceptions are may now play a more important role given the SCA's increasing focus on cross-border activities.

It should be noted, however, that whether marketing pursuant to one of the exceptions or on a cross-border basis, activities while physically in the UAE should still be limited so as to avoid being deemed to be 'conducting business' in the UAE, which would itself require licensing.

Conclusion

The 2017 Promotion Regulations have been in force for six months now and appear to focus on activities conducted actually in the UAE, with the regulations not clearly dealing with cross-border activities. Given this, together with an increasing focus by the SCA on cross-border activities, the current position is unclear. We anticipate that further regulations or confirmation of the SCA's position will be forthcoming in the near future and continue to monitor developments and engage with the SCA.

The content of this article is for general guidance only and not intended to be a substitute for specific legal advice on individual matters. As such, the information contained herein should not be relied upon or used as a substitute for consultation with professional advisors.

Al Tamimi & Company's Banking team regularly advises on fund marketing. For further information please contact Edward Brown (e.brown@tamimi.com).

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A Comparison of the VAT Regimes in Saudi Arabia and the UAE

As the United Arab Emirates ('UAE') and the Kingdom of Saudi Arabia ('Saudi Arabia') continue to lead the Gulf Cooperation Council ('GCC') in proposing the implementation of value added tax ('VAT'), this article compares the key features of the future VAT regimes in these countries, including the treatment of different industry sectors based on what is currently known about the proposed VAT regimes.

The GCC VAT Framework

The Unified VAT Agreement for the GCC ('GCC VAT Framework'), which is a country level agreement between all the GCC states, sets out the framework and broad principles that should be followed by all the GCC countries in their individual VAT laws. Each GCC country is expected to enact its own domestic VAT legislation based on the underlying principles in this GCC VAT Framework.

In Saudi Arabia, the VAT law has incorporated parts of the GCC VAT Framework into its domestic VAT law and these, together, are supplemented by implementing regulations.

In the UAE, the VAT legislation will comprise the VAT law and supporting executive regulations.

The Status of VAT in the UAE and Saudi Arabia

In line with the recent trend where Saudi Arabia has been the first to publish tax laws, pursuant to tax related agreements at the GCC level, the country has become the first in the GCC to issue its final VAT law and implementing regulations, doing so on July 28, 2017 and August 30, 2017 respectively.

The UAE issued its VAT law at the end of August and the related executive regulations are expected to be issued during the fourth quarter of this year.

Implementation Dates in the UAE and Saudi Arabia

Both Saudi Arabia and the UAE will be implementing their VAT regimes with effect from January 1, 2018, as confirmed by their final VAT laws.

Scope of VAT in the UAE and Saudi Arabia

The UAE and Saudi Arabia have adopted a broad tax base with limited exceptions. VAT will apply to the supply of goods and services in the UAE and Saudi Arabia, and to imports into the countries respectively. Certain goods and services may be exempt or subject to a zero rate of VAT. Unless the supply of goods and services falls within a category that is specifically exempt or is subject to the zero rate, VAT will apply at the standard rate. The standard VAT rate will be five per cent in both countries.

VAT Registration

The Saudi Arabian tax authority has already started automatically registering large businesses based on existing information held by it on taxpayers. The country's VAT law required all persons liable to register for VAT to register within 30 days from the issue of the law.

The UAE Ministry of Finance has indicated that electronic VAT registration will be open on a voluntary basis during the third quarter of 2017. For businesses required to be registered, VAT registration is expected to become compulsory in the UAE during the final quarter of 2017.

The mandatory registration threshold will be an annual business turnover of over 375,000 UAE dirhams in the UAE and over 375,000 Saudi riyals in Saudi Arabia; the voluntary registration threshold will be an annual business turnover

“As the UAE and Saudi Arabia continue to lead the GCC in proposing the implementation of value added tax, this article compares the key features of the VAT regimes in these countries, including the treatment of different industry sectors based on what is currently known about the proposed VAT regimes.”

that is below the mandatory registration but above 187,500 UAE dirhams and above 187,500 Saudi riyals. Businesses must register for VAT if their annual turnover exceeds the mandatory registration threshold, while it is optional for them to register if the taxable supply and imports are below the mandatory registration threshold but exceed the voluntary registration threshold. In Saudi Arabia, small businesses with turnover of less than one million Saudi riyals will be given the opportunity to delay registration until January 1, 2019. Group registration will be available in both countries for related parties, subject to certain conditions.

In Saudi Arabia, it is interesting to note that businesses that supply goods or services that are zero rated are not required to be VAT registered, whereas the UAE requires such businesses to request an exemption from mandatory registration. Clearly, it will be in the interest of businesses to register as only VAT registered business will be able to recover any VAT paid on their purchases.

VAT Treatment of Industry Sectors

In the light of the flexibility provided by the GCC VAT Framework, it is likely that industry sectors may be treated differently for VAT purposes in individual GCC countries. Even where the sector may have the same headline VAT treatment, the definitions may vary from country to country resulting in potentially different VAT outcomes for the same services.

The above can be seen in the case of the VAT treatment in the UAE and Saudi Arabia for the education and healthcare sectors. Based on Saudi Arabia’s draft VAT implementing regulations, where education and healthcare services are neither exempt nor zero rated, education and healthcare providers will generally be subject to VAT at the standard rate (with public education and healthcare providers potentially not subject to VAT).

The UAE, however, has announced that certain education and healthcare services will be subject to VAT at the zero rate. It remains to be seen how the Emirates will define the type of education and healthcare services that will be taxed at the zero rate and which education and healthcare services will be excluded from this definition. It is possible that the zero rated VAT treatment is dependent on whether the education provider is engaged in pre-school, primary, secondary or higher education and on whether the healthcare provider or educational institute is public or private.

Both nations are expected to treat financial services and insurance in the same way. It is expected that margin-based financial services will be exempt, while fee-based products will be subject to the standard rate of VAT. General insurance services will be subject to the standard rate of VAT, except life insurance, which will be exempt.

In terms of real estate, both will exempt the supply of residential real estate, except that the Emirates will subject the first sale of residential real estate to VAT at a zero rate. The UAE will also exempt the supply of bare land. The supply of commercial real estate will be subject to VAT at the standard rate in both countries. As noted above, the definition of ‘commercial’ and ‘residential’ real estate may differ between the two nations.

Subject to certain conditions, the supply of medicine and medical equipment will be zero rated in accordance with the GCC VAT Framework in both countries. Although under the GCC VAT Framework there was a list of 100 items of foods that could have been zero rated, both countries will subject these items to VAT at the standard rate.

Another example of the differences in VAT treatment is local passenger transport services. The UAE has announced that this will be exempt, whereas Saudi Arabia’s implementing regulations indicate that such services will be subject to VAT at the standard rate.

In both countries, government authorities that are performing a public function will not be considered to be carrying on an economic activity, as such, supplies made by them will not be subject to VAT in either country. However, where government authorities are involved in the supply of goods and services in competition with the private sector,

they will be regarded as carrying on a commercial activity and subject to VAT in the normal way.

VAT Compliance

In the UAE, VAT returns will generally be required to be submitted on a quarterly basis, with the returns and payments due within 28 days after the end of the period. In Saudi Arabia, companies with annual income in excess of 40 million Saudi riyals must file returns on a monthly basis, while companies under this threshold must file their returns on a quarterly basis, with payments required to be made within a month of the end of the relevant period.

Transitional Provisions

Both nations will have special rules to protect businesses for contracts that straddle VAT implementation.

In the UAE, under normal circumstances, where the contract is silent on VAT, the price will be deemed to be inclusive of VAT. However, where the contract was concluded prior to the implementation date and a part of the supply is made after the implementation date, suppliers will be able to charge the tax to the customer, where the latter is able to recover it.

In Saudi Arabia, for contracts that were entered into before May 31, 2017 and are silent on VAT, the supply can be treated as zero rated until the end of the contract or December 31, 2022 where the customer is entitled to deduct VAT incurred on its supplies.

Are you ready for VAT?

As there are less than four months remaining before VAT is implemented in the UAE and Saudi Arabia, the concern is whether there is sufficient time for businesses that have not yet taken any proactive measures to prepare. Such businesses will likely find it very difficult to be ready in time.

It has, therefore, become critical for organisations to assess the impact of VAT on their businesses and implement any changes necessary to be compliant with the applicable VAT laws and minimise costs and cash flow impact.

A version of this article was originally published in the National on 5 August 2017

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

Fighting to Beat Financial Crime

This month's special feature offers an assortment of enlightening articles from our Regional Financial Crime Practice, focusing on pertinent issues relating to financial crime and the ways in which they are being fought across the region. Combative measures against different forms of financial crime occupy a central space at the forefront of many national governance agendas across our jurisdictions in the Middle East. The rapidity with which opportunities and methods for such crimes are evolving demands ongoing efforts to fortify legislation and more effective measures to increase awareness.

The extent of this trend is clearly demonstrated in one of the included articles authored by Ibtissem Lassoued, Partner, which provides a multifarious overview of how Financial Crime issues are being addressed in each of our jurisdictions. Her 'Regional Roadmap of Financial Crime Issues' spans innovative initiatives such as Egypt's anti-corruption advertising campaign and more conventional measures akin to Oman's tightened anti-money laundering regulations and Jordan's pro-enforcement approach to its National Integrity and Anti Corruption Strategy. By juxtaposing these starkly contrasting approaches, Ibtissem highlights the diversity with which the region is confronting its Financial Crime problems and taking positive steps in securing against them.

One emerging issue that is garnering greater attention is the rise of various forms of FinTech, which resembles as yet unknown entity to many aspects of the law and could have particularly pertinent repercussions for financial crime. In the article 'Bitcoin - Infiltrating the Financial System Bit by Bit: What Does the Rise of Cryptocurrencies Mean for Financial Crime?', Khalid Al Hamrani, Partner and Head of the Regional Financial Crime Practice, and Sharif Jamous provide their commentary on the rapidly emerging cryptocurrency phenomenon Bitcoin and its impending implications for both financial crime and law enforcement agencies.

A matter of particular importance this year is that of charitable activity, which has experienced a remarkable surge during the 2017 Year of Giving in the UAE. Anyone thinking about embarking on any fundraising initiatives or donating to worthy causes would benefit from reading Ibtissem Lassoued's informative article titled 'To Donate or Not To Donate: Fundraising Practices and CTF in the UAE', in order to familiarise themselves with the relevant legislation and the obligations contained therein.

Other interesting offerings this month include a run-down of INTERPOL's new Red Notice procedures and their call for augmented case presentation standards in 'Always Get the Man You Want: An Overview of Recent Amendments to INTERPOL Red Notices and their Current Application in the UAE' by Ibtissem Lassoued and Adam Wolstenholme. This will have important practical consequences for all lawyers involved in extradition matters across the region. Khalid Al Hamrani and Saad Al Doseri, Senior Associate, also provide a concise overview of the anti-corruption measures applied to the private sector in Bahrain's strengthened regulatory framework.

We hope that you find the Financial Crime feature both interesting and informative. The issues discussed in the articles provide a window into the complex world of financial crime but represent only a snapshot of the wider regional fight to defeat it.

Our Regional Financial Crime Practice comprises highly specialised and both internationally and locally trained lawyers with experience of working in various jurisdictions, including the UAE, United Kingdom, France, Jordan and Egypt. Headquartered in Dubai, we provide advisory and litigation services across the UAE, Saudi Arabia, Oman, Jordan, Kuwait, Bahrain, Qatar, Iraq and Egypt and consult with international firms on multijurisdictional matters.

If you have any comments related to the issues discussed in this issue or other queries concerning Financial Crime, we would be delighted to hear from you. Please feel free to contact either Khalid Al Hamrani at k.hamrani@tamimi.com or Ibtissem Lassoued at i.lassoued@tamimi.com.

