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AL TAMIMI & CO.

Issue 307 I March 2018

LAW UPDATE

Latest Legal News and Developments from the MENA Region

The New Saudi Arabian Bankruptcy Law

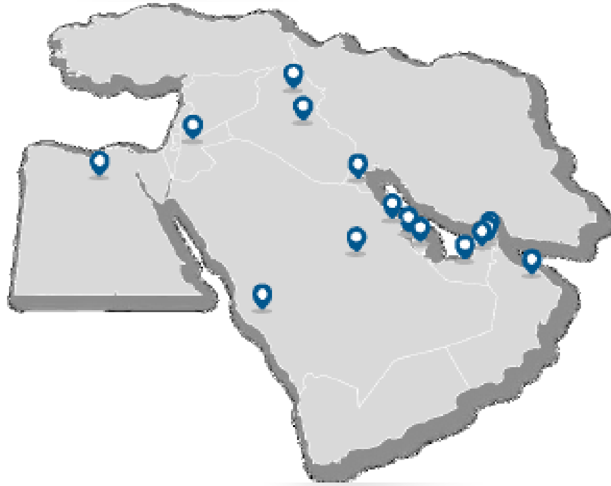
Doing Business with Saudi Aramco: The IKTVA Program

Working Towards Vision 2030: Key Employment Considerations in KSA

Change in Power: How New UAE Laws may affect IPP and Solar Projects

Amendments to the Commercial Companies Law in Bahrain

Our Regional Footprint



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Contents

Judgments

8 Construction Dispute Costs Engineer and Contractor 195 Million AED

12 The Discretionary Power of the Criminal Judge when Determining the *mens rea*: A Case Study

Articles

15 Banking & Finance

Regulatory Updates in the DIFC

18 Employment

Important DIFC Employment Law Changes on the Horizon

21 Intellectual Property

Innovation & IP at the Core of the 4th Industrial Revolution

23 Intellectual Property

Massive Anti-Counterfeiting Action on Personal Care Products: An Overview of Administrative and Criminal Action

Projects in Focus

26 Change in Power: How New UAE Laws may affect IPP and Solar Projects

29 Egypt's Special Economic Zones: An Attractive Investment Opportunity

32 The Projects and Privatisation Landscape in Oman

35 A Tree Begins with a Seed: Construction and Project Finance in Qatar

Jurisdiction Update

74 Bahrain

Amendments to the Commercial Companies Law in Bahrain

78 Jordan

Regulation of Gated Communities for the First Time in Jordan: Proposed Real Estate Communities Law

81 Kuwait

Collateral Support for Derivative Transactions in Kuwait

83 Qatar

Recent Legislative Changes Improving Intellectual Property Protection in Qatar

Saudi Arabia In Focus

38 The New Saudi Arabian Bankruptcy Law

42 The Development of the Judicial System in Saudi Arabia under Vision 2030

46 KSA: Supporting Companies in Accordance to the New Companies Law

48 Social Media and the Fight against Counterfeiting in Saudi Arabia

50 Doing Business with Saudi Aramco: The IKTVA Program

54 Mortgage of Real Estate in Saudi Arabia: Recent Developments

56 Aviation: An Important Catalyst for Growth in the Saudi Economy

60 CITC's New Cloud Computing Framework in Saudi Arabia

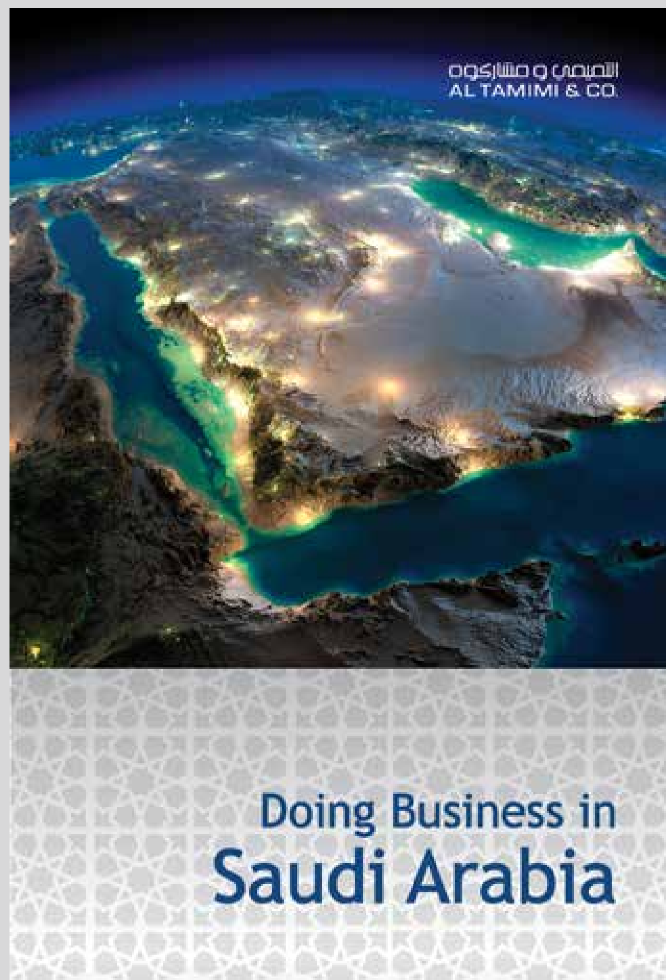
64 Working Towards Vision 2030: Key Employment Considerations in KSA

69 Kingdom of Saudi Arabia Clarifies Certain Aspects of its Arbitration Law

72 Off Plan Sales in the Kingdom of Saudi Arabia

News & Events 85

UAE Federal Gazette 91



Doing Business in Saudi Arabia? So are we...

Our guide *Doing Business in Saudi Arabia* provides an overview of legal considerations when considering a business opportunity in Saudi Arabia.

With offices in Riyadh, Jeddah and Al Khobar, we are perfectly placed to help you do business in the Kingdom.

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In this Issue

Welcome to the March edition of *Law Update.*

In this issue, we turn our attention to largest economy in the Arab world, Saudi Arabia, a key strategic focus for Al Tamimi & Company's regional growth plans for 2018 and beyond.

Although we are now the largest law firm in Saudi Arabia, we continue to expand our presence there in an effort to take full advantage of the growing number of opportunities that exist, in particular those presented by the Kingdom's ambitious National Transformation Program and Vision 2030 strategy. Further developing our business in this important market is also in line with the growing needs of our clients which means for us, amongst other things, new office expansions, new lawyer hires and relocating senior Al Tamimi lawyers from elsewhere around the region to our Riyadh, Jeddah and Al Khobar offices. There are exiting times ahead for Saudi Arabia, and as a result, for its Gulf State neighbours also.

We cover a number of important legal issues in this month's feature, including investigating the new Saudi Arabian Bankruptcy Law (page 38), discussing the development of the judicial system in Saudi Arabia under Vision 2030 (page 42) as well as taking an in depth look at Saudi Aramco's new IKTVA Program (page 50). Our KSA team provide a more thorough introduction and overview of recent developments in the Kingdom on page 37.

In addition to this month's Saudi Arabia focus, we also shine the spotlight on the Projects Sector, where, on page 26, we look into how new UAE laws may affect IPP and solar projects in the future, discuss investment opportunities related to Egypt's special economic zones (page 29) and provide an update on 'The Projects and Privatisation Landscape in Oman' (page 32).

We also highlight some key recent judgements and share updates from around the region, including covering important DIFC Employment Law changes on the horizon (page 18), regulatory updates in the DIFC (pages 15), the proposed Real Estate Communities Law in Jordan (page 78) and Amendments to the Commercial Companies Law in Bahrain on page 74.

We hope you find this issue informative and interesting. As always, if you would like any further information on any of the topics covered, or have any feedback to share, please do not hesitate to get in touch with me or any of our lawyers directly.

Best wishes,

Husam Hourani
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Judgments

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

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Construction Dispute Costs Engineer and Contractor 195 Million AED

Introduction

The UAE Civil Transaction Code ("**CTC**") imposes in article number (877) a strict joint liability on the contractor and the supervisor engineer if a building collapses within ten years of the date of handing over the building. This liability known as the Decennial Liability ("**DL**").

We are aware of a perception in the market that the engineer's liability should not exceed its contract's value, and thus the engineer's civil liability should be limited to this value. In this article, we analyse the scope of the engineer's liability in relation to DL, in line with a recent judgment issued by the Abu Dhabi Court of Cassation, in which Al Tamimi & Company successfully represented a leading developer in Abu Dhabi in a dispute related to a collapse in a part of a mega project in Abu Dhabi, which created much publicity in the UAE local media in 2012.

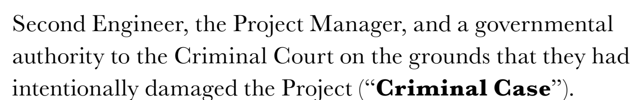
Background

A developer ("**Employer**") entered into an agreement with a contractor ("**Contractor**") to build a mega project in Abu Dhabi ("**Project**"). The Employer further contracted with a project manager ("**Project Manager**"). Then, the Employer contracted with a consultant ("**First Engineer**") to design and supervise the construction of the Project. The First Engineer provided the design of the Project, and supervised the construction of part of the Project. The Employer decided to change the First Engineer during the construction progress, and thus contracted with another consultant ("**Second Engineer**") to continue the supervision of the construction.

The residential part of the Project was completed, and handed over to the Employer, who leased it out.

Almost five years ago, a collapse of 1,400 square meter occurred in one of the parking areas. Fortunately, there were no loss of life. The authorities of the Emirate of Abu Dhabi decided immediately after the collapse to evacuate the Project from the residences. The Employer immediately provided alternative accommodation (hotel apartments) for the residents of the Project, until the Employer prepare a permanent accommodation for the residents.

The Prosecutor General of the Emirate of Abu Dhabi decided to appoint an engineering committee to visit the Project and prepare a report regarding the reason for the collapse and to highlight whether there was any other potential risk for another collapse. In the meantime, the Prosecutor General referred the Contractor, First Engineer,



Second Engineer, the Project Manager, and a governmental authority to the Criminal Court on the grounds that they had intentionally damaged the Project (“**Criminal Case**”).

The engineering committee came to a conclusion that the reason of the collapse related to a defective design. The engineering committee decided that the Contractor, Project Manager, First Engineer, Second Engineer, and a governmental authority are responsible, with a different percentage of liability, for the collapse incident.

The total damages affected the Employer due to the collapse incident was around AED 192 million, which included the value of the alternative and permanent accommodation, re-building the collapsed area, ratification of the defective design related to the remaining parts of the Project to prevent any potential collapse in the future, and etc. it is important to note that the total contact’s value of the supervisor engineer, was around AED 24 million.

Al Tamimi & Co represented the Employer and accordingly filed a civil claim against the Contractor, First Engineer, and Second Engineer. The total claim amount was around AED 192 million, in addition to a compensation for loss of reputation, Court’s fees, and an interest rate as of the date of obtaining a final judgment until a full payment is made.

Court’s Judgment

Court of First Instance

In summary, the First Engineer requested the Court of First Instance to reject the case, as the Second Engineer was the one who took over the construction supervision, and thus the latter should be responsible. Alternatively, the First Engineer requested the Court to limit its liability for the cost of re-building the collapsed part of the Project.

The Second Engineer requested the Court to reject the case, as the reason of the collapse relates to the defective design produced by the First Engineer.

The Contractor requested the Court to reject the case, on the basis that he notified the First and Second Engineer about the defective design issue during the construction; however, both Engineers instructed the Contractor to follow the related drawings.

In response, Al Tamimi highlighted to the Court that the UAE CTC grants the Employer the legal right to cover its damages and loss of profit from the contractor and the supervising engineer, jointly and/or severally, as long as the collapse occurred within ten years of the date of handing over the project. We further pointed out that neither the contractor nor the supervisor engineer was entitled to defend or limit their strict liability, unless the reason of the collapse was due to external reason, which they failed to prove.

The Court of First Instance appointed an expert committee comprising an engineer and an accountant to

calculate the damages and the loss of profit affected the Employer due to the collapse of the parking area. The Court-appointed Experts issued their report, in which they reported to the Court that the value of the damages and loss of profit affected the Employer was (approximately) AED 186 million.. The Court appointed Experts highlighted that the collapse incident is resulted from three reasons. The final liability percentage is based on the following analysis regarding the reasons of the collapse:

1. The Design: This reason represents 30%
   a. The First Engineer's liability is 65%
   b. The Second Engineer's liability is 20%
   c. The Contractor's liability is 10%
   d. The Project Manager's liability is 1.5%

2. Overloads (After the First Engineeer left the Project): This reason represents 50%
   a. The First Engineer's liability is 0%
   b. The Second Engineer's liability is 44%
   c. The Contractor's liability is 44%
   d. The Project Manager's liability is 12%

3. The Construction Joints: This reason represents 20%
   a. The First Engineer's liability is 0%
   b. The Second Engineer's liability is 42.5%
   c. The Contractor's liability is 42.5%
   d. The Project Manager's liability is 15%

Based on the abovementioned analysis, the Court appointed Experts opined that all the defendants were liable for the collapse incident to varying degrees: the Contractor's total percentage of liability was 33.5%, the First Engineer's total percentage of liability was 19.5%, the Second Engineer's total percentage of liability was 36.5%, and the Project Manager's total percentage of liability was 10.5%

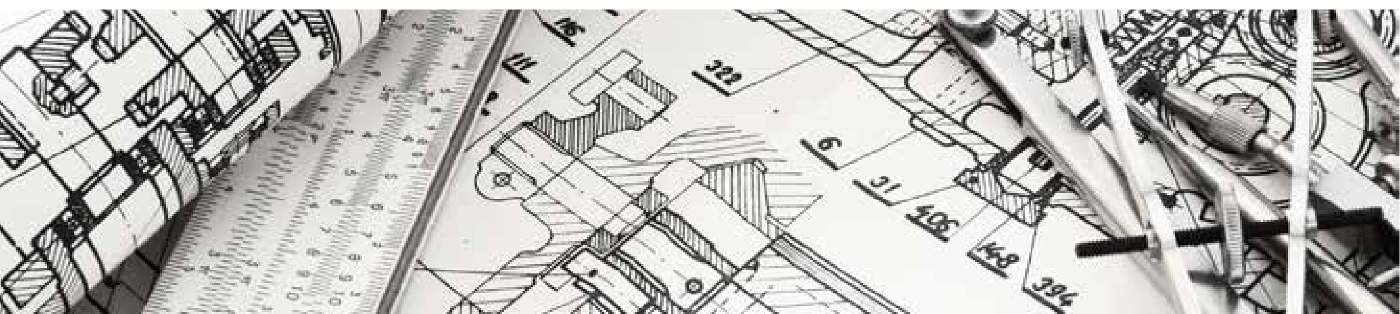
Al Tamimi asserted to the Court that no party should have the right to limit its liability, as the DL under UAE CTC imposes a strict liability on the contractors and supervisors engineers to compensate the employers in case a collapse occurred during the ten years as of the date of handing over the project.

The Court of First Instance issued its judgment, in which it awarded the Employer the compensation amount set out in the Court-appointed Experts' report, after deducting the Project Manager's total percentage of liability (10.5%), as the latter was not a party of the case. The Court further rejected the opponents' defence related to the limitation of liability based on the percentages set forth in the Experts' report, and instead, the Court decided to oblige the Contractor, the First and Second Engineer, jointly and/or severally, to pay the Employer the compensation of (approximately) AED 165 million, in addition to an amount of one million dirhams as a compensation for loss of reputation, Court's fees, and an interest at the rate of 5% as of the date on which the judgment would be final and binding.

Appeal Court

Al Tamimi filed an appeal, and requested from the Court to amend the judgment issued by the Court of First Instance in relation to the deduction of the Project Manager's total percentage of liability. Al Tamimi asserted to the Court that it was the Employer's right to opt as against whom to claim in the case of a strict liability, i.e., the Employer was entitled to claim the full amount of compensation from the Contractor, and/or the First and/or Second Engineer, jointly or severally. Therefore, Al Tamimi requested the Court not to deduct the percentage of liability related to the Project Manager, and accordingly to award the Employer the full claimed compensation amount.

The Contractor, the First and Second Engineer, filed an appeals as well. The Contractor and the Second Engineer requested the Court to reject the case, and highlighted that the party who should be responsible for the collapse was the First Engineer who provided the defective design, and supervised part of the collapsed area. The First Engineer argued that its design was not defective, and claimed that the Second Engineer did not stick to the design requirements related to the loads, and alternatively, the First Engineer requested the Court to limit its liability to the cost of re-



building the collapsed part of the Project. The opponents further argued that the Employer's claim did include indirect loses that should not be accepted by the Court, as the compensation should be for the direct damages only.

We reiterated to the Court that the Employer's claim is related to direct damages that affected the Employer, which were a direct result of the collapse.

The Appeal Court decided to uphold the judgment issued by the Court of First Instance, and hence rejected all appeals.

Cassation Court

The parties escalated the dispute to the Abu Dhabi Cassation Court. Al Tamimi filed a cassation appeal, in which we asserted that the Court of First Instance, and the Appeal Court should not deduct the Project Manager's percentage of liability, as the Employer's claim was based on the DL liability which provides a strict joint liability on the contractor and the supervisor engineer, and consequently the Employer was entitled to claim the full due amount of compensation from both of them, jointly or severally, and neither the Contractor nor the Engineer had the legal right to limit its liability by excluding the liability of any other third party, including the Project Manager.

The Contractor, and First Engineer and the Second Engineer all filed cassation appeals, reiterating their defence in line with the defence raised before the Court of First Instance and Appeal Court.

The Cassation Court issued its judgment number (876/2016 + 43/2017 + 71/2017 + 72/2017 + 80/2017 + 83/2017), in which the Cassation Court accepted Al Tamimi's arguments that the Employer was entitled to claim the full amount of compensation from the contractor and/or the engineer, jointly or severally, as long as their liability was a strict liability, and as long as the Appeal Court and the Court of First Instance applied its powers laid down in article (291) o the UAE CTC which states that "If a number of persons are responsible for a harmful act, each of them shall be liable in proportion to his share in it, and the judge may make an order against them in equal shares or by way of joint or several liability". Consequently, the Cassation Court stipulated that the Court of First Instance and the Appeal Court should not have deducted the Project Manager's percentage of liability. The Cassation Court further rejected the arguments of the Contractor, First Engineer, and the Second Engineer in relation to the scope of their liability for the collapse, as the DL under UAE law imposes a strict joint liability on the contractor and the engineer, if a collapse occurred within ten years of the date of handing over the project. However, the Cassation Court decided to refer the case to the Appeal Court in order to calculate the total due amount of compensation without deducting the Project Manager's percentage, and to ensure that the Employer's compensation claim did not include any indirect damages.

The Appeal Court issued its second judgment, and decided to accept Al Tamimi's appeal, and therefore not to deduct the Project Manager's percentage of liability, and consequently amended the Employer's due compensation amount to be AED 185 million (approximately). The Appeal Court further confirmed that the Employer's claim was related to direct damages resulted from the collapse incident. The Appeal Court rejected the appeal filed by the opponents.

The First Engineer, and the Second Engineer filed a cassation appeal, and objected to the second judgment issued by the Appeal Court, and they repeated their previous defence. The Cassation Court issued its second judgment number (625/2017 + 767/2017), in which the Cassation Court rejected the arguments raised by the First and Second Engineer regarding the limitation of liability, and the alleged indirect damages. The Cassation Court decided to uphold the second judgment issued by the Appeal Court, according to which the Contractor, the First Engineer, and the Second Engineer are, jointly and severally, liable to pay the Employer a total amount of AED 195,705,408. This amount represents the total awarded compensation amount of AED 185,466,630.00, a compensation for loss of reputation an amount of AED 1,000,000.00, Court fees an amount of AED 2,800,362.00, interest rate at 5% as of the date of Appeal Judgment, and some other charges.

Conclusion

Although the matter of the engineer's liability may or may not exceed its contract value, is not expressly addressed in the present case, however, it is worth noting that the approximate contract value for the supervision engineer was around AED 24 million, and the judgment obliged the engineer to pay more than AED 195 million, which means that the contract value for the supervisors engineers is not a point that may limit their civil liability under the DL.

The supervisor engineer, and the contractor cannot limit the scope of their liability in relation to DL.

The employer has the legal right to claim all due compensation from either the supervisor engineer, or the contractor, or both of them to be jointly and severally liable to pay the full claimed compensation amount.

The UAE law only allows the direct damages to be compensated (and not the indirect damages).

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The Discretionary Power of the Criminal Judge when Determining the *mens rea*: A Case Study

Introduction

Mens rea and *actus reus* come from the Latin phrase "*actus reus non facit reum nisi mens sit rea*", which means that no act is punishable unless the mind is guilty. *Mens rea* is the guilty mind or a culprit with an intention (i.e. the moral element) whereas *actus reus* is the action or conduct which constituent a crime (i.e. the material element). In criminal law, the offender is culpable if both the intention and act are present in the alleged crime.

Criminal judge or judges, depending on the courts, have wide discretionary powers when determining the cases they hear. In essence, they form their own beliefs when assessing whether the elements of the crime exist and evaluate the oral or written evidence based on the pleadings of the parties before the court. The judge's aim is to reach a logical conclusion that the evidence presented to the court is satisfactory to either convict the accused regarding the crime in question, or acquit them if the evidence presented is weak.

In this article, we will demonstrate how the courts in the UAE at the different levels have approached and analysed subjectively the moral element of a crime. In addition, we discuss how an opinion of one judge may differ from another despite being presented with the same facts and associated circumstances. This difference in formulating legal opinion/ belief, strengthens the application of the judicial review principle that is considered as one of the main factors of achieving the accused right to a fair trial.

The Law

Article 38 from the United Arab Emirates Penal Code Federal Law No. 3 of 1987 as amended provides for the basic elements of Mens rea, it stipulates that "*the moral element of a crime consists of the intent or error. The intent arises when the culprits' will moves towards the commission or omission of an act, where such commission or omission is legally defined as a crime, for the purpose of producing a direct effect or any other criminal result which the offender expected. An error arises if the criminal result occurs by reason of the offender's error whether such an error is negligence, inadvertence, carelessness, recklessness, imprudence or non-compliance with laws, regulations, rules or orders.*"

In addition to the discretionary powers of the criminal judges, prosecutors enjoy similar powers. Their role involves conducting comprehensive and focused interrogations from which they reach a conclusion whether the accused committed the alleged crime with a criminal intent to achieve the resulted breach of the law.

The judge, however, is not obliged to follow the prosecutors' opinion. The judge's personal conviction informs his judicial opinion. Hence, he may take a different view on the evidence presented by the prosecutor and dismiss the case.

The following case study, which involves a case that was recently heard in the Abu Dhabi courts demonstrates clearly how the opinion differs from one judge to another when deciding in the same facts.

Facts

The prosecutor accused a senior public official and a number of accomplices, natural persons and companies, of embezzling the State's funds upon receiving a complaint from the State Audit. The prosecutor referred the case to the federal courts after completing the investigations and interviewing witnesses as well as experts, given the financial nature of the crime. The

prosecutor presented the evidence to the court, which supported the conclusion that a crime was committed by the accused.

The defendants pleaded not guilty at all stages of the trial. They argued, inter alia, the lack of the moral element of the crimes attributed to them and that they did not benefit or have interests as a result of the acts (alleging that a government ministry received all the funds which were alleged to have been embezzled). Therefore, in their defence, they pleaded that no public funds suffered any damage or loss and accordingly the moral element was not satisfied in relation to the alleged crime.

Interestingly, the trail lasted nearly six years and was heard before all the trial levels, and involved a series of conflicting opinions of the accused's culpability.

Courts of First Instance and Appeal 1: Verdict - Guilty

The First Instance Courts analysed the evidence presented by the prosecution and concluded that the first two defendants "public officials" were aware and agreed together to commit the *actus reus* and concluded contracts between them to help embezzle public funds. The Courts found that the public officials' intention was to embezzle or facilitate the embezzlement of public funds for the rest of the defendants.

The Court concluded that there was a collective mens rea (moral unity) between all the defendants, and they were guilty by the mere fact that the public official had the intention to commit the actus reus of the crime. The Court stated "*according to the facts of the case, the acts of the Accused show*

that they have a moral unity – that is, a mental or moral relation that brought them together with the First and Second Accused in embezzling the public funds, the subject matter of the case. In addition, they were aware that the act that they are carrying out represents an intention to agree on and assist in committing the crime when they made contracts with the Second Accused who executed those contracts with them. With their act, their intention and will was directed altogether to commit the crime as their intention intersected with the intention of the First Accused" (the authors' translation).

The Court's statements indicated that the criminal intent was present on the part of all of the accused (they "acted as one unit"). Moreover, the moral unity of all the Accused was based on the fact that the criminal intent was proven and it had materialized for the one of the accused by committing the material element of the crime.

Studying the criminal intent of the accused, the Court of Appeal relied on the conclusion reached in the judgment of the Court of First Instance and confirmed that the criminal intent was present for the first accused. It confirmed that the first accused had the criminal intention and prior criminal determination between him and the other accused. The Court adopted the reasoning stipulated in the Court of First Instance judgment stating "and the court supports the reasons contained in the same".

Court of Cassation-First Objection: Verdict – Re-retrial

The Court of Cassation dismissed the appeal and the First Instance Court decision, accepted the accused's petition, and remitted the case for a re-trial by the Appeal Court – before a different circuit - stating that the "*judgments of the courts of merits did not clearly prove affirmatively the criminal intent. The court ruled that the court of merits did not show clearly and conclusively that the criminal intent is achieved in relation to the Accused in embezzling the State's funds and the reasoning of the court is just mere statements about acts without being connected to criminal intent*" (the author's translation).

Accordingly, the Court did not prove that the alleged acts constituted embezzlement of the State's funds. The accused had argued the same but the Court did not verify that defense and decided to annul the judgment and remit the case for re-trial.

Appeal Second Hearing

In the re-trial, the Court ruled that it had been proved beyond reasonable doubt that the accused committed the actus reus; however, the essence of these acts did not prove that they were determined to embezzle the State's funds or collect undue fees. Therefore, the criminal intent, as such, was not achieved and accordingly it ruled that all the defendants were innocent from all the allegations made against them.

The prosecutor objected to this judgement before the Court of Cassation for the second time, on the basis that the element of criminal intent was clear in the actions committed by the accused and that the appeal court did not specify its basis for denying any criminal intent in the accused acts. The prosecutor requested the annulment of the appeal judgment and the re-trial of the accused.

Court of Cassation (Second objection): Final verdict

The Court of Cassation confirmed that there was a criminal intent. Its assessment was based on the analysis of the criminal act and the material element committed by the public official. In addition, the Court concluded that the execution of the subsequent contracts with the other defendants had a fraudulent intent and were intended to avoid the lawful application of the applicable financial rules and regulations applicable in the State. The reason being that the money was diverted to a charity that did not have a beneficiary to receive the donations and the contracts had not included any bank guarantees or clear procedures to ensure that the contracted parties performed their obligations set in their contracts.

The Court concluded that the defendants were guilty since they possessed the requisite criminal intention and actus reus, which resulted in the misappropriation of public funds. Accordingly, the Court of Cassation was convinced beyond reasonable doubt that the accused were guilty of the alleged offences and sentenced them with the appropriate penalty for all charges and suspended execution of the penalty.