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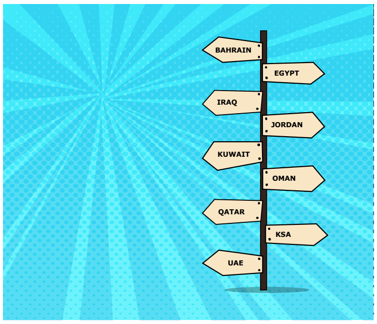
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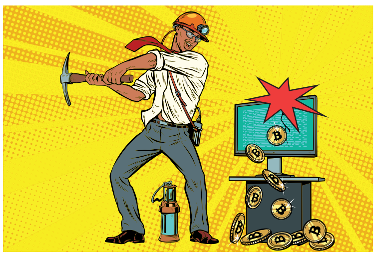

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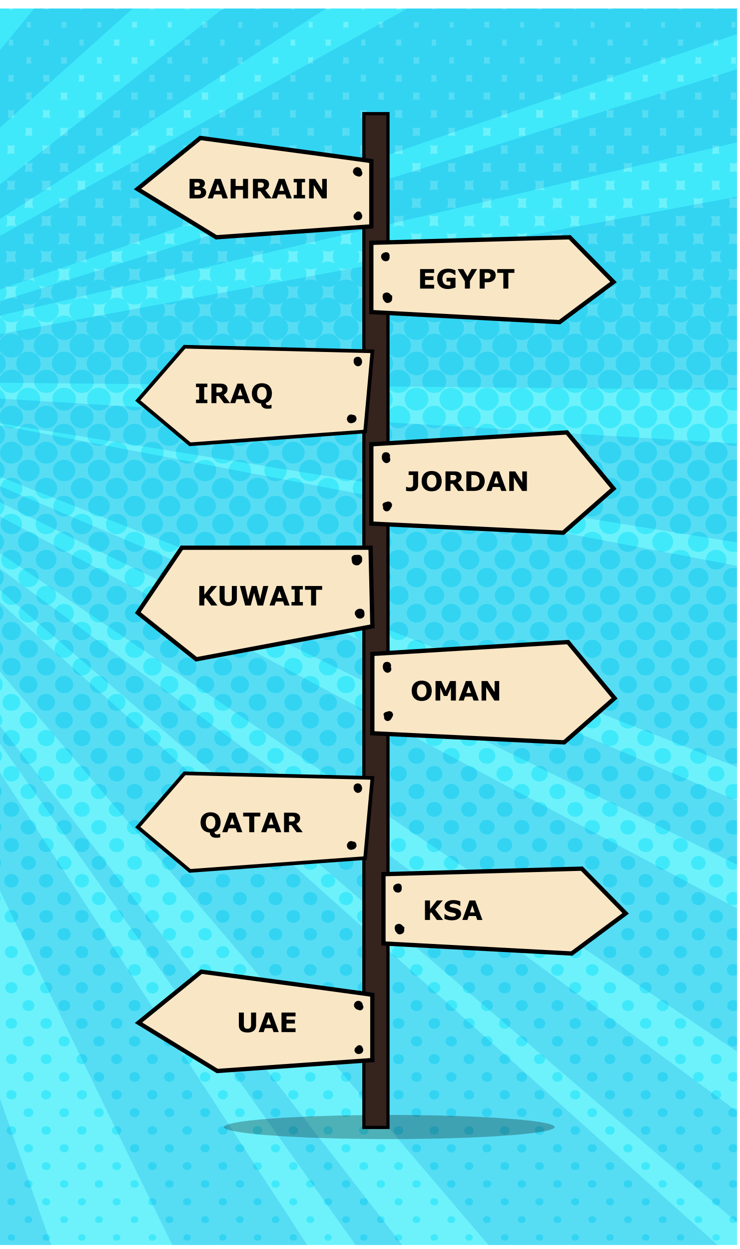
A Regional Roadmap of Financial Crime Issues



As a region, the Middle East witnesses constant development across a spectrum of financial crime issues. Over the past six months, each country has showcased its own approach to addressing the specific challenges faced in its jurisdiction. This article considers some of the more prominent campaigns.

Egypt – UNODC Anti-Corruption Campaign

During Ramadan this year, Egyptian national television was flooded with anti-corruption adverts as part of a targeted media campaign. Building on the success of last year's initiative, the advert aimed to encourage public participation in Egypt's fight against corruption, and was strategically aired more than 650 times per day during the holy month to maximise its audience. The media campaign was developed in close partnership with the United Nations Office on Drugs and Crime (UNDOC), which has been assisting Egypt's drive for anti-corruption through its project "Supporting Measures to Combat Corruption and Money Laundering, and to Foster Asset Recovery in Egypt" since July 2011. UNODC has been cooperating with the Administrative Control Authority (Egypt's monitory body for corruption and financial integrity), Egyptian Ministries of Justice and Interior, the Public Prosecutors Office, and the Money Laundering and Terrorist Financing Combating Unit to improve anti-corruption awareness throughout the various branches of government. The project has taken a multifaceted approach, targeting soft strategic elements such as awareness, whilst also making more pragmatic advancements in developing the legal framework, improving institutional capacity in combative measures and enhancing reporting mechanisms.

The project concludes on 30th September 2017 and Egypt will have to continue its anti-corruption efforts without the benefit of this particular source of UN, EU, Canadian and Romanian funding, which has contributed a total of more the $3.5 million over the past 6 years. Egypt is currently ranked by Transparency International as 108th out of 176 on the Corruption Perceptions Index 2016, with a failing score of 34%, indicating that a great deal more needs to be done before Egypt will feel real benefit from reduced corruption. As a member of the UN Convention Against Corruption (UNCAC), Egypt is committed to eradicating corruption in the public and private sector, though its low scores indicate limited progress since ratification in February 2005.

The success of the campaign will not come to light for some time but, moving forwards, future initiatives might do well to emulate the inclusive nature of UNODC's program. Encouraging involvement across the civic sphere fosters an anti-corruption culture that, if properly sustained and utilised, could catalyse pro-active reform and a more robust political will to combat corruption.

Iran – Sanctions, Retaliation, and Escalation

The Joint Comprehensive Plan of Action (JCPOA) involving Iran and P5+1 powers (US, UK, France, China, Russia and Germany) is on unsteady ground after escalatory actions on both sides of the deal. Additional sanctions imposed by the United States and the prospect of more to come is creating a convoluted web of measures that make compliance a difficult task.

For now at least, the JCPOA remains intact, and trade between Iran and other countries should be feasible save for issues that directly relate to Iran's missile programme, military procurement, terrorist and organised crime activity or the Revolutionary Guard Corps. In reality, even under the extensive sanctions relief provided by the deal, many businesses are still utilising a de-risking strategy when appraising trade opportunities. This trend has arisen due to a combination of residual fear of punitive measures attached to sanctions violations and confusion over the remaining measures. De-risking strategy is a commonly used term referring to the general practice of banks and other financial institutions of avoiding high risk business ventures. According to an International Monetary Fund (IMF) report released in February 2017, no Tier 1 large banks have started correspondent relationships with Iranian banks since the implementation of the deal. A lack of trade between larger institutions can have a detrimental impact on both commerce and investment, putting large-scale operations and development out of reach. Aversion to opening trade with Iran has severely diminished the economic upturn that the deal was intended to provide and this is unlikely to improve whilst the trade climate is constantly confused by frequent changes to sanctions programs.

The complexity of the remaining sanctions is not the only barrier to trade. Any plan to deal with Iranian parties is still subject to a extremely high compliance burden in light of Iran's existing Anti-Money Laundering (AML) and Counter Terrorist Financing (CTF) deficiencies, as highlighted by the Financial Action Task Force (FATF). These challenges may dissuade interested parties, but doing business with Iran is still within the realm of possibility, provided that opportunities are viewed in parallel with adhering to internationally approved AML and CTF prevention programs. Subject to careful adherence to compliance standards and fastidious due diligence measures, being open to the possibility of new business could prove to be a lucrative avenue for institutions with big enough risk appetites.

Jordan – Pro-Enforcement Approach to New National Integrity and Anti-Corruption Strategy

A delegation from the Saudi Ministry of Civil Service visited the Jordan Integrity and Anti-Corruption Commission (JIACC) on 1st August 2017 in order to review the programs and impending plans involved in Jordan's anti-corruption initiative. The visit marks the latest in a string of events that suggest the Jordanian

"As a region, the Middle East witnesses constant development across a spectrum of financial crime issues. Over the past six months, each country has showcased its own approach to addressing the specific challenges faced in its jurisdiction."

national government are taking a much more effective pro-enforcement approach to the newest National Strategy for Integrity and Anti-Corruption (NSIAC), published in December 2016. The JIACC was established with the passing of Jordan's new Integrity and Anti-Corruption Law on 16th June 2016, which introduced more comprehensive and vigorous provisions to Jordan's anti-corruption legislation. As a fully independent body, the committee will assume primary responsibility for implementing the NSIAC over the coming 8 year period.

Awareness and receptiveness to corruption control seems to have gained momentum in Jordan since the publication of the Corruption Perceptions Index (CPI) 2016, which saw the country slide 12 places down the ranking to 57th in the space of just 12 months. Since its release in January 2017, parliamentarians have played a far more active role in advancing anti-graft measures, voting to refer more than 90 violations to the IACC in March alone, followed by a vote to refer three former ministers to the committee just one month later in April. Legislation has also been strengthened, with AML and CTF regulations expanded in April to apply to societies and non-profit organisations, at the recommendation of the National Committee for Anti-Money Laundering and Terrorism Funding. This measure, approved by the Council of Ministers, ensures that the services of such institutions cannot be co-opted for money laundering or terrorist financing purposes, and ensures that external funds received are legitimately spent. An Extraordinary Parliamentary Session was further convened in May to increase the penalties attached to crimes against public assets. These developments suggest that the government is prioritising corruption control in public office with genuine intent to close the gap between regulation and enforcement. Jordan's existing legislative framework for combating corruption is relatively comprehensive, largely due to its efficient adoption of international best practices since ratifying the UN Convention on Corruption (UNCAC) in 2005.

From a regional perspective, Jordan's renewed efforts are closely aligned with a wider regional trend of improving governmental transparency. Much of the anti-corruption agenda in Middle Eastern countries is grounded in both ideological aspirations of transparency and integrity but also a more pragmatic objective of improving business and social conditions. Collective awareness and proactive governance in anti-corruption measures make it more likely that the efforts of individual countries will be sustained, especially if states are prepared to collaborate to develop the most effective responses, as the visit from the Saudi delegation would suggest. Further developments will provide insight into how Jordan is benefiting from the mutual drive for corruption control across the region and whether or not it is able to sustain its enthusiasm for a pro-enforcement approach.

Oman – Improved Protection Against AML and CTF

Following the publication of its most recent Mutual Evaluation Report (MER) in April 2017, Oman has achieved a rating of at least Largely Compliant (LC) with FATF's standards of AML and CTF control. The Middle East and North Africa Financial Action Task Force (MENAFATF) report reviewed Oman's efforts to implement previous recommendations and considered its application to be moved to the biennial review process. Ultimately, the report concluded that Oman had successfully implemented key recommendations and had improved sufficiently to be moved to the lesser level of oversight, pending later approval at the 25th Plenary Session in April 2017.

The primary factor in its improved status was more robust implementation of the new AML / CTF legislation promulgated via the Sultani Decree No 30/2016 in June last year. Key improvements introduced by the new law included:

- Establishing the National Centre for Financial Information to operate with complete financial independence and autonomy;
- Strengthened preventative measures, including due diligence and Know-Your-Client (KYC) procedures, introducing greater accountability for financial and non-financial institutions in assessing their accounts and detecting suspicious transactions;
- Stiffened penalties across prison sentences and fines, with the Court granted discretionary powers for protecting whistleblowers; and
- New provisions to allow for international cooperation in cross-jurisdictional matters.

The MER denoted three primary areas of improvement that were instrumental in improving Oman's compliance rating. First, there was proper implementation of provisions that prohibited Financial Institutions (FIs) from opening accounts for anonymous customers or individuals providing fictitious names. FIs must now also conduct ongoing checks on business relationships, ownership structures and customer transactions in order to determine and assess the risk attached to each account.

Secondly, Customer Due Diligence (CDD) was another key area for extensive reform, with the law providing clarification over where CDD requirements were necessary and prohibiting services, or even terminating relationships, in situations where CDD is impossible. The final critical area of improvement related to deficiencies in tools for freezing and confiscating terrorist funds and fully implementing the Convention for the Suppression of the Financing of Terrorism. Overall, the report found that Omani legislation and implementation has improved sufficiently across all areas to be ranked as Largely Compliant and promoted to biennial review status.

The MENAFATF review emulates the oversight structure and standards of FATF regulations so provides an accurate indication of how Oman ranks in the framework of international best practice. Since Oman is not a regional or offshore financial hub, it does not attract the same level of AML or CTF risk as some of its Gulf neighbours, but being able to present itself as a lower risk destination for investment may pay dividends in future. Strengthening AML and CTF regulations improves its domestic economic security and lends confidence to prospective backers. As MENAFATF now progresses with its second round of mutual evaluations with new FATF methodology, marked advancements like Oman's reflect the efficiency of the regional institution and enhances its drive for AML/CTF best practice.

Qatar – MENAFATF Counter Terrorist Financing (CTF) Training

The Middle East and North Africa Financial Action Task Force (MENAFATF) and the UN Office of Drugs and Crime (UNODC) provided a four day regional training course in Doha in May 2017, aimed at improving states' capacity to track and prevent the flow of illicit funds and money laundering. The Qatar National Anti-Money Laundering Centre hosted the event where sessions were delivered by experts from relevant organisations, including the Terrorism Prevention and the Corruption and Economic Crimes Branches of UNODC, and the Global Programme Against Money Laundering. MENAFATF member states in attendance were instructed on global good practice and gained valuable insights regarding specialised techniques in recognising the operations of terrorist funding networks, identifying vulnerability and deploying effective disruption techniques to immobilise terrorist network operations.

MENAFATF's initiatives to improve CTF are aligned with wider international endeavours as global institutions have sought more effective ways of countering terrorist organisations, particularly Daesh and its affiliates. FATF reported on its progress in fighting terrorist financing to the G20 summit in Paris on 10th July and the UN Security Council issued Resolution 2331 calling on FATF and regional style bodies to conduct deeper analysis of terrorist financing flows, particularly where related to human trafficking.

International coverage of such events provides reassurance to the global community that MENA regional powers are adopting a pro-active approach to tackling issues related to CTF. Collective awareness and collaboration is a significant feature of MENAFATF's efforts given UNODC's emphasis on mutual cooperation as a vital tenet of combative measures and its long-term aim of helping member states to strengthen cross-border capacities. The initiative is not limited to terrorist financing but is intended to aid in developing a comprehensive responses to all fields of organised crime, trafficking, corruption and terrorism.

Saudi Arabia – Response to JASTA Cases in U.S. District Court of Manhattan

On 1st August 2017, the Kingdom of Saudi Arabia (KSA) submitted a filing to the U.S. District Court in Manhattan requesting a U.S. Judge to dismiss a total of 25 lawsuits seeking damages against the Kingdom for its alleged role in the 9/11 hijackings. U.S. District Judge George Daniels, who presides over the litigation, has already dismissed the cases brought by the victims' families in 2015, but ruled to reopen them in light of the new provisions implemented by the Justice Against Sponsors of Terrorism Act (JASTA), enacted on 27th September 2016.

In his ruling on reopening the cases on 7th March 2017, Daniels stated that JASTA's legislative history made it clear that it had been written to provide the widest possible basis to eliminate the Kingdom's sovereignty defences. In allowing plaintiffs the assert direct claims against the KSA, removing non-textual judicial limitations on federal courts' jurisdiction under the Foreign Sovereign Immunity Act (FSIA), and eliminating judicial constrictions on the Anti-Terrorism Act (ATA), JASTA has deliberately and effectively strengthened civil claims beyond the KSA's routine defence of sovereign immunity.

The KSA's renewed request to dismiss was the widely expected response to the amended cases. However, uncertainty now arises regarding how JASTA will now be implemented, and whether or not it will have the legal teeth to override the ingrained principle of national sovereignty. Even if the decision goes against the KSA, the onus still lies with the plaintiff to prove that the KSA knowingly and intentionally facilitated the bombings; a feat that all previous efforts have failed to achieve. However, if the KSA successfully defends its right to sovereignty, the JASTA's legal potency will be effectively eradicated with one hit. This will leave Congress with a political dilemma; to continue to pursue the means to hold the KSA accountable in its court system, or to abandon the project and preserve recently improved Saudi-US diplomatic relations.

The US is particularly concerned with maintaining non-abrasive regional relations in the current political climate of the Middle East as it seek to find a diplomatic solution to the tensions between key allies in the Gulf. President Trump's recent meetings with the KSA leadership seem to have brought new strength to the relationship and has been matched by significant promises of economic investment to the American economy. Future governmental action surrounding JASTA or anti-Saudi rhetoric has dangerous potential to derail a key strategic alliance.

For more insight into the Justice Against Sponsors of Terrorism Act (JASTA) and its regional implications, please refer to the article in our Dec-Jan 2017 edition of Law Update titled "Wait, JASTA Second...What about Sovereign Immunity? An Overview of the Controversial Justice Against Sponsors of Terrorism Act (JASTA) from a Middle East Perspective" by Ibtissem Lassoued

UAE, Kuwait, Lebanon and Bahrain – Increased Powers to Combat Tax Crimes

The UAE recently became the 109th jurisdiction to sign the Multilateral Convention on Mutual Administrative Assistance in Tax Matters at the Organisation for Economic Cooperation and Development (OECD) headquarters in Paris on 21st April 2017. The agreement was formed as a means for implementing the Standard for Automatic Exchange of Financial Account Information in Tax Matters by the OECD and G20 countries. In practice, it works to improve cooperation between tax authorities and enhance their capacity to tackle offshore tax evasion and avoidance, whilst also reinforcing protections for tax payers' rights. Due to the proliferation of signatory countries and the multilateral nature of the agreement, the government will have a vastly upgraded ability to detect and prevent illicit tax activity.

Changes relating to the convention will not go into immediate effect in the UAE, but the first exchanges will start to occur as early as 2018. It includes provisions that will allow the Federal Tax Authority (FTA), established in September last year by Decree No. 13 of 2016, to automatically exchange financial account information with foreign tax administrations and implement the exchange of country-to-country reports detailing the tax affairs of multinational corporations on an automatic basis. Establishing such procedures will provide the FTA with streamlined access to an enormous base of information and will radically expedite incoming or outgoing tax enquiries. Improving the capacity of the FTA marks an important priority of the UAE government in light of the impending introduction of Value Added Tax (VAT), which will be introduced across GCC nations from 1st January 2018.

The UAE is not the only regional power to take this step towards greater tax control. Kuwait, Lebanon and Bahrain similarly followed suit and signed the agreement on 5th May, 12th May and 29th June respectively, becoming the 110th, 111th and 112th participating jurisdictions. Following the same timeline of enforcement, each country is expected to begin exchanging reports from the beginning of 2018. Aside from these recent additions, no other countries in the Middle East are signatory to the agreement, suggesting that there is some way to go before there is full transparency and mutual assistance across the region.

If you have any queries regarding the issues discussed above, please do not hesitate to contact Ibtissem Lassoued, Partner, Financial Crime Practice, at i.lassoued@tamimi.com

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Bitcoin - Infiltrating the Financial System Bit by Bit: What Does the Rise of Cryptocurrencies Mean for Financial Crime?

The world's repertoire for money management is undergoing a period of radical overhaul with the recent advancements in financial technology. Nowhere is this more true than with the creation of cryptocurrencies like Bitcoin, which has introduced an anarchic system for accruing, storing and transferring funds. Bitcoin came to fruition only relatively recently in 2009. Due to its novel and largely unregulated nature, governments are still grappling with the legal and fiscal implications tied to virtual currencies and are faced with a difficult choice; to develop effective safeguards against the new threats involved in dealing with online currencies, or to restrict their development and use within manageable confines? Few countries have declared a definitive legal approach to integrating Bitcoin and other cryptocurrencies to their regulatory systems due to a pervading uncertainty about the balance between the potential benefits provided and any risks to the integrity of their financial systems. Likewise, individuals determined to dip their toes into the virtual water should also be aware of the risks and volatility involved when dealing with cryptocurrencies.

How Bitcoins Work and Where the Complications Arise

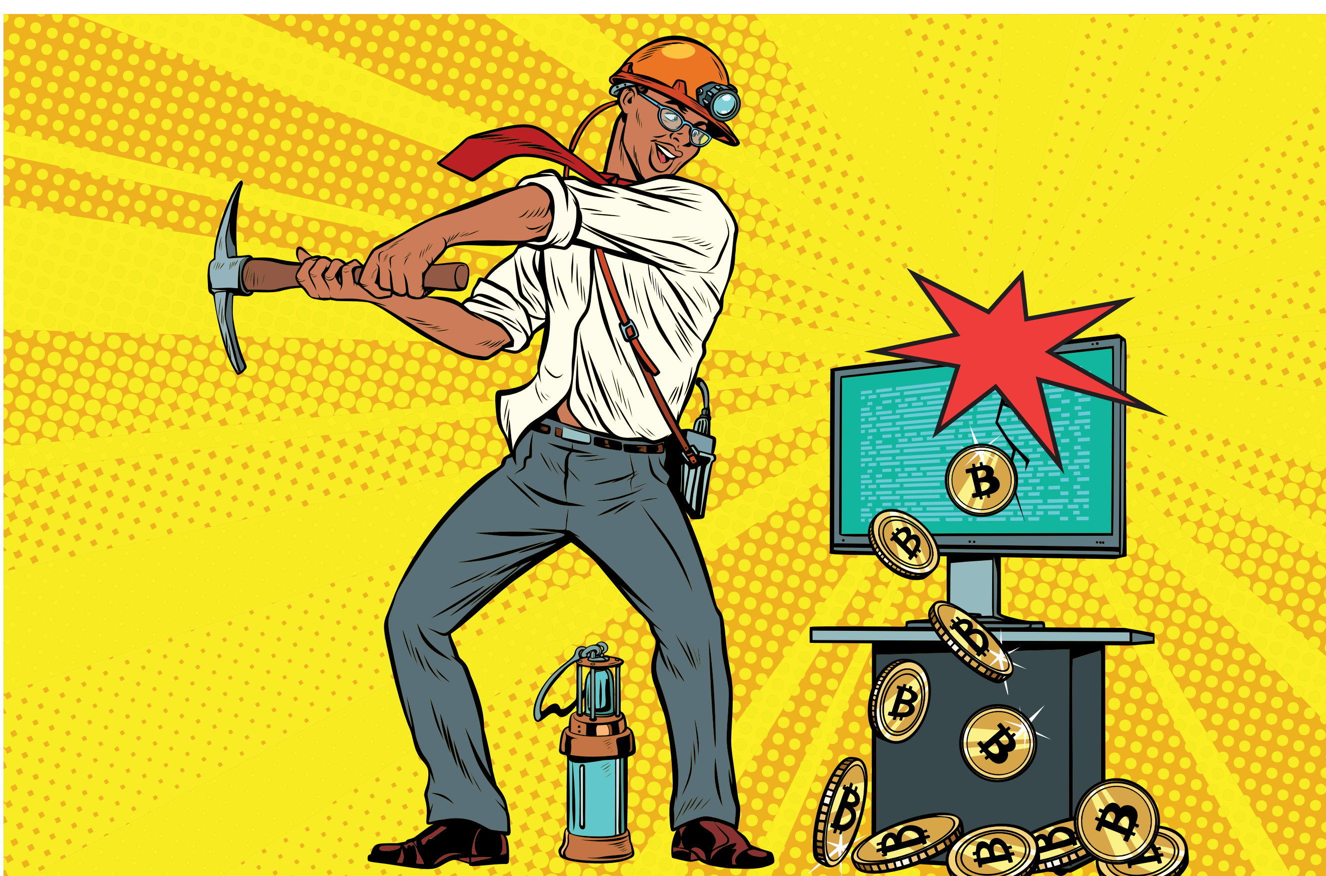
Bitcoin is what is known as a cryptocurrency, a medium of exchange that is created and held on a digital payment network; in other words, it is virtual cash that is completely intangible and stored online. Like a regular currency, it can be used to buy things electronically, functioning in a comparable way to conventional denominations of dollars, euros, or yen, which are also traded digitally. However, one of Bitcoin's most important characteristics and a distinguishing factor, is that it is decentralised; no single institution controls the Bitcoin network, monitors or settles transactions, or holds Bitcoins belonging to other people. This has evident appeal to many of those that protest the notion of banks being able to control or restrict the flow of their money but it does remove the protection granted to funds that are overseen in a conventional banking system. Since Bitcoin is not physically printed under strict control of a Central Bank, unlike physical currencies its value cannot be manipulated by financial authorities. The value is fixed demand, so Bitcoins accrue worth as they become more widely used and sought. In this way, Bitcoins function more like a commodity than a conventional currency, and stability in value is sacrificed for security against manipulation.

There are three major points of departure in how cryptocurrencies function that differentiate it from government-backed physical currencies. Firstly, it operates in a completely decentralised system, devoid of any central authority. Units are held by individuals owners and usually transferred directly peer-to-peer without requiring the services of a middle man. Secondly, ownership over Bitcoins and records of transfers are completely anonymous. Users can hold multiple Bitcoin addresses that are not linked to personal information able to identify related parties. Despite this element of concealment, the software itself remains completely transparent as the details of every single transaction are stored as code in the network in an enormous virtual version of a general ledger known as the Blockchain. Finally, Bitcoin transactions are completely non-repudiable, meaning that that once they have been sent it is impossible to reverse the transaction to recover them unless the recipient agrees to return them in a new transaction.

Though these features have been lauded for streamlining procedures and increasing autonomy in matters of financial management, there are a number of associated risks that significantly mitigate the desirability of the Bitcoin system. Granting complete control over transactions to every individual gives little consideration to how money needs to be safeguarded, especially given the anonymity and irreversibility of each transaction. Moreover, Bitcoins do not benefit from any of the security measures that are given to regular currencies and thus they create a market ripe for exploitation.

In the absence of regulation, many states remain perturbed that Bitcoin's unique characteristics will facilitate the commission of financial crimes, particularly money laundering and counter terrorist financing. Fears are predominantly based on the apparent appeal of borderless and concealed transactions to criminal cohorts, rather than an accurate analysis of the threat landscape. However, there are some early indications that abuse of cryptocurrencies is a mounting probability, rather than an unlikely possibility. Cases involving

"The Governor of the UAE Central Bank has informed the media that virtual currencies are currently under review by the Central Bank and new regulations will be issued as appropriate."



instances of clients being blackmailed with stolen sensitive information and ransoms demanded in the form of Bitcoin are becoming increasingly frequent, and lack of applicable law makes prosecution a complicated issue.