Conclusion

This case is significant as it clearly outlines that the judgement of whether a criminal intention is present in a criminal case is very subjective. Judges apply their own opinions, to formulate their judgement in criminal cases. They need to be persuaded that the criminal charges could be proved beyond reasonable doubt and that the accused committed the acts with a criminal intention, which resulted in a crime penalized by the law of the State. As may be seen, this evaluation may vary from court to court given the subjective nature of the exercise.

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Regulatory Updates in the DIFC

Introduction

This article is a summary of some key financial services regulatory developments that have taken place in the Dubai International Financial Centre ('DIFC') in recent months. In this article we highlight some of the more recent regulatory developments in the DIFC and to the Dubai Financial Services Authority ('DFSA') Rulebook that may be of interest to those persons who are either already present in the DIFC or who are looking to establish a presence in the DIFC.

The DFSA publishes their Client Classification and Suitability Thematic Review

The DFSA recently published the findings of their thematic review which assessed Authorised Firms' adoption of and compliance with the DFSA's client classification rules and practices in respect of suitability assessments. We encourage all DFSA regulated persons to read the DFSA's review and take into consideration improvements which could be made to their existing policies and processes.

The DFSA highlighted several concerns with Authorised Firms' existing systems as summarised below.

Client classification weaknesses:

1. Lack of training and guidance is provided to employees on client classification, especially front office staff, who are responsible for collecting and assessing client classification criteria. For example, front office staff and relationship managers who best know the potential client would be most likely to document the knowledge and experience of the client. Because such assessments can be difficult due to the lack of documentary evidence, it is essential that sufficient details and files notes are kept in order for the final classification to be made. Adequate staff training must be provided on what client classification entails, including practical elements and examples of how to carry out assessments and record keeping.
2. Not clearly documenting client classifications by specifically recording the Professional Client sub-category for either 'deemed', 'service-based' or 'assessed' Professional Clients. The DFSA feels the specific sub-category of the Professional Client must be clearly recorded internally.
3. Where there was reliance on client classification made by the firm's head offices or other members of their Group, there seemed to be weaknesses regarding the awareness of other office's classification procedures and whether their assessments met requirements in accordance with the DFSA rules. Where relying on client classification undertaken by a group member, due diligence should be performed on the client classification procedures of the group member and any gaps should be addressed.
4. Sole reliance on a client's self-declaration that they qualify as a Professional Client or that they

possess sufficient net assets or relevant knowledge and experience. A separate assessment must be carried out by the Authorised Firm and supporting documentation and evidence must be taken for the firm to duly consider the persons' net assets and knowledge and experience. Sufficient and clear documentation must be maintained to support client classification assessments, for example, obtaining account statements and tax returns to provide good insights into net assets.

5. Too much emphasis or reliance on simple questionnaires or a 'tick-box' assessment of a client's classification rather than conducting a higher quality or more measured assessment.
6. Some firms failed to demonstrate full compliance with the DFSA's requirements to sufficiently notify their clients of their right to be classified as a Retail Client.

Weaknesses identified by the DFSA in relation to suitability assessments were as follows:

1. Failures to demonstrate that client suitability assessments in connection with advice or discretionary transactions had been carried out in accordance with the DFSA's Rules. Weaknesses here included not maintaining appropriate documentation of the assessment undertaken and the low quality of some suitability assessments. Firms need to adequately perform and document client suitability assessments in order to protect them from legal and compliance risks. For example, firms should be able to demonstrate by the client files that advice given and investments made for clients were in fact suitable for them.
2. The use of suitability waivers or limiting the extent of a firm's suitability consideration in Client Agreements. The DFSA has identified that the best practice where an Authorised Firm seeks to limit the extent of any suitability considerations, is that the firm should stipulate the agreed limitations in a separate document, independent of the general terms and conditions to ensure that the client's express consent is obtained in relation to the agreed suitability approach.
3. General overall weakness in internal policies and procedures concerning relevant suitability and client classification obligations.

Implementation of new DFSA fees

In 2017 the DFSA amended the Fees Module of the DFSA Rulebook, these amendments came into force on 1 January 2018. The following is a high-level summary of some areas of change, but it should be noted other amendments have been made to DFSA fees that are not mentioned below.

Other than there now being additional fees for certain types of DFSA applications there are also either new or additional fees for various changes that may happen in the life time of an Authorised Firm. For example there is an increased fee for amending the scope of a DFSA authorisation, applying for a Retail Client endorsement or applying for a waiver or modification of a DFSA Rule.

More significantly, as of the start of this calendar year, the DFSA increased their basic fixed annual fees for Authorised Firms carrying out the following Financial Services: (i) Accepting Deposits; (ii) Providing Credit; (iii) Dealing in Investments as Principal; (iv) Effecting or Carrying Out Contracts of Insurance (excluding Captive Insurers, Protected Cell Companies or Insurance Special Purpose Vehicles); (v) Insurance Management; and (vi) Operating a Credit Rating Agency. The fixed annual fees for Authorised Firms carrying out these Financial Services will again further increase as of the 2019 calendar year. This phased approach to increasing these particular annual fees was to allow affected Authorised Firms to better plan for the increases. All Authorised Firms will also pay an extra $500 for each additional Financial Service featuring on their DFSA Licence (excluding the relevant Financial Service with the highest fee that applies). The sum of these fees will be added to the DFSA basic fixed annual fee. This amount will be increased to $1,000 for each additional Financial Service for the 2019 calendar year.

Separately as of the 2020 calendar year, there will be: (i) an additional annual fee for Authorised Firms designated as a systemically important financial institution, if they are licenced as Authorised Firms in Prudential Categories 1, 2, 5 or are an Insurer; and (ii) also an additional annual fee for Authorised Firms for which the DFSA acts as the consolidated prudential supervisor of its Financial Group or as a lead supervisor of part of its Group.

Enhancement of the DIFC Funds Regime

At the end of 2017, the DFSA proposed changes to their current regime for regulating Collective Investment Funds by issuing Consultation Paper (No. 115), titled 'Enhancing Our Funds Regime'. The most significant proposals in the paper stem from the DFSA's desire to keep the funds regime up to date.

The consultation period is over and although the amendments to relevant legislation have not been issued yet, it would be reasonable to expect to see the changes proposed in the consultation paper issued soon. However, it should be noted that the proposed changes will not come into force until the relevant rulemaking instrument has been published by the DFSA. Proposals contained within the consultation papers may also change so market participants will need to wait for the final text of the amended Rulebook and/or Law to confirm the changes.

“The DFSA recently published the findings of their thematic review which assessed Authorised Firms’ adoption of and compliance with the DFSA’s client classification rules and practices in respect of suitability assessments. We encourage all DFSA regulated persons to read the DFSA’s review and take into consideration improvements which could be made to their existing policies and processes.”

Some key proposals include:

1. Removing the investor number-based criteria in the Exempt Fund and Qualified Investor Fund (QIF) definitions. Currently the definitions of an Exempt Fund and QIF include limits on their number of investors (i.e. an Exempt Fund being limited to 100 or fewer investors and a QIF being limited to 50 or fewer investors, in each case whom meet the Professional Client criteria). These number-based limits will be removed creating more flexibility for Fund Managers of Exempt Funds and QIFs.
2. Under the current regime, there is nothing that deals with the unique features of Exchange-Traded Funds (ETF’s). Thus, the DFSA has proposed to introduce ETF’s as a specialist class of funds with clearly identifiable features. These open-ended funds, listed and traded on exchanges, have become popular with investors in other jurisdictions. The consultation paper proposes to introduce certain rules and guidance for ETF’s in line with what is envisaged under International Organisation of Securities Commissions Principles.
3. The DFSA has proposed several enhancements relating to Property Funds. These include (i) introducing guidance regarding the distinction between property companies which are commercial companies, and those which are investment companies (funds) (ii) the proposed removal of the current prohibition against a Property Fund being open-ended, if it is a Property Exempt Fund or a QIF (iii) extending the period that a Public Property Fund has to list and trade, from the date on which it first offers its Units to the public, to three years (currently a Public Property Fund must be listed and traded within six months of the date on which its Units are first offered to the public); and (iv) allowing the use of the name ‘REIT’ by an Exempt Fund or a QIF provided it meets the key REIT criteria in the DFSA’s Rules and complies with other relevant requirements that would normally apply to a Public Property Fund.
4. Introducing a new model for internal management of an Investment Company, where such a company can be internally managed by its licensed sole Corporate Director, subject to certain requirements. The DFSA regime currently allows an Investment Company to be managed by one director, which may be a body corporate, i.e. a sole Corporate Director. However, it does not expressly provide that such a Corporate Director can be the Fund Manager of an Investment Company (where the Articles of Association allow it). The new proposals will allow for greater flexibility of choices available to Funds which are Investment Companies, and their Fund Managers.

Al Tamimi & Company’s Banking & Finance team regularly advises on DIFC regulatory matters. For further information please contact Margaret Elder (m.elder@tamimi.com) or Divya Abrol Gambhir (d.abrol@tamimi.com).

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Important DIFC Employment Law Changes on the Horizon

The Dubai International Financial Centre Authority ("DIFCA") has recently drafted a new DIFC Employment Law (the "Proposed Law"), which is intended to replace the DIFC Employment Law (Law No. 4 of 2005), as amended by Law No. 3 of 2012 (the "Current Law") in its' entirety. The Proposed Law is out for public consultation until 22 March 2018 and it is expected, subject any amendments, that the Proposed Law will be enacted shortly thereafter.

Summary of the changes

The Proposed Law sets out several key changes, a number of which we summarize below:

Part Time Employees

Current Law: Part time employees are entitled to the same benefits and leaves as full time employees.

Proposed Law: Part time employees will be entitled to leave entitlements on a pro-rated basis.

Article 18 Penalty

Current Law: Employers are required to pay all wages and termination payouts to an employee within 14 days of the termination of employment. If an employer fails to pay within 14 days, the employer is required to pay the employee a penalty of the last daily wage for each day delayed. This Article 18 penalty has proven to be contentious and has been the subject of various DIFC Court decisions.

Proposed Law: Retains an obligation to pay certain sums to the employee within 14 days of the termination of employment. However, the penalty payment is no longer automatic and the following applies:

- if the outstanding amount to be paid to the employee is less than 5% of the full amount due, no penalty will apply;
- the penalty will be capped at 6 months' wages; and
- the DIFC Courts may waive or reduce the penalty in unreasonable circumstances.

Sick Leave Pay

Current Law: Employees are entitled to 60 working days of sick leave with full pay.

Proposed Law: Sick leave remains at 60 days but sick pay will be calculated as follows:

- The first 10 working days of sick leave: Full pay
- The next 20 working days of sick leave: Half pay
- Any additional working days of sick leave: Unpaid

Discrimination

Current Law: Protected characteristics for discrimination include sex, marital status, race,

nationality, religion and mental or physical disability. No provision for a remedy in discrimination claims.

Proposed Law: Adds pregnancy and age to the above list of protected characteristics for discrimination purposes. Importantly, it also introduces a remedy for discrimination claims and provides that compensation can be sought. The compensation payable in respect of a discrimination claim is capped at one years' wages (or two years' wages for repeat offenders). In addition, the concept of a victimization claim is included.

Termination for Cause & Constructive Dismissal

Current Law: Both employers and employees are entitled to terminate for cause where the conduct of the other party warrants termination and where it passes the test of reasonableness.

Proposed Law: Introduces an expanded test to determine whether termination for cause is reasonable, including:

- whether or not the employer / employee acted reasonably or unreasonably, given the circumstances for termination; and
- in accordance with equity and in consideration of the substantial merits of the case.

Importantly, the Proposed Law contains provision for a compensation claim of up to one years' wage if an employee terminates for 'cause'. Thus the Proposed Law introduces constructive dismissal as a concept.

Gratuity - Termination with Cause

Current Law: Where an employer terminates an employee for cause, they are not required to pay gratuity.

Proposed Law: Mandates that employers pay gratuity even in circumstances where the termination is with "cause".

Salary Split

Current Law: No minimum percentage for split of basic salary and allowances.

Proposed Law: Basic salary must comprise at least 50% of the total wage.

Weekly Working Hours

Current Law: Weekly working hours are capped at an average of 48 hours per week.

Proposed Law: Removal of 48-hour provision, but provisions remain with regard to daily and weekly rest. The provision which states that employees are not allowed to work excessive hours which may be detrimental to their health is also retained.

Paternity Leave

Current Law: No provisions for paternity leave.

Proposed Law: Allows for 5 working days of paid paternity leave for male employees who have a child or

adopt a child under the age of 5 years, subject to certain conditions being met. Further, male employees will now be entitled to attend medical appointments for ante-natal care or adoption proceedings.

Hiring Costs and Retaining Passports

Current Law: No reference to passing on costs of hiring an employee to the employee and does not specify the position with regard to an employer holding an employee's passport.

Proposed Law: Clarifies that employers are not allowed to pass on the hiring and sponsorship costs to employees. It further states that employers are not allowed to retain employee's original passports.

Fines and Penalties

Current Law: Specifies a number of basic requirements for employers to adhere to but does not specify any corresponding fines.

Proposed Law: Introduces fines and penalties to ensure adherence to basic employment and immigration requirements. It further allows for the DIFCA Board of Directors to expand the fines and penalties regime, impose additional fines and appoint inspectors to ensure compliance.

Use of Settlement Agreements

Current Law: Employees are not allowed to waive their minimum rights. This has proven problematic for employers and employees settling disputes.

Proposed Law: Allows for the waiver of rights if the waiver intends to settle a dispute. The DIFC Courts will have the discretion to void any settlement agreements found to be unreasonable but it cannot do so when independent legal advice has been obtained by the parties.

Employer's Vicarious Liability

Current Law: Employers are vicariously liable for any act of an employee done during the course of employment.

Proposed Law: Specifies that employers can only be held liable for claims for loss, damages or compensation for any act, attempted act or omission on the part of an employee if the claim is sufficiently connected with what was authorised or expected of the employee.

Contributory Negligence

Current Law: Employers are fully liable for any injury arising out of or during employment.

Proposed Law: Introduces the principle of contributory negligence to employee compensation claims for injury or death arising out of or during employment. This means that the DIFC Courts may reduce the employer's liability if it found that the employee's negligence caused the injury or death.

Whistle-Blower Protection

Current Law: No protection for whistle-blowers.

Proposed Law: References whistle-blower protections included in the proposed new DIFC Companies Law (details awaited).

Additional Proposed Changes

The Proposed Law also includes additional changes, including but not limited to:

Current Law: Minimum age to employ a child is 15 years

Proposed Law: Increases the age of hiring children to 16 years.

Current Law: Requires employers to retain employee records for 2 years

Proposed Law: Increases the requirement for employers to retain employee records to 6 years

Dependent upon the final form of the Proposed Law, changes to existing employment contracts, employee handbooks and document retention policies will inevitably be required. Please let our employment practice know if you require our input.

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Innovation & IP at the Core of the 4th Industrial Revolution

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Few will contest that the fourth industrial revolution is well and truly in full swing across the globe. The revolution, known as industry 4.0, we are witnessing today is not merely an extension or continuation of the prior revolution. Instead, industry 4.0 is witnessing new inventions and breakthroughs in the fields of autonomous transport, nanotechnology, the internet of things, smart devices, artificial intelligence, 3D printing, robotics, quantum computing, biotechnology, to name a few.

The Industrial Revolutions - Past and Present

The first, mechanical, revolution witnessed the invention of locomotives and the gradual rise of factories. The second electrical revolution, introduced electricity. The third revolution ushered in digital technologies (telecommunications, computers and finally the internet). All three revolutions have led to human progress; and particularly the development of sophisticated legal intellectual property (IP) protection and exploitation regimes. At an international level, IP legal development culminated with the coming into force of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) on 1 January 1995. TRIPS required member countries of the World Trade Organisation to enact laws, which are in line with international standards on the protection and enforcement of IP rights. On the digital electronics front for instance, TRIPS paved the way for the universal recognition of integrated circuit layout designs among WTO member countries. Overall and in line with the digital revolution's changes, TRIPS instilled a common goal among WTO members to actively promote technological innovation and the transfer and dissemination of technology. However, all these developments arguably pale in comparison to the disruption that industry 4.0 is causing. Compared with its predecessors, industry 4.0, is surpassing expectations and is rapidly changing the foundations of several disciplines, including intellectual property (IP).

Brief Look at the Evolution of IP from the mid-20th to 21st Century

In terms of IP, each revolution of course introduced something new – an innovation that in turn caused a series of changes in all sectors of the economy and a proliferation of new patents and designs. The last revolution, for instance, began in the 1960s with the introduction of semiconductors and culminated with the introduction of the internet during the mid to late 1990s. In less than fifty years, the digital revolution generated an unprecedented amount of IP. According to the European Commission's Eurostat quarterly review, statistics show that the number of patent filings during the 1990s alone rose by more than 40%. In this respect, a prime example of a new form of IP arising during that period was that relating to mobile phones.

What the digital revolution managed to achieve on the IP front in four decades, industry 4.0 is now achieving in less than a decade. In terms of patents, the global rise in patent filings this decade is unprecedented. The World Intellectual Property Office reported that the total number of patent filings worldwide in 2011 exceeded 2 million for the first time ever, with a growth rate of nearly 8% for that year alone from 2010. In technology and telecoms, the rapid evolution of mobile phones to smart phones, the associated proliferation of mobile applications and the unfolding patent wars (such as between Apple and Samsung) evidence how much and how quickly things changed in this past decade. So what exactly are these new changes, which occurring with industry 4.0, and what are the associated IP consequences? The next section briefly takes the UAE as a case study to examine how industry 4.0 is developing in this country and what the IP outlook is.

"The prior revolutions arguably pale in comparison to the disruption that industry 4.0 is causing and to address the changes arising from industry 4.0, the UAE Cabinet of Ministers formed the UAE Fourth Industrial Revolution Council"

Industry 4.0 in the UAE

To be better placed to address the changes arising from industry 4.0, on 28 March 2017 the UAE Cabinet of Ministers formed the UAE Fourth Industrial Revolution Council (FIRC). Broadly speaking, the FIRC is now the UAE government body responsible for the UAE's strategy to adopt new technologies and develop the digital and knowledge based economy in the UAE. Shortly after its formation, FIRC worked closely with the UAE Government to formulate this strategy and on 27 September 2017, announced its main goals. Very briefly, those goals focus on four fields: the education sector, the health and medical industry, economic security and finally urban planning and the defence industry. These four fields are among the principal sectors set in the UAE's Vision 2021 and each of them entails actions which would lead to various improvements in our daily lives.

In the education sector, the FIRC will implement the utilisation of smart devices, nanotechnologies and artificial intelligence (AI) to offer advanced expertise in the transfer of knowledge and enhancing the learning experience in all types of academic and vocational settings. In the health and medical industry, the FIRC will work with the institutions to introduce telemedicine, robotic healthcare and intelligent genomic medicine, AI analysis and processing of a patient's genomes, to optimise the diagnostic and therapeutic treatment of patients. In the field of economic security, the FIRC aims to capitalise on the development and use of blockchain based technologies and applications across all types of transactions and services to reduce costs and pollution in the UAE by going fully paperless. For urban planning and the defence industry, the FIRC aims to develop and use smart systems for processing satellite data in planning future cities and to empowering the armed forces with advance robotic systems and autonomous vehicle technologies.

At the core of the FIRC strategy are innovation and IP. In this respect, FIRC wants to establish a national environment that encourages the development of new technologies and incubates the innovative efforts and initiatives of the younger generations in the UAE. To this end, one of FIRC's main aims is to usher in a new digital era in the UAE where the younger generations will better appreciate the IP value of innovations and the development of an advanced patent protection regime to secure the rights to such innovations.

To implement it ambitious agenda, the FIRC will need to consider the existing UAE legal framework as it relates to attracting talent, stimulating research and development, protection, commercialisation and deployment of IP and innovation and to understand what refinement may be required. This could include education and talent placement policies, tax incentives for research and development, infrastructure policies, regulatory licensing, competition and consumer protection legislation, commercial and insolvency legislation, labour laws, public procurement rules, technology transfer and IP legislation.

The implementation of FIRC's strategy coupled with the enactment of new laws, regulations, and policies is likely to improve the UAE's ranking on the Global Innovation Index from its current 35th position globally in 2017. The Index ranking of the UAE was and continues to be contingent among others on how many resources the UAE invests in research and development capabilities and patent protection. Therefore, as IP and innovation are at the core of FIRC's strategy, assessing and securing innovative and patentable solutions, advancements and breakthroughs, which will come about in all four fields, is equally important for the public and private sectors.

To foster, incubate and grow creativity and innovation, securing the accompanying patent rights is the key to commercially leveraging benefits of the FIRC strategy, increasing foreign investment and unlocking the potential that it has to offer. As such, intellectual property protection, including patenting innovations arising from the execution of FIRC's strategy, is a vested interest for both public and private stakeholders in the UAE. With a joint public and private effort, the UAE should continue to rise up the ranks of the Global Innovation Index of this year.

As trusted advisors with a team of qualified knowledgeable IP experts, Al Tamimi & Co are best placed to help clients in formulating and executing patent strategies, which are mindful of all the changes occurring in this fourth industrial revolution we are witnessing. For further details and/or enquiries on this topic please contact the authors of this article, Bachir A Chakra and/or Ahmad Saleh (Partner & Head of Patents & Designs – R&D and Innovations) at b.chakra@tamimi.com and/or a.saleh@tamimi.com.

Massive Anti-Counterfeiting Action on Personal Care Products: An Overview of Administrative and Criminal Action

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Many businesses, big and small, are now fully appreciating the importance of intellectual property rights (IPR) protection in the Middle East. Specifically, brand owners are becoming ever more aware that, to remain competitive, safeguarding IPR is a cornerstone of any business venture in the challenging markets of this region. Brand owners are now frequently resorting to brand enforcement measures to curb the influx of infringing products which tarnish the image and quality of their brands and original products. Quite often as well, the counterfeit and knock-off products, found in local markets, not only infringe and damage brand owner's rights and goodwill but also pose serious health hazards to consumers. In this context, the following article considers a recent case study example of the steps the UAE authorities took to enforce brand owners' rights.

During the closing quarter of last year 2017, the Commercial Compliance Section of the Dubai Department of Economic Development (the DED) executed a raid in Dubai Investment Park (DIP) pursuant to a complaint Al Tamimi filed on behalf of a well-known brand owner based in the USA. In this case, the action we took was administrative in nature and aimed

to enforce the brand owner's rights in respect of a famous product line for personal care.

The DED initially assigned two inspectors to raid an outlet in Dubai. However, upon closer inspection, the DED and our team at Al Tamimi discovered that the infringers were actually operating out of the Dubai Investments Park (DIP). Accordingly, a team from Al Tamimi headed to DIP with the assigned DED inspectors, where they managed to identify two warehouses which the infringers owned. In tandem with this operation, the UAE Ministry of Health assigned one of its inspectors to liaise internally with the DED inspectors and to ascertain the infringing products' non-conformity to the declared standard health specifications for personal care products in the UAE. The administrative action Al Tamimi took on behalf of the US brand owner resulted in the DED's seizure of an estimated 120,000 personal care products worth approximately AED 1,200,000 (USD 328,000). Furthermore, because the DED had noted in its records that this was the second time the infringers had infringed a third party's trademark rights during 2017, the DED imposed a further, heftier fine of AED 30,000 (USD 8,200) against them.

The above case is a prime example of how the involvement of the DED is an important method by which brand owners can protect their rights. It is worth mentioning that the Departments of Economic Development in Dubai, Sharjah and Abu Dhabi routinely carry out administrative actions within their respective jurisdictions in the UAE. In the other Emirates, such efforts are coordinated through the Ministry of Economy rather than the DED. The DED in each Emirate usually takes administrative enforcement action against outlets selling the counterfeit and knock-off goods rather than against major importers or distributors. The remedies for administrative actions are usually confiscation and destruction of the goods with a fine imposed against the offender. Closure of any shop is also an option for the DED in the case of repeat offences. Compared with court actions, administrative actions are efficient, cost effective and quick. This is why when faced with infringers engaged in the retail sale of infringing goods, brand owners are better off resorting to administrative actions, which are more suitable in such cases.

As stated above, administrative actions generally result in the confiscation and destruction of the goods with a fine imposed against the infringers. Unfortunately, the amount of the fine is often insufficient to act as a deterrent. Official fees are of course payable, when filing the administrative complaint and investigating the suspected entity. The decision to destroy the goods and the actual destruction can occur within a period of one to three months from the time of filing the complaint with the administrative authorities. Nevertheless, some administrative complaints may take longer to conclude if the trademark infringement claim involves an unauthorized use of a trade name. Typically, in such cases where the trade name's infringement of the trademark is established, the administrative authorities prefer to allow the infringers a grace period to transition to a non-conflicting trade name.

A criminal court action, on the other hand, is the most effective manner to deter the infringement of an owner's trademark when facing a widespread IPR infringement. The action entails prosecuting a company or a person, identified as the major importer or distributor of the infringing products, and filing a criminal action through the public prosecution. The resulting penalties are usually similar to those of administrative actions and normally include fines, confiscation and destruction of the infringing goods. However, the deterrence stems from the process of prosecution itself, as it is tedious to the defendant. Faced with a criminal complaint and subsequent charges, the infringers may be subject to temporary arrest, and their identity documents and passport may be confiscated for extended periods. Unlike the administrative action, filing the criminal complaint and subsequent prosecution of the infringers entails no official fees whatsoever for brand owners.

Finally, while administrative actions are available for brand owners in the UAE, it is interesting to consider briefly how other GCC countries enforce intellectual property rights. For example, in Saudi Arabia, the Anti-Commercial Fraud Department (ACFD) of the Ministry of Commerce and Industry undertakes this responsibility. The actions taken by the ACFD are akin to those taken by the UAE DEDs (raid, seizure, destruction of goods and fines) and have proven to be an effective means for countering infringements in the Kingdom. In Kuwait, the Ministry of Trade, along with the police, routinely coordinate efforts in the fight against counterfeit and knock-off goods with criminal prosecutions following suit, where the infringements are grave, before the local courts.

Al Tamimi & Company's Intellectual Property team regularly advises on IPR infringement cases. For further information please contact Ahmad Zaza (a.zaza@tamimi.com)

Projects in Focus

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Change in Power: How New UAE laws may affect IPP and Solar Projects

In the first quarter of 2018, we have witnessed a lot of in activity involving power and water projects in the UAE. This article considers the recent activity, the existing legal framework and key legislative developments.

Power & Water Projects: Key recent activity

Leading examples of key recent projects and pipeline activity include:

- The Abu Dhabi Water & Electricity Authority (ADWEA) has announced its intention to invite bidders for a second solar power plant in the middle of this year;
- Dubai Electricity & Water Authority (DEWA) has awarded contracts to build a 40 million imperial gallons a day (MGD) desalination plant at Jebel Ali and for the fourth phase 815 megawatt expansion of the Al-Aweer H Station power plant;
- Financial close of the fourth phase of the Mohammed Bin Rashid Solar Park is expected to be completed in the first half of 2018;
- The Federal Electricity & Water Authority (FEWA) has issued a request for proposal in relation to a proposed 45 million MGD desalination plant Umm Al Quwain; and
- The Sharjah Electricity & Water Authority is also active in the planning of new power projects that will have private sector involvement.