In light of this, it is easy to see the importance of governments taking a proactive approach to addressing Bitcoin. Whether it is through applying existing laws to cryptocurrencies or introducing new legislation to regulate the virtual market, keeping people in the dark about the official standing of Bitcoins will leave governments woefully ill-equipped to protect their economies from the inherent risks of dealing with uncontrolled and unverified currencies.

Jurisdictional Responses in the Middle East

At the national level, the UAE Central Bank has offered some initial indication as to the government's position regarding the use of Bitcoin in its jurisdiction. In regulations released on January 1, 2017, the Central Bank indicated that they do not outlaw virtual currencies such as Bitcoin and the same are not regulated by any of the existing controls. However, the Governor of the UAE Central Bank has informed the media that virtual currencies are currently under review by the Central Bank and new regulations will be issued as appropriate. This indicates that the UAE Central Bank has not yet formed a definite opinion on the safety of dealing with Bitcoin or its potential impact of the UAE's economic integrity. Whilst its use is not illegal at present, individuals accept the burden of all risks without any form of financial protection. Any change in the UAE's position on this matter will likely involve imposing stricter controls on its use.

At present, this position resembles a more relaxed approach than those taken in other regional jurisdictions. In the Kingdom of Saudi Arabia, for example, reports state that the Saudi Arabia Monetary Authority (SAMA) has actively discouraged the use of Bitcoin as an unverified currency due to the inherent dangers involved in dealing with an uncontrolled entity. Though this position may be revised in the future once best-practice for regulating cryptocurrencies has been established, for now it is indicative of the natural wariness certain governments feel over de-centralised and anonymous financial activity.

The Central Bank of Jordan has indicated a similar position, reiterating that Bitcoin is not considered legal tender and carries a high risk for investors for both devaluation and financial crime. It also emphasised that Bitcoins are not guaranteed by underlying material assets, and there is no bank in the world that is obliged to exchange virtual units for real currency. The Jordanian Central Bank has issued circulars to prohibit all national financial institutions from dealing with virtual currencies. As more neighbouring powers release their own guidelines for Bitcoin's use, it will be possible to discern whether the regional trend favours a risk averse approach or more open minded caution.

Beyond the Middle East, there are certain countries where dealing in Bitcoin has not only been permitted, but has developed to become a more commonplace occurrence. On the 1st January 2015 with the implementation of Bill AB 129, California became the first American state to fully legalise the use of digital currencies as a form of viable payment. Likewise in Germany, the official government position is one of open acceptance rather than restriction. In December 2013, the German Federal Financial Supervisory Authority (BaFin) classified Bitcoin as a recognised unit of account for private means of payment and does not subject its use as a substitute currency to regulation. Trading in Bitcoin is permitted but requires a licence administered by BaFin. Although BaFin has also been careful to warn Bitcoin users of the accompanying risks, in adopting such an open approach, Germany's economy is providing valuable lessons to other jurisdictions that are unsure of how to address the growing issue of Bitcoin usage. Benefits and risks identified through Germany's experience will provide a more empirical indication of how cryptocurrencies interact with illicit activity and economic security.

In conclusion, Bitcoin's infancy places it in a grey area concerning risks and regulation. As with all innovative technology, early acceptance is tempered by caution until the intricacies of its functionality are better understood. Its outstanding features may entice some individuals to jump ship from conventional banking but doing so without an appreciation of the associated dangers is ill-advised. These same features that attract legitimate users also contain strong appeal to less savoury characters, and Bitcoin's unregulated nature provides plenty of opportunities for exploitation at the hands of criminals. Looking ahead, Bitcoin users will also need to be aware of the shaky legal terrain beneath their feet, which is set for seismic shifts once jurisdictions clarify their approach to regulation. For now, the only protection to be found against risks is in arming oneself with awareness and exercising a healthy degree of discretion before venturing into the dark world of cryptocurrencies.

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To Donate or Not to Donate, That is the Question: Fundraising Practices and Combating Terrorist Financing in the UAE

2017 - The Year of Giving

2017 has been declared by President Sheikh Khalifa bin Zayed Al Nahyan as the Year of Giving in the UAE. In recognition of this, His Highness Sheikh Mohammed bin Rashid Al Maktoum published a statement encouraging the government to create more opportunities for volunteering and to coordinate with the private sector to improve corporate social responsibility (CSR). The UAE has a long-standing established culture of generosity and giving and this latest drive for philanthropy has provoked a surge in charitable initiatives aimed at helping the less fortunate and those in need. Whilst such initiatives can only be encouraged, there needs to be a corresponding awareness of the relevant applicable laws that regulate fundraising activity and the legal implications involved should they be breached.

Global Efforts in Combating Terrorist Financing

Restricting fundraising in a country with a prolific aid donation record may seem paradoxical but the measures are well justified in the context of the global agenda for counter terrorist financing (CTF). The primary purpose of controlling charitable giving is to prevent donated funds from being abused or diverted to terrorist organisations. Despite the semblance of good intentions, charities and non-profit organisations (NPOs) face a high risk of being co-opted by terrorist organisations as a means for disguising their fundraising efforts through seemingly legitimate fronts. The flow of cash and anonymous donations through such organisations represents a critical weakness in defences against terrorist funding, since it is often difficult to determine the source of funds or monitor all beneficiaries of donations. This creates a plethora of opportunities for terrorist groups or financiers to abuse the philanthropic system, whether it is by fraudulent fundraising methods or commandeering donations at a later point in the operations chain. Often, organisations are themselves unaware of instances of abuse. Particularly where their work involves high levels of contact with third parties or is based in an area of conflict, the flow of money is harder to track and is increasingly likely to leak into the pockets of unintended beneficiaries linked to terrorist organisations.

Layers of opacity in tracking the movement of money through non-profit organisations present a unique challenge to CTF regimes and have been identified as a key risk in the defensive framework of jurisdictions around the world. The Financial Action Task Force (FATF), an inter-governmental body dedicated to implementing best practice for defence against money laundering and terrorist financing, has been active in raising awareness of the risks involved and implementing appropriate protective measures.

Various reports published by the FATF and other CTF organisations consistently highlight the link between charitable fundraising and terrorist financing. These conclusions have contributed to forming a consensus that stringent measures are required to combat instances of abuse across the board.

Controlling the Risk in the UAE

The UAE's concern over the link between CTF and charitable organisations has been reflected both in its legislation and in its cabinet-approved list of terrorist organisations, which includes a number of NPOs. Laws issued at both Federal and local levels regulate fundraising practices and provide a number of steps that must be followed before donations are sought, or else parties leave themselves exposed to legal liability. The measures are intended not only to prevent illicit channels of terrorist financing, but also to offer a degree of protection to charities that may otherwise have unwittingly fallen victim to instances of abuse.

Regulation of charity work is spread across a myriad of laws at the Federal level. Law No. 2 of 2008 concerning Public Welfare Associations and Organisations (the Federal Charity Law) criminalises the collection of any donations through associations that are not properly licensed by the Ministry of Social Affairs. Additionally, Law No. 7 of 2014 On Combating Terrorism Offences (the Counterterrorism Law) prohibits any person or entity from facilitating the obtainment of funds for a terrorist organisation, and carries a stiff penalty of imprisonment from at least 10 years up to a life span. Whilst the provisions concerning terrorist financing are not solely aimed at NPOs, the scope of their application is left sufficiently broad to criminalise any activity that could aid a terrorist group in obtaining finances, including fundraising initiatives.

On a more local level, Dubai in particular has created an advanced framework of laws to regulate fundraising initiatives. Dubai Decree No. 9 of 2015 provides a comprehensive set of provisions to restrict all fundraising in the Emirate, applying to all donations broadly defined as;

> *'The sum of money voluntarily given by a donor as a beneficence, kindness, assistance, and charity, including Zakat and alms.'*

Donations are prohibited in any instance where they are made to an unlicensed charity or the fundraising event has not received express written approval from the Department of Islamic Affairs and Charitable Activities (IACAD). The Department has sole authority to grant licenses to charities seeking to operate in the UAE and is responsible for overseeing every application for approval on fundraising initiatives. Even where ventures are approved, IACAD has powers to audit any donations and review the proposed recipients and spending methods. This provides the overseeing body with a turnkey view of how donations are sought, collected and redistributed between legitimate parties, minimising the opportunity for funds to be misappropriated or diverted.

Any infringement of the fundraising law can incur a fine of between 5,000 – 100,000 dirhams or a term in prison of between 1 month – 1 year, or both. Legislation is more concerned with individuals soliciting donations than with the donors themselves, but there is still a responsibility for each individual to ensure that recipients of any donations are legally licensed before proceeding to give money. By exerting such strong restrictions on fundraising enterprises the Government of Dubai is providing a greater level of protection to the donations given by its residents, ensuring that they are put to good use rather than falling into the hands of terrorist financiers.

The Dangers of Social Media

With the advance of modern technology and its rapidly proliferating uses, social media has risen to become a powerful tool for social engagement. Given its unprecedented access to millions of users and an unparalleled ease of use, networking sites are increasingly utilised as a means to canvass for donations and endorse charitable efforts.

A growing reliance of NPOs on outreach through social media is fast becoming a defining feature of the global giving landscape, particularly where supporters are encouraged to share promotional information about an organisation or its fundraising campaign on networking pages. The real problem in this respect is that its seemingly innocuous nature belies the severity of the legal implications attached to such conduct. Under the provisions of Law No. 5 of 2012 On Combating Cybercrimes, using social media to share content relating to charity work becomes a punishable offence. Article 27 states that any person using information technology to solicit or promote donations to an unlicensed organisation is guilty of an offence punishable by imprisonment and a fine of between 200,000 - 500,000 dirhams. This definition is broad enough to encompass social media usage and assigns a much higher fine than other fundraising infringements. This law specifically targets those responsible for coordinating and encouraging donations rather than the donors themselves, but it has profound implications for NPOs and individuals alike in light of the growing utilisation of social media as a means to accrue support and donations.

The UAE has a proven record of doubling down on social media fundraising, with a growing list of individuals arrested and detained for infringements, and yet there remains a troubling lack of awareness amongst well-meaning parties of their legal vulnerability. UAE residents should exercise particular caution before sharing any content online

“The controls on donating and fundraising should not discourage philanthropic efforts but individuals should ensure that they are properly informed before they commence with any related activity.”

that contains specific mention of fundraising efforts or the work of unlicensed charities, which is against the law.

The controls on donating and fundraising should not discourage philanthropic efforts but individuals should ensure that they are properly informed before they commence with any related activity. There are a number of licensed organisations in the UAE that offer a multitude of opportunities to donate, volunteer or become involved in charitable efforts, all of which are permissible under the law. If the necessary steps have been taken to legalise the charity work, then fundraisers are free to tap into the generosity of the UAE community with impunity.

For any query or follow up related to fundraising practices, please feel free to contact Ibtissem Lassoued, Partner, Financial Crime, at i.lassoued@tamimi.com.

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Bribery Crimes in the Private Sector in Bahrain

In the past, legislation across the GCC and Levant has been limitevd in application because anti-bribery provisions have been restricted exclusively to conduct involving the public sector. As a result, national penal code articles outlawing corruption, bribery, and embezzlement were of narrow scope and offered only partial protection against similar offences committed in the private sector. Incitements or gifts of any kind that were exchanged between private sector entities were not criminalised under the law. This oversight caused an imbalance in business conditions and impacted the ability of private-sector participants to compete on equal terms. Moreover, it had the potential to foster an environment where canvassing and covert solicitation was a common part of business culture.

In order to rectify this situation, Bahrain has taken significant steps to modernise its anti-corruption controls and create a just and propitious business environment. On 5 October 2010, Bahrain ratified the United Nations Convention Against Corruption (UNCAC) which obliges signatory states to bring their domestic legislation in line with international best practices that promote anti-corruption measures. It became a signatory to the International Anti-Corruption Academy (IACA) in October 2016 and ratified the Arab Anti-Corruption Convention on 13 February 2017. Bahrain's accession to these agreements surpasses purely symbolic statements over its resolve to fight corruption, and constitutes tangible and measurable progress towards superior legislative control.

Article 12(1) of the UNCAC stipulates that 'Each State Party shall take measures…to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures'. In order to comply with the convention, Bahrain issued Law No. 1 of 2013, which introduced a range of amendments to its Penal Code (Law No. 15 of 1976) including an additional chapter dedicated to tackling crimes of bribery and corruption in the private sector. In so doing, Bahrain significantly extended the protection against corruption provided by its legislative framework and joined a number of other GCC states in meeting the international standards of anti-corruption control.

"Bahrain has taken significant steps to modernise its anti-corruption controls and create a just and propitious business environment"

In this article, we examine the provisions of Bahrain's amended Penal Code that criminalise bribery and embezzlement in the private sector, highlighting some of the most notable articles and demonstrating how they have been applied with reference to past cases.

Defining Private Sector Participants

Article 417 of the Penal Code indicates which private sector participants may be considered criminally liable for any acts of bribery. The list includes board directors and trustees of any private entity, specifically encompassing 'the chairman, the vice-chairman, and the board members regardless of the board's name or form'. More generally, the Article also covers all private entities and employees. A 'private entity' is defined as 'any group of persons or properties that are recognised as juristic persons by virtue of law', whilst the latter includes 'any natural person working in return of a salary for and under the management and supervision of an employer'. In order to maximise the applicability of the law's provisions, it is further extended to apply to self-employed individuals, or 'any person performing a job or a service in any capacity without being under the management and supervision of an employer'.

Crimes of Bribery in the Private Sector

Article 418 of the Penal Code provides the basis for tackling the root form of bribery crimes in the private sector, criminalising conduct that involves 'any solicitation of a bribe by a board director or employee within a private entity'. The bribe must have been solicited in order to commit or omit an act in violation of the offender's duties, harming the interests of the employer or private entity. For instance, an offender might request a bribe in exchange for awarding a certain contract to a private entity, or promising not to terminate a contract already held by that entity. There is no mental requirement under Article 418, meaning that a person is liable under the Article regardless of whether the offender intended to commit or omit the promised act, and sets a punishment of imprisonment for a period of up to ten years.

The Court of Cassation has taken a 'zero tolerance' approach to this issue. For example, in one instance an employee of a company filed a labour case against his employer following summary dismissal. In its defence, the company stated that the employee requested a luxury pen from one of the company's clients, thus providing grounds for the company to dismiss him. The employee did not deny this fact, but claimed that he paid the pen's price to the donor and said that if it were a serious offence, the company should have reported this incident to the authorities. Nevertheless, the Court of Cassation upheld the company's decision despite its failure to report the incident on the basis of breach of trust. The Court upheld the decision to dismiss the employee as a consequence of his alleged receipt of a bride.

Article 419 creates an alternative type of bribery offence whereby an employee or a director can be subject to imprisonment for a period of up to ten years 'if a bribe is solicited or received after the commission or omission of the act' for which the benefit is demanded or paid. The difference between the offences criminalised by Articles 418 and 419 is the timing of the bribe. One criminalises seeking a bribe before the act or omission, and the other after the incident.

A different form of bribery takes place if a director or employee solicits or receives a bribe in order to commit or omit an act which is not part of that person's work functions or remit, but one that the offender alleges he is able to perform. An offence is committed whether or not the offender wrongfully believes he is capable of conducting the promised act; his actual authority has no bearing on establishing the crime. Article 420 of the Penal Code stipulates a punishment of imprisonment for up to ten years for such an act.

Whereas the previously mentioned articles deal with a director or employee taking or asking for a bribe, Article 421 criminalises acts of bribery on the part of person giving or offering the bribe. Any person offering a bribe to a board director or employee, in order to incentivise the same to commit or omit an act in violation of their duties or position or harming the employer, is liable for a sentence of imprisonment of up to three years.

Are Gifts Considered Bribes?

Bahrain's anti-bribery provisions give due consideration to the accused's intent. Consequently, a gift may only be considered a bribe if it is intended as such and there is direct or indirect evidence of such criminal intent. A number of factors are relevant when assessing whether the necessary evidence is present, including but not limited to: the value of the gift or hospitality, the timing of a gift (its proximity to a decision that is being made by the recipient or which the recipient has the ability to influence), and the ability of the recipient to affect the giver's position vis-à-vis winning or retaining business.

Additional Penalties

According to Article 423 of the Penal Code, in addition to the applicable penalties as described above, the court shall also confiscate the bribe from the receiver. The court, at its discretion, may impose a fine of not less than BHD 500 and not exceeding BHD 10,000 in addition to the applicable criminal penalties.

Leeway to Offenders

The applicable penalties can be mitigated or reduced if an offender reports the crime to the judicial or the administrative authorities prior to detection. Article 426 provides that such offender can be given a reduced punishment and the court, at its discretion, may entirely relieve an offender from the penalty.

Conclusion

The amended measures of the Penal Code are emblematic of Bahrain's resolve to eradicate corruption from its private sector. This marks a distinguished improvement from previous practices of confining bribery offences to conduct involving public officials, and further signifies Bahrain's commitment to implementing international best practices since ratifying a number of international anti-corruption agreements.

Al Tamimi & Company's Financial Crime team regularly advises on anti-bribery measures and corruption in the region. For further information please contact Khalid Al Hamrani (K.Hamrani@tamimi.com), Ibtissem Lassoued (I.Lassoued@tamimi.com) or Saad Al Doseri (S.Aldoseri@tamimi.com).

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Always Get the Man You Want: An Overview of Recent Amendments to INTERPOL Red Notices and their Current Application in the UAE

The UAE as an enterprising country attracts individuals from around the world, with the vast majority of residents being expatriates. Whilst most expatriates enjoy the attractions of life in the UAE, some of a more nefarious character seek to exploit individuals and companies and then sail off into the sunset, returning to countries where they think they will be safe from the UAE authorities. The UAE, through a series of recent initiatives such as the October 2016 amendments to the Federal Penal Code, are clamping down on criminal activities both within the UAE and abroad. With this more international approach, our clients regularly approach us and request our assistance in locating and extraditing criminals from overseas. We also represent international clients who have been detained and arrested in the UAE and who themselves are sought for extradition. Whilst effecting the return of criminals to face justice is never easy, a solid understanding and appreciation of the international extradition framework and the use of the International Criminal Police Organisation's (INTERPOL) dispersal and Red Notice systems allows us to better assist our clients and the UAE public authorities in their efforts to pursue justice.

Further to our article in Al Tamimi & Company's Law Update , 'Navigating the Minefield of Mutual Judicial Cooperation in Criminal Matters', which provides an overview of INTERPOL and its initiatives, the following addresses the recent developments in INTERPOL's procedures and how they may affect our clients in the UAE.

In November 2016 INTERPOL, whose headquarters are in Lyon, France, introduced a number of structural reforms aimed at altering the way member states use and approach the Red Notices system when seeking extradition of a fugitive from a foreign jurisdiction. Red Notices are alerts circulated by INTERPOL to all member countries which identify an individual wanted for arrest by another jurisdiction or an international tribunal, seeking his or her extradition. The changes, specifically targeted at strengthening the review procedures once a notice request has been received or circulated, highlight the need for prosecutors to properly prepare criminal cases before submitting the request to the General Secretariat of INTERPOL.

As an organisation, INTERPOL has been criticised for its failures in preventing abuse of its Red Notice system, which has led to severe consequences for sometimes undeserving recipients. Requisite procedures relating to international notices are provided by INTERPOL's Rules on the Processing of Data but following a review of the supervisory mechanisms it was revealed that the integrity of the system had been undermined, leaving it rife with instances of abuse. Some states are perceived to have flouted Articles 2 and 3 of INTERPOL's constitution, which prevent Red Notices or dispersals in cases that do not comply with international principles of human rights or are based on discrimination, regardless of its form. In efforts to address these abuses and increase transparency, INTERPOL has implemented a number of strategic reforms across a number of its internal functions. The following highlights the most relevant reforms:

First, internal vetting procedures enacted prior to a Red Notice being published have been reinforced. New measures involve the deployment of a dedicated expert 'task force'; a multidisciplinary team comprising lawyers, policemen and analysts charged with providing support and expertise to the internal review and vetting process. By introducing increased vetting, INTERPOL has raised the bar on requests from states as they now have a greater ability to detect and prevent illegitimate Notices before they reach circulation.

Additionally, the capacity of the Commission for the Control of INTERPOL's Files (CCF) has been strengthened through the creation of an independent Requests Chamber. As per Article 28 of the new statute, which entered into force on 11th March 2017 establishing the CCF, the Request Chamber will now have exclusive power to review all appeals for access to or the correction or deletion of data, including outstanding Red Notices. Not only will members of the Chamber be permitted to make binding decisions over the repeal of notices, but it is intended that the process will also be subject to a greater level of transparency. Limited access to data has previously been a significant barrier to defending against Red Notices in the past and will have important ramifications for anyone attempting to combat spurious extradition requests.

In regards to reviewing and appealing the imposition of Red Notices, the newly established expedited timeframes for replying to requests will provide opportunity to those seeking to oppose abusive Red Notices. This is important not only for protecting targeted individuals from illegitimate notices, but also, going forward, for preserving the legitimacy of Red Notices and INTERPOL itself.

The immediate consequence of an improved review mechanism is a highlighted awareness of the onus on prosecutors to present a case that is capable of withstanding stronger appeals and to ensure that Red Notice requests are successful. With greater access to the data underpinning each request and with more rigorous standards applied in each review, National Central Bureaus (NCBs) responsible for submitting all requests on behalf of their respective states are opening themselves to a much wider market of potential criticism. Countries that have built a reputation for filing cases that are frequently rejected are more likely to face difficulties as the trend develops, and likewise states that are known to comply with INTERPOL's standards will likely experience smoother cooperation with recipient jurisdictions. This process of quid pro quo should underline the importance of proper presentation of requests for INTERPOL's assistance from state authorities and, at a primary level, of the legal representatives of those seeking international assistance.

An appreciation of these evolving protocols concerning Red Notices is critical, as this forms a significant part of preparation of cases and subsequently of law enforcement in the UAE. As touched on above, this is particularly important for a country that has both a transient population and well-known profile as an international hub. Due to this international standing, the UAE is well versed in the procedures of INTERPOL and is becoming increasingly involved in the global efforts to combat crime.

UAE's Role in the International Effort to Combat Crime

As part of the country's 2021 Vision, the UAE has set itself the objective of becoming the safest place in the world, a critical tenet of its efforts to further boost its social and business appeal. In order to better both prevention and prosecution of crime, the UAE will rely heavily on all branches of law enforcement both domestically and abroad. In recognition of this and to further this objective, the UAE government has signalled its commitment to improving international judicial cooperation through a number of different initiatives. In March of this year, the UAE donated $54 million (USD) to INTERPOL's Foundation For A Safer World, providing resources for key projects aimed at enhancing the organisation's ability to combat terrorism and organised crime. The UAE has also joined forces with Europol and other cooperating parties in Operation Dragon, a joint action effort that targets organised crime networks operating in crime hotspots.

These international ventures highlight long-term efforts to promote judicial cooperation within the region, and are bolstered through the establishment of an INTERPOL style agency between GCC countries, known as GCC-Pol. GCC-Pol is based in Abu Dhabi and currently functions as a law enforcement branch of the GCC, with the intention of providing developed methods of intelligence sharing and operational coordination. INTERPOL and GCC-Pol signed an agreement in November 2016 to establish inter-agency cooperation, signifying the regional agency's ambition to become an effective tool to enhance the rule of law in the Gulf.

Threshold for a Red Notice

One benefit of the increased transparency in INTERPOL's review mechanisms is a clearer indication of the standards cases must reach in order for a Notice request to be approved. The reforms give clear priority to preserving INTERPOL's compliance with Article 3 of its constitution, which states that:

> *"It is strictly forbidden for the Organization to undertake any intervention or activities of a political, military, religious or racial character."*

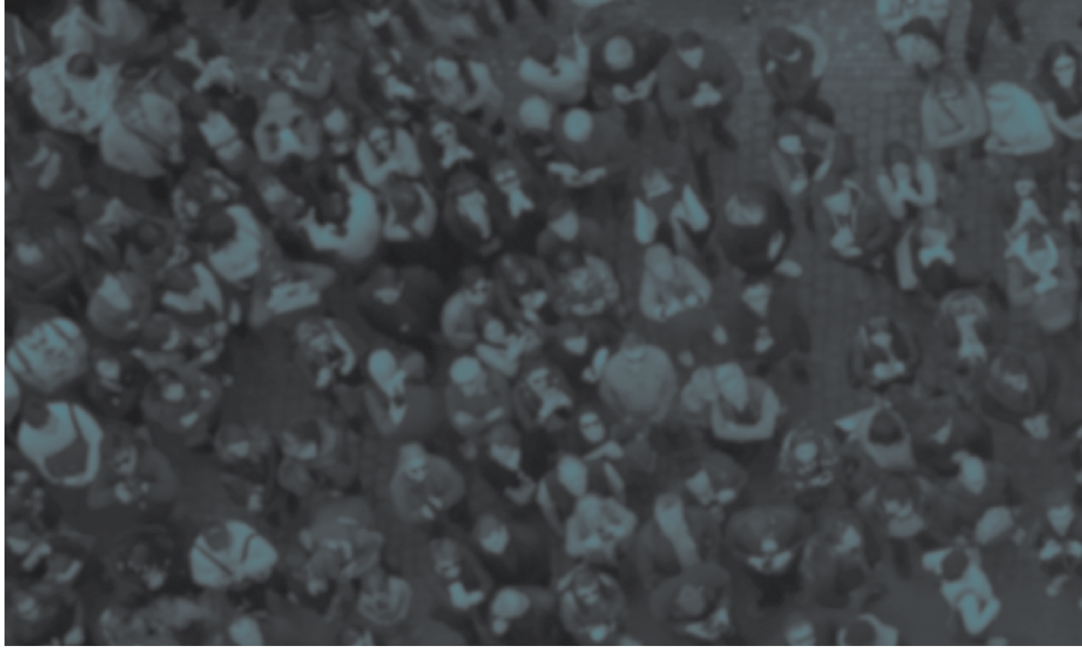
At its crux, this principle is enshrined to protect INTERPOL's neutrality and to shield it from invoking any kind of political liability. This is central to the agency's ability to maintain its credibility, operate independently and implement a universally acceptable mechanism to track criminals internationally. Furthermore, it is intended to act as a deterrent against the sinister practice of prosecutors pursuing spurious criminal accusations, most commonly perpetrated by states with their own political agenda. As evidenced through the wording of the article itself and by the report that provoked this latest wave of reforms, the article provides little guidance and assistance as a measure to protect against this abuse. As a routine defence, the 'Predominance Test' is applied on a case-by-case basis to determine whether political, military, religious or racial arguments form the foundations of a case. The longevity of this issue and its failing defences are indicative of how strengthened measures are necessary to improve INTERPOL's resilience to abusive practices. Evidently, new cases will be subjected to a much higher standard of scrutiny and need to be prepared accordingly.