This action is a continuation of trend in the UAE of the development of power and water infrastructure to meet future demand, diversifying the energy mix into new areas such as nuclear and renewables and greater private sector participation in the delivery of new assets.

Current legislative framework

ADWEA and Abu Dhabi have led the way involving the private sector in development of its power production capabilities since the introduction of Law No (2) of 1998 Concerning the Regulation of the Water and Electricity Sector, which introduced the independent power producer (IPP) model to the Emirate. Dubai introduced its own IPP regime via Dubai Law No. 6 of 2011. As a result of Abu Dhabi having undertaken the most IPP transactions the ‘Abu Dhabi’ model is looked to in practice as a basis for new greenfield transactions. This model provides government sponsors, project developers and financiers comfort that the broad framework of a transaction has been tested, implemented and accepted (or to use the industry term, is ‘bankable’).

Abu Dhabi and Dubai also have regulatory regimes for captive commercial and industrial (C&I) solar installations. These allow private businesses to generate solar power from panels installed on their premises for their own use with any surplus power feed back into the power grid with an offset against their power bills.

Notwithstanding the dedicated legal frameworks, many other aspects of UAE law impact on the development IPP and C&I solar projects. We now

consider three developments under UAE law that could impact existing practice in this area.

Foreign ownership

At present, the Federal Law No. 2 of 2015 ("UAE Companies Law") provides that any company established in the UAE (other than in free zones) must have one or more UAE partner holding at least 51% of the share capital of the company. The law only contemplates 100% foreign ownership in companies where there is either (i) a special federal law to that effect or (ii) a cabinet decision provides such an exemption.

In this area, UAE media has reported on announcements from the Ministry of Economy, as recent as October 2017, that a new UAE Federal Investment Law, which would allow 100% foreign ownership in certain sectors of the economy, is planned for 2018. It is not clear at this time which sectors of the economy would be covered under this proposed law but power generation could be a strong candidate with power distribution continuing to be the monopoly of the respective Emirate electricity & water authorities (EWAs).

In practice, the 51% local ownership requirement is met by the applicable EWA taking an ownership stake in the project company of an equivalent or greater share. IPPs are predominantly financed by a syndicate of financial institutions and can be significantly leveraged given the long-term and assured revenue generating nature of power assets. However, banks will not fully finance a project meaning the EWA must make a material equity contribution to fund the project. By allowing greater foreign ownership in the power generation sector, this would reduce the financial burden on Emirate governments and allow the private sector to assume the risk (it is estimated that the UAE plans to invest USD 272bn by the year 2050 to meet energy demand).

The IPP law in each Emirate has varying degrees of flexibility to allow for foreign ownership. For example, neither the Abu Dhabi or Dubai laws mandate a minimum local ownership requirement and the ordinary position in the UAE Companies Law implicitly applies. The Dubai law expressly contemplates that DEWA is to establish joint ventures with third parties without expressing what its ownership would be. In contrast, the Abu Dhabi law does not specify that a joint venture must be formed with an ADWEA company. The FEWA position is the same. As no minimum equity stake by the EWA is mandated, any relaxation under a UAE Federal Investment Law would make greater private sector involvement possible. IPPs in the UAE may become even more demand as the potential commercial returns increase to private investors.

In the C&I solar space, the Dubai and Abu Dhabi framework imposes specific local licensing requirements on the entity that carries out the design of C&I system and the contractor that carries out the works to construct and install the C&I system. Unless a foreign branch can be established, non-UAE entities that specialise in this area must establish a joint venture with a local partner. If a new UAE Federal Investment Law allowed 100% foreign ownership in this sector, greater foreign investment may also follow.

Movable Assets Security Law

UAE Federal Law No. (20) of 2016 on the Mortgage of Movable Property to Secure a Debt ("Movable Assets Security Law") came into force on 16 March 2017. Broadly the Movable Assets Security Law does two things: it sets out a new regime for creation of security over movable assets; and it sets up a public security register for that security. Earlier articles in Law Update in Issues 296 and 303 have detailed the key changes and benefits that this law should bring to the UAE.

The particular impact it may have on IPP transactions is the potential for an "all assets" security under the Moveable Assets Security Law to replace the commercial business mortgage—a form of security contemplated by Federal Law 18 of 1993 (commonly referred to as the "Commercial Transactions Law") which grants security over a commercial company's existing tangible and intangible assets. The commercial business mortgage is not widely employed due to the cost and complexity of the perfection process. However, it is a standard feature of IPP transactions to ensure financiers are fully secured. Security under the Moveable Assets Security Law would have an equivalent scope to the commercial business mortgage but has the advantages of a low cost and simple registration process and "self-help" enforcement rights which commercial business mortgage does not provide. Of course, the Moveable Assets Security Law does not replace the existing methods. Therefore commercial business mortgages remain possible and a valid method to create security. Until the regulations for this law have been issued and the security register becoming operational, we expect the commercial business mortgage will continue to be the security of choice for IPP transactions.

The Moveable Assets Security Law would also allow specific security to be taken over C&I solar equipment. This means C&I suppliers could supply equipment on deferred payment terms or financiers could provide dedicated lending for the acquisition of the equipment, better enabling customers to afford installation. The self-help remedies provided under the law give a new and distinct advantage that is not available under an ordinary pledge of goods under the UAE Civil Code, which requires enforcement via the courts meaning there is a significant risk of delay and diminution in the value of assets. Consequently under the Moveable Assets Security Law, suppliers or financiers should have the necessary tools to undertake rapid enforcement and the recovery and redeployment of assets. The law also permits registration of operating leases of movable assets that have a term of more than one year. Accordingly, where C&I solar equipment that is structured as an operational lease the interest can be registered and the lessor can take advantage of the enforcement provisions provided in the law.

Financial leasing law

It was announced in January 2018 that the UAE's Federal National Council approved a draft law regulating finance leases. We understand the law will apply to leasing of property that, at the end, provides an option for the lessee to acquire the property at the end of the lease. Information that it is publicly available on the law makes clear that the lessor will need to be licensed by the Central Bank of the UAE to undertake financial leasing activities.

The need for a licence from the Central Bank is likely to impact UAE businesses that lease equipment with a buy option included (for example in car leasing or C&I solar equipment). However, it may also provide new opportunities. For example, in IPP solar transactions the developer acquires the relevant solar panels and related gear. The developer could instead lease the equipment. Banks could also procure the necessary licence and become lessors of equipment, as an extension of their asset financing operations, in either IPP or C&I solar projects.

Once the law becomes public, it can be scrutinised further to understand its likely impact in this area and on other laws. For example, the law will need to be read together with the Movable Assets Security Law as there is a possibility for overlap given both laws deal with a party's interest in movable property (including by way of lease) and rights that arise as a consequence. We will publish a more detailed article on the law's content and its effect on the finance lease industry generally in the UAE when it is available.

Meet the new laws

Power and water infrastructure projects will continue to grow apace as the UAE looks to fulfil expected future demand. Current laws already allow bankable IPP and C&I projects to be implemented. However, the new laws planned, drafted or enacted mentioned in this article will further support implementation of new projects by providing greater opportunity for foreign investment and for deal and financing structures to evolve.

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Egypt's Special Economic Zones: An Attractive Investment Opportunity

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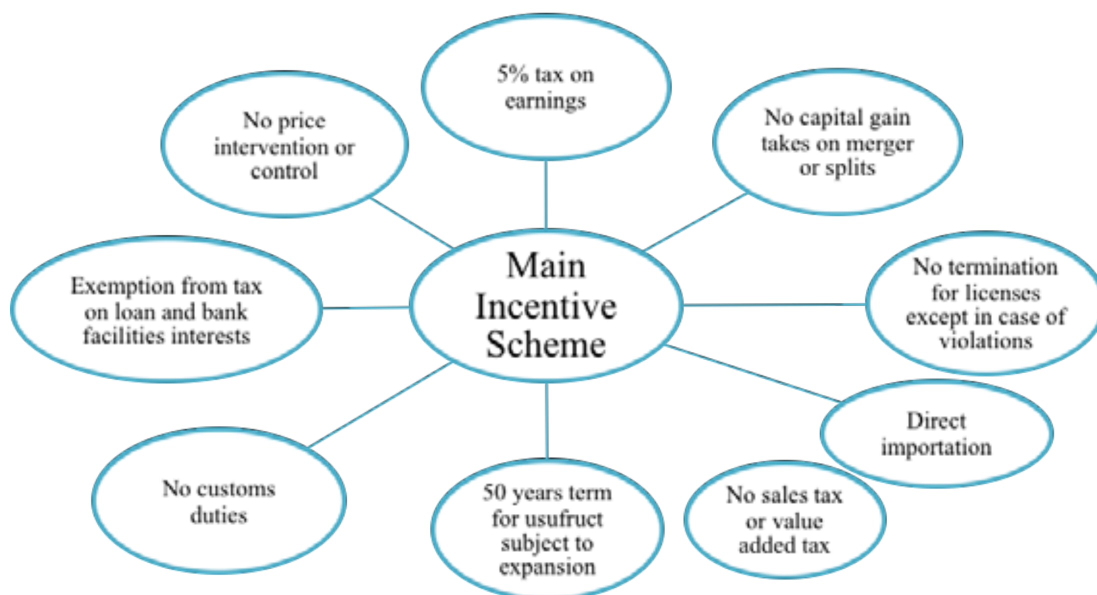
Egypt has a well-established system of free zones, overseen primarily by the General Authority for Investment and Free Zones (GAFI). The country's various zones have a wide range of different sector focuses. The Media Public Free Zone, in suburban Cairo, for example, hosts radio and television companies, while the Shebin El Kom Public Free Zone is mostly populated by the textile spinning and weaving industry. Other zones include those in Port Said, Alexandria, Nasr, Suez, Ismailia and Damietta.

In addition to free zones system, Egypt introduced more investment opportunities by creating the new special economic zones under the Special Economic Zones Law No. 83 of 2002. This article intends to give an overview of the law and the economic zones created to date.

The Special Economic Zones Law No. 83 of 2002 ("the SEZ Law")

The SEZ Law aims at creating special economic zones to serve as international business hubs. It also aims at utilizing both national and foreign investment to develop industries and exports in order to earn foreign currency, as well as developing new and high technology industries. The economic zones will have a positive social impact through generating thousands of new employment opportunities. The SEZ Law stipulates a number of incentives and guarantees to spur investments and labour opportunities in the country. The following diagram explains in a nutshell the types of incentives and guarantees introduced by the Law:



The SEZ Law is based on the concept of a one-stop shop, providing the establishment of a sole governing body (i.e. the Economic Zone Authority) overseeing investment matters within each zone. This body is competent to carry all government mandates and issue required licences. It provides simplified taxation and customs systems and removes restrictions on foreign ownership. In addition, the law sets out efficient licensing procedures and effective frameworks for the resolution of disputes.

Up to now, only two special economic zones have been established under the SEZ Law: the Suez Canal Special Economic Zone (SCZone), which was established in 2015, and the second the Golden Triangle Economic Zone (GTZone), established in late 2017.

The Special Economic Zones

1. The Suez Canal Economic Zone (SCZone)

The SCZone is a premier services and trade hub offering investment opportunities in various economic sectors including logistics, industry, ICT, renewable energy, business parks and real estate developments as well as infrastructure services and transport links developments. Its target industries include automotive assembly and components, chemicals and petrochemicals, construction and building materials, textile and readymade garments, and agribusiness and food processing.

The SCZone resides along the banks of the newly-expanded Suez Canal, connecting two oceans and two seas. More than 8% of global trade passes through the canal every year. The strategic location of SCZone on the main trade route between Europe and South Asia permits it to offer competitive production cost and makes it the most comprehensive market access programme in the region.

Spanning 461 km2, the SCZone has four unique zones and six strategically-located ports. The four zones are:

1. Ain Sokhna, set aside for heavy industry and renewable energy manufacturing (being near Egypt's windiest region);
2. East Port Said, allocated to light industry and logistics;
3. Qantara West, a coastal area reserved for logistics; and
4. East Ismailia, targeted at agri-business, textiles and ICT industries.

The six ports are at East and West Port Said; Ain Sokhna; Adabiya; Al Tor; and Al Arish. The planned expansions of these ports will increase their capacity for handling maritime traffic and for offering related services such as shipbuilding, stevedoring, bunkering, vessel scrapping, and recycling.

All SCZone investors benefit from a one-stop shop to streamline the registration, licensing and granting of permits in the form of the Suez Canal Economic Development General Authority. The SCZone Authority has been given autonomy over all matters in the zone except national security. Accordingly, investors may count on it for licensing, tax collection and utilities provision.

Since its establishment, SCZone has already attracted a number of investors. For instance, China's Tianjin Economic-Technical Development Area (TEDA) Corporation, a Chinese state-owned entity that specialises in developing free zones in China, entered into an agreement with the SCZone Authority. In addition, the Chinese company Jushi signed a contract for planned expansions by the company in Ain Sokhna zone with an investment of US$60 million in an area of 90,000 square meters.

In January 2016, 32 Chinese companies started operating in SCZone, with a total investment of $400 million. In this regard, the Chinese President announced that the Chinese government would be investing up to $2.5 billion in 100 companies in SCZone.

The Russian government has also confirmed investment and started developments amounting to $107.8 million spread across 398 companies in engineering, machinery, shipbuilding and food near East Port Said.

During the World Youth Forum in Sharm El-Sheikh, the SCZone Authority signed seven contracts with several international companies. The deals include a $3.5 billion contract with a consortium of real estate companies for the industrial development of 5.5 million square meters of land in Ain Sokhna.

An agreement was also signed for the $500 million financing of the Sonker Bunkering Company and DP World Sokhna's liquid bulk terminal at Port Ain Sokhna. The terminal will be used to import and store gasoil and liquefied petroleum gas in the third basin of Port Ain Sokhna. The European Bank for Reconstruction and Development, the International Finance Corporation and CIB announced in 2016 that they were providing $341 million of the project's cost to Sonker.

A number of UAE investors have also invested in SCZone. In November 2017, DP World entered into a partnership agreement with the SCZone Authority to develop an integrated industrial and residential project at Sokhna. The agreement will establish a joint venture between SCZone (51%) and DP World (49%) with DP World managing the zone; it is projected to start in the first quarter of 2018.

2. The Golden Triangle Special Economic Zone (GTZone)

The Golden Triangle is the second economic zone created by the Egyptian government after the SCZone. Presidential Decree No. 341/2017 established the Golden Triangle Economic Zone in Upper Egypt (in the Al Qoseer - Safaga - Qena – Qeft region) as an economic zone of a special nature. Spanning 2,228,754.25 feddan (over 2 million acres), the GTZone is expected to lead to substantial investments in Upper Egypt, especially in the fields of mining, general industry and the tourism sector. According to the government's announced plans, 65% of the project will be composed of modern industrial hubs whilst 35% will be residential, commercial, and touristic.

The GTZone already has basic infrastructure including railroads between Qina and Safaga; three ports, at Qusayr, Safaga, and Al Hamrawen; three airports, Luxor, Hurghada, and Marsa Alam; and numerous main roads including Safaga-Qina, Qusayr-Koft, Marsa Alam-Edfo and the Red Sea Road. These are predicted to assist the swift development of the economic zone.

The area between Qusayr, Safaga, and Qina is filled with untapped mineral wealth, including limestone, phosphate rocks, glass sand, shale rocks, and gold. Existing residential cities are available to increase labour and housing capacities. The area can also be developed into a tourist destination, with beaches in Safaga and Qusayr, or the areas nearby in Hurghada, El Gouna, and Marsa Alam.

On 16 August 16 2017, the Prime Minister issued Decree no. 1788 of 2017 establishing the General Authority for the GTZone (GTZone Authority) as the regulatory authority responsible for administering the zone, and having its headquarter in Safaga.

Immediately after the establishment of the GTZone, Safaga issued tenders for infrastructure developments, including desalination projects and power generation projects funded by the European Bank for Reconstruction and Development (EBRD) to develop the region.

The Safaga desalination project is under the Public Private Partnership program developed by the Egyptian Government. The Safaga desalination project is expected to have an investment cost worth EGP 450 million. Another desalination project in Hurghada was also launched with estimated investment cost of around USD 52 million.

The Safaga mining port, which is expected to have vessel capacity of 60,000 tons, has issued a tender for development of an industrial port focusing on mining. The first phase of the project is the construction of the infrastructure necessary to expand the port and its activities. The second phase will involve the operational aspect of the port. The project is estimated to have an investment cost of EGP 3.8 billion, with the EBRD to finance consultancy, and the International Finance Cooperation (IFC) as the transaction advisor.

In conclusion, with all these developments taking place in Egypt, we expect a flow of foreign direct investment over the coming years to grasp the investment opportunities offered in the several mega projects introduced by the Egyptian government.

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The Projects and Privatisation Landscape in Oman

Oil Revenues, Privatisation and the 'New Normal'

The dramatic fall in oil prices between June 2014 and January 2016 saw the oil price crash from USD114 per barrel (p.b.) to a 30-year low of USD26 p.b. Inevitably, the oil price crash significantly restricted the ability of Gulf Co-operation Countries' (GCC) governments to fund new infrastructure projects. Despite some more optimistic views from specific commentators, most expect oil to remain in the USD50-60 p.b. range for the medium term.

In response to the fiscal squeeze on public finances, finance ministries across the Middle East and North Africa (MENA) region have increasingly sought to engage the private sector in designing, building, financing and operating public sector infrastructure and services.

Since the mid-1990s countries in the MENA region have used private financing models. Prior to 2014, however, the majority of projects were limited to the utilities sector, mostly Independent Power Plants (IPPs) and Independent Water and Power Plants (IWPPs). IPPs and IWPPs have historically benefitted from special agreements to incentivise the provision of low cost energy.

The public private partnership model (PPP) in the GCC and wider MENA region is relatively young compared with the record of its use in the rest of the world. This article examines some of the challenges and opportunities arising in the projects and privatisation field in Oman in 2018 and beyond.

Oman's response to the New Normal

Oman has not been immune from the oil price fluctuation having had a 2017 fiscal break-even position of USD79 p.b. With current nominal GDP of USD51.7bn, oil output of c. 952,000 barrels per day and inflation running at 0.3%, Oman started running a budget deficit of about 1% of GDP in 2014.

The budget deficit rose to 21% of GDP by late 2016 before being brought down to around 13% in late 2017 due to fiscal consolidation and cost-cutting. Growth had slowed to 0.4% by late 2017 but is expected to recover to a forecasted 3.8% in 2018. Fiscal consolidation has seen the value of contracts awarded by the government roughly halve.

Less rich in natural resource reserves than its GCC neighbours, Oman has had a long-standing commitment to economic diversification. The government also has an excellent record with IPPs and IWPPs, launching the GCC's first IPP in 1994. Oman is, however, yet to deliver any major PPP scheme in any other sector.

According to Oman's 2018 national budget, oil prices, estimated at $50 p.b, will produce 70 per cent of the expected OMR12.5bn in revenues. Meanwhile it is envisaged the deficit will be kept at the same level as 2017 by increasing expenditure on important projects.

Fabio Scacciavillani, chief economist at the Oman Investment Fund has been quoted in Oman's national press as saying:

"The most important aspect of budget is that revenues and current expenditures are in line with each other or nearly the same. So borrowing is done only to implement infrastructure projects that will produce a return. This is applying the golden rule, that is, to pay for current expenditures from revenues, and pay for return yielding projects by financing it."

Mr Scacciavillani added that Oman's budget is not just prudent, but should reassure lenders that "you are not lending money, but financing growth, from which returns are evident."

Specific opportunities

In January 2018 the Ministry of Finance of the Sultanate of Oman stated, in its detailed analysis of the budget, that six state-owned enterprises (SOEs) will be privatised this year. The relevant SOEs are currently carrying out projects worth OMR3bn

(USD7.8bn). Those projects are in addition to the OMR2.7bn the government has set aside for the implementation of projects in the oil and gas, and infrastructure sectors.

Around 11 public-private partnership projects valued at USD2bn are in different stages of planning and execution in Oman, according to recent research from the business intelligence firm MEED.

Further, the government's *Tanfeedh* programme, seeks to ensure 80 per cent of funding from the private sector for 91 initiatives underway. *Tanfeedh* is Oman's 9th Development Plan covering the period 2016 to 2020, focussing on five key strategic areas of: manufacturing; transport and logistics; tourism; fisheries; and mining. *Tanfeedh* has 121 projects and initiatives which are expected to generate USD40bn in investment opportunities, mainly from the private sector. While the details of which projects will be delivered by way of PPP are awaited, the *Tanfeedh* 2017 Handbook identifies three pilot projects: a mass housing project; public schools; and a hospital.

MEED forecasts that in the period 2018 to 2021 project awards in Oman will rise from US13.3bn to US16.4bn (worst case scenario estimate USD9.6bn to US12.7bn, best case USD17.0bn to USD20.1bn).

The Oman projects pipeline breaks down approximately: 25% construction; 15% each of oil, chemical and water; 10% power; and in the region of 6% for each of industrial, gas and other.

Structural challenges and the Oman opportunity

Informed commentators will be aware that the GCC and MENA region can present legislative, capacity and political challenges which will need to be overcome if the region is to deliver its PPP plans.

MEED Editorial Director Richard Thompson has commented that: "*The rise in public-private partnerships over the past few years is one of the most strategically significant shifts in the business landscape of the Middle East since the nationalisation of the oil industry in the early 1970s.*"

"*But it is not easy*," he added. "*The transition from full government control to private-sector control requires a host of difficult changes to be implemented covering everything from the way entire industries are regulated, to how much things cost over, to who has the decision making authority. It requires new skills and technical capacity. And it requires not just a change in business models but also in the political mindset.*"

In our view, Oman's government remains a leader in the region in terms of commitment to continuous reforms to improve its business environment and attract ever more private sector investment. Oman is ranked fourth in the Arab world, at 71st globally, according to the World Bank's Ease of Doing Business Index. The government continues to work towards enacting a new Foreign Investment Law, A Public-Private Partnership Law and a Bankruptcy Law, all keenly anticipated by the domestic and wider business community.

His Majesty Sultan Qaboos has himself recently stated: "*The private sector must play a greater role in supporting and diversifying the national economy. This should be done in concert and harmony with the efforts exerted by the government to stimulate domestic and foreign investment. It is to be done by establishing a new infrastructure; continuing to maintain the existing foundations upon which we have built; providing a wide range of services; improving the atmosphere of general investments; and instituting a programme of privatisation. This programme will help the continuation of economic growth, increase the efficiency of productivity and avoid monopolisation.*"

2018 Outlook

With growth forecast to return to the Oman economy in 2018 and oil prices stable, or possibly rising, projects and privatisation activity can be expected to rise and flourish in Oman in the short to medium term.

While legislation can take time to come in to force in the Sultanate, the final results usually pay testament to the due consideration and attention that is paid to key legislative reform and development. Prime movers probably still have an opportunity to influence the new legislative framework in terms of ensuring it can accommodate all the optimal models of PPP suitable for the territory.

With its longstanding vision and discipline in terms of securing sustainable and responsible economic growth, pursuant to economic liberalisation in accordance with the national interest, and its commitment to fiscal control and privatisation, Oman may well be 'one to watch in 2018' for significant projects and privatisation investors.

Al Tamimi & Company's Oman Office team regularly advises on projects and privatisation matters in Oman. For further information please contact Richard Baxter (R.Baxter@tamimi.com) or Ahmed Al Barwani (A.AlBarwani@tamimi.com).

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أول الشجرة بذرة

A Tree Begins with a Seed: Construction and Project Finance in Qatar

Anyone who has travelled to Qatar over the last few years will have witnessed the huge infrastructure projects that have been completed or are under construction. From the new Hamad International Airport, the dramatic road upgrade programme, to the new metro rail system - transport in Qatar is being transformed. Winning the 2022 FIFA World Cup bid has not only generated a great number of construction projects directly, with entirely new or upgraded stadiums being built, but has acted as a spur to improve infrastructure and transport links. On top of this, there is a huge amount of residential and commercial property being constructed, from the Musharib regeneration project in downtown Doha, the Motor City complex within touching distance of the KSA border, to the continued growth of the Pearl, the upscale waterfront community. So, there are a great deal of projects going on, but what about finance? How are all of these works funded?

As with many things in Qatar at present, the political situation is influencing the availability of finance. Up until June 2017 there were a number of regional lenders that were providing finance to institutions in Qatar to help fund construction projects. Whilst several banks headquartered in other GCC countries remain active in Qatar, local financial institutions have become more prominent in providing finance to projects in the country, funded in certain cases via well-publicized debt raisings on the international money markets. There are frequent announcements in the local press about lenders such as Qatar National Bank, Qatar Islamic Bank and Qatar International Islamic Bank providing financing for specific construction projects, and billboards at building sites around the country proudly announce lenders' involvements in the schemes.

There remains an active market for project finance in Qatar. Whilst the collapse of the UK construction giant Carillion, which operates in Qatar, has brought some less welcome news, the fact that the Musharib project that it was involved with continues apace

demonstrates the resilience of the local economy. As a firm we currently act for a large number of major construction companies active in Qatar, and the number of inquiries received from construction and construction support companies based in Europe and Asia looking to establish a presence Qatar demonstrates the attractiveness of the market.

From a legal perspective, it interesting to see the form of legal and funding structures being used to undertake projects in Qatar. There is no direct equivalent of the European-style public / private finance arrangements where a government entity will contract with a private sector company to procure services over the lifetime of a contract, perhaps up to 25 years. On the back of this contract the private sector company, which will provide the service, is able to secure financing to build the road or hospital or other infrastructure, servicing the debt with the income received from the government. The closest equivalent is a company established under Article 207 of the Civil Code (formerly Article 68 under the previous law) which enables the government or a government entity (or a foreign entity together with the government or a government entity) to establish a private company. These companies can contract out of the provisions of the Companies Law, making them an attractive structure. That said, the role of the government in such an enterprise clearly precludes this structure for entirely private arrangements.

A more common structure for private contracting partners in Qatar is the joint venture. As explained in previous editions of the Law Update, there is a great deal of flexibility afforded to a JV arrangement in Qatar as it allows entities even without a formal presence in the country to operate through the JV. Many construction and infrastructure companies operate via the JV route to allow a marriage of expertise and skills, with JVs frequently established on a project-by-project basis. From a financing perspective, the JV arrangement should be robust enough to be bankable, though lenders will often require parent company guarantees to support the obligations of the JV together with performance bonds from a financial institution (note the commentary in the press recently about the performance bonds issued on behalf of Carillion in Qatar). The exact allocation of risk can then be contracted between the JV partners.

In terms of the actual form that project financing takes in Qatar, rather like the JVs it more often than not done on a project-by-project basis. The funding could, for example, support construction of an individual building such as one of the new residential towers being erected around Doha, or

“There are challenges facing the local and regional economies, but the upcoming World Cup and the firm commitment from the government to infrastructure upgrading in Qatar means that the sector should remain buoyant for the foreseeable future.”

funding might be provided for a broader project such as parts of the Musharib redevelopment. The same fundamentals of lending apply: how much is needed and for how long, and what underlying or projected cashflows will underpin repayment of the loans. Qatar has a sophisticated finance sector with some very experienced bankers, with the increasing role of local lenders helping to further burnish the experience of the local sector.

There are challenges facing the local and regional economies, but the upcoming World Cup and the firm commitment from the government to infrastructure upgrading in Qatar means that the sector should remain buoyant for the foreseeable future. Essential to that is the continued availability of funding. It is likely that certain banks will have a diminishing profile going forward, but the appetite for financing from key lenders in the Qatar market means that there should remain liquidity to finance these projects. The flexibility afforded by the company law in Qatar means that there are various means by which sponsors and borrowers can offer comfort to lenders and make projects bankable, even with more stringent credit conditions, which seem likely to apply given the pressures on the economy.

So next time you are transferring flights in Doha or are on the new expressway to view a newly built apartment at the Pearl or having a meeting in Musharib (once complete), give some thought to the financing that helped fund the rapidly changing environment in Qatar.

Saudi Arabia in Focus

We are very pleased to have the opportunity to introduce this month's Law Update feature on Saudi Arabia.

Saudi Arabia continues to be a priority for Al Tamimi & Company's expansion plans in the region, building on our status as the largest law firm in this key market. The Kingdom is at a pivotal point in its history, with the Vision 2030 and National Transformation Program in full swing and HRH Crown Prince Mohammed bin Salman continuing to push through his reform agenda. Al Tamimi is very excited about the work we are currently undertaking with our clients and the myriad of further opportunities on the horizon.

Our Riyadh, Jeddah and Al Khobar offices have experienced considerable growth of late, with an influx of lawyers either joining, relocating, or in the process of doing so. This includes, amongst others, Nick O'Connell, leading the development of our KSA TMT practice and Senior Associate, Siri Hashem, joining us in the Eastern Province to build on our Transport and Insurance offering. We are very excited about what the future holds for us in Saudi Arabia, and look forward to sharing more updates in the months to come.

Before moving on to this KSA-focused supplement, it seems appropriate to share some background and provide a brief overview on the current state of play in Saudi Arabia.

Vision 2030

In April 2016, the Saudi Arabian government unveiled an ambitious plan called Saudi Vision 2030 with an aim to reduce the Kingdom's dependence on oil by developing other sources of income. It will also make far-reaching socio-economic changes. The Vision 2030 announcement was rapidly followed in June 2016 by the announcement of the National Transformation Program 2020 which identifies and prioritises various medium-term objectives for the implementation of Vision 2030.

The impetus for these programmes comes from the urgent need to provide millions of new jobs for Saudi Arabia's increasingly youthful workforce (the median age of the Saudi population is 27) and the need to wean the Kingdom off its dependence on oil as a source of government revenue. As is the case in many Middle Eastern countries, government spending has been a key driver of Saudi economic activity. However, the government has signalled that it wants the private sector to shoulder a much greater responsibility for the implementation of these programmes. It is envisaged that the role played by foreign investors, in particular, will increase substantially and, in many areas, the government's plans appear to depend on that foreign investment happening. There is a focus on the establishment of a legal and regulatory environment that is far more investor-friendly in order to encourage and facilitate such foreign investment. This requires some significant legal groundwork to be done in many areas, which we are excited to be part of.

Current Business Environment

2017 was a year in which the KSA Government made a determined effort to reduce its expenditure and this had a very substantial impact on the business environment in the country. Initially large capital works projects were adversely impacted and this led to a spate of construction related litigation. However, the impact of lower government expenditure has been felt more broadly.

The success of many Vision 2030 projects will hinge on attracting direct foreign investment but in the short-term these need to be kick-started by government expenditure and while most media attention has focused on flagship Vision 2030 projects (Saudi Aramco IPO, privatisations and PPPs) there are a myriad of opportunities – especially for business and legal advisors.

Since Vision 2030 was announced in 2016, there has been no indication that the Saudi government is considering a plan B, maintaining its commitment to this ambitious initiative throughout.

The following special feature touches on a number of important and topical issues, which We hope you find interesting and informative. For further information and advice on doing business in Saudi Arabia, please do not hesitate to contact any of the KSA Al Tamimi team directly.

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The New Saudi Arabian Bankruptcy Law

These days it seems as if all roads in Saudi Arabia lead to Saudi Vision 2030 and the National Transformation Programme (NTP), the government's strategy to modernise and diversify the Saudi economy.

Amongst other things, the government has signalled that it wants to see a far greater level of private sector participation in many areas of the economy than has previously been the case. This has led to a number of reforms designed to facilitate and pave the way for that investment and especially foreign investment.

Investors want to know how their investment will be protected and how effective those protections will be if they need to be relied upon. Amongst other things, this includes knowing what their rights and obligations will be if their investment runs into financial difficulty.

The lack of a modern fit-for-purpose insolvency regime has been a major bugbear for businesses, professional advisors and others doing business in Saudi Arabia. Some of the problems encountered include the following:

- Disorderly collection of debts resulting in some creditors being paid but others missing out entirely;
- Little scope for workouts with the result that creditors and debtors may both be disadvantaged;
- Reduced prospects of survival of a viable business experiencing a temporary hiccup;
- Lack of or no information on whether a proposed counterparty was insolvent;
- A large number of lawsuits resulting from a multiplicity of legal claims (this has

been a feature of several large corporate insolvencies in Saudi Arabia); and

- Debtors attempting to defeat creditors' claims by concealing assets or disposing of them prior to insolvency at less than fair value or for no value at all.

In 2016, the Saudi Arabian Ministry of Commerce and Investment (MOCI) announced plans to issue a Bankruptcy Law and published a draft of the proposed Law. This followed on from a policy paper published by MOCI in 2015, which sketched the broad outline of a proposed Bankruptcy Law.

The long awaited new Bankruptcy Law (New Law) was published in the Official Gazette on 23 February 2018, and is expected to come into force by no later than the third week of August 2018.

Saudi courts have traditionally been reluctant to make an order declaring a debtor to be bankrupt, until all feasible methods of debt enforcement have been exhausted. Even then, some judges have been unwilling to make a bankruptcy order. This had resulted in protracted and in many cases unsuccessful debt enforcement.

There has also been little or no effective protection for a debtor whose business is facing financial difficulties, but which remains financially viable. In practice, where there are several creditors there may be no scope for that debtor to trade his way out of those difficulties and restore the financial health of his business. However, preserving the business in some form may be in the best interests of most if not all creditors and this especially the case with small creditors – even if it means receiving less than their due.

The New Law contains many of the features of a modern western styled insolvency regime reflecting the extensive benchmarking process, which occurred prior to it being drafted as part of its development. As well as establishing some new forms of insolvency administration, the New Law tidies up some issues which have caused problems to creditors when dealing with insolvent debtors.

The New Law runs to 231 Articles and this article summarises the headline changes.

Aims of the New Law

The New Law aims to:

- Help a bankrupt or insolvent debtor who is expected to suffer financial disruption to reorganise his financial position, resume his activities and contribute to economic support and development;
- Ensure fair consideration of creditors' rights and ensuring the equitable treatment;
- Maximise the value and regular sale of assets in bankruptcy, as well as ensure fair distribution thereof to creditors upon liquidation;
- Reduce the cost and length of legal proceedings and enhance their effectiveness; and
- Provide a simplified liquidation of debtors whose assets, if sold, are not expected to be sufficient to meet the expenses of liquidation.

To whom does the New Law apply?

The New Law has an extended reach and applies to:

- Individuals/ Corporations carrying on commercial, professional or for-profit businesses in Saudi Arabia; and
- Non-Saudi investors who have assets in Saudi Arabia or carry on commercial, professional or for-profit business through a licensed entity .

The New Law will also apply to regulated entities such as banks, insurance companies and telecommunications companies. However, it preserves the right of certain regulators (for example, Saudi Arabian Monetary Agency and Capital Market Authority) to issue regulations for their own regulated entities covering bankruptcy issues. They may make regulations excluding regulated entities from provisions of this law or impose additional regulations, obligations or requirements.

Insolvency and Bankruptcy

The New Law distinguishes between a person who is "Insolvent" and a person who is "Bankrupt".

An "Insolvent" is a debtor who fails to discharge a debt on its due payment date. It is unclear whether this is intended to be a departure from the generally understood meaning of insolvency being an inability to pay debts as they fall due. The definition in the New Law might be read as suggesting that the failure to pay any debt on its due date means he is "insolvent". It remains to be seen whether the Saudi courts take that view.

A "Bankrupt" is a debtor whose debts have consumed all his assets.

Logically a Bankrupt must also be an Insolvent. However, an Insolvent will not be a Bankrupt unless he has no his assets. Taken literally this suggests that the existence of any assets would preclude a debtor being a Bankrupt.

The New Law establishes work out procedures which are intended to forestall the need for liquidation where a person is Bankrupt or Insolvent. These are summarised below:

Preventative Settlement

The debtor may apply to the Court for the initiation Preventative Settlement Procedure if:

a. It is likely he will experiencing financial issues and insolvency is a concern;
b. He is Insolvent;
c. He is Bankrupt.

The debtor may request a suspension of claims and the court may order a temporary extension for up to 90 days which can be extended, provided the period of suspension does not exceed 180 days.

During the period of suspension, claims against the debtor and enforcement procedures are stayed.

Subject to stated exceptions:

a. The application for the initiation of the Preventive Settlement Procedure does not have any impact upon contracts to which the debtor is a party or accelerate payment liability and any condition to the contrary is void;
b. Contracts to which the debtor is a party remain in full force (provided the debtor continues to perform his contractual obligations).

The stated exceptions are contracts with financing companies and government procurement contracts.

Financial Restructuring

This is defined as follows:

"Procedure that aims at facilitating the debtor's coming to terms with his creditors regarding the financial restructuring of his business under supervision of a Financial Restructuring Officer."

The debtor, a creditor or the regulator of the debtor, may make the financial restructuring application.

The court and creditors whose claims represent two thirds of the value of debts in the same class must approve the financial proposal.

The request for a financial reorganisation results in the suspension of claims until:

a. the date of the request is rejected;
b. the request is approved by the court; or
c. the earlier termination of the financial reorganisation without approval of the court.

If the court approves the Financial Restructuring Proposal it will appoint a trustee (the Financial Restructuring Officer) who will, amongst other things, supervise the debtor's activity during the financial restructuring to ensure fairness of the procedure and its execution. The debtor will also need to obtain the trustee's approval before undertaking any of a large number of specified actions that may have an impact on his asset and liability position.

Once the court approves the financial structuring, it applies to all creditors.

Liquidation

The debtor, a creditor or the regulator of the debtor may apply to the court to initiate a liquidation procedure for the debtor if the debtor is insolvent or bankrupt. This can be done where:

a. The debtor is insolvent or bankrupt;
b. The debtor believes – based on the information he has – that it is impossible to continue his business with his assets being sufficient to cover the expenses of the liquidation procedure; or
c. In the case of an application made by a creditor it is able to satisfy a number of formal requirements, notably that the debt is due and is for a definite amount.

Given the alternative forms of insolvency administration provided for by the New Law, liquidation should be regarded as last resort procedure.

A liquidation trustee is appointed and the trustee will assume the management of the debtor's assets.

Liquidation will result in the assets of the bankrupt being sold and the proceeds distributed amongst the creditors under the management of a liquidation trustee.

The liquidation trustee will liquidate the debtor's assets, list debts, and distribute proceeds of liquidation between creditors according to their debt's priority.

Upon completion of liquidation, if there are no surplus assets, the liquidation trustee will take the necessary measures to wind up the company (if the debtor is a company).

There are special arrangements for the liquidation of small debtors.

Other Noteworthy Changes

a. Set-off and Debt Mutualisation:

The New Law regulates rights of set-off in order to maintain equity between creditors. It prohibits set-offs once preventive settlement and financial reorganisation have been commenced.

However, set-offs which occur automatically are allowed.

b. Priority of Debts

For the first time an order of priority is established with a "higher priority debt" being paid before a "lower priority debt", in accordance with the following order:

1. In-kind guaranteed debts;
2. Certain types of "guaranteed finance" obtained in preventive settlement and financial restructuring procedures;
3. Debts due to employees' equivalent to 30 days remuneration;
4. Family costs prescribed under a judgment;
5. Expenses necessary for the continuation of the debtor's activity during the procedure;
6. Wages of previous employees;
7. Non-guaranteed debts; and
8. Non-guaranteed governmental fees, subscriptions, taxes and dues as specified in the Regulations.

c. Certain Transactions may be set aside

Transactions done with the intent to defraud creditors, conceal debtor's assets, or harm creditors and stockholders ae prohibited. The court may set aside actions or transactions, which have the effect of violating this requirement and order the recovery of any debtor's assets and the payment of compensation.

Violations are subject to stiff penalties including:

- Imprisonment for a term not exceeding five years and/or a fine not exceeding five millions Saudi Riyals;
- Restrictions on carrying on, managing or co-founding certain businesses.

d. Bankruptcy Register

A Bankruptcy Registry will be established in which the provisions of the Law shall be recorded. Regulations (which have not yet been published) will specify what is to be recorded in the Bankruptcy Register.

The bankruptcy register will be open to public inspection.

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The Development of the Judicial System in Saudi Arabia under Vision 2030

A country's desire to develop its business environment, encourage investment and accelerate economic development should also include a review of the rules and performance of the judicial system.

Historically, dispute resolution in Saudi Arabia has been labelled as uncertain and inefficient, with some saying that cases were taking too long. In 2007, HRH King Abdullah bin Abdulaziz Al Saud in order to address these concerns launched the "King Abdullah Program for Judicial Reform" with a focus on the development of legislation and the judicial system in the Kingdom on continuing basis.

The main goals of Vision 2030, amongst others, include enhancing interaction between public authorities and citizens, improving performance, productivity and flexibility of public authorities, creating an attractive environment for both local and international investors and enhancing their confidence in Saudi Arabia's economy. In order to achieve these goals the Saudi government issued the National Transformation Program (NTP) 2020. Within this program, the Ministry of Justice has many initiatives to improve the judicial system in Saudi Arabia in order to support the Vision 2030 goals. The NTP set forth key performance indicators such as:

- reducing the average timeframe to conclude cases;
- increasing the percentage of concluded cases;
- increasing the percentage of those stakeholders in court cases who are satisfied with the process;
- reducing the average number of incoming cases per judge in the main courts; and
- improving Saudi Arabia's World Bank institution ranking.

This article will provide an overview of judicial reforms undertaken and recent developments relating to the judicial system.

Overview of the judicial reform

The reform of the judicial system in Saudi Arabia started in 2007 when King Abdullah issued a number of royal decrees implementing an overhaul of Saudi Arabia's judicial system. The Law of the Judiciary issued by Royal Decree No. M/78 on 19 Ramadan 1428H (October 1st, 2007) established the Supreme Court as the highest judicial authority in the Kingdom. This law also established new Courts of Appeals in the Saudi Arabian provinces as well as courts of first instance for general, criminal, personal status (family), commercial and labour matters in each city.

The Board of Grievances Law also issued through Royal Decree No. M/78 on 19 Ramadan 1428H (October 1st, 2007) established a Board of Grievances (BOG) which oversees the Administrative Court system. The BOG organised the Administrative Courts in the following order: the High Administrative Court, followed by the Administrative Courts of Appeals and, the Administrative Courts. The High Administrative Court's role is to look into cases objecting to the judgments issued by Administrative Appeal Courts. The Administrative Courts determine cases related to the rights of government employees, administrative decisions of public authorities, compensation awards, public contracts and disciplinary actions by public authorities.

In the judicial overhaul, certain specialist commissions retained certain judicial powers/ remit including:

- The commission for Labour Dispute Resolution (which will be replaced by the Labour Court when it is established).
- The commission for Banking Dispute Resolution.
- The commission for Securities Dispute Resolution.
- The commission for Insurance Dispute Resolution.
- The commission for Financial Market Dispute Resolution.

The implementation of the above reforms was a complex process and required significant investment from the Saudi Government. Accordingly, the Government applied a pragmatic approach to implementing the new judicial system over the course of 10 years to ensure a smooth transition between the old and new systems.

Opening of new commercial courts

In September 2017, the Ministry of Justice opened the Commercial Courts in Jeddah, Dammam and Riyadh as independent courts directly attached to the Ministry of Justice rather than as a branch of the BOG, as was historically the case.

The Commercial Courts have jurisdiction over the following matters:

1. All commercial disputes, whether principal or consequential, occurring among traders.
2. Lawsuits filed against the trader because of its principal or consequential acts thereof.
3. Disputes occurring among partners/ shareholders in partnerships/companies.
4. All lawsuits and violations relating to commercial laws without prejudice to the jurisdiction of the Board of Grievance.
5. Bankruptcy lawsuits, interdiction of a bankrupt, or lifting thereof.
6. Other commercial disputes.

The opening of the Commercial Courts came nearly 4 years after the law establishing their jurisdiction was passed by the Law of Procedures before the Shari'a Courts issued under Royal Decree No. M/1 on 22/01/1435H corresponding to 25 November 2013 (Civil Procedures Law).

The Commercial Courts assist in providing certainty and speed of process for participants. Previously, commercial disputes suffered from jurisdictional challenges as to which was the appropriate court to hear the dispute, be it the BOG or the General Courts. These challenges added significant delay in the progress of a claim/dispute as proceedings were, in effect, put on hold whilst determination of which court had jurisdiction was adjudicated by the Committee on Jurisdictional Challenges. The opening of the Commercial Courts was, therefore, heralded as the beginning of a new era for the Saudi judicial system and its procedures.

New rules for Commercial Court:

On 25 February 2018, the Minister of Justice issued a decision adding an Article to the implementing regulations of the Civil Procedure Law, stipulating the following:

1. The first hearing date for a commercial case shall not be later than 20 days from the date the lawsuit was registered.
2. The maximum number of hearings for commercial cases, after the defendant has been notified, must be no more than three; further adjournment is not allowed except for cases of necessity, such as the illness of one of the parties or their representatives, or the inability of a witness to attend.
3. In the first hearing, the judicial panel must determine the preliminary issues pertaining to jurisdiction and admissibility conditions.
4. The Court may, in commercial proceedings, enable the parties -- via a duly recorded decision -- to exchange memos and documents with the Court administration; the decision must include the number of memos, the date of filing for each of them, and the date of the next hearing.
5. The expert appointed by the Court must submit his report to the Court within 60 days from his appointment to the case. If the expert is unable to submit his report to the Court within the 60 day time limit, he must clarify the reason for the delay and the Court may extend this period for a maximum of 30 days.

The above amendments to the implementing regulations of the Civil Procedure Law were required to re-engineer existing litigation procedures to ensure efficiency of commercial proceedings and quality rulings being issued by the Commercial Courts.

Publishing general principles and court judgment:

As part of the judicial reforms, the Ministry of Justice and BOG issued a series of publications in 2016 containing court judgments from commercial, civil, administrative and criminal cases. These publications provide judges and lawyers with valuable knowledge about how the courts have historically applied Shari'a and legislation to actual cases. These judgments are considered as guidelines and persuasive in nature rather than precedent, as in common law legal systems. However, in practice, we are seeing many judges follow these judgments where they are relevant and applicable.

On 5 January 2018 the Minister of Justice and Chairman of the Supreme Judicial Council published a sourcebook of legal principles and precedents. This comprises a book of 2,323 principles and decisions and a further set of eight volumes containing the jurisprudential roots from which the principles have been derived. These books were prepared by the Supreme Court after reviewing over 20,000 rulings issued during the last 47 years.

In addition, there is a special committee comprised of highly regarded scholars in Saudi Arabia appointed by King Abdullah to codify Shari'a jurisprudence in relation to civil, contract, criminal and family cases in order to bring more clarity and uniformity to judicial rulings. This ongoing project will be a crucial tool in improving Saudi Arabia's legal and judiciary system.

Shifting from a paper-based to electronic system

The Ministry of Justice and BOG have also implemented a huge IT project, involving the introduction of new hardware and software to the courts and online platforms with a focus on the Administrative, Commercial and Enforcement Courts. This online approach has allowed parties to proceedings to submit requests and file lawsuits online without visiting the relevant court. It also allows all parties to see all information related to their case and the associated motions. In line with the objectives of Vision 2030, these IT projects hugely support the efficiency of the judges and the administration of these courts, as well as save litigants' time and cost.

The Ministry of Justice has also implemented a Royal Order which allows judicial notifications be to communicated electronically via SMS on verified phone numbers e-mail addresses, and accounts registered on government automated systems. Such notifications are valid and effective legal summons and have the same effect as traditional methods of notification recognised by law. This will mean that courts can send legal summons to defendants via SMS using the number registered on government automated systems, whereas previously a claim would be stayed if the claimant did not know the defendant's address for service of the claim or good service had been successfully challenged.

New law to impose court fees

At present, there are no fees for filing a claim with any court in Saudi Arabia. In July 2017, however, the Ministry of Justice issued a draft law for the introduction of judicial costs and fees. It is currently

under review by the Saudi Board of Experts. The draft law is expected to be enacted after being approved by a royal decree

The proposed law will apply to most cases before the Saudi courts, except for a small number of cases such as criminal, family and enforcement cases. The law includes fees to be paid in relation to any requests made to the Court for certified copies of a judgment or copies of documents. Furthermore, the losing party will be liable to pay all Court fees in the proceedings to the claimant. In the event that the Court has not awarded the full amount of the claim, the losing party will pay only part of the court fees, in proportion to the degree of success of the winning party. The fees paid by the parties will be deposited in a special account dedicated to improving judicial bodies in Saudi Arabia.

Under the provisions of the draft law, the maximum judicial costs and fees for any case will not exceed SAR 1,000,000. Further clarification on particular issues, such as the amount of fees payable for certain services, will be provided in the implementing regulations which will be published after the law receives royal approval.

Judicial experts and prominent lawyers have stated that they expect this law will reduce the number of the spurious cases being brought before the courts, encourage settlement of cases outside court and the use alternative dispute resolution such as mediation.

Conclusion

The Ministry of Justice has made good progress in reviewing and reforming the efficiency of legal and judicial system in Saudi Arabia in recent years. However, given the far-reaching and ambitious objectives of Vision 2030, further reforms are likely to ensure the legal infrastructure in Saudi Arabia is sufficiently robust to deal with the increased activity in the economy from both local and foreign investors. In particular, further reforms are likely to codify Sharia law in order to unify court judgments, review and update existing laws and regulations, ensure the implementation of these laws in the courts, and the recruitment and training of highly skilled judges and adminstrative staff. With these and further reforms envisaged, the reformed legal system in Saudi Arabia will provide the judicial infrastructure for Vision 2030 to be achieved.

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"The opening of the Commercial Courts was, therefore, heralded as the beginning of a new era for the Saudi judicial system and its procedures."

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KSA: Supporting Companies in Accordance to the New Companies Law

On the 2nd of May 2016, a new companies law came into force as issued by the Royal Decree no. M/3 dated 28-01-1437H corresponding 11-11-2015G (the "New Companies Law").

This article considers a key provision within the New Companies Law, its effect on the Saudi corporate sector and whether it improves the overall regulatory framework.

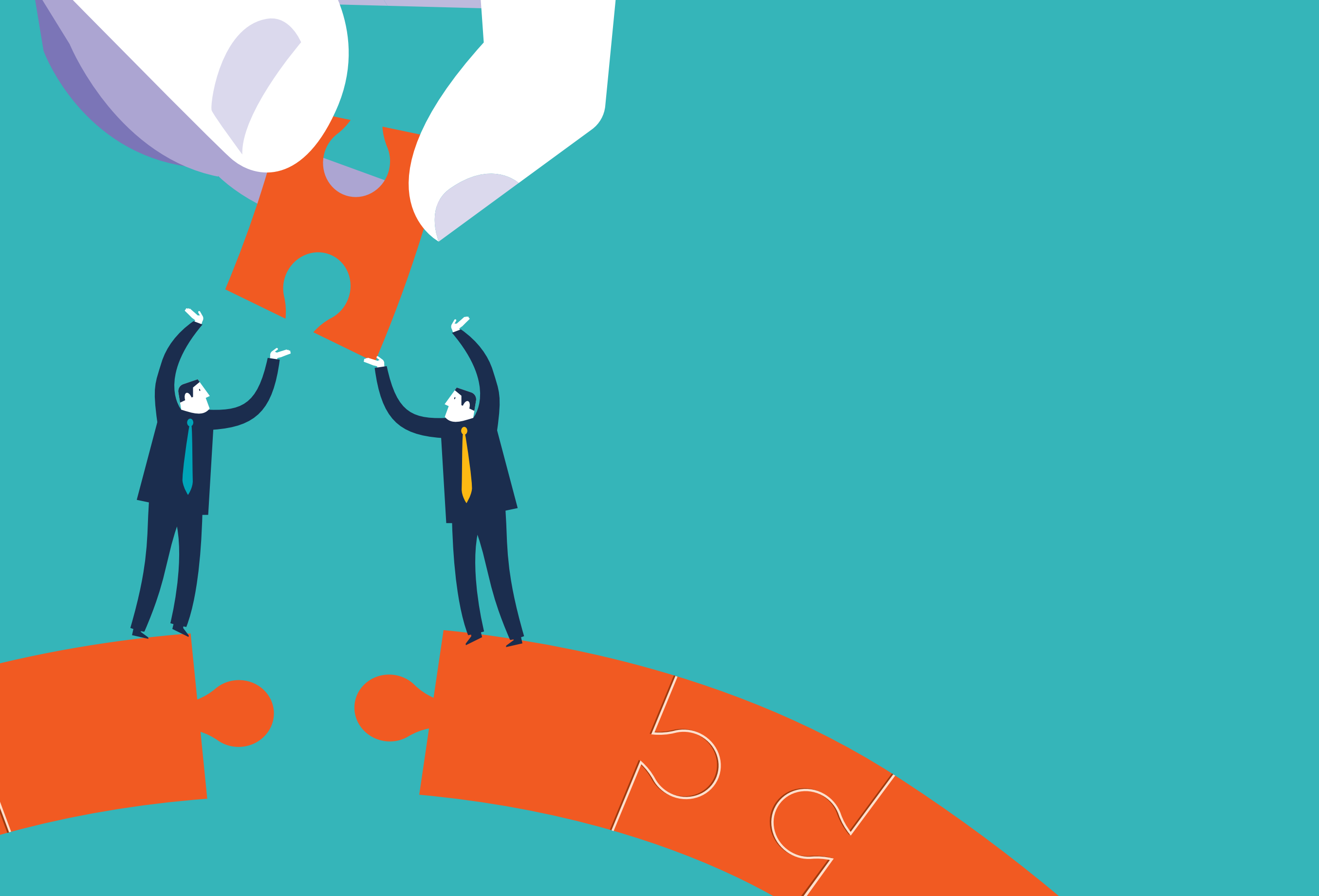
Importantly, the New Companies Law includes provisions relating to corporate structuring and restructuring including the ability to establish a sole shareholder limited liability company and holding companies. One of the main provisions of interest is Article 181 which provides as follows:

1. Of the losses of a limited liability company reach the half of its capital, the company director must record such occurrence in the Commercial Register and invite the shareholders to meet within a period of not more than ninety days from the date of being aware of the loss of such amount to consider whether to support and continue or dissolve the company.
2. The shareholders' decision, whether to support and continue or dissolve the company, must be published in the ways set forth in article (158) in the Law.
3. The company shall be terminated by the Law if the Company's director failed to invite the shareholders or if the shareholders failed to issue a resolution whether to support and continue or dissolve the company.