Meeting the ethical standards of Article 3 will not be sufficient to guarantee the acceptance of a Red Notice request. Intensified examination of cases and wider access to case details confers even greater importance on the preparation of a full criminal complaint.

In the UAE, a system is employed whereby local authorities initially issue a local travel ban and subsequently liaise with the National Central Bureau in Abu Dhabi in order to request that they apply for an international arrest warrant. Even if all of the prerequisite information is contained in the file, the success of the request is still contingent on the fulfilment of INTERPOL's minimum criteria for processing data. Despite the appearance of straightforward standards, Red Notice requests are still subject to a degree of subjectivity in the decision-making process that can make approvals or denials seem arbitrary. Details of previous cases disclosed by investigative reports and INTERPOL's Repository of Practice on Article 3 expose areas of INTERPOL's legislation that are ambiguous in their implementation and create significant room for discretion on a case by case basis. The aforementioned Predominance Test, for example, has not been grounded in consistent application of specific evaluation criteria but rather appears to have been subject to the subjective and selective interpretation of facts available to the decision maker. Rather than abandoning Red Notices as a futile exercise, when advising clients lawyers should anticipate such challenges to any international requests and accordingly present their cases in the most convincing manner possible.

Conclusion

The UAE has already shown itself to be proactive in INTERPOL's initiatives and the nation, as the seat for the GCC-Pol, will bear a great responsibility in navigating INTERPOL's rules and procedures. In today's global world and specifically with the UAE being a home for many nationalities, those who are victims of international crimes require an effective remedy no matter where the culprit is. If you are going to get your man and bring him to justice, preparation and effective representation are imperative before embarking upon the lengthy road to international extradition.



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Crowdfunding in Bahrain

The Kingdom of Bahrain ("Bahrain") has become the second country within the Gulf Cooperation Council, after the United Arab Emirates, to allow crowdfunding. Crowdfunding is the use of small amounts of capital aggregated from a large number of individuals to finance a business venture. In this article we will provide an overview of Crowdfunding and its regulation in Bahrain.

Conventional Financing Based Crowdfunding Business ("CFC") Person to Business (P2B) is a lending e-platform which takes place on an online portal, through which people lend money to businesses, for the purpose of gaining a financial return in the form of interest payment and a repayment of the principal sum (loan amount) over a pre-specified period of time. CFC Platforms may raise funds for borrowers based in Bahrain or abroad, subject to regulation.

Regulations and licensing

The new Crowdfunding regulations issued by the Central Bank of Bahrain ("CBB") create a legal framework for loan crowdfunding (both conventional and Sharia compliant) while providing governance for financial technology or FinTech businesses and protection for their customers. The regulations are aimed at helping small and medium size enterprises and start-ups to get access to alternative forms of funding when more traditional funding options are not available.

Firms operating an electronic platform in relation to lending must be licensed in Bahrain, as 'operators of P2B Conventional Financing-based Crowdfunding Platforms', under the CBB Rulebook Volume 5 – Financing Based Crowdfunding Platform Operator. The minimum capital requirement for these CFC Platform Operators is Bahraini Dinars ("BD") 50,000 to be maintained on an on-going basis. This is new type of license. A CFC Platform Operator is not permitted to engage in Business to Business (B2B), Business to Person (B2P) or Person to Person (P2P) lending.

Category of investors and borrowers

Retail investors are not permitted to participate in finance-based crowdfunding given its high-risk nature. Only expert and accredited investors are allowed to provide loans through these platforms while the borrowers must be small or medium sized business with paid-up capital not exceeding BD 250,000.

Under a CFC agreement (entered into between the CFC Platform Operator and the lenders), lenders are restricted to lending not more than 10% of their net assets to any single borrower. All lenders intending to participate in a CFC Platform must fill out the 'Self Declaration Form' declaring that they meet this requirement.

Under a CFC agreement, the amount of capital provided must be less than or equal to BD 100,000 in aggregate, per borrower, within a 12 month period. Additionally, the term of loans must not exceed five years.

The minimum subscription to be received in a CFC offer must not be less than 80% of the crowdfunding offer size. In the event that the borrower is unable to raise the minimum required loan subscription, all subscription monies received must be returned to the lenders no later than 7 calendar days of the closing date of the crowdfunding offer. In case of over-subscription, CFC Platform Operator must ensure that no funding shall be made to the borrower in excess of the original offer size. Also, the lenders must get proportionate share of the Crowdfunding offer size.

> **“Bahrain has become the second country in the Gulf Cooperation Council after the United Arab Emirates to allow crowdfunding, which is the use of small amounts of capital from a large number of individuals to finance a business venture.”**

The CFC Platform Operator

The role of CFC Platform Operators is restricted to arranging deals, bringing together borrowers and lenders. CFC Platform Operators are strictly prohibited to provide any advice on deals. A CFC Platform Operator itself may lend money to borrowers, who use the platform subject to:

a. Obtaining the required license from the CBB for carrying financial services of providing credit; and
b. Adequate disclosure of the conflicts of interest which will arise for each transaction on their website.

CFC Platform Operators must make arrangements with a local retail bank (which holds the appropriate CBB license) to facilitate transactions. Also:

a. Lenders must prefund the full committed amount by depositing it at the designated licensed retail bank in Bahrain. The name of the retail bank must be disclosed to the CBB.
b. The CFC Platform Operator must designate an escrow account as an aggregate account for all borrowers. The CFC Platform Operator must maintain within its records separate sub-accounts for each borrower. The name of the designated bank must be provided to the lenders.

Disclosure of information

CFC Platform Operators must ensure that sufficient information is available to lenders on the profiles of the borrowers. CFC Platform Operators will publish information disclosed by the borrowers to them in the ‘Standard Forms for Borrowers’ and the related required documents submitted by the borrowers, thus allowing lenders to make informed lending decisions. Moreover, the documentation must state the governing law for the financing transaction.

The disclosure of such information shall be on standard CBB prescribed templates. Additionally, such information must be provided to potential lenders before they agree to commit to lending. In cases where the borrower is not based in Bahrain, adequate disclosure on cross-border risk must be provided to the potential lenders. It is the responsibility of the lenders to perform their own creditworthiness assessments on the borrowers and other related due diligence before making any commitment to lend.

The general regulations are the same for both conventional and Sharia-compliant crowdfunding platforms. For the latter, an additional requirement is that the financing structure should be Sharia-compliant, for which Sharia advisory services will be needed.

The CBB have said regulations for equity-based crowdfunding will be announced soon.

Crowdfunding had been popular in the UK and USA, for example Kickstarter is an American public benefit corporation based in New York that maintains a global crowdfunding platform focused on creativity. The introduction of crowdfunding in Bahrain is likely to enhance Bahrain’s reputation and competitiveness in the financial services sector by allowing access to funds for small to medium businesses. This is also good news for entrepreneurs in the region seeking to develop ventures which may otherwise have been restricted due to access to finance.

These Crowdfunding regulations are another step that the Central Bank of Bahrain has taken towards consolidating Bahrain’s position as a regional financial hub.

Al Tamimi & Company’s Banking & Finance team regularly advises on matters relating to licensing and regulatory advice. For further information please contact Natalia Kumar (n.kumar@tamimi.com).

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The Global Rise of eSports and the Importance of Being Aware of Local Laws in order to be Successful in the Middle East

In the Middle East, eSports is still largely in its infancy. Despite this, the Middle East's large youthful demographics, high penetration rate and the fact that eSports can be played in all climates means that the Middle East market has big potential for eSports.

According to reports in the UAE press, Abu Dhabi's Media and Entertainment Free Zone Authority, twofour54 (a specially created media and entertainment free zone), the video games industry in the Middle East is estimated to be worth more than US$1 billion annually and is expected to rise to US$4.4 billion by 2022.

Compared to the rest of the world however, the Middle East market remains relatively untapped. Football is generally still seen as the main sport in the region and governments have traditionally backed traditional sports with funding. Television and sponsors in the region have also favoured traditional international sports such as rugby, Formula 1, golf, tennis and cricket over newer entrants to the market such as eSports. However, this trend would inevitably change if broadcasters and sponsors considered eSports to be an investible opportunity in the region which derives the same benefits of investing that investing in traditional sports does economically, politically and socially. There is no doubt that given the increasing popularity of online multi-player gaming formats, eSports in the Middle East has bright future.

It is no surprise, however, that Dubai has already hosted the first main stream, large scale tournament in the region, in 2015 with the ESL ESEA Pro League invitational where the prize money at stake was US$250,000, and the common consensus is that eSports will take off in the region as technology continues to advance globally. Power League Gaming, described as the leading eSports operator and platform in the Middle East has been around for a few years now and has just teamed up with Playstation and a major cinema chain in the Middle East, Vox Cinemas to launch the PLG Nationals, described on its website as "an all-new set of competitive gaming and eSports leagues for PS4 fans across VOX Cinemas screens in Middle East and North Africa." This could potentially be a game changer for eSports in the Middle East as it will raise the profile of eSports and make eSports more accessible and mainstream for gamers locally, creating a launch pad for professional players coming out of the Middle East. For spectators, this offers the opportunity to watch the broadcast of the PLG Nationals live from the comfort of a cinema chair and certain games such as regional finals will be streamed online too.

So what legal considerations need to be taken into account when hosting an eSports tournament in the region? Of course different countries within the region have different laws and sensitivities but there are common considerations that would apply. Despite the rapid development of eSports and its technology focused advancements, when it comes to legal issues, eSports has similarities with traditional sports. For example, team and player contracts have to be drafted, tournament hosting considerations need to be looked at, common rules and regulations have to be constructed which take into account regional issues and sponsorship and broadcasting agreements have to be negotiated. There will, however, be peculiarities and complexities that will need to be considered.

This article explores the main legal issues affecting eSports in the Middle East. Specifically, it considers integrity issues and the issues facing media partners, players and sponsors.

Media Partners

When staging an eSports event in the region, focus should be given to the type of sponsor and form of advertising as there are cultural and legal issues to consider. In very general terms, the publication or dissemination of materials that cause harm to the interests of the relevant state, the values of society, are contrary to public morals or otherwise inconsistent with proper conduct are prohibited. Taking the UAE as an example, its laws do not specifically differentiate between sponsorship and advertising and sponsorship is in fact regarded as advertising.

Advertising in the UAE is regulated by the National Media Council's Resolution No. 35 of 2012 Concerning the Standards of Advertisement Content in Mass Media. Federal Law No 15 of 1980 Regarding Printed Matters and Publications is also important and regulates advertising in the UAE. In addition, Federal Decree No. 5 of 2012 on Combating Cybercrimes and the Penal Code (Federal Law No. 3 of 1987) are relevant. In Abu Dhabi and Dubai there are additional statutes, the Abu Dhabi Liquor Law (Law No. 8 of 1976) and the Dubai Liquor Control Law (Law No. 999 of 1972), expressly prohibit the advertising of alcohol.

The main principles under the Advertising Regulations are generally:

a. Respect for religion and political institutions: Advertising content must be respectful of all divine religions and not offend Islamic beliefs. It must not disrespect the regime in the UAE, its symbols or political institutions. Further, no content broadcast or published by a media corporation or outlet may disrespect the local and international policies of the UAE or disrespect the cultural heritage of the UAE.
b. Prohibited products/services: Advertising alcoholic beverages, tobacco, smoking and all banned products or services (including banned narcotics) is prohibited.
c. Prohibited content: The publication of words and pictures that breach public morals is prohibited, as is the spread and dissemination of information that may prejudice children, women or any other members of society.
d. Consumer Protection: Compliance with the laws governing consumer protection and commercial activities is mandatory particularly in relation to anti-competitive practices and illegal monopolies.
e. Health regulations: Advertising content relating to medicines or pharmaceutical products must comply with the Health Advertisements regulations (Cabinet Resolution No. 7 of 2007).