As noted, this article regulates the steps that should be taken when a company's losses reach 50% of its share capital. From a practical perspective, at the end of each financial year, the auditor of the company must upload its financial statement to the Qawaem website, a program established by the Ministry of Commerce and Investment ("MoCI") in cooperation with the Saudi Organization for Certified Accountants. Qawaem provides a set of services related to financial statements and a database for use by other governmental authorities, such as the General Authority for Zakat and Income Tax. Moreover, once the financial statement is uploaded to Qawaem website, it will be reviewed and studied by MoCI, and accordingly MoCI will decide whether the company is making a loss or not and, if so, the extent of those losses.

Director's Liability

In our experience, the ninety days mentioned in Article 181 will commence from the date of MoCI's decision that a company has incurred a loss of 50% or more of its share capital. This shall



be the date that constitutes the “awareness” of the director (being the General Manager named on the commercial registration of the company) that the losses have been incurred.

The previous companies law, issued by the Royal Decree no. M/6 dated 22-03-1385H corresponding to 21-01-1965G (the “Old Companies Law”) did not specify a particular period of time for the director to invite the shareholders to assemble in order to pass the related resolution to support and continue the company or dissolve it. However, under the New Companies Law, the failure of the director to invite the shareholders to meet within the ninety days will cause the company to be dissolved. Nevertheless, the director will personally liable to indemnify the company, the shareholders or any applicable third parties against any damages they incur due to the director’s breach of his duties in accordance to the Articles of Association of the company or the New Companies Law, and any shareholders’ approval to release the director from any liability shall not prevent the director from incurring such a liability.

Shareholder Liability

In the above situation, the shareholders must assemble pursuant to the director’s invitation to pass the relevant resolution. In the event that the shareholders decide to support the company continuing to operate, there is a prospect that they would be jointly responsible for the debts and the obligations of the company. In other words, the corporate veil will be lifted similar to the position that applied under the Old Companies Law.

Article 181 states that in the event that the shareholders fail to pass the required resolution, the company will be dissolved. The Old Companies Law provided that such resolution shall not be valid unless approved by shareholders holding at least 75% of the share capital. Article 181 does not state that a required percentage of the shareholders in order to pass the relevant resolution. Accordingly, we consider that 100% shareholder approval could be required. This may give rise to a deadlock between the shareholders unless the Articles of Association of the company states otherwise. This is an unfortunate lacuna in the law and it remains to be seen how the position will be interpreted.

Finally, on the assumption that the company continues to be loss making for more than a year, and the shareholders continue to issue support via shareholder resolutions, it begs the question as to how long can this situation can continue. The New Companies Law does not address this point.

In conclusion, the issuance of the New Companies Law was long awaited and it was hoped that it would comprehensively regulate the corporate sector. However, whilst it has made important changes, it has also left some unanswered questions that require to be addressed in due course.

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Social Media and the Fight against Counterfeiting in Saudi Arabia

Consumers' Social Media

During the last few years, Saudi Arabia has witnessed the rise of a new phenomenon known as 'consumers' social media' that upholds citizenship advocacy and raises consumer awareness. This new phenomenon now helps the Saudi authorities in their efforts to protect intellectual property and combat commercial fraud. It also helps all stakeholders engaged in the fight against counterfeiting in their initiatives to educate the public about the harm caused by such activities. But, just how does 'consumers' social media' achieve this?

Lately, many social media activists have engaged in a national campaign to expose counterfeiting in Saudi Arabia. For example, one prominent case occurred in one of the biggest traditional markets in Riyadh. An activist using Snapchat showed his followers counterfeit products, including cosmetics, that a makeup artist was promoting at the market as genuine. Another activist, using social media channels, exposed gold shops selling counterfeit jewellery. Upon reviewing these social media posts, the Anti-Counterfeiting Department within the Ministry of Commerce and Investment ('MOCI') raided these shops and closed them down. MOCI did not wait for someone to file a complaint but instead took the initiative based on the social media post's information to stop the sale of these counterfeits in Riyadh's traditional markets.

The actions of the social media activists are one of many other examples existing in relation to how social media is becoming a measure to combat commercial fraud. Indeed, many people in Saudi Arabia have taken to using social media apps, such as Whatsapp, Instagram, Twitter, and Snapchat, for this purpose. By using social media, people of all ages are raising consumer awareness of counterfeiting and commercial fraud. This awareness in turn helps the authorities expand their fight to protect consumers from commercial fraud and at the same time enables them to undertake their responsibilities at reduced costs.

For brand owners, this type of social media activism also provides them with well-documented

evidence of counterfeiting and other fraudulent activities and can accelerate processing of their IP infringement claims before the courts.

This new trend of 'consumers' social media activism and awareness' is anticipated to expand in coming years, as we will surely witness wider engagement with social media by both consumers and businesses. Such engagement may include the organisation of consumer education workshops and seminars online and offline where those combating counterfeiting inform all interested parties about their practices and initiatives. In the longer term, social media could support more advanced educational and accreditation initiatives. These may include certificate training on consumer rights and laws, for those who want to participate in social media activism for the protection of consumer rights.

Moreover, such initiatives should and may very well extend to MOCI and the Saudi Customs employees and investigators so that they may have better knowledge of legal issues in these areas and best practices worldwide. This kind of training will help those officials in their efforts to apply local and international laws governing intellectual property rights applicable in Saudi Arabia. To this end, other relevant Ministries could consider including social media based training as part of their regular training plans for both public officials and members of the public.

While the trend of consumer awareness and protection is changing with social media, many Saudi citizens unfortunately are still not sophisticated enough to understand the complexity of the modern media environment. Many people still perceive that everything that the traditional media reports in is unquestionable, and such perceptions are the same with social media. As such, and since commercial fraud significantly affects Saudi women, who form a large portion of consumers in Saudi Arabia, launching social media projects devoted to educating women about counterfeit and knock-off products and how to distinguish them from originals is also quite important.

MOCI's 'Maroof' service

In parallel, the MOCI has also recently taken a new initiative to raise consumer awareness in terms of e-commerce and online shopping issues. In this regard, MOCI launched the 'Maroof' service to protect traders and consumers from online sales and services fraud. According to the information available about Maroof at the MOCI's website, Maroof is an e-service where the seller can register his business on Maroof's website to build a legal and trustful relationship between the sellers and the buyers or the consumers in general. As a result, Maroof now helps organise and improve electronic-shopping through the internet by facilitating the sellers' promotion of their products and services to a massive number of consumers.

Subscribing to the Maroof's service until now is free of charge for shop owners/ sellers as well as consumers. Furthermore, Maroof also provides a ratings / evaluation service for consumers who can provide their reviews and experience with the products through the online platform. This of course helps improve the quality of the e-service and ensures the authenticity of the products offered for sale at each online-shop.

Moreover, MOCI has warned and announced through websites and social networks about the marketing or sales of counterfeit products, as this action violates the Anti-Fraud Law and the Trademark Law System. Per MOCI's latest warnings/announcements, penalties for such violations can reach up to three years of imprisonment and/or fines of up to one million riyals in Saudi Arabia. To ensure further compliance with the Anti-Fraud Law and the Trademark Law System, MOCI has made available a dedicated call centre integrated with a downloadable smart phone application that allows consumers to report any commercial fraud in real time.

The efforts the MOCI has taken are a clear testament to the Saudi government's drive for modernity through the leveraging of online and mobile technologies to enhance and promote brand and consumer awareness throughout the Kingdom.

Since more people and businesses will come to rely on the expansion of e-commerce, brand owners and businesses must also resort to social media as a means of raising awareness among the Saudi people about online and offline commercial fraud. On this front, and in line with the KSA Vision 2030, the Saudi government has taken heaps and strides to intensify efforts and enforce regulations for the protection of consumer rights and brand owners' rights. To this end the contribution of the civil society, such as the Saudi Bar Association, and the help from individual lawyers, is welcomed.

Al Tamimi & Company's Intellectual Property team regularly advises on issues to do with brand protection and anti-counterfeiting. For further information please contact Omar Obeidat (o.obeidat@tamimi.com) or Hanin Al Fayaz (h.alfayaz@tamimi.com).

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Doing Business with Saudi Aramco: The IKTVA Program

Doing business with Saudi Aramco, the World's largest oil and gas company, is the essential feature for many local and international companies operating in the Oil Field Services and Equipment ("OFSE ") and related sectors in Saudi Arabia.

Historically, Saudi Aramco awarded contracts primarily based on lowest cost and technical capabilities. While those are still key elements for winning work from Saudi Aramco, it has recently moved to making localization of goods and services and promoting and expanding the value of local content a cornerstone of its supplier' selection process.

"Made in Saudi Arabia" has been announced as crucial to the long-term economic well-being and growth of Saudi Arabia with foreign investment being an essential part of accomplishing it. To this end, in December 2015 Saudi Aramco announced it was introducing the In Kingdom Total Value Added Program ("IKTVA"). During 2017, compliance with IKTVA has become a key component for doing business and contracting with Saudi Aramco.

Requirements for doing business with Saudi Aramco

There are a range of requirements for companies wishing to do business with Saudi Aramco in addition to IKTVA including:

- Pre-qualification through online registration as an approved supplier. For those wishing to register as international manufacturers or suppliers or existing registered international manufacturers or suppliers wishing to offer additional products or services they must

first contact Saudi Aramco's affiliates in the relevant home jurisdiction (ie Aramco Services Company, Aramco Overseas Company or Aramco Asia Company depending on relevant jurisdiction) for evaluation of the business need;

- Adherence to Saudi Aramco's detailed policies and procedures including the Suppliers Safety Management System Manual;
- Promoting Saudisation;
- Adhering and agreeing to Saudi Aramco's business ethics including the Supplier Code of Conduct;
- Entering into approved conditions for supply and contracting;
- For work to be performed in Saudi Arabia, technical and financial qualifications must be approved and contractors must be properly registered and licenced to conduct business in Saudi Arabia; and
- If using a local agent, the agency agreement must be registered with the Ministry of Commerce and Investment.

The requirements apply to both local and international companies.

Saudi Aramco's Electronic Contracting Network is a comprehensive web based system handling most activities during the procurement of contracts and online contractor registration.

IKTVA Program

The IKTVA Program was initiated by Saudi Aramco with the following aims :

- doubling the percentage of locally produced energy related goods and services contracted by Saudi Aramco to 70% by 2021;
- increasing the export of Saudi-made energy related goods and services to 30% by 2021; and
- increasing employment opportunities for Saudis.

This program is in line with the localisation initiatives of the National Transformation Program and Saudi Arabia's Vision 2030 by promoting local content development, providing numerous job opportunities for a growing Saudi population and stimulating the diversification of the Saudi economy.

Saudi Aramco describe the IKTVA Program as the key localization initiative for the OFSE Sector and as a systematic, fair and transparent mechanism for making local content the basis of Saudi Aramco's procurement process.

Priorities of the IKVA program

Saudi Aramco highlights transparency, consistency and uniformity as the priorities of the IKTVA program in order to create a level playing field for local and international suppliers.

Transparency in application and process and access to information, and consistency in evaluations for both goods and services suppliers is provided in order to create supplier-focused partnerships and investment stability and assurance.

IKTVA is regarded as a value-creation program allowing suppliers to work with Saudi Aramco for their mutual benefit, to increase opportunities for suppliers and to create a globally competitive Saudi industrial base.

Supplier's IKTVA Formula

The IKTVA Program requires suppliers to self-report on application and on an ongoing basis their quantitative and qualitative data in the following major categories:-

A. Localized goods and services;

B. Salaries paid to Saudis;

C. Training and development of Saudis;

D. Supplier development spend;

r. Local Research & Development;

E. Company revenue (spend from Saudi Aramco only).

Supplier IKTVA Formula: IKTVA %=[(A+B+C+D+r)/E]x100

The IKTVA ratios allow Saudi Aramco to calculate the percentage of its spending that remains in Saudi Arabia or that helps develop Saudi Arabia's capabilities and supply chain, and will be used to determine the award of contracts.

The above data must be verified by an Aramco certified third party and submitted to Saudi Aramco prior to participating in the IKTVA Program. Suppliers are also required to submit verified IKTVA reports including the above data annually to Saudi Aramco.

For large projects and contracts, some suppliers may be required to provide interim verified IKTVA

reports or reports related to a particular project.

Suppliers are encouraged to increase their IKTVA score with the potential to increase business with Saudi Aramco and in the Kingdom generally.

IKTVA Process

The IKTVA Program process involves the following main phases:

1. The IKTVA Program will firstly create a 3-year IKTVA baseline score for suppliers based on their spreadsheet/survey and data submission, which is measured through key metrics for local value creation. The IKTVA spreadsheet/survey can be submitted by the supplier to Saudi Aramco for initial review before completion of its audit by a Saudi Aramco approved accountant;
2. Once the IKTVA baseline score has been identified, Saudi Aramco and each supplier will jointly develop a 5 year IKTVA action plan to increase the supplier's IKTVA ratio;
3. Finally, on an ongoing basis the IKTVA Program will measure the performance of suppliers through annual reporting and KPIs to track their progress and ensure that local value creation is continued.

How is Saudi Aramco Supporting Suppliers?

As part of creating a level playing field for suppliers, the Supplier Solution Center ("SSC") has been established to monitor suppliers' performance and to ensure their proactive development.

The roles and support functions of the SSC are :

- Assist suppliers in completing the pre-registration requirements;
- Analysing suppliers' performance and lost opportunities to construct support programs for existing suppliers; and
- Providing technical coordination support to existing and new business suppliers.

How will IKTVA affect doing business with Saudi Aramco?

Local value creation in all aspects of Saudi Aramco's business is currently one of its key strategies, which makes complying with IKTVA crucial to winning business with Saudi Aramco.

Saudi Aramco has made IKTVA participation one of the main components when evaluating suppliers' proposals. However, this does not mean that Aramco is abandoning their long-standing commitment to cost, quality, safety and the environment. There is still some uncertainty on the extent that the IKTVA score will be taken into account when contract awards are decided and, although the IKTVA ratio will be a very important factor, it is assumed that quality and cost will remain a top priority.

What does it mean for local and international companies?

Saudi Aramco's new focus on localization and specifically the introduction of the IKTVA program is leading many companies who supply to Saudi Aramco to reconsider how they operate in Saudi Arabia. The IKTVA score is of great importance to Saudi Aramco and it is a key component in determining the contract award. Therefore, showing current and forward-looking measures for localization is vital for companies that wish to do business with Saudi Aramco.

The OFSE sector in Saudi Arabia contains a large number of distribution arrangements and joint ventures between international and local companies. Historically, international manufacturers have appointed local Saudi distributors and agents to supply their products imported from overseas with associated arrangements for servicing and maintenance. This is because Saudi regulations restricted trading activities to Saudi individuals and companies and also the cost and difficulty of establishing and operating a local entity. However, Saudi Arabia has increasingly relaxed foreign investment law, and recently allowed

foreign entities to establish or own trading companies, subject to strict conditions and substantial capital and other commitments.

Continuing to be competitive in the Saudi OFSE Sector and meeting the IKTVA objectives is encouraging companies to consider moving from distribution models and/or final assembly operations to developing and establishing local manufacturing and research and development capabilities either alone or through a local joint venture partner in Saudi Arabia.

Localization may require restructuring of supply chains and distribution arrangements as well as establishing manufacturing, service or trading entities in Saudi Arabia. This is likely to require significant investment in Saudi Arabia for international suppliers, as manufacturing centres, warehouses and other facilities operations may have to be established in Saudi Arabia. This may also encourage some international companies to partner or contract with local companies for assembly or local manufacture.

International companies will need to consider carefully the intellectual property licensing and quality control implications as well as the usual risks inherent in joint ventures.

Saudi Arabia is encouraging investment by making the process of establishing and licensing companies in Saudi Arabia easier and quicker, although this can still remain a lengthy and challenging process. Other incentives may be available such as low cost industrial land.

Saudisation (localization of workforce) will continue to be an imperative for companies operating in Saudi Arabia. Reaching Saudi Aramco's 2020 target of 70% for Saudi employees is likely to be challenging. Sufficient numbers of appropriately qualified and skilled Saudi employees may not be available. However, showing a commitment to create jobs for Saudis may initially be adequate (one of the successful examples is General Electric's female training centres, which are committed to creating jobs for women).

It is expected that the "made in Saudi" requirements of IKTVA and related Saudisation requirements will result in companies dealing with Saudi Aramco:

- Increasing the size and scale of their local operations;
- Continuing to focus on Saudisation with increased focus of training;
- Restructuring their supply chain arrangements with a move away from some distribution arrangements;
- Establishing more manufacturing and trading entities either 100% foreign owned or in joint venture arrangements; and
- Entering into greater numbers of strategic partnerships or joint ventures for local provision of assembly, manufacturing or services.

Achievements of the IKTVA Program

Although the IKTVA Program is relatively new and developing, it is having a positive impact. A significant number of arrangements have been entered into between Saudi Aramco and international companies as part of the IKTVA Program, including with McDermott, Schlumberger, General Electric, Honeywell, Jacobs Engineering and Siemens.

In conclusion, the IKTVA Program is a key factor in doing business with Saudi Aramco, and is heavily influencing the way that companies dealing with Saudi Aramco develop and structure their operations and business model to meet the "made in Saudi" requirements in the OFSE sector. This is likely to lead to international companies setting up local manufacturing and assembly operations as well as service entities either through 100% foreign owned companies or through strategic partnerships and Joint Ventures with Saudi companies and the restructuring of supply chain and distribution arrangements.

Al Tamimi & Company's Corporate and Commercial Team regularly advises on projects and contracts with Saudi Aramco. For further information please contact Grahame Nelson (g.nelson@tamimi.com) Head of Riyadh Office or Jonathan Reardon (j.reardon@tamimi.com) Head of Al Khobar Office.

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Mortgage of Real Estate in Saudi Arabia: Recent Developments

Mortgage of Real Estate in Saudi Arabia: Recent Developments

The Registered Real Estate Mortgage Law (the 'Mortgage Law'), issued in 2012, was a significant step towards encouraging real estate finance in Saudi Arabia. Until recently, local banks typically took an outright conveyance of the title to real estate (Ifragh) to a nominee entity. The transfer of title structure involves the obligor transferring legal title to a special purpose company, set up by the bank providing the financing, for the duration of the financing. The title to the property would revert to the obligor, once the financing is repaid.

The Mortgage Law has now paved the way for a traditional mortgage structure, whereby the title to the property would remain with the borrower and the bank would obtain a registered mortgage. Some of the key features of the Mortgage Law are as follows:

- Once a mortgage over property is registered, the secured debt can be recovered from the sale of the property in priority to other creditors;
- The mortgage should be created in respect of a specific debt or future or contingent debt provided that the amount of the secured debt

or maximum limit of the debt is specified in the mortgage agreement;

- The owner of the property (mortgagor) continues to receive the rentals and other proceeds being generated from the property;
- The mortgagor and mortgagee may agree in the mortgage agreement that the receivables from the mortgage property will be used to pay in accordance with the amortisation schedule of the debt and to service any other fees, charges, and profits;
- A lease of more than five years will not be enforceable if the property has been mortgaged; and
- A property may have more than one mortgagee, allowing for the creation of a succession of mortgages (e.g., first mortgage, second mortgage, and so on).

In May 2017, SAMA issued a circular urging banks and finance companies to:

- comply with the notarisation of real estate mortgages and to stop the process of transferring title to property rather than mortgaging the real estate;
- remedy the status of properties that are currently registered in their name within a three-year period, and inform their clients accordingly; and
- inform SAMA about the cases in which the notary public refrains from registering a mortgage.

This circular, in-effect restricts the outright transfer of title and instead requires any security over real property to be registered as a mortgage under the Mortgage Law.

Importantly, following publication of SAMA's circular, notaries have issued guidelines as to the information banks will be required to present in order to register mortgages. Most notably, banks are required to provide a letter confirming that the debt being secured by the mortgage relates to a Shariah compliant transaction (either a tawarruq, or murabaha). Yet another recent development is the issuance by SAMA of standard form ijara and murabaha documentation to be used when providing real estate finance. The template documents provided by SAMA are expected to be implemented by the end of March 2018.

These legal and regulatory developments, coupled with government sponsored housing schemes, are indications of further reform in the real estate and housing market in Saudi Arabia.

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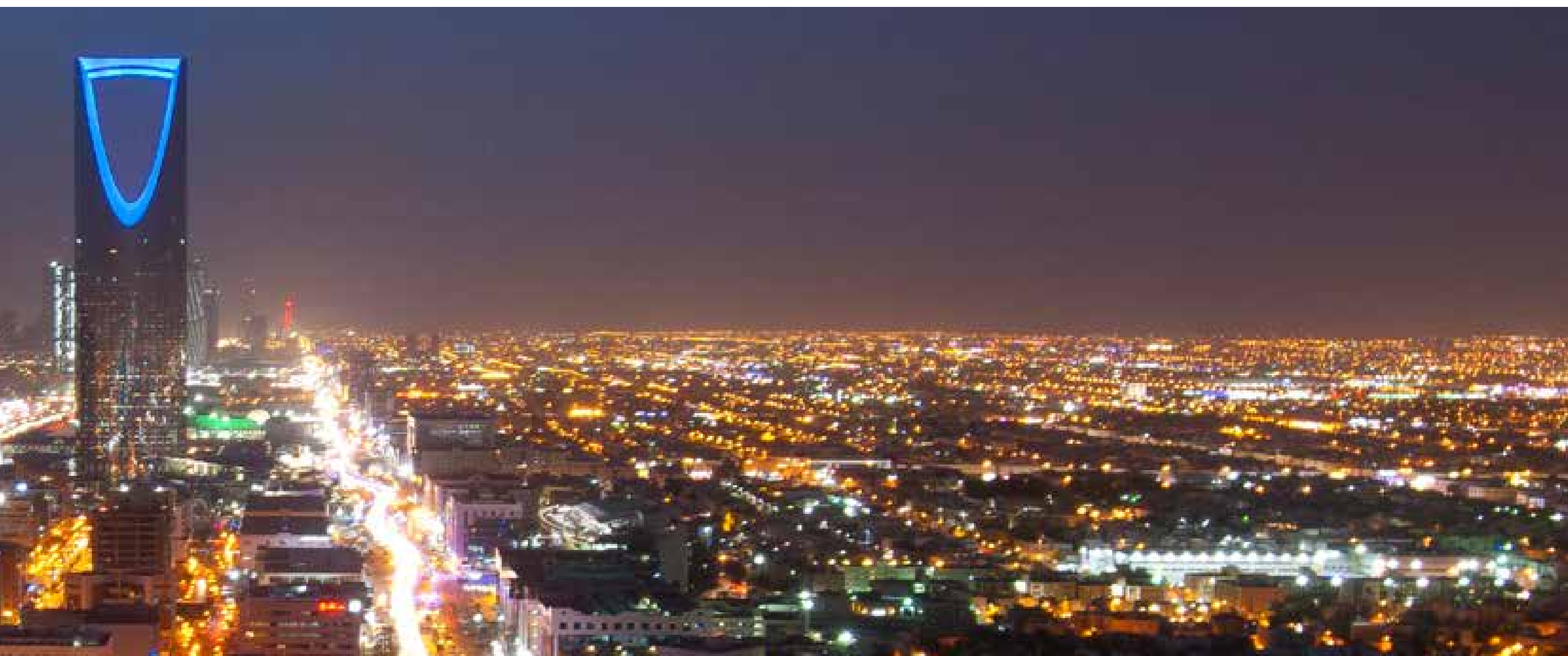

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Aviation: An Important Catalyst for Growth in the Saudi Economy

The Saudi 2030 Vision is based upon growing inward investment to stimulate and diversify the economy and transform the Kingdom of Saudi Arabia into a global hub connecting Asia, Europe and Africa.

To support economic growth, the Saudi Government reaffirmed in December 2017 its investment plans for 2018 and announced that it will raise total spending to USD 293 million. That investment is expected to generate revenue of USD 77 billion dollars in the 2018 Budget.

Aviation will play an essential role in the diversification and expansion of the Saudi economy. If we look to other countries in the GCC region, the UAE, especially Dubai, is a good example of how aviation can impact the development of the economy. The aviation sector currently accounts for 27% of Dubai's GDP and is expected to exceed 35% by 2020.

Aviation is set also to be an important catalyst in the development of the Saudi Arabian economy through the establishment of new airports and the expansion of existing facilities. The entry of new participants into the market will be an important development.

Market Overview

Forecasts anticipate significant growth in the number of air passengers worldwide and a significant hike in the global tourism industry. For example, the International Air Transport Association ("IATA") has estimated that passenger demand worldwide will double in 20 years, from 3.8 billion passengers in 2016 to 7.2 billion air travellers in 2035.

Airbus in its "Global Market Forecast 2017/2036 – Growing Horizons" and Boeing in its "Current Market Outlook 2017-2036" each forecast that airlines in the Middle East region will add substantial capacity to the market. Airbus estimates to deliver 2,530 aircraft to airlines in the Middle East in the next 20 years, whilst Boeing expects to make 3,350 deliveries. Other aircraft manufacturers also have high expectations for substantial growth in the Middle East markets.

This is being accompanied by strong investment in airport infrastructure. The investment is aimed at increasing capacity in both the commercial aviation

and business jet markets, where manufacturers and operators are expecting very strong growth in the coming years.

The Kingdom of Saudi Arabia is matching these trends in the areas of airport infrastructure, airline investment and related businesses.

Infrastructure

There are currently 27 airports in the Kingdom, six are international, eight are regional and 13 are domestic. In order to improve the infrastructure of airport facilities, the Saudi Government has approved an expansion plan which contemplates both the upgrade of the existing airports and the construction of new airports.

The planned expansion includes the redevelopment of the airports in Abha, Al Ahsa, Al Qassim, Arar, Hail and Jizan, new terminals at the King Khalid International Airport in Riyadh and the new King Abdulaziz International Airport in Jeddah. There are also plans to develop new airports in Al-Qunfudah, Farasan Island and Taif, Riyadh North (serving the provinces of Al Ghat, Al Majmaah and Zulfi) and Riyadh South (serving the provinces of Al Aflaj, Al Hariq, Al Kharj and Howtat Bani Tamim).

The General Authority of Civil Aviation of Saudi Arabia ("GACA") has announced plans to privatize all 27 existing Saudi airports, as well as the new airports that are scheduled for completion by 2020. In 2017, the President of GACA, H.E. Abdulhakim bin Muhammad Al Tamimi, stated that the airports and relevant business units were to be transformed into separate companies fully-owned by Saudi Civil Aviation Holding Company ("SAVC") with ownership to be transferred to the Saudi Government's Public Investment Fund ahead of each company being privatized.

SAVC is a state-owned company established with the aim of improving efficiency and performance in the Aviation sector. SAVC's mission is to make each airport an independent entity viable for privatization.

The process is underway with GACA envisaging three different models as exemplified by airport developments in Riyadh, Dammam, Jeddah and Medina.

In Riyadh, the King Khalid International Airport is being managed and operated by Riyadh Airports Company, which was established in 2016. And in Dammam, the King Fahd International Airport was transferred mid-last year to the new established Dammam Airports Company. Both companies are fully owned by SAVC. Minority stakes are to be sold to private investors.

In Jeddah, the operation and management of the new King Abdulaziz International Airport was awarded to a consortium under a revenue sharing arrangement with GACA bearing the costs in relation to the expansion project. However, very recently, on 21 February 2018, it was announced that GACA terminated the relevant concession agreement and it would initiate a new international tendering process soon.

In Medina, Prince Mohammed Bin Abdulaziz International Airport was developed on a build–operate–transfer basis, becoming the first airport in the Kingdom of Saudi Arabia built under a public-private partnership. The same structure is being used by GACA in the construction of other new airports, including Al Qassim, Hail, Taif and Yanbu.

The success of some of these projects may turn upon other investments to be made in adjacent areas in the years ahead and in some cases the reshaping of urban and industrial spaces that surround the airports. One good example is Taif, where the Saudi Government announced plans to create a new city comprising a technology hub as well as residential, industrial and educational areas next to the new airport's location.

Airlines

Saudi Arabian Airlines (also known as Saudia) is the national carrier and main commercial airline in the country. With a fleet of almost 200 aircraft operating on 89 routes, including 62 international destinations across four continents, Saudia is the third largest airline in the Middle East. The airline has been renovating its fleet in recent years and has announced plans to increase the number of aircraft and routes by 2020.

The second largest airline in the Kingdom is Flynas, a low-cost carrier founded in 2007. The airline has a fleet of 31 aircraft flying to a total of 23 destinations in the region. It is also expanding. Last year, Flynas announced that it had reached an agreement with Airbus for a total of 80 new aircraft to be delivered between 2018 and 2026.

Other local airlines have started operations in recent years. Nesma Airlines has a total fleet of 10 aircraft and operates within the Kingdom of Saudi Arabia and between Saudi Arabia and Egypt. SaudiGulf has a fleet of four aircraft and it has announced plans to expand internationally, including routes for the UAE and Pakistan. And Flyadeal, the low-cost subsidiary of Saudia which

started operations in September 2017, has already announced that it expects to have a fleet of eight aircraft by mid-2018 and has plans for ordering 50 new aircraft in the near future.

While the majority of the aircraft worldwide is still owned by aircraft operators, there has been a significant boost in commercial aircraft leasing, particularly in the operating aircraft leases which increased from 22% of the global fleet in 1997 to 43% in 2017.

Industry terminology categorizes aircraft leases as either “dry” or “wet” leases. In a “dry” lease the lessor provides the lessee with the aircraft only, and it typically encompasses two types of arrangements, financial and operating. A financial lease is treated as a loan with the purpose of financing the acquisition of an aircraft. An operating lease is a renting-type arrangement which usually does not include an option to transfer ownership. In contrast to a “dry” lease, in a “wet” lease the lessor provides not only the aircraft but also the crew, maintenance and insurance under an “aircraft, complete crew, maintenance, and insurance” (or ACMI) agreement.

We expect local carriers to follow the market trend and opt for operating lease arrangements. This is because an operational lease gives flexibility to optimise the size of the fleet according to traffic growth. These lease arrangement also facilitate access to new aircraft. If airlines have short-term needs we could see “wet” lease arrangements as well. In any case, the projected fleet growth in the Kingdom will create new business opportunities for manufacturers, lenders and lessors.

Cape Town Convention: Limitations on its Application to Saudi Arabia

Foreign lenders and lessors need to be aware of the limitation on the application of the Cape Town Convention on International Interests in Mobile Equipment (“Cape Town Convention”) in Saudi Arabia.

At the time of ratification, the Saudi Government lodged a declaration under Article 54.2 of the Cape Town Convention stating that all remedies available to the creditor under any provision of the Convention shall be exercised only with leave of a Saudi court if there is no express provision requiring the submission of an application to the court.

Other than the above, the Saudi Government lodged no other declaration. In particular, no declarations were made under Article XXX of the Aviation Protocol to the Cape Town Convention. Hence, the provisions that require such separate declarations pursuant to Article XXX of the Aviation Protocol are not applicable in the Kingdom, including the following:

- Article VIII – Choice of law;
- Article X - Modification of provisions regarding relief pending final determination;
- Article XI - Remedies on insolvency;
- Article XII – Insolvency assistance; and
- Article XIII - De-registration and export request authorisation.

The limitations above should be taken into consideration by lenders and lessors when negotiating new lease arrangements with local carriers.

Related Businesses

The development of the aviation sector also relies on the development of navigation services, airport operation, manufacturers, aircraft maintenance services (known as “MRO” - maintenance, repair, overhaul, inspection or modification), ground handling (which includes cabin service, catering, fuelling and ramp services), logistics, and training. Charter flight carriers and business jets operators are also relevant to the market.

As part of the privatization program aimed at raising efficiency and achieving financial independence in the sector, GACA has also announced plans to privatize the recently established Saudi Air Navigation Services Company (“SANS”). SANS provides air traffic control services and it is responsible for ensuring safe and efficient traffic flow in the Kingdom of Saudi Arabia. This requires close coordination with numerous entities such as military and adjacent air traffic control centres. Moreover, SANS is responsible for the provision, maintenance and operation of all air navigation systems such as communication, navigation and surveillance.

The renovated infrastructure and the growth in the Saudi airline industry will therefore lead to existing players expanding their businesses. It will also encourage the entry of new players into the Saudi market, especially in relation to MRO sector, ground handling services, logistics and business aviation to support the airport and airline expansion.

Regulatory

As in many other countries, aviation is highly regulated in the Kingdom of Saudi Arabia.

"The renovated infrastructure and the growth in the Saudi airline industry will therefore lead to existing players expanding their businesses. It will also encourage the entry of new players into the Saudi market."

The core piece of legislation is the Civil Aviation Law, enacted in 2005. This establishes a legal framework in Saudi Arabia in relation to:

i. air transport and operations (including licensing);
ii. aerodromes and navigation service facilities;
iii. aircraft (including registration, rights, airworthiness and operation liabilities);
iv. airspace;
v. flying permits and training;
vi. aviation accidents, search and rescue;
vii. crimes and acts against safety and security; and
viii. military aircraft.

The Civil Aviation Law applies to all aviation activities and operations in the Kingdom. Furthermore, it applies to all civil aircraft registered in the country, and to any aircraft registered in a foreign country and operated or maintained by a Saudi national or company by virtue of a lease or any similar agreement, if an agreement between the Kingdom and the aircraft registration country so states.

GACA Regulations regulate in detail all aviation matters related to:

a. general provisions, procedural and administrative rules;
b. airworthiness and aircraft maintenance;
c. flight operations;
d. airport and ground operators;
e. air navigation services;
f. licensing; and
g. training.

GACA introduced new Regulations in 2016 but further changes could be made in the near future.

As an example, GACA is in the process of amending Part 129 of GACA Regulations, which applies to foreign air carriers intending to operate commercial flights to, from, or within the Kingdom of Saudi Arabia. Until the amendment is finalised and enacted, GACA has implemented on 28 January 2018 an interim policy applicable to authorized foreign operators or foreign operators seeking authorization under part 129 of GACA Regulations. Under this interim policy, any foreign operator seeking authorization to operate within the Kingdom of Saudi Arabia must now be the holder of an air operator certificate for a minimum period of three consecutive years. The foreign operator must also have conducted the same type of operations and with the same type of aircraft within a 90 days period preceding the authorization date. In addition, authorized foreign operators will only be allowed to operate in the Kingdom under a "wet" lease from another foreign operator if the relevant lessor is also an authorized foreign operator. This interim policy aims to give more protection to passengers, and it will remain in effect until Part 129 of GACA Regulations is amended.

Conclusion

The planned new infrastructure facilities and the airlines' expansion plans will create more employment in Saudi Arabia and generate business in ground services and other services along the supply chain.

The increase of the number of routes will also create further business opportunities in general, as it will encourage more foreign investment in the country. Finally, there will be an impact on tourism and leisure, especially taking into consideration the new projects and the new visa issuance procedures for visitors which are proposed.

It is clear that Vision 2030 heralds many opportunities in the aviation sector in Saudi Arabia for both established companies willing to expand their business and new players seeking to enter the Saudi market.

Al Tamimi & Company's Corporate Commercial team in Saudi Arabia regularly advises on transactions in the Aviation sector. For further information, please contact Grahame Nelson (g.nelson@tamimi.com) or Pedro Castro (p.castro@tamimi.com).

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CITC's New Cloud Computing Regulatory Framework in Saudi Arabia

CITC's new cloud computing regulation in Saudi Arabia

Following public consultation in 2016, Saudi Arabia's telecommunications regulator, the Communications & Information Technology Commission ('CITC'), has now issued a cloud computing regulatory framework (the 'Cloud Framework'), which came into effect in March 2018. A key driver for the introduction of the Cloud Framework is the rapid change being experienced in the information technology sector. The CITC considers that the adoption of the Cloud Framework will provide increased regulatory clarity and encourage the adoption of cloud computing services in the Kingdom. In this article, we outline some of the key provisions of the Cloud Framework, raise some queries, and provide some recommendations.

Scope of application

The Cloud Framework applies to any cloud service provided to cloud customers having a residence or customer address in Saudi Arabia. These obligations apply to any cloud service provider that owns, operates, or offers access to data centres, or other elements of a cloud system, located in the Kingdom. Additionally, regardless of whether the cloud customer has a residence or customer address in Saudi Arabia, certain obligations relating to major information security breaches, takedown of unlawful or infringing content, and notification of violations of Saudi Arabia's Anti-Cyber Crimes Law 2007, can also arise. In some instances the Cloud Framework appears to apply to cloud service providers outside the Kingdom.

Registration with CITC

Anyone controlling data centres, or other critical cloud system infrastructure, hosted in Saudi Arabia and used for the provision of cloud services, and anyone controlling the processing of customer content of a specific nature (including private sector regulated industries subject to sector-specific rules, and sensitive customer content from public authorities), is required to register with the CITC.

Cloud service providers registered pursuant to the Cloud Framework must disclose to CITC the location and main features of their data centres located in Saudi Arabia, as well as the foreign countries in which they use data centres for processing the data and content of Saudi-based cloud customers. (Cloud service providers are also required to notify cloud customers in

advance if they will process data or content outside Saudi Arabia.)

Cloud service providers registered with the CITC are required to comply with standards that the CITC defines as mandatory, and comply with business continuity, disaster recovery, and risk management related rules and guidelines that CITC identifies as mandatory. (These mandatory standards, rules and guidelines do not appear in the Cloud Framework, and will be published by CITC from time to time.) If requested by cloud customers, cloud service providers also need to provide information on actual performance relative to service levels, as well as information on any certification standards followed by the cloud service provider.

Information security

Four information security categories applicable to customer content are specified in the Cloud Framework. These are (in summary):

- Level 1: Non-sensitive customer content of individuals, or private sector companies, not subject to any sector-specific restrictions on the outsourcing of data.
- Level 2: Sensitive customer content of individuals, private sector companies, not subject to any sector-specific restrictions on the outsourcing of data; and non-sensitive customer content from public authorities.
- Level 3: Any customer content from private sector-regulated industries subject to a Level 3 categorisation by virtue of sector-specific rules or a decision by a regulatory authority; and sensitive customer content from public authorities.
- Level 4: Highly sensitive or secret customer content belonging to relevant governmental agencies or institutions.

These levels are a means of categorising content, although they do not provide any clear direction on the corresponding level of information security that cloud service providers must provide to such content. It is unclear whether these levels were intended to conform to something like the requirements of The Uptime Institute's tier classification system (which are pointed at capacity, redundancy, fault tolerance, etc., and not specifically focussed on information security), or whether the CITC plans to elaborate on what security mechanisms and processes it requires of each level, in practice.

The application of these information security levels is subject to any other rules regarding information security requirements determined by other competent authorities in Saudi Arabia, and other rights and obligations of cloud customers relating to the outsourcing, transmission, processing or storage of content or data in a cloud system, specified elsewhere. Between Levels 1, 2 and 3, there is scope for cloud customers to opt for a higher or lower level of information security.

The Cloud Framework sets out certain presumptions as to applicable information security levels for certain types of information. For example, for natural persons resident in Saudi Arabia, there is a presumption that Level 1 shall apply; for private sector entities operating in Saudi Arabia, Level 2 shall apply. Ultimately, the onus is on each cloud customer to specify the level of information security that needs to apply to its content, failing which the cloud service provider may assume that the default levels specified in the Cloud Framework shall apply.

Reporting security breaches

There is a specific obligation on cloud service providers to notify cloud customers of any security breach or information leakage likely to affect the data or content of the cloud customers, or the services the cloud customers receive from the cloud service provider. Additionally, in the case of security breaches or information leakages relating to any Level 3 customer content, or to data or content of a significant number of cloud customers, or to a significant number of people in the Kingdom, there is a specific obligation to notify the CITC.

There is also an obligation on each cloud service provider to provide, on request of a cloud customer, information on the extent of insurance coverage

for the cloud service provider's civil liability to the cloud customer. This information is intended to allow cloud customers to properly assess their own insurance needs and coverage.

Internal rules and policies on business continuity, disaster recovery, and risk management must be prepared by each cloud service provider. They must make summaries available to their customers, and to the cloud service providers with whom they work, upon request.

Protection of customer data

Generally, the provisions relating to protection of customer data are without prejudice to any higher degree of protection required by law or contract.

The provisions relating to protection of customer data apply to cloud service providers who contract with cloud customers, as well as cloud service providers who do not have a direct contractual relationship with such customers but who determine (alone, or jointly with others) the purposes and means of processing cloud customer data.

Cloud service providers are prohibited from providing any third party with customer content or customer data, or processing such content or data for purposes other than those permitted in the relevant cloud services contract. This restriction is subject to exceptions, where cloud service providers are required to comply with the laws of another country in respect of cloud customers established in such other country, or where there is a Saudi law obligation on the cloud service provider to disclose, transmit, process, or use that content or data. Additionally, when customer data is categorised as Level 1 or Level 2, and the customer has expressly consented to non-application of the restriction, the restriction does not apply.

There is also a requirement that cloud service providers allow and enable cloud customers to access, verify, correct, or delete their customer data.

Some of the wording relating to protection of customer data echoes language found in modern personal data protection laws in other jurisdictions. To the extent that customer data is not necessarily 'personal data', and cloud customers are not necessarily 'data subjects', this does seem curious. It remains to be seen whether this wording will effectively introduce some modern personal data protection type obligations in Saudi Arabia.

Unlawful content and infringing content

The provisions relating to unlawful content and infringing content apply to cloud service providers who contract with cloud customers, as well as cloud service providers who do not have a direct contractual relationship with such customers but who determine (alone, or jointly with others) the purposes and means of processing cloud customer data.

The Cloud Framework makes clear that cloud service providers will not be administratively or

“Cloud service providers should review their own operations and make sure they register with the CITC if required to do so. They should also review their standard contractual documentation to make sure that it is consistent with mandatory requirements set out in the Cloud Framework and ensure that their sales teams are familiar with these new mandatory requirements.”

criminally liable solely because unlawful content or infringing content has been uploaded, processed, or stored in their cloud systems. It also makes clear that there is no obligation on cloud service providers to monitor their cloud systems for such content.

Cloud service providers are required to remove or block any unlawful content and infringing content if directed to do so by the CITC (or other relevant authority). They are also required to notify the CITC (or other relevant authority) if they become aware of any customer content on their cloud systems that might violate Saudi Arabia’s Anti-Cyber Crime Law 2007.

Mandatory contractual requirements and unfair terms

The Cloud Framework sets out various minimum requirements for cloud contracts. These include: requirements relating to details of the cloud service provider; description of the cloud services; duration, charges, payment terms, termination; rules on processing customer content, and processes enabling it to be returned post-termination; service level type considerations; and a customer complaint mechanism.

Cloud service providers are not permitted to exclude liability for certain types of losses of damages, where such losses or damages are attributable to intentional or negligent acts or omissions of the cloud service provider. These include: loss or damage to customer content or customer data linked to the cloud service provider’s processing of such content or data; service parameters that do not conform to the contractually agreed terms or any requirements mandated by the Cloud Framework; and information security breaches. The practical implications of these apparent restrictions on limitations of liability require greater scrutiny.

What next?

Cloud service providers are required to register within a month of the Cloud Framework coming into force.

The CITC may issue model contracts and clauses, recommendations, and other guidance on the Cloud Framework, and on cloud computing in general.

Cloud service providers should review their own operations, and make sure they register with the CITC if required to do so. Being familiar with the new requirements with regard to removal, blocking, and filtering of content, will enable cloud service providers to put operational mechanisms in place to accommodate these obligations. Cloud service providers should also review their standard contractual documentation to make sure that it is consistent with mandatory requirements set out in the Cloud Framework. They should ensure that their sales teams are familiar with these new mandatory requirements.

Cloud customers should also familiarise themselves with the mandatory contractual requirements, and other rights, set out in the Cloud Framework.

Al Tamimi & Company’s Technology, Media & Telecommunications team regularly advises clients on issues relating to cloud computing, data centres, data sovereignty, and other data related matters. For further information, please contact Nick O’Connell, Partner – Technology, Media & Telecommunications: n.oconnell@tamimi.com

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Working Towards Vision 2030: Key Employment Considerations in KSA

Since the launch of its flagship "Vision 2030" initiative in 2016, the Kingdom of Saudi Arabia (KSA or the Kingdom) has steadily been taking measures to diversify its economy away from its dependence on oil and government spending in response to the challenges brought by lower global energy prices. Vision 2030 is centred on establishing a modernized legal and investment framework that boosts private sector activity, attracts foreign investors and encourages the employment of Saudi workers in line with the Kingdom's 'Saudisation' programme. In order to achieve the ambitions of Vision 2030, a number of reforms have and will continue to be implemented to create further investment incentives for investors looking to establish or expand their presence in the Kingdom.

As opportunities in the Kingdom develop, both local and foreign investors will need to consider a number of key factors which will drive their planning, strategy and operations. This article focuses on some of the employment aspects of operating a business within the Kingdom which all investors will need to consider if seeking to take advantage of the wide-ranging opportunities presented by Vision 2030. It will also discuss key employment developments that are likely over the coming years in the context of Vision 2030.

The legal framework

The KSA legal system is based on and underpinned by Shari'ah law. Matters relating to employment relationship are governed by the Labour Law issued by Royal Decree Number M/51 dated 23 Sha'ban 1426 (corresponding to 27 September 2005), as amended from time to time (the Labour Law). It covers all aspects of the employment life-cycle from recruitment through to termination and dispute resolution. The Labour Law is supplemented by Ministerial Resolutions and circulars issued by the Ministry of Labour and Social Development (MLSD) which has overall responsibility for employment matters.

Businesses seeking to invest in KSA should take note of some of the key features of the Labour Law:

- The Labour Law applies to all workers in KSA and broadly provides equal rights to both Saudi and non-Saudi nationals although it provides preferential treatment to Saudi nationals in certain respects.
- A non-Saudi national may only be employed for a fixed term corresponding to the duration of their work and residence permit (see further below for information relating to work and residence permits).
- A non-Saudi national under the sponsorship of his employer is prohibited from working for another employer without formally transferring his sponsorship to the new employer.
- Employment contracts may be for fixed or indefinite terms (although the contract term for non-Saudi employees will always be fixed corresponding to their work and residence permit).
- An employer may request an employee to undergo a probationary period of no more than 90 days, which can be extended by agreement of the parties to a further period of up to ninety days.
- The maximum working hours are eight hours a day and 48 hours per week (although this does not apply to senior employees and managers).
- Employees are entitled to a minimum of 21 days paid holiday increasing to 30 days after five years' service.
- Indefinite term contracts terminate at the discretion of either party provided written notice is given to the other party stating the valid reason for termination. At least sixty days' notice is required for contracts where the worker is paid monthly or not less than thirty days' notice in any other case.
- An employer can dismiss employees validly by way of redundancy if the business is closed permanently or the activity in which the employee is employed ceases to be carried out by the business.
- The retirement age is 60 for men and 55 for women.
- Employees are entitled to claim compensation for an unlawful termination of employment but do not have the right to reinstatement.
- An end-of-service award is payable on termination of employment based on length of service and salary.
- Employers must make social insurance contributions for employees to the General Organisation for Social Insurance (GOSI).
- Employers must provide medical insurance that covers the employee and the employee's dependants.

> **"As the Kingdom of Saudi Arabia moves into a new era under Vision 2030, local and foreign investors seeking to capitalise on the vast opportunities on offer will need to consider the employment related issues of their business activities in the country."**

Immigration and sponsorship requirements

All employees must be registered with the MLSD and GOSI. While Saudi nationals and GCC nationals do not require any immigration approvals to work

in KSA, non-Saudi (and non-GCC) nationals must be sponsored by their employer to work in KSA. In order to obtain sponsorship, employees must seek prior approval from both the MLSD and the Ministry of Interior to obtain a work and residence permit (known as an Iqama) by submitting a number of documents including attested educational and professional qualifications. As explained further below, whether or not an employee is granted a work permit is dependent on a number of factors, of which the employer's compliance with its Saudisation requirements is the most important. Once an Iqama has been issued, the employee is under the sponsorship of his employer. The Labour Law prohibits employers from allowing an employee to work for another party and from employing an employee of another party.

Saudisation and the promotion of the local workforce

A key measure to achieving Vision 2030, and one of the most important issues that a foreign company should be aware of in doing business in KSA, is the national policy of encouraging and prioritising employment of Saudi nationals in the private sector, known as Saudisation. This policy is implemented through the 'Nitaqat' programme which operates by classifying employers into six categories – Platinum, Green (High, Medium and Low), Yellow and Red – depending on various factors such as the size and activity of the company; the percentage of Saudi nationals in the workforce compared to expatriate employees; the average salaries of Saudi employees; and retention rates of Saudi employees. In general, an employer benefits from being in a higher category through greater incentives such as flexibility in recruiting and managing expatriate employees, lower processing fees, and other administrative benefits. By contrast, lower graded entities will have restricted immigration and sponsorship benefits.

The Saudisation percentages imposed on companies under the Nitaqat programme vary based not only on the size of the company but also the activities of the company. For example, small laboratories with between 10 and 49 employees must employ 10% to 14% Saudi nationals in order to remain in the yellow category. In contrast, in the agricultural industry, only 2% to 4% of Saudi employees are required for a company of the same size. These percentage requirements are subject to constant change based on KSA public policy considerations. As a minimum requirement, however, all companies must employ at least one Saudi national. This requirement can be fulfilled if the business owner or employer is himself a Saudi national. Some jobs (e.g. head of HR) and sectors within the economy (e.g. car rental outlets, mobile phone shops) are restricted to only Saudi nationals and a further 12 sales-related activities will be restricted to Saudi nationals only from September 2018.

Recent changes to the Nitaqat system in September 2017 introduced increased thresholds for obtaining a higher Nitaqat grading across most industries. The increased Nitaqat thresholds apply to companies of different sizes across more than 60 industries. Some examples of the increased Nitaqat thresholds include:

- 'Small' (i.e. a total headcount of 10-49 employees) oil and gas companies are now required to adhere to a Saudisation percentage of at least 66% (rather than the previous threshold of 56%) in order to be classified as a Platinum entity.
- Small financial institutions are now required to adhere to a Saudisation percentage of at least 88% (rather than the previous threshold of 80%) in order to be classified as a Platinum entity.
- Small IT companies are now required to adhere to a Saudisation percentage of at least 56% (rather than the previous threshold of 30%) in order to be classified as a Platinum entity.

It is important to note that, if a foreign company fails to employ its quota of Saudi nationals (dependent on its Nitaqat requirement), the MLSD can refuse to renew the Iqamas of the company's expatriate employees. Moreover, the Ministry of Commerce and Industry can refuse to renew a commercial registration certificate or cancel it altogether.

Levies on foreign employees

As a measure to compliment the Saudisation policy, certain levies have been applied to foreign employees and their dependents over recent years

to discourage the employment of foreign nationals by making it more expensive to recruit and retain foreign employees. For example:

- In 2013 a levy was applied for every foreign employee where the ratio of foreign employees to Saudi nationals was greater than 1:1. This levy is payable by the employer.
- In July 2017 a levy was applied to each dependent of a foreign employee. This levy is payable by the employee although some employers support their employees in meeting this cost.
- In January 2018 a new levy was applied for each foreign employee employed by an employer.

Each of these three levies are incurred on a monthly basis but must be paid as an annual lump sum in order to renew a foreign employee's or his dependent's Iqamas. Further, the levies increase incrementally on a yearly basis.

Employers will therefore need to factor in these additional costs of employing foreign employees when planning their workforce in KSA.

Women in the workplace

A prominent goal of Vision 2030 is to increase the participation of women in the workforce from 22% to 30%. Under recent changes to the Saudisation policy, certain jobs and sectors have been restricted to women (commonly known as 'feminisation'). For example, certain shops in shopping malls, outdoor markets and standalone locations selling women's products and accessories must be staffed entirely by women. From September 2018, these jobs will be restricted to Saudi women only. Further, the widely-reported lifting of a ban on women driving in KSA is due to come into force in June 2018 with a view to removing one of the widely perceived obstacles to the employment of women in KSA, thus making access to workplaces easier for women as well as creating new job opportunities.

As the number of female graduates entering the employment market increases each year, and given the importance placed on increasing employment opportunities for women in KSA, businesses and investors will need to ensure they comply with the various requirements relating to women in the workplace. For example, under the Labour Law and the associated Work Regulations, there are certain requirements relating to females in the workplace including the following:

- Employers must provide female employees with their own space in the workplace that is segregated from men.
- Female staff must wear modest, loose and non-transparent clothing.
- A woman and a man must not stay alone together in a workplace.
- Save in certain circumstances (e.g. hospitals) women may not perform night work.
- Women are not allowed to be employed in hazardous or harmful jobs or industries (e.g. as construction workers).

Similarly, the Labour Law also provides a number of rights for female employees, for example:

- Women are entitled to fully-paid maternity leave for a period of 10 weeks.
- There are various maternity-related rights afforded to female employees on issues such as leave to attend to sick babies or babies with special needs; time off for nursing babies for a period of up to 24 months; and the right not to be dismissed while on maternity leave or as a result of sickness absence arising from childbirth.
- A Muslim female worker whose husband passes away will be entitled to fully paid leave for a minimum period of four months and 10 days (in accordance with Sharia law). A non-Muslim worker whose husband passes away shall be entitled to fully paid leave of 15 days.

As further opportunities develop under Vision 2030, women will become an increasingly integral part of the workforce in KSA. In particular, women are likely to play an important role in the development of the proposed tourism, retail and leisure industries which are key to KSA's ambitions to diversify its economy. Against that broader backdrop, it is possible that further reforms will be proposed

aimed at enabling greater participation of women in different sectors of a newly diversified economy.

Dispute resolution

Disputes arising from an employment relationship should be brought to a Labour Office in the locality where the employee works. The Labour Office will attempt to resolve the dispute amicably without further recourse to formal litigation. If the dispute cannot be resolved amicably at the Labour Office, the matter will be escalated to a formal claim at the Preliminary Commission for the Settlement of Disputes ('Preliminary Commission') which is effectively a first instance court for employment disputes. Any such claims must generally be submitted to the Preliminary Commission within 12 months of the occurrence of the offence which forms the subject of the claim. The decision of the Preliminary Commission may be appealed to the High Commission for the Settlement of Disputes, which is the appellate court. Appeals must be lodged within 30 days of receiving the judgment of the Preliminary Commission.