Players

Where an existing eSports event is being transposed into the region and given the high profile nature of some gamers now, they can expect to enter into participation agreements within which, they may, amongst other things, be expected to assign various image rights to the organiser of an event and agree to attend various press conferences. It is fair to say that currently most eSports players and teams don't have image rights structures in place. However, it is possible to expect that as the popularity of certain teams and players grow and given the potential of streaming certain tournaments online to very large audience, we can expect eSports to follow in the footsteps or more traditional sports whereby more emphasis will be placed on players image rights and intellectual property generally. The player would also be expected to comply with any title and tournament sponsor conditions for the event.

Further, players would be expected to comply with the rules of the event and any morality clauses, which basically state how a player is expected to behave whilst attending at and participating in an event. This is particularly important in the region as a player would be expected to behave in a way not to offend local cultural sensitivities and the morality clauses would need to address these points. As eSports continues to mature, we can expect requirement for participants to give warranties and obligations in relation to compliance with anti-doping regulations, testing requirements and match fixing will become more common. Currently only a few organisers which include ESL and Gfinity appear to have introduced anti-doping policies or acted against players regarding match fixing but we can expect policies, monitoring and education of such issues to be more commonplace and unified as the sport continues to evolve.

From a regulatory perspective, player contracts may need to comply with local laws but where common rules and regulations for eSports are being considered any transparency issues or standard terms will also have to be accounted for.

Sponsors

From a sponsor's perspective, the range of benefits is significant and will depend on the nature of the sport, team or venue being sponsored. Signage and name recognition were traditionally considered to be the main drivers to promote the sponsor's brand and image. Whilst this may still be relevant for an eSports tournament in a traditional venue setting, its streaming appeal and ability to reach millions of spectators means that they will try to seek even more innovative means to increase the potential benefits from their investments. The same can also be said for venues and teams wanting sponsorship. Because the sale of sponsorship can be both lucrative and competitive, packages can also be flexible and should fit both sides to increase the likelihood of long-term or sustainable sponsorship relationships.

Integrity

The more sophisticated a commercial product eSports becomes, the greater the need for a common regulatory framework akin to traditional sports, especially because of the global nature of eSports.

A criticism of eSports previously has been the lack of standardised rules relating to integrity. Organisations such as the Esports Integrity Coalition ("ESIC") which was established in 2016 have looked to address that and have made strides in signing up regional eSports organisations as members. In early 2017, ESIC signed up Esports Middle East ("ESME") as a member organisation. ESME has recently partnered with World Cyber Arena to organise international tournament qualifiers for the Middle East. ESIC describes Esports Middle East on its website as "the first and most advanced dedicated non-profit esports organization in the Middle East and North Africa. ESME translated the ESIC code into Arabic and will be hosting integrity seminars in the region." This is a positive step in the evolution of eSports in the region as we have seen with other sports, the lack of integrity can very quickly undermine a sport and result in stakeholders abandoning a sport all together.

Bribery and gambling are also integrity issues which would need to be addressed in relation to eSports. Whilst there are positive steps taken by ESIC and ESME, such concerns are usually addressed by local laws in the region. In relation to the UAE, for example, these are addressed by the Penal Code. Bribery that occurs in either public or private sectors is criminalised, with bribery in the private sector carrying a penalty of up to 5 years' imprisonment.

Gambling is also prohibited by the Penal Code and is punishable by up to 3 years' imprisonment, with up to 10 years' imprisonment for those who open or manage a gambling establishment. This is particularly important to bear in mind as technology has made betting more accessible on a global basis but is forbidden in the region. This should be considered in relation to in-game gambling too such as skin betting especially where real world or digital currency is involved. As a consequence of gambling, there could be an elevated risk of match fixing in eSports too, especially given the technology reliant means of participating in an event. This should be considered when arranging eSport tournaments in the region and when drawing up an appropriate regulatory framework.

Money laundering is now a global worldwide concern and always a concern for all sports. In recognition of this, the UAE implemented a comprehensive anti-money laundering & counter-terrorist financing law, which was last amended in 2014 and is supported by regulations and circulars issued by the Federal Cabinet and the Ministry of Justice as necessary.

Doping may not be an issue that many would associate as being a problem with eSports, however, many professional gamers train over many hours for concentrated periods. Gamers have been known to take products that enhance performance and concentration. Such issues ought to be dealt with by a common regulatory framework.

With reference to the UAE, the National Anti-Doping Agency has been established to comply with the approach and the requirements of the international agency for anti-doping and has adopted rules consistent with those goals.

Conclusion

eSports appears set to become an important dimension of the future of sports but whilst it is unlikely to take the place of traditional sports it may rival certain sports. The Middle East has taken positive steps to promote sports for a number of reasons, not least of these because of its health benefits and the ability to unite communities. The popularity of eSports in the Middle East is certainly increasing and in developing this new genre we can draw on lessons from traditional sports to assist in developing the potential of eSports in the region to create a professional marketable product, taking into account local considerations. However, the key is to install the right regulatory environment in the region to attract sponsors and commercial partners.

Al Tamimi & Company's Sports Law & Event Management team regularly advises on eSports matters. For further information please contact Raj Pahuja (r.pahuja@tamimi.com).

A version of this article was first published by LawInSport in June 2017 - https://www.lawinsport.com/articles/item/why-the-esports-industry-needs-to-be-aware-of-local-laws-in-order-to-be-successful-in-the-middle-east.

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Cybercrime Legislation in Iraq

'Cybercrime' is commonly defined as any criminal offence that is facilitated by, or involves the use of, a computer or network-connected device. The Center for Strategic and International Studies estimated that cybercrime cost the global economy US$445 billion in 2014. The global costs are estimated to reach $2 trillion by 2019. This is all without accounting for the significant portion of cybercrime that goes undetected. In this article we will provide an overview of cybercrime in Iraq and discuss the efficacy of Iraqi legislation surrounding cybercrime.

Overview of Cybercrime in Iraq

Iraq's internet sector is currently unregulated, placing it among the freest globally, but also amongst the most vulnerable. The current political and security situation in Iraq means that further work is necessary to develop the legal, technical, organisational, and capacity building fundamentals to provide comprehensive cybersecurity for its citizens, businesses, and the state.

Data on the types of cybercrime in Iraq is scarce, and rarely published by the Iraqi government. However, earlier reports released by the Iraqi government expose the most common types of cybercrime in Iraq, which have likely increased over the years.

In 2013, the Iraqi Ministry of Planning reported that, the vast majority of cybercrime is conducted via social media platforms, primarily on Facebook, and against persons rather than businesses or governments. The most common cyberattacks involve internet fraud, identity theft, child pornography, cyber-stalking, cyber-blackmail, copyright infringement, satellite piracy, and cyberterrorism.

Applicable Legislation

A draft Iraqi Information Crimes Law was proposed by the Presidential Council of Iraq in 2011. The draft law was intended to regulate the use of information networks, computers, and other electronic devices and systems. It was, however, widely argued the proposed legislation violates international standards protecting due process, freedom of speech, and freedom of association. With the result that, on 6 February 2013 following strong local and international objections, as well as a decisive letter by the Iraqi Council of Representatives' Culture and Media Committee addressed to the head of the Council, the Iraqi Council of Representatives revoked and discarded the draft law.

> **“Iraq’s internet sector is currently unregulated, placing it among the freest globally, but also amongst the most vulnerable.”**

Iraq does not currently have any specific legislation on cybercrime in place. In the absence of specific legislation, the judiciary must apply the provisions of the Iraqi Civil Code No. 40 of 1951 (the “Civil Code”) and the Iraqi Penal Code No. 111 of 1969 (the “Penal Code”), in addition to sector-specific laws (e.g. the Banking Law of 2004, and Communications and Media Commission Law CPA Order 65 of 2004), to cases involving cybercrime.

Furthermore, Iraq does not currently have any specific data protection legislation in place and privacy protection under the Civil Code remains largely undeveloped. There is reference to a “right to personal privacy” in the Iraqi Constitution of 2005, but guidance with respect to this right is unavailable, and it remains undefined in legislation.

Applying Existing Legislation

As noted above, the most common cybercrimes in Iraq are internet fraud, identity theft, child pornography, cyber-stalking, cyber-blackmail, copyright infringement, satellite piracy, and cyberterrorism. The Penal Code broadly addresses the criminal nature of these cybercrimes, but fails to adequately incorporate their ‘cyber’ property.

Any person who is convicted of a cybercrime involving violence, sexual exploitation, threats, or manipulation may be penalised under Article 369 and 396 of the Penal Code:

Under Article 369 the penalty is imprisonment with a maximum term of 4 years (eighteen years if the victim is younger than eighteen years of age) on any person who assaults another using force, or threatens, manipulates or violates in any way the decency of another male or female, or initiates such violation.

Similarly, Article 396 of the Penal Code imposes a maximum term of imprisonment of 7 years on any person who sexually assaults a man or woman or attempts to do so without his or her consent and with the use of force, deception or other means. The penalty for offences against victims under 8 years of age is imprisonment for a term not exceeding 10 years.

In addition to the above, any person who is convicted of a cybercrime involving identity theft, internet fraud, blackmail or other relevant acts may be penalised by detention under Article 456 of the Penal Code.

Any person who is convicted of a cybercrime involving copyright infringement may be penalised under Article 45 of the Copyright Law. Legal relief available to the copyright owner under Article 45 includes:

- injunctions to order the infringer to cease infringing activities;
- confiscation of the original and copies and materials used to manufacture infringing copies; and
- confiscation of the proceeds of the infringement.

Any person who is convicted of cyberterrorism may be penalised under the Anti-Terrorism Law No. 13 of 2005.

The above provisions are in addition to the civil rights of harmed persons to file claims for damages caused to them by virtue of said violations, in accordance with the Civil Code.

Conclusion

The Internet is a unique domain. Laws that regulate other forms of media cannot always effectively govern this medium, and attempting to have them do so may create inconsistency and ambiguity in application. Regulatory approaches need to be tailored specifically for the internet and the criminalization of e-crimes. While the Penal Code and Civil Code, in addition to the sector-specific laws dealing with e-transactions, serve as a step towards the establishment of cybersecurity, it is hoped that the Iraqi legislature will adopt articles specifically relating to cybercrime. Specific and extensive cybercrime legislation will provide judicial consistency on the subject as well as facilitate the enforcement of the law.

Al Tamimi & Company’s corporate commercial and media and telecommunications teams regularly advise on e-transactions and cyber crimes. For further information please contact Haydar Jawad (H.Jawad@tamimi.com) or Aro Omar (a.omar@tamimi.com).

Competition Law Developments in Kuwait

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An announcement of acquisition was made recently by Delivery Hero Group ("Delivery Hero"), a leading European global online food delivery company, acquiring Carriage, a young and fast-growing Kuwaiti food delivery platform operating in the GCC. In 2015, Delivery Hero acquired Talabat, another Kuwaiti food delivery company operating throughout the GCC for around KD 50 million. It seems that acquiring Carriage would be a natural step forward to their current offering under the Talabat brand and the company hopes this acquisition will enable them to strengthen their foothold in the GCC region. For companies like Delivery Hero, this region has become increasingly attractive, as the region has demonstrated a significant potential for growth, as the food delivery market continues to evolve and mature.

However, new developments suggest that the local Kuwaiti authorities are taking a closer look at the acquisition in order to determine if it may result in impeding competition in Kuwait. The Authority for the Protection of Competition ("Authority") was established by virtue of Law no. 10 for the year 2007 (the "Competition Law") and is connected to the Ministry of Commerce and Industry ("MOCI"). The Authority has considered that the acquisition of Carriage, which is currently operating in the State of Kuwait and other GCC countries under the Talabat brand, may be harmful to competition in the food delivery market and could potentially result in the monopolisation of these services by one operator, Delivery Hero. Accordingly, the Authority is now considering the matter and the acquisition has been ceased till a final decision is issued.

As per the Competition law, harmful economic practices which result in unfair competition are prohibited. Article 4 of the Competition Law, details various activities which are prohibited, including for example the following:

- Manipulating or fixing prices through fictitious transactions contrary to market principles and in a way that harms competitors;
- Totally or partially restricting the flow of goods into and out of the market without justification by concealing them or refraining from dealing in the same;
- Preventing or hindering a competitor from conducting

business in the market;

- Selling goods for less than their actual cost with the intention of harming competitors;
- Providing conditions in a tender that name a particular trademark or type of commodity to be purchased;
- Dividing the market by categorising them according to geographical location, distribution centre, type of customer or commodity or season or time period, with the intent of harming competitors;
- Destroying equal opportunities between competitors by distinguishing some over others in the conditions of the sale or purchase agreements without due reason, or by leaking information for the benefit of one competitor and not from others.

In the present case of Delivery Hero's acquisition attempt, the Authority may be of the view that this acquisition could prevent or hinder a competitor from entering or conducting business in the food delivery market, which would run afoul at least one of the provisions of Article 4.