It should be noted that there is no concept of judicial precedent in KSA meaning that a decision of a court will have no binding authority in respect of another case. Further, there is no system of court reporting in KSA. As a result it is not always possible to reach a conclusive interpretation of Saudi Arabian law, and predict how the court will adjudicate on a particular transaction or issue.

Future developments

Privatisation

One of the most anticipated developments under Vision 2030 is the proposed privatisation of various sectors such as the energy, health, education and water sectors. A key challenge for investors seeking to take advantage of the opportunities presented by such large scale privatisations will be ensuring that their businesses are comprised of a skilled workforce which is also compliant with its Saudisation requirements. In order to achieve this we are likely see an increased focus on training initiatives for Saudi nationals to not only develop workers with the relevant knowledge and skills, but also to increase the employment rates of the local population and thereby strengthen the economy.

Creation of jobs through development of different sectors

In order to reduce unemployment levels within KSA, a key goal of Vision 2030 is to create jobs through the development of various sectors. For example, the expansion of the retail sector is expected to create one million jobs for Saudi nationals by 2030. Similarly, the localisation of the defence industry and the resultant stimulus to other industrial sectors such as industrial equipment, communications and information technology, will also create more job opportunities and increase the need for specialised training.

Flexible working

As the country transitions to a modern and diverse economy, it is likely there will be a need for increased flexible working arrangements to widen participation in the economy. This is particularly in light of developments of new industries such as tourism and entertainment where work engagements may be of a more temporary and less-structured nature. Similarly, as more women enter the national workforce, there may be a need to develop greater flexible working initiatives to ensure they are supported in the workplace whilst also managing any family-related commitments.

Conclusion

As the country moves into a new era under Vision 2030, local and foreign investors seeking to capitalise on the vast opportunities on offer will need to consider the employment related issues of their business activities in KSA. By planning carefully, businesses can ensure they comply with the various regulatory requirements relating to their workforce and thereby reduce the risk of interference in their business due to non-compliance. With the largest population in the region becoming increasingly qualified and engaged in the economy, and supported by foreign skilled workers, investors should feel confident that their human resource needs can be met as they seek to take advantage of the opportunities presented by Vision 2030.

Al Tamimi & Company's Employment team has two dedicated lawyers based in Saud Arabia who advise on the full range of employment related matters in the country. For further information please contact Zahir Qayum (z.qayum@tamimi.com) or Mohsin Khan (mohsin.khan@tamimi.com).

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Kingdom of Saudi Arabia Clarifies Certain Aspects of its Arbitration Law

The Kingdom of Saudi Arabia ("KSA") has enacted the Executive Regulations of the Arbitration Law ("Executive Regulations"). The Executive Regulations were published in the Saudi Gazette and came into force on 9 June 2017. Arbitration in the KSA is governed by the Arbitration Regulation issued under Royal Decree No. M/34 dated 24/5/1433H (which corresponds to 16 April 2012 in the Gregorian calendar) ("Arbitration Law"). The Executive Regulations aim to clarify certain key provisions of the Arbitration Law.

Key Provisions of the Executive Regulations

The Executive Regulations clarify the following issues in the Arbitration Law.

- Article 2 of the Executive Regulations states that the Competent Court referred to in the Arbitration Law, which is tasked with the supervision of Saudi-seated arbitrations, is the Saudi Court of Appeal. This helps practitioners to clearly identify the Competent Court in the KSA.

The Arbitration Law provides the Competent Court with jurisdiction in a number of arbitration matters. According to Article 8 of the Arbitration Law, the Saudi Court of Appeal has jurisdiction to consider an action to nullify an arbitration award. Article 8 also states that, in the case of international commercial arbitration within the KSA or abroad, the Court of Appeal located in Riyadh has jurisdiction unless the parties agree otherwise.

Moreover, Article 15 of the Arbitration Law provides that the Court of Appeal has the jurisdiction to appoint an arbitrator or the president of an arbitral tribunal in the event that the parties fail to reach an agreement. In addition, the party seeking to challenge an arbitrator can petition the Court of Appeal (Articles 17 and 18 of the Arbitration Law).

Article 10 of the Executive Regulations further clarifies Article 15 of the Arbitration Law by providing that, where parties fail to agree on the appointment of a sole arbitrator, the Court of Appeal may appoint the arbitrator at the request of the party seeking to accelerate the arbitration proceeding. Such an appointment must be made within 15 days from the date of submission to the Court of Appeal. We presume that these provisions only apply to ad hoc arbitration in KSA and in the absence of any institutional rules, but that remains to be clarified in due course.

Article 22 of the Arbitration Law permits the parties to request precautionary measures prior to the commencement of arbitration procedure from the Court of Appeal.

In the absence of an agreement on the arbitration tribunal's fees, the Court of Appeal will decide on the matter pursuant to Article 24 of the Arbitration Law.

Additionally, Article 50 provides the Court of Appeal with jurisdiction to deal with the nullification of the award, while Article 53 provides the Court of Appeal with jurisdiction to issue an order for enforcement of the arbitration award.

- Article 3 of the Executive Regulations provides that a written notice can now be served electronically (e.g., by email). Previously, written notices could only be served in person or to the mailing address specified in the contract, unless otherwise agreed upon by the parties pursuant to Article 6.1 of the Arbitration Law.
- Article 7 of the Executive Regulations provides that the copy of the "contract concluded with the arbitrator" must be deposited with the competent authority. According to Article 24 of the Arbitration Law, a separate contract must be concluded with the arbitrator, upon appointment, which specifies the arbitrator's fees.
  The Executive Regulations added a further requirement to this provision, by which the parties are now required to deposit this contract with the competent authority administering the case. This new requirement is a step forward in transparency and clarity in the arbitration proceeding.
- Article 13 of the Executive Regulations introduces a new provision whereby an arbitral tribunal may agree to the joinder of a third party in the arbitration proceedings, provided that the parties to the arbitration and the third party to be joined all consent.

- Article 17 of the Executive Regulations clarifies the process for challenging arbitral awards. The Arbitration Law provides that if the Competent Court, i.e., the Saudi Court of Appeal, decides to set aside the award, the parties can appeal its decision to the Saudi Supreme Court within thirty (30) days following the date of notification of the decision.

Commentary

The 2012 Arbitration Law aimed to codify an emerging pro-arbitration policy within the KSA. Alongside the Enforcement Law of 2013, the Arbitration Law heralded a number of key developments, including a reduced role for the Saudi courts in the conduct of arbitral proceedings and increased party autonomy. These developments have brought the KSA more in line with the international tenets of arbitration practice and will help develop it into one of the leading arbitration nations in the Arab world.

The Arbitration Law aims to create an independent and arbitration-friendly environment in the KSA. The Arbitration Law is largely based on the UNCITRAL Model Law, while still maintaining the essential principles of Shari'a. The parties are free to agree on a set of procedural rules to govern the arbitration; however, they must always ensure that they conduct the arbitration in accordance with the principles of Shari'a. The Arbitration Law applies to both international and domestic arbitrations within the KSA, and parties may choose the Arbitration Law to govern international commercial arbitration proceedings conducted outside of KSA.

The Executive Regulations are an important complementary source to the Arbitration Law, as they clarify a number of important issues. The Executive Regulations, when viewed in the context of a move away from earlier distrust in arbitration in the KSA to a gradual acceptance of arbitration as a dispute resolution method, represent a significant development for arbitration in the KSA by clarifying aspects of the Arbitration Law and helping to develop an arbitration-friendly environment in the jurisdiction.

There are, however, a number of areas that would benefit from further clarification. Under Article 2 of the Arbitration Law, for instance, all disputes are subject to arbitration with the exception of personal-status disputes and matters that are not subject to reconciliation. It would be helpful to clarify whether this exception is exhaustive (i.e., confirmation that all other disputes are permissible under the Arbitration Law). It would also help to clarify whether this provision applies to both domestic and international arbitration.

For example, it remains unclear whether real estate disputes are capable of being resolved by arbitration. The Law of Procedure before Shari'a Courts, which was enacted by Royal Decree No. M/1 dated 22/1/1435H (which corresponds to 16 April 2012 in the Gregorian calendar), made it clear that in real estate disputes, the competent court is the General Court where the real estate in dispute is located in the KSA. This strongly suggests that the Saudi courts have exclusive jurisdiction over real estate matters in the KSA. Hence, it would be helpful if future amendments to the Arbitration Law or to the Executive Regulations would clarify the position.

This is important since the Enforcement Law enacted by Royal Decree No. M/53 dated 17/4/1434H and its Executive Regulation Dated 17/4/1434H (which were passed after the Arbitration Law) provides that foreign judgments shall not be enforced in cases where Saudi courts have exclusive jurisdiction, e.g., in cases in rem involving real estate located in the KSA (Article 11.6 of the Executive Regulation). Article 12 of the Enforcement Law states that "[t]he provisions of the preceding Article shall be applicable to the arbitral awards issued in a foreign country", which means that foreign arbitral awards issued in cases in rem involving real estate located inside KSA may not be enforceable in the KSA if indeed real estate disputes are not arbitrable.

In addition, a question mark remains over whether certain other commercial and civil disputes are arbitrable, such as rental disputes, insurance related disputes, commercial agency disputes, and civil and commercial disputes touching on mandatory rules of law and public policy. It would be helpful to clarify the position in order to avoid the confusion that has arisen on these points in other Middle Eastern states.

There is no doubt that the KSA is making significant strides to provide a comprehensive and independent approach to international arbitration. It has taken a significant step by designing the Arbitration Law and Executive Regulations in line with the international standards set out in the UNICTRAL Model Law. This brings further reassurance to foreign investors who have opted to resolve disputes related to their commercial dealings in the KSA by means of arbitration.

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Off Plan Sales in the Kingdom of Saudi Arabia

On 6 September 2016 (4 December 1437 AH), Resolution No. 536 concerning the Regulations on the Sale or Lease of Off Plan Real Property Units ("Off Plan Regulations") was implemented by the Council of Ministers.

The Off Plan Regulations have superseded the Council of Ministers Resolution No. 73, as amended by the Council of Ministers Resolution No. 47, which previously covered off-plan sales. Various implementation regulations have also been issued in support of the Off Plan Regulations; these include the requirements of licensing, escrow accounts, the obligations of developers, the principles of property project registration and marketing/advertising.

The aim of the Off Plan Regulations is to ensure that the off plan real estate market within the Kingdom of Saudi Arabia is properly regulated and structured by placing requirements on various stakeholders, including developers and real estate development projects, to obtain the relevant consents and approvals. The aim is to regulate the real estate market and business practices, with the effect of boosting confidence and assisting end users, developers and investors.

Off-plan sale or lease licensing

The Off Plan Regulations prevent the following activities without an approval from the Ministry of Housing:

- Off plan sale or lease of property units;
- All property development including residential, commercial, investment, offices service, industrial or tourism property; and
- The carrying out of the marketing of property, whether locally or internationally including participation in property exhibitions.

A Committee has been formed at the Ministry of Housing which has the power to approve or reject an application to obtain a license in order to undertake the activities noted above. The Committee shall have 10 days from receipt of a complete application to determine whether the application has been successful or not.

Once a project has been registered with the Committee a certificate including the license number, the developer's name, the name of the real estate project and the duration of the license is issued to the developer.

The Committee has the prerogative to revoke a license granted to a developer should the developer fail to commence construction of the project without an acceptable reason, if the development has stalled or the developer does not have any intention of continuing with the project, any provision of the Off Plan Regulations are violated, or if the developer has acted in a fraudulent manner.

If a developer is unable to complete a project or should a project be stalled or suspended for a period of more than 6 months, the Committee shall take all required steps to safeguard the rights of end users and ensure the completion of the project or the return of funds paid by end users

> **"The real estate off-plan market in KSA has become more mature and properly regulated to protect the interests of investors."**

to the developer or any financed obtained by the developer. The Committee will also have the ability to liquidate the project.

The Ministry of Housing and the Committee has created a Real Estate Developer Registry which records the names of all registered developers. Should the Committee revoke a developer's license, the Real Estate Developer Register shall be amended accordingly with the removal of the details of the developer.

Also, once an off plan property project has been registered with the Ministry of Housing a block will be placed on the title deed of the land preventing any disposition.

When registering a project with the Ministry of Housing a developer is required to submit various documents including but not limited to the following:

- A copy of the developer's commercial registration;
- A certificate showing the developer has sufficient financial capability;
- A copy of the title deed or its equivalent;
- A copy of the contract with the sub developer (if any);
- Confirmation of the opening of an escrow account;
- The approved architectural designs for the project; and
- A feasibility report.

A consultation office, which has been accredited with the Organisation of Saudi Engineers and has no less than 3 years' experience in construction and project management, will be required to supervise the project. The role of the consultation office shall include submitting quarterly technical reports to the Committee on the progress of the project and to provide a certificate, which has been notarised by the Chamber of Commerce, confirming the project has been completed.

Marketing, advertising and displaying in property exhibitions

No marketing, advertising or exhibitions of real estate projects within the Kingdom are permitted, whether for projects based inside or outside the Kingdom, without the approval of the Committee.

When applying for a marketing license, a marketer will need to provide the Committee with several documents which include a copy of the title deed, and a copy of the contract between the marketer and the developer. Where the project is outside the Kingdom, the marketer will also be required to provide a financial guarantee of 1% of the value of the project up to a value of SAR1 million for up to 3 months after the expiry of its license.

Al Tamimi & Company's real property team regularly assist developers and firms that market properties in KSA. For further information please contact Unkar Chanian (u.chanian@tamimi.com)

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Amendments to the Commercial Companies Law in Bahrain

The Kingdom of Bahrain has marked its presence in the global market with its business friendly environment, and readiness to transform its legislation in order to remain competitive and stay in line with international counterparts. This was evidenced by the 2014 and 2015 amendments to Legislative Decree No. 21 of 2001 promulgating the Commercial Companies Law ("Commercial Companies Law"), and its most recent amendments in Legislative Decree No. 1 of 2018 ("New Law"). Throughout the New Law, consistent references have been made to the Central Bank of Bahrain ("CBB") to clarify specifically that all CBB licensed companies are subject to the rules and regulations of the CBB.

More Flexibility for Investors

The New Law amends Article 18 (Bis 1) to permit a shareholder in one company to be a shareholder in a competing company, subject to provisions of the Corporate Governance Code and the company's constitutional documents. As such, there is no longer a requirement to obtain a no objection letter if a person wishes to be a shareholder in more than one competing company.

Amendments to Joint Stock Companies

Requirements for Management

A requirement was added to Articles 172 and 240 of the Commercial Companies Law requiring a the Board of Directors of Joint Stock Companies, whether public or a closed company, to comprise a number of independent and non-executive directors. The CBB will issue requirements relating to such positions which will be relevant to CBB licensed companies and the Minister in charge of Trade Affairs will issue requirements relating to all other companies.

Moreover, the three year term of the board membership for all the types of directors may be extended to a maximum of six months based on a request of the board of directors that, in accordance with the New Law, needs to be substantiated. This will be subject to the CBB's approval for CBB licensed companies. The New Law restricts the appointment of one person as both a board chairman and deputy chairman.

Personal Interest

The board of directors should be informed of any direct or indirect personal interest of a board member in any matter under consideration. Aside from the members of the board of directors, the New Law extends this responsibility to the Chairman, and this notification should include a thorough description of the details of such interest, including all relevant material. Moreover, such member may not attend the resolutions pertaining to the areas of interest. This amendment is intended to be a positive step to protect the interests of the company, and bona fide third parties.

A person who is appointed as board member should disclose details of any other companies where they act as a director. Where there is a personal interest in a matter, approval is now sought from the board of directors rather than the General Assembly. This is subject to CBB's rules for CBB licensed entities.

Any outcomes relating to personal interest in a matter should be reported by the company's chairman to the General Assembly, accompanied with a report by an external auditor, and disclosed in the company's financial statements and annual reports with relevant details.

In the event that approval was not obtained from the board of directors, in relation to personal interest matters, there would grounds for claiming invalidity of the relevant agreement or transaction, if the conditions of the same are unfair or involve a conflict of interests. In addition, compensation may be payable to the company in relation to any profit or gain generated from the relevant violation.

In light of the above, the restrictions placed in the New Laws provide added protection and encouragement to investors whilst holding directors accountable.

"The New Law introduces the concept of "cumulative voting"... This approach increases the chance for minority shareholders to be represented on a company's board by concentrating the cumulative votes on one candidate"

Formation of an Audit Committee

Under the new Article 184 (Bis), a Joint Stock company is required to form an audit committee through a decision of the Board of Directors. The audit committee will have the authority to revise all financial and accounting documents related to the company and ensure compliance with all internal and external policies. A description of the audit committee's work will be included in the annual financial statement of the company. This inclusion was made by the Ministry in charge of Trade Affairs ("Ministry") in order to have full supervision of companies in Bahrain.

Introduction of a "Cumulative Voting" System

Previously, board members of Joint Stock companies, whether public or a closed company, were selected by a vote of the relative majority at the General Assembly. The New Law introduces the concept of "cumulative voting", which is defined as each shareholder having a number of votes equal to the number of shares held by each shareholder, and which the latter may either give to one candidate or divide among multiple candidates. This approach increases the chance for minority shareholders to be represented on a company's board by concentrating the cumulative votes on one candidate.

Lawsuits

The New Law clarifies the extension of the liability under Article 187 to the chairman and board of directors. In addition, where the company is under liquidation, whether voluntary or by court order, the New Law allows the liquidators to institute a liability lawsuit, and removes the requirement for a resolution of the General Assembly. Essentially, this simplifies the process of filing a lawsuit.

Where a shareholder is looking to initiate a lawsuit for invalidity and claim compensation in respect of any resolution issued by the Ordinary or Extraordinary General Assembly on the grounds that it violates the Commercial Companies Law, public order or the company's constitutional documents must file a claim before the courts. If the claim is successful and the court renders the resolution null and void, the judgment should be published by the board of directors in a local daily newspaper. The New Law sets a limitation period so that a claim should be made within 60 days from the date of the shareholder's knowledge of the resolution or one year from the date of its issuance, whichever less.

Subsidiaries

New Articles 120 and 236 (Bis) prohibit shares of Closed Joint Stock companies listed on the Stock Exchange and Public Joint Stock companies to be held by subsidiaries. A subsidiary company is defined under the New Law as one that is directly or indirectly owned by the parent company through the parent company's ownership of more than half of its share capital or having the rights or a number of shares on the company which enables the parent company to have control over decisions, form its board of directors or appoint its directors.

General Assembly

Joint Stock Companies

(i) When should an Ordinary General Assembly convene?

Public Joint Stock companies and Closed Joint companies that are CBB licensed, shareholders' ordinary assembly must now convene at least once a year within three, rather than six, months following the end of the fiscal year of the company. For all other companies, the General Assembly should convene at least once within six months following the end of the fiscal year.

Moreover, a request for an ordinary general assembly by an auditor or shareholders owning at least 10% of the share capital must be fulfilled by the board of directors, and there is no longer a requirement for serious reasons to prove such request, hence, simplifying the procedure.

The New Law adds scenarios in which an ordinary general assembly meeting may be requested by the Ministry. Namely, where the board of directors fails to convene a meeting within one month of a request by the above mentioned to do so, or if the authority supervising the company's business requires so. Under the New Law, shareholders owning at least 10% of the capital of the company can no longer submit a request to the Ministry to initiate an ordinary general assembly.

(ii) Calling an Ordinary General Assembly

Under Article 199 of the New Law, the call for a General Assembly should be published in two daily newspapers twenty one days before the scheduled meeting date. This is a stricter time limit than the previous fifteen days. In contrast, the time limit for submitting copies of the call for a General Assembly to the Ministry remains as 10 days prior to the scheduled meeting date.

Additionally, for Closed Joint Stock companies, where the call of a General Assembly is served by a registered letter, the New Law now requires acknowledgment of receipt. Alternatively, the General Assembly may be called by any other means which prove knowledge of time, venue and meeting agenda.

(iii) Proxies at the Ordinary General Assembly

Where a proxy has been appointed by the Ministry to attend a General Assembly, such proxy has no vote in the deliberations. Subject to a decision to be issued by the Minister, and subject to the Cabinet approval, certain fees will be imposed on such attendance. The New Law, however, is silent on any fees imposed on CBB licensed entities.

(iv) Issues discussed at the Ordinary General Assembly

The Commercial Companies Law mentions that the meeting agenda shall list all issues to be discussed at the General Assembly. Aside from issues arising out of urgency and issues that are revealed during the meeting, the New Law states an additional scenario in which an issue that is not listed on the meeting agenda may be discussed. Such scenario requires a written request from the auditor, authority supervising the company, or shareholders holding at least 5% of the capital of the company to be submitted to the Board of Directors at least five business days prior to the scheduled meeting date. Moreover, any issues that arise out of urgency at a general assembly meeting should be notified to the Ministry after 5 business days from the day following the meeting date.

With Limited Liability ("WLL") Companies

(i) When should an Ordinary General Assembly convene?

The General Assembly shall convene once a year during the last six, rather than four, months following from the end of the company's fiscal year.

(ii) Calling an Ordinary General Assembly

Previously, only shareholders holding at least a quarter of the company's share capital had the right to call a General Assembly. The New Law amends this so that a General Assembly may be called by shareholders holding 10% of the company's capital, hence, granting more rights to minority shareholders.

Currently, the call for the meeting should be made at least twenty one days before the date of the meeting. This time limit was previously one week before the meeting convenes. It appears that this amendment has been made with the intention to ensure that all administrative procedures will be fully carried out during the time between the call date and the scheduled meeting date.

(iii) Proxies at the Ordinary General Assembly

The Commercial Companies Law allows a shareholder in a WLL company to attend the general assembly meeting in person or through a representative by virtue of a Power of Attorney, subject to various conditions. The New Law has eased these conditions by allowing one representative to represent more than one shareholder.

(iv) Issues discussed at the Ordinary General Assembly

In cases of increasing a shareholder's financial obligations or admitting a new shareholder into the company, unanimous consent of the shareholders of a WLL company is needed. Furthermore, the New Law prohibits any disposition in excess of half of the company's asset value unless approval is obtained from majority of the shareholders holding at least three quarters of the company's share capital. This prohibition, however, does not apply to mortgages, cases where the disposition is made in favour of a subsidiary or where it is a part of the ordinary course of business.

WLL Company Accounts

Formerly, all financial reports had to be sent to the Ministry through the directors of a company and its auditors. The New Law shifts the entire burden onto the directors and disregards any responsibilities given to auditors.

Introduction of a new Article 288 (Bis) states that a company shall distribute profits to the shareholders no later than thirty days from the date of approval by the general assembly.

Wider Interpretations

Holding Companies

A holding company is defined more generally in that it may acquire stocks or shares in any Bahraini or foreign corporate entities.

Name of General Partnership

The New Law amends Article 27 so that the name of a General Partnership may be any name that the Ministry in charge of Trade Affairs may accept. This means that the name of a General Partnership does not necessarily need to include the name of all the partners or one of the partners and the phrase "& Partners".

Stricter Penalties

Notably, non-compliance with the Commercial Companies Law results in stricter penalties. A violation of Article 361 constitutes a minimum penalty of 10,000 Bahraini Dinars ("BHD") (previously 5,000 BHD) and a maximum of 100,000 BHD (previously 10,000 BHD). Comparatively, violation of Article 362 results in a maximum penalty of 50,000 BHD, an increase of 45,000 BHD.

Conclusion

Greater restrictive measures have been added to the Commercial Companies Law in an effort to decrease the level of violations, disruptions and conflict within a company, while simultaneously increasing the level of protection towards the interest of the company and stakeholders. Although more stringent requirements have been introduced, such as tighter time limits, the New Law also provides more flexibility, such as added rights to minority shareholders and permitting a single proxy to represent numerous shareholders at a General Assembly. As such, the New Law reinforces Bahrain's 2030 Economic Vision to encourage investment and increase investors' confidence in the economy.

Al Tamimi & Company's Corporate Structuring team regularly advises on Corporate Structuring matters For further information please contact Eman Al Isa (e.alisa@tamimi.com).

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Regulation of Gated Communities for the First Time in Jordan: Proposed Real Estate Communities Law

Over the past few years, there has been a noted surge in the development and construction of gated communities in Jordan, including in particular, the development of new urban areas on the peripheries of the cities of Jordan, and the further expansion of the Aqaba Special Economic Zone (Jordan's main port).

In light of said developments, there has been a noted demand to modernise the existing real estate laws of Jordan, to better accommodate for large-scale development projects. One such initiative has been the proposal of a new draft bill, the Jordanian Buildings and Real Estate Communities and their Development Law (the "Proposed Real Estate Communities Law") in 2015, and which is currently under review by the Jordanian Government. The Proposed Real Estate Communities Law aims to provide a governing framework that will regulate the rights and obligations of project developers and owners of real estate units respectively, in order to ensure the sustainability of an integrated real estate development project, the proper management and maintenance of its common parts and the provision of services to the projects.

This article will discuss certain aspects of the Proposed Real Estate Communities Law and its expected impact on the governance of gated communities and other large developments in Jordan. It is to be noted that, whilst the current legal framework serves a beneficial purpose of regulating general matters regarding ownership and control of flats and similar fixtures, attempting to deal with the regulation of gated communities under the umbrella of flats and apartments, as provided for under the current legal regime, is likely to continue to yield undesirable results. Therefore, a law specific to gated communities should be enacted to better accommodate for matters such as shared facilities and the provision of services.

Current Legal Framework

The Jordanian Ownership of Floors and Units Law No. 25 of 1968 (the "Apartments Law") regulates the ownership and rental of units and floors within apartment buildings.

Importantly, the Apartments Law provides the following:

1. It makes it obligatory for any building having more than four floors or units to form an Owners' Association for the management of the common parts of the building, and provides for the possibility of forming an Owners' Association if the building has less than four floors or units (should the owners so wish);
2. It requires the Owners' Association to adopt by-laws for the management of the building, to be certified by a Notary Public and to deposit the same at the relevant Land Registration Department (along with the building plans);

3. It defines the approval process in relation to making alterations to the internal and external fixtures of the building, and the erection of additional floors that may affect the overall appearance of said fixtures, as well as providing for the management and maintenance of common parts of the building,

   It is worth noting that the definition of "common parts" under the Apartments Law covers such matters as the foundations, walls, pipes, ventilation, cooling and heating systems of a "building"; so that it is questionable whether said requirements would also cover the maintenance of internal sidewalks (including street lamps and lighting), parks, swimming pools, gyms, and other facilities more commonly found in a gated community.

An interesting feature of the current Apartments Law is that it grants homeowners, through the Owners' Association, complete autonomy to make decisions affecting their property. Whilst such autonomy is preferable in the context of a small, residential building, the current Apartments Law does not seem to take into account the interests of other stakeholders in gated communities, including developers and investors.

In addition, from a commercial standpoint, the services available (and the fees associated with such services) at a real estate community are an important asset that home buyers and owners look to when considering investing in real estate complex projects. Whilst the management of such services and the due allocation of service fees may be regulated fully at the Owners' Association level in the context of a smaller building, the provision of such services in gated communities requires greater transparency, and which is only attainable through high regulation. Service fees should cover only actual expenses incurred in the maintenance of public and shared spaces and faculties, and be subject to periodic review.