Notwithstanding the above, Delivery Hero does have the option to apply for an exemption with respect to the Carriage acquisition. Article 5 of the Competition Law stipulates that "[t]he Authority ... shall have the right to allow some of the practices, agreements, contracts and decisions which can limit competition, and can materialise defined and prominent benefits to the consumer that will exceed the impact of limiting competition". Therefore, if Delivery Hero argues for this exemption and the Authority deems that the benefits to the consumer with respect to this acquisition outweigh any harmful effect the acquisition may have on competition, then the Authority will allow the acquisition to proceed.

The review process is not simple, and can at times be daunting for companies who are eager to proceed with their investments and plan the next steps in achieving a smooth acquisition. During this process, relevant parties must provide various corporate documents and the parties' agreement for the Authority to review. Additionally, the Authority may request that companies submit various other reports, supporting documents on their proposed merger or acquisition, documents relating to the practical and economical impact the acquisition will have, in order for the Authority to have the relevant information and be able to determine the effect such a venture will likely have on the particular sector of the market. In certain circumstances, the parties are obligated to notify the Authority of their intent for a merger or acquisition, at least 60 days prior to the acquisition date, and failure to do so may result in penalties under the Competition Law.

Considering this recent scrutiny by the Authority in Kuwait, it would be prudent for companies to carefully consider the various provisions of Kuwait's Competition Law, the effect on the relevant market sectors, and to have a strategy in place for dealing with potential scrutiny by the Authority. In the case of Delivery Hero, it remains to be seen if the Authority will ultimately allow the acquisition of Carriage to proceed, but nevertheless, this outcome will prove to be an important guide for other companies considering acquisitions of similar scope in Kuwait.

Riyadh Office Relocation

We are very pleased to announce the recent relocation of our Riyadh office to a more spacious surrounding on Level 9 of King Fahad Road's Sky Tower. In line with the firm's ongoing regional expansion plans, our new location allows for continued growth in Saudi Arabia. With 40 staff now based in our Riyadh office, and 58 across all three of our KSA offices, we can offer our clients comprehensive and timely on the ground legal support.

Our new Riyadh office details are:

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T: +966 (0)11 4169 666
E: inforiyadh@tamimi.com

22 AUG

Construction and Infrastructure Seminar Series

On Tuesday 22nd of August we kick started the second half of our construction and infrastructure seminar series with an interactive session discussing 'Contract preparation – the first key to a successful project'.

Scott Lambert, Head of Construction & Infrastructure addressed the following areas:

- Choosing the risk allocation
- FIDIC Golden Principles
- Tips and Traps

The event was well attended and the perfect platform to allow the construction and infrastructure community to re-connect and discuss key elements regarding contract preparation.

Our seminars cover topical issues surrounding the legal aspects of construction in the region. The next session will explore 'Construction Arbitration in the GCC - Practical Tips and Latest Developments' – for more information, please contact events@tamimi.com

Scott Lambert
Head of Construction & Infrastructure
s.lambert@tamimi.com

13
SEP

Opening of the new ICC representative office in Abu Dhabi Global Market (ADGM)

On Wednesday, 13 September the ICC International Court of Arbitration celebrated the opening of their representative office which will uniquely serve the Middle East and North Africa (MENA) region.

The opening of the ICC office has been welcomed by the legal community with a positive outlook that there will be significant market demand for an international arbitration centre.

During the welcome address the President of the ICC International Court of Arbitration, Alexis Mourre, and the Chairman of Abu Dhabi Global Market, H.E. Ahmed Al Sayegh, announced the opening of the new office and the opportunities this will bring.

Essam Al Tamimi, Senior Partner and Founder, Al Tamimi & Company joined the panel discussion and shared valuable insights into the developments and landscape of arbitration in Abu Dhabi and the region.

The event was a great success and the perfect platform for the arbitration community, government representatives and corporate counsels to reconnect.

Once again, we congratulate the ICC and the ADGM on this partnership and significant development. Wishing you all the success!

United Arab Emirates
Ministry of Justice

47th Year
Issue No. 620
17 Dhu al-Qidah 1438H
9 August 2017

FEDERAL DECREE-LAWS

3 of 2017	Amending Federal Decree-Law No. (2) of 2004 on the establishment of the Emirates Identity Authority.
4 of 2017	Approving an additional allocation to the budget of the Federation and to the ancillary budgets of independent bodies for the financial year 2017.
5 of 2017	Concerning settlements related to the General Reserve Account.

FEDERAL DECREES

57 of 2017	On ratifying the Agreement for the Avoidance of Double Taxation & Prevention of Fiscal Evasion with respect to Taxes on Income and Capital between the UAE and the Republic of The Gambia.
58 of 2017	On ratifying the Agreement for the Avoidance of Double Taxation & Prevention of Fiscal Evasion with respect to Taxes on Income and Capital between the UAE and the Argentine Republic.
59 of 2017	On ratifying the Agreement for the Avoidance of Double Taxation & Prevention of Fiscal Evasion with respect to Taxes on Income and Capital between the UAE and the Republic of Equatorial Guinea.
60 of 2017	On ratifying the Agreement on the Encouragement and Reciprocal Protection of Investments between the UAE and the Republic of Equatorial Guinea.
61 of 2017	On ratifying the Agreement on the Exchange of Land in Abu Dhabi and Astana for the Headquarters of Diplomatic Missions between the UAE and the Republic of Kazakhstan.
62 of 2017	On ratifying the Agreement on Defense Cooperation between the UAE and the Federative Republic of Brazil.
63 of 2017	On ratifying the Air Transport Services Agreement between the UAE and the Republic of Iceland.
64 of 2017	On ratifying the Agreement between the UAE and the Commonwealth of The Bahamas for Air Services Between and Beyond their Respective Territories.
65 of 2017	On ratifying the Agreement between the UAE and the Republic of Equatorial Guinea for Air Services Between and Beyond their Respective Territories.
66 of 2017	On ratifying the Agreement between the UAE and the Republic of Nicaragua for Air Services Between and Beyond their Respective Territories.
67 of 2017	On ratifying the Agreement between the UAE and the Italian Republic for Air Services Between and Beyond their Respective Territories.

United Arab Emirates
Ministry of Justice

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

FEDERAL DECREE-LAWS

7 of 2017	On excise tax.

FEDERAL DECREES

68 of 2017	On ratifying the Agreement between the UAE and the Republic of Zimbabwe for Air Services Between and Beyond their Respective Territories.
69 of 2017	On ratifying the Agreement between the UAE and the Republic of Macedonia for Air Services Between and Beyond their Respective Territories.
70 of 2017	On ratifying the Agreement between the UAE and the Republic of Bulgaria for Air Services Between and Beyond their Respective Territories.
71 of 2017	On ratifying the Agreement between the UAE and Antigua and Barbuda for Air Services Between and Beyond their Respective Territories.
72 of 2017	On ratifying the Agreement between the UAE and the Cooperative Republic of Guyana for Air Services Between and Beyond their Respective Territories.
73 of 2017	On the UAE's accession to the Protocol of 1988 relating to the International Convention on Load Lines, 1966.
74 of 2017	On the UAE's accession to the Protocol of 1988 relating to the International Convention for the Safety of Life at Sea, 1974.
75 of 2017	On the UAE's accession to the International Convention for Safe Containers, 1972.
76 of 2017	On ratifying the Agreement on Economic and Technical Cooperation between the UAE and the Republic of Sierra Leone.
77 of 2017	On the UAE's accession to the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space.
78 of 2017	On ratifying the Agreement on Economic and Technical Cooperation between the UAE and the Republic of Bulgaria.
79 of 2017	On the transfer of the UAE Ambassador to the Islamic Republic of Pakistan to the Headquarters of the Ministry of Foreign Affairs and International Cooperation.
80 of 2017	On the transfer of the UAE Ambassador to the Hashemite Kingdom of Jordan to the Headquarters of the Ministry of Foreign Affairs and International Cooperation.
81 of 2017	On the appointment of the Assistant National Security Advisor for International Cooperation.
82 of 2017	On the appointment of a judge in the federal courts of first instance.
83 of 2017	On restructuring the Board of Directors of the Telecommunications Regulatory Authority.
84 of 2017	On the transfer and appointment of the Director General of the Federal Tax Authority.
85 of 2017	On terminating the duties of the UAE non-resident Ambassador to the Republic of Chad.
86 of 2017	On the transfer the UAE Ambassador to the Czech Republic to the Headquarters of the Ministry of Foreign Affairs and International Cooperation.

87 of 2017	On the transfer and appointment of the UAE Ambassador to the Czech Republic.
88 of 2017	On the appointment of the UAE Ambassador to the Republic of Chile.
89 of 2017	On the transfer of the UAE Ambassador to the People's Democratic Republic of Algeria to the Headquarters of the Ministry of Foreign Affairs and International Cooperation.
90 of 2017	On the appointment of a UAE non-resident Ambassador to the Grand Duchy of Luxembourg.
91 of 2017	On the appointment of a UAE non-resident Ambassador to the Republic of Fiji and the Kingdom of Tonga and Tuvalu.
92 of 2017	On the appointment of a UAE non-resident Ambassador to the Republic of Slovenia and the Slovak Republic.
93 of 2017	On the appointment of a UAE non-resident Ambassador to the Cooperative Republic of Guyana and the Republic of Suriname.
94 of 2017	On the appointment of a UAE non-resident Ambassador to the Islamic Republic of Pakistan.
95 of 2017	On the appointment of the UAE Ambassador to the Republic of Panama.
96 of 2017	On the appointment of a UAE consul-general in Sao Paolo, Federative Republic of Brazil.
97 of 2017	On the appointment of a UAE non-resident Ambassador to the Republic (sic) of Brunei Darussalam.
98 of 2017	On the appointment of a UAE non-resident Ambassador to the Republic of Iceland.
99 of 2017	On performing the duties of the UAE Ambassador to the Hashemite Kingdom of Jordan.
100 of 2017	On performing the duties of the UAE Ambassador to the Republic of Chad.
101 of 2017	On performing the duties of the UAE Ambassador to the People's Democratic Republic of Algeria.
106 of 2017	On the establishment of a UAE embassy in the Republic of Rwanda.
107 of 2017	On terminating the duties of the UAE non-resident Ambassador to the Republic of Tajikistan.
108 of 2017	On performing the duties of the UAE Ambassador to the People's Republic of China.
109 of 2017	On the appointment of the UAE Ambassador to the Republic of Guinea.
110 of 2017	On the appointment of a UAE non-resident Ambassador to the Republic of Tajikistan.
111 of 2017	On the appointment of a UAE non-resident Ambassador to the Republic of Moldova.
112 of 2017	On the appointment of a UAE non-resident Ambassador to the Kingdom of Swaziland and the Republic of Mauritius.

DECISIONS OF THE UAE PRESIDENT

6 of 2017	On the Year of Zayed.

REGULATORY DECISIONS OF THE CABINET

35 of 2017	On the Prime Minister's orders, decorations and medals.

MINISTERIAL DECISIONS

- From the Ministry of Justice:

579 of 2017 Regulating estates.

- From the Ministry of Community Development:

137 of 2017 On the registration of the Muslim bin Ham Charity Foundation.

138 of 2017 On the registration of the Sheikh Saud bin Saqr Charity Foundation for Education.

213 of 2017 On the registration of the Emirates Filial Piety and Care Association.

218 of 2017 On the registration of Rewaq Ousha bint Hussein Cultural and Social Centre.

221 of 2017 On the registration of the Emirates Diabetes Society.

NOTICE OF CORRECTION

- From the Ministry of Justice:

- Typographical errors in Ministry of Justice Decision No. (518) of 2017 concerning the agreement for the protection of the rights of children in custody, published on p. 75 of Issue 619 of the Official Gazette dated 31.07.17.

ADMINISTRATIVE DECISIONS

- From the Insurance Authority:

22 of 2017 On the application of the investment limits stipulated in the financial regulations for insurance companies and the financial regulations for takaful insurance companies.

- From the UAE Central Bank:

23/2/2017 of 2017 On the restructuring of the Committee on Liquidation of Asia Exchange Center.

51/4/2017 Amending Decision No. 23/2/2017 on the appointment of a standing committee for deregistration, closure and liquidation of exchanges operating the UAE and withdrawal of their licenses.

- From the Securities & Commodities Authority:

- Certificate of approval of amendment of the Articles of Association of Noor Bank PJSC.
- Certificate of approval of amendment of the Articles of Association of Emirates Islamic Bank PJSC.
- Certificate of approval of amendment of the Articles of Association of Dubai Bank PJSC.
- Certificate of approval of amendment of the Articles of Association of Union Properties PJSC.
- Certificate of approval of amendment of the Articles of Association of Emirates Steel Industries PJSC.
- Certificate of approval of amendment of the Articles of Association of Noor Takaful General PJSC.
- Certificate of approval of amendment of the Articles of Association of Noor Takaful Family PJSC.

About Us

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

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

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

17 offices

9 countries

60 partners

330 lawyers

670 staff

45 nationalities

Our Accolades

Client Services

PRACTICES
Arbitration
Banking & Finance
Capital Markets
Commercial
Competition
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
FMCG
Healthcare
Hotels & Leisure
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Rail
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Sports & Events Management
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