In such a context, we will look at the main changes suggested to be introduced by the Proposed Real Estate Communities Law.

Establishment of Higher Board for Buildings and Real Estate Communities

The Proposed Real Estate Communities Law provides for the establishment of a Higher Board for Buildings and Real Estate Communities. The composition of the Higher Board shall be formed from representatives of the Ministry of Finance, the Land and Survey Department, the relevant municipality, the Ministry of Environment, the Ministry of Public Works and Housing, and private stakeholders to be nominated by the Council of Ministers, amongst others.

Once established, the Higher Board is granted authority to govern the real estate communities sector, with the purpose of protecting buyers and the national economy, as well as developing the real estate sector and promoting investments. As part of its activities, the Higher Board shall enter into development agreements with developers in connection with gated communities, as well as adopt templates for Promises to Sell, By-Laws for the Management of Real Estate Communities and other related documentation,

Regulation of Different Forms of Establishment

Under the Proposed Real Estate Communities Law, the legislature has recognised for the first time different types of establishments, including, buildings, towers, units, independent units and real estate complexes (gated communities); each deserving its own regulation in accordance with its unique characteristics.

In the context of gated communities, upon the recommendation of the Higher Board for Buildings and Real Estate Communities, the Council of Ministers shall designate certain establishments or projects as "real estate complexes (communities)."

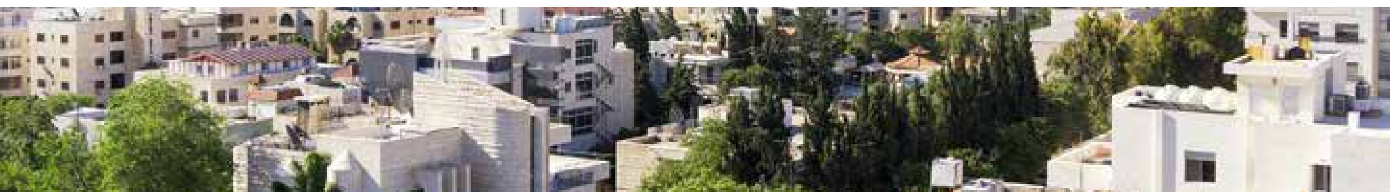
If so designated, the Proposed Real Estate Communities Law provides for the establishment of two managerial bodies, the Owners' Association and the Owners' Union, who are responsible for the workings of the gated community of which they form a part, under the overreaching supervision of the Higher Board.

The Owners' Association consists of all unit holders of a single building or tower (located within a real estate community), and are responsible for the common spaces of the said building or tower. The Owners' Union, however, consists of all representatives of each respective Owners' Association, as well as the owners of the independent units located within the same community.

The Owners' Association is the sole legal owner of, and shall be granted full responsibility for, the entire infrastructure and superstructure of the real estate community. This includes streets, sidewalks, gates, public spaces, and gardens, as well as water, electricity and other facilities. The management and usage of the infrastructure and superstructures shall be fully tasked to the Owners' Association, provided such infrastructure and superstructure is common to all unit holders having been established fully at the expense of the developer or the Owners (taken as a whole).

Article 15 of the Proposed Real Estate Communities Law will facilitate these tasks by providing that each of the Owners' Association and the Owners' Union shall have its own moral personality and an independent financial edifice to manage the real estate community.

In terms of representation on the Owners' Association and the Owners' Union respectively, the Proposed Real Estate Communities Law provides for two welcome developments:



1. It recognizes that an "owner" may be a real estate developer or real estate investor of units or independent units which have not been sold; and
2. It provides that each owner shall have a right to vote at a general assembly meeting of the Owners' Association, pursuant to the area of their respective unit as against the total area of the building or tower. Similarly, a representative of each Owners' Association and the owner of an independent unit shall be entitled to vote at a general assembly meeting of the Owners' Union, in accordance with the area of their respective tower, building, or independent unit to the total area of the gated community (other than the common parts).

   Such a development is welcome, as it recognises that owners, who have invested a larger stake in the gated community, should in turn be granted greater voting rights in the Owners' Association and Owners' Union. This is in contrast to the previous regime under the Apartments Law, and where generally, each unit holder was entitled to one vote, irrespective of the area of the unit.
3. In order to ensure that all parties have a say in the management of the gated community, the Proposed Real Estate Communities Law dictates that in the event that a single member owns more than 50% of the aggregate area of the gated community (other than the common parts), his vote shall be limited so as to equal the total number of votes held by the other members.

Insurance Requirements, and Allocation of Risk

The Proposed Real Estate Communities Law requires the Owners' Association and the Owners' Union to insure their respective properties against all risks, including the risk of total or partial loss and fire hazards, and wherein, beneficiaries of the insurance policy shall be the Owners' Association and the Owners' Union (as applicable).

The mandatory insurance requirements aside, the Proposed Real Estate Communities Law places responsibility on the real estate developer or the real estate investor, jointly and severally with the contractor, for any partial destruction, structural defect or damage to any of the units they sell and all related areas, for a period of 10 years from the date of development. Such liability supplements any liability arising under contract, as well as the decennial liability already imposed on contractors and/or engineers by virtue of the Jordanian Civil Code.

Other Developments

The Proposed Real Estate Communities Law also introduces further changes to the current regime, including without limitation:

i. Defining guidelines to be adopted by developers with respect to maintaining project accounts and financing their projects;
ii. Introducing time limits during which units must be delivered, and
iii. Enacting specific provisions regulating parking lots, and the possibility of selling a parking unit independent of the gated community.

Conclusion

The current Apartments Law has been in force since the 1960s. And whilst it has adequately regulated the management of more traditional buildings; however, as times have changed, the scope and nature of real estate projects has expanded, requiring a new set of regulatory rules that will accommodate the evolving track of real estate projects in the 21st century.

The Proposed Real Estate Communities Law, if implemented, would introduce more structured regulation that would better appeal to foreign buyers, investors and developers alike. This is especially critical on account of the fact that the Jordanian market has faced economic difficulties in recent years. From the developers' perspective, the Proposed Real Estate Communities Law recognises, for the first time, the developer or the investor as an independent stakeholder in its own right, whilst, granting home owners an established say, not only in the common parts of the building but also in the management of the wider gated community.

Al Tamimi & Company's Real Estate team regularly advises on gated communities. For further information please contact Dana Abduljaleel at D.Abduljaleel@tamimi.com or Rama Za'tara at R.Zatara@tamimi.com.

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Collateral Support for Derivative Transactions in Kuwait

With the rapid growth of the derivatives market through the late '90s and early 2000s and reaching a unprecedented approximate of $542 trillion in 2017, it may be deemed simply prudish to allow the definition of a derivative as a "financial weapon of mass destruction" without having explicating on what heaves derivatives into this category. Former Chairman of the United States Securities and Exchange Commission, Arthur Leavitt in the 1995 IDB/ ISDA Conference held in Washington D.C described derivatives as "something like electricity; dangerous if mishandled, but bearing the potential to do good" and it is with this common sentiment that it has been a prime focal point for international regulator, The International Swaps and Derivatives Association ("ISDA") to ensure precautionary mechanics are placed in a bid to minimise the prevalent risks associated with such financial instruments.

ISDA provides the standard documentary formalities for swaps and derivatives. The use of the ISDA documentation in order to effectuate such derivative transactions is customary in Kuwait. ISDA documentation generally consists of the ISDA Master Agreement (the "Master Agreement"), the ISDA Schedule and the ISDA Confirmation.

Given the high-risk of over the counter derivatives, many parties employ, what is called, the Credit Support Annex (the "CSA") in order to provide themselves with more credit protection. More specifically the CSA allows a means of transfer of collateral by a counterparty. The CSA is supplemental to the Master Agreement and does not create a security interest in the collateral, but rather places an obligation on the collateral provider (known as a "Transferor" under the CSA) to transfer the relevant collateral to the counterparty to the transaction (known as a "Transferee").

The collateral (identified as the "Eligible Credit Support") may take the form of cash or securities and must be in an amount and form sufficient to satisfy the requirements listed under the respective CSA. The type of Eligible Credit Support that a party is willing to accept will be detailed in Paragraph 11 of the CSA itself and it is worth noting that the CSA also details the precise mechanics pertaining to the manner in which the Eligible Credit Support will be posted.

Since the CSA is deemed a bilateral agreement, any amendments to and elections under it are made primarily pursuant to Paragraph 11 of the CSA. While the CSA affords the swap counterparties considerable freedom to amend the exact mechanics in Paragraph 11, the basic principle is that collateral calls and returns are calculated on a mark-to-market basis and determined on specific valuation dates (usually daily or weekly).

We believe the laws of Kuwait would characterize each transfer of Eligible Credit Support as effecting an unconditional transfer of ownership in the assets transferred. Notwithstanding the same, we would draw some caution to the fact that Kuwaiti laws do not specifically address the issue of how the transactions delineated in the CSA would be characterized. There is certain speculation, specifically in that there is some risk that such transfer may be re-characterized as 'creating a security interest.' It is our opinion that pursuant to the laws of Kuwait each transfer of Eligible Credit Support would be characterised as 'effecting an

unconditional transfer of ownership in the assets transferred.' Pursuant to the terms of the CSA, and as a matter of English law, transfers of Eligible Credit Support involve an outright transfer of title, free and clear of any liens, claims, charges or encumbrances or any other interest of the transferring party or of any third person. Therefore, if an event of default exists under an Master Agreement, an amount equal to the value of the relevant credit support balance is deemed to be an unpaid amount under the Master Agreement and therefore is taken into account for purposes of determining the amount due upon close-out of the respective transactions.

Based on the foregoing, in our opinion the risk of re-characterization is remote. Given the language of the CSA (particularly referencing paragraph 5(b) of the CSA), whereby it is made clear that the Transferee receives the Eligible Credit Support free and clear from all restriction and that the intention of the parties is, in essence, a "true sale," and that no security interest is created by virtue of the transfer. Furthermore, such transactions do not correspond with the form of security interests as the same are outlined in Kuwaiti law. We do not believe there exists means to further reduce such risk, specifically in terms of making any amendments to the CSA, since the CSA includes an express provision indicating the transactions contemplated thereby would not constitute a mortgage, encumbrance or other security interest and in doing so it essentially provides for this.

Our analysis stands on the assumption that the Eligible Credit Support would be restricted to cash, which is located outside of Kuwait, in addition to foreign issued securities. It is worth noting that there may be limitations under Kuwaiti laws, in substituting the respective Eligible Credit Support if the same includes Kuwaiti collateral. In our experience, Eligible Credit Support in the Kuwait market primarily consists of cash and not securities. Generally, local securities are not used as Eligible Credit Support due to the formalities associated with the transfer of such securities. In a bid to avoid such obstacles, local banks are now leaning more toward the use of an ISDA Credit Support Deed, which calls for the perfection of collateral rather than an outright transfer of title.

Notwithstanding the above, in the instance that a Kuwaiti court does re-characterize the Eligible Credit Support as creating a security interest, Kuwaiti bankruptcy and insolvency law will apply (i.e. the collateral will be subject to the relevant Kuwaiti bankruptcy court's discretion and may be set aside by the court).

Another consequence of a re-characterization would be the potential application of Kuwaiti law relating to the creation and validity of the security interest. In other words, in the event of bankruptcy of a Counterparty, the collateral will be evaluated by a Kuwaiti bankruptcy court to confirm whether or not the collateral underwent the formal steps required to create a security interest in Kuwait. If the Kuwaiti bankruptcy court finds that such collateral did not undergo the formal steps required to create a valid security interest, it will also find the collateral to be subject to set aside.

Given the importance of the derivatives market in international financial sphere, coupled with the GCC's proliferated use of derivatives products, we expect that Kuwait, in a bid to strengthen and further develop its financial sector, shall continue to grow in accommodating the sophisticated mechanics that such products entail. It is inevitable that in the emergent use of derivatives products, it shall become more incumbent on GCC parties to further avail themselves of the security that is provided by the Credit Support Annex, in order to mitigate the prevalent risks associated with such financial instruments.

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Recent Legislative Changes Improving Intellectual Property Protection in Qatar

Qatar has historically held a positive outlook and recognition of intellectual property (IP) rights. Recently Qatar has been investing resources in promoting the development of a knowledge economy. To this end Qatar is taking significant steps towards encouraging domestic industries as well as foreign investment. Such steps notably include Qatar's reinforcement of its IP protection regime through the provision of a stronger legal basis for protection and enforcement, in addition to improving and organising IP administrative filing systems. In this article we examine several recent IP related developments in Qatar which reflect the approach taken by the Government to achieve these goals.

Qatar joins Rome Convention

With effect from 23 September 2017 Qatar became a member of the Rome Convention on the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961). Qatar is also a member of the Patent Cooperation Treaty, WIPO Copyright Treaty, WIPO Performances and Phonograms Treaty, Berne Convention for the Protection of Literary and Artistic Works, and Paris Convention for the Protection of Industrial Property.

Qatar's accession to the Rome Convention completes and bolsters its membership in essential WIPO conventions that in turn ushers in an era of better IP protection across the country. The implementation of the Rome Convention in Qatar will certainly provide a stronger basis for copyright protection in the media and entertainment industry. It will be interesting to see what, if any, amendments the Qatari Parliament may introduce to Qatar's copyright, neighbouring rights and related media laws pursuant to Qatar's accession to the Rome Convention.

Online Trademark Registration

On 11 November 2017, the Ministry of Economy and Commerce announced launching the online trademark registration service through the Ministry's website. This was the first step of a gradual implementation of the online IP system as the online system currently applies only to filing of trademark applications.

The further steps of the trademark registration process, such as requesting publication and registration of a trademark, must still be completed by submitting printed forms.

Another positive step was recently taken by the Ministry on February 2017, by publishing the most recent Trademarks Official Gazette no. 246, dated 7 December 2017 on the Ministry's website, allowing wider audience to review the published applications, and file oppositions if needed. The Ministry's aim is to ultimately provide a fully online IP registration services.

The Ministry's launch of the online service is a welcomed initiative that aligns Qatar with the modern standards, procedures and international best practices of trademark prosecution. It is hoped that the online system will streamline the registration process reducing examination and publication times and provide a more reliable and cost effective basis for IP protection.

Copyright & Related Rights: New Official Fees

The Qatari Minister of Economy and Commerce issued Resolution No. 433 of 2017, amending some provisions of Resolution No. 410 of 2014 determining the Official Fees of Intellectual Property services, namely Copyright and

Related Rights. The new Resolution came into force on 10 January 2018.

The new Ministerial Resolution replaced the table of fees related to Copyright and Related Rights annexed to the previous Ministerial Resolution No. 410 of 2014, adding filing fees of QAR 300 for Companies and Individual entities, QAR 200 for Educational and Research institutions, and QAR 100 for Individuals, noting that students are exempted from paying such fees.

The Resolution also added "To Whom It May Concern" certificate fees of QAR 100 and certificate of Custom Release fees of QAR 300, maintaining registration fees unchanged.

It is noted that the added fees are minimal, and gave special consideration to students and educational institutions so as not to hamper but on the contrary encourage creativity and innovation in academic settings.

Customer Protection Law amendment to be released

Another law closely related to IP enforcement will be witnessing a revamp soon in Qatar. The Qatari Parliament recently approved a new amendment of the Customer Protection Law No. 8 of 2008 and referred it to the Government for implementation.

Currently, the Qatari Customer Protection Department plays a significant role in detecting and seizing fake products, in addition to protecting customer rights. The Department carries out such actions pursuant to the authorities granted to it in accordance with the rules of the Customer Protection Law No. 8 of 2008 as amended by law No. 13 of 2011, replacing Commercial Fraud Law No. 2 of 1999.

The new amendment, as approved by the Parliament, is expected to impose stricter punishments, noting that current punishments include imprisonment not exceeding two years, and/or fines between three thousand and one million Qatari Riyal.

Conclusion

Acknowledging the importance of Intellectual Property Protection is an essential part of economic development. Qatar is improving its legal system, protecting domestic industries and investments, customers, and foreign investments. The latest developments reported in this article are good indicators of the Qatari authorities' efforts to maintain and grow a positive environment and setting which welcome and promotes intellectual creativity and human capital in all types of industries and sectors of the economy.

How Can Al Tamimi help? Our IP department has a dedicated team of experienced practitioners, who can assist in a wide range of contentious and non-contentious matters related to IP, including legal protection, contractual matters and litigation. For more information about our IP services or if you wish to enquire more about the above reported developments, please contact the author or Omar Obeidat (Partner & Head of Intellectual Property) at o.obeidat@tamimi.com.

Al Tamimi Partners with Thomson Reuters for the 12th MENA Regulatory Summit

Al Tamimi was proud to be the legal partner and take part in the 12th MENA Regulatory Summit, held in Bahrain on 5th February 2018. The Summit is the leading opportunity for businesses and professionals in the region to discuss the ever evolving nexus of regulatory controls and the associated challenges facing authorities, financial institutions and private sector companies in each jurisdiction.

Ibtissem Lassoued, Partner in the Regional Financial Crime Practice, participated as a panellist in an informative session on ‘Understanding the Effects of De-Risking and Financial Inclusion’. Ibtissem addressed the global consequences of restricting access to the financial system and failing to implement sophisticated financial crime defences, and her remarks concerning the need for greater international cooperation between regulators and financial institutions were well-received by audience members.

Al Tamimi’s Bahrain office and the Regulatory practice also contributed to producing the Summit, which was attended and supported by over 300 regional and international regulators, financial services professionals, law practitioners, advisors and market participants. Following the conference, Ibtissem and Foutoun Hajjar, Partner and Head of the Bahrain office, utilised the opportunity to meet with leading Bahraini companies and government organisations such as the Ministry of Interior Financial Intelligence Directorate, National Bank of Bahrain, Aluminium Bahrain, the Telecoms Regulatory Authority, the newly opened FinTech Bay, and the Central Bank FinTech & Innovation Unit to follow up on the issues discussed at the conference and other sensitive financial crime issues.

Overall, the Summit was a resounding success and will no doubt prove another popular choice next year.

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Spanish Business Counsel Seminar - Intellectual Property

Al Tamimi's Intellectual Property lawyers, Omar Obeidat, Partner, Head of Intellectual Property and Mariam Sabet, Senior Associate, hosted an informative seminar for the Spanish Business Counsel on the 12th February 2018. Omar and Mariam shared key insights on the following topics:

- Protecting intellectual property and knowing tenancy rights
- Creating a patent portfolios
- Cases of copyright, trademark and rebranding

The seminar was a great success and we look forward to future seminars with the Spanish Business Counsel.

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DHA Briefing – Public Private Partnerships in Dubai's Healthcare Sector

Al Tamimi & Company in collaboration with the Dubai Health Authority (DHA) held an informative seminar on the 13th of February which addressed the Investment and Partnerships Strategy of the DHA and Public - Private Partnership in Dubai.

During the session Dr. Ibtesam Al Bastaki, Director of Investment & Public–Private Partnerships of the Dubai Health Authority gave a keynote presentation on the Dubai Health Authority's Investment and Partnerships Strategy and the role that DHA can play to encourage, stimulate and facilitate investments and PPP's.

Andrea Tithecott, Partner and Head of Regulatory Al Tamimi & Company also provided her insights and an overview on the key features of the Public - Private Partnership law in Dubai.

The session was a great success and we look forward to learning more the Dubai Health Authority's future plans.

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Abu Dhabi In-house Counsel Forum: Crisis Management Masterclass

On the 19th of February Al Tamimi & Company held an informative discussion for in-house counsel addressing their role in crisis management. This masterclass provided an overview of the following areas:

- When a regulator calls – general guidance – whether attorney or litigation privilege arguments can help
- Dealing with the police - including fatal and serious accidents
- Whistle blowing – legal position, policy recommendations, what do to when the cat is out of the bag.
- Cyber-attacks.

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Construction & Infrastructure Seminar Series

On Wednesday, 21 February we held another successful Construction and Infrastructure Series in our Abu Dhabi office. John Gaffney, Senior Associate, Arbitration and Euan Lloyd, Senior Counsel, Construction and Infrastructure gave an insightful presentation on common causes of construction disputes, practical tips to minimize the risk of disputes arising and effective dispute resolution strategies and mechanisms.

We look forward to hosting future construction and infrastructure seminars in the coming months, for further information email events@tamimi.com.

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Qatar Master Golf Tournament Client Brunch

Al Tamimi & Company's Qatar office hosted a small private brunch on Sunday, 25 February at this year's Commercial Bank Qatar Masters 2018.

The brunch was a great opportunity to catch up with our key clients and industry experts in an informal setting to discuss some of the latest developments in Qatar, and to re-cap on the past year.

We look forward to hosting future networking events.

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VAT Awareness Workshop

Al Tamimi Company in collaboration with the Russian Business Council held a VAT awareness session on the 26th of February 2018.

Zafer Oghli, Partner, Head of Office – Sharjah, Al Tamimi & Company kick started the workshop with an opening address to the council members. Our senior tax advisor Shiraz Khan also presented valuable insights on The UAE VAT Regime and provided an overview on the key features of the UAE VAT system, including the scope of VAT, transitional provisions, reporting and compliance.

The workshop was very informative and we look forward to hosting future sessions with the Russian Business Council.

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Employment Workshop

On Monday, 26 February, our employment team hosted an informative roundtable discussion on the recent HR developments. Samir Kantaria, Partner and Head of Employment and Natalie Jones, Senior Associate presented on the following hot topics and key HR themes:

- Emiratisation - winds of change
- VAT – the unexpected HR considerations
- Looking ahead – the 2018 HR horizon

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Ahead of the Curve: Investing in early growth stage companies where technology makes a difference

On the 28th of February we were delighted to welcome speakers from some of the regions leading Venture Capital (VC) investors, disruptors, founders and entrepreneurs.

The session entitled '*Ahead of the Curve: Investing in early growth stage companies where technology makes a difference*' touched on the status of the VC industry in the region, international and regional trends in start-up and entrepreneurial ecosystems; and insights into key areas of growth and opportunity.

Stuart Davies, Head of Technology, Media & Telecommunications, Al Tamimi & Company moderated the session which consisted of the following industry experts:

- Tom Speechley – Private Investor (Ex-Partner & CEO, Abraaj)
- Faaris Naqvi – Private Investor, Founder bakery.vc
- Fares Ghandour – Partner, Wamda
- Walid Mansour – Partner & Chief Investment Officer, Middle East Venture Partners
- Hasan Haider – Partner, 500 Startups
- Stavros Panayi – General Counsel, Careem

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AD Connect Human Resources Session

On the 28th of February 2018, Al Tamimi & Company and InterSearch Middle East combined forces to organise a quarterly gathering of 'ADConnect' members to discuss the frontline role of Human Resources during mergers and acquisitions.

The roundtable discussion was hosted by the recently merged TechnipFMC at their Guardian Tower offices in Abu Dhabi. The interactive session was chaired by Ivor McGettigan, Partner, Al Tamimi & Company and Andrew Bailey, InterSearch, and gave some great insight into the challenges that Human Resources professionals face when seeking to make two newly merged companies operate together as one.

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The 3rd Arab Lawyers Forum 2018

Lawyers from across the Arab World congregated in Manama, Bahrain on 28th February – 1st March to attend the 3rd Arab Lawyers Forum, organised by Al Tamimi & Company in collaboration with Bahraini law firms Haya Rashed Al Khalifa, Hassan Radhi & Associates, Zu'bi & Partners, the Bahrain Chamber for Dispute Resolution, and international sponsors as a crucial platform for Arab lawyers to share ideas on key themes surrounding legal services. The aim of the event was to bring together lawyers from private practice from across the Arab world to discuss pertinent issues and transitions facing the legal services industry over the coming years, and to provoke constructive conversation about how Arab law firms can take smart steps to effect big change and ensure that they remain at the leading edge of the international market.

The conference's panel sessions addressed a number of forward-thinking topics and prompted insightful discussion amongst expert panellists from around the world.

The first panel session, moderated by Ibtissem Lassoued, Partner at Al Tamimi & Company, focused on the rapid pace of advancement in technological innovation and critical importance of Arab law firms being proactive in their approach to implementing new forms of technology in light of its potential to act as a key differentiator in the near future. Panellists Samer Mahfouz (Market Development Lead for Innovation, Thomson Reuters), Khalid Saad (CEO, Fintech Bay), Constanze Kuhn (Senior Counsel, IBM MEA), and Alastair Beddow, (Director, Meridien West [UK]) were unanimous in their optimism for technology to have a positive impact in the evolution of legal services, and the momentousness of Arab law firms acting early to cultivate a culture of innovation within their corporate environment. The sentiments of the panel were succinctly summarised by Dr Roland Vogl, Director of Stanford Law School (USA), in a short video contribution, in which he stated that Arab law firms could take small but effective steps when faced with the daunting challenge of adopting such technology.

After the futuristic connotations of the first session, discussion was directed to more familiar ground during the second panel, moderated by Dr. Ismail Selim, Director of the Cairo Regional Centre for International Commercial Arbitration, who questioned fellow panel experts on the dynamics of arbitration in the Arab world. Essam Al Tamimi (Senior Partner and Founder of Al Tamimi & Company), Khalifa Al Yaquot, (Al Yaqout Law Firm and Legal Service in Kuwait), and Abdelatif Boulalf (of Boulalf & Mekkaoui Law Firm based in Morocco) contributed to a valuable debate over the existence of a bespoke Arab fit for arbitration, areas of uniformity and disparity in regional approaches to arbitration rules and institutions, and areas of necessary alignment with international best practices.

In light of the recent and impending VAT introductions across the GCC states, the conference would have been remiss without discussion of its potential impact on public and commercial policy. The third panel discussion was directed at an exploration of the lessons to be learned in managing the dynamics of VAT and FDI across the region. Moderated by Mahmood Hussain (Founder and Partner of Mahmood Hussain Law Firm in the UAE), attendees benefitted from contributions by VAT experts including Shiraz Khan (Senior Tax Advisor with Al Tamimi & Company) who offered a roadmap of the VAT framework across the Region, Bruce Hamilton, (Partner Indirect Tax with Deloitte) who offered comparative examples from his experience in implementing VAT in a number of foreign jurisdictions across the globe, and Dr Talal Jaber, (Managing Partner of Jaber Law Firm in Lebanon), who had first-hand experience of the impacts of fluctuating levels of FDI in Lebanon.

The contributions of attendees, panellists and moderators alike revealed a clear sense of proactivity and aspiration for Arab lawyers to embrace disruptive changes and move forwards with the right strategy in place to realise their full potential. The panels were followed by an interactive session, during which lawyers were given the opportunity to share their thoughts on how Arab law firms should respond to the issues raised over the course of the conference.

Throughout the event, there was also a prevalent theme of regional law firms needing to collaborate and engage at the international level to overcome these challenges and stay abreast of best practice utilised by leading global firms. This sentiment was echoed by Mark Ellis, Executive Director of the International Bar Association in a short video address during which he highlighted the importance of the Annual Arab Lawyers Forum and encouraged efforts centred on building stronger relationships between the IBA and the Arab world. In line with this drive and momentum, the next Arab Lawyers Forum will be held alongside the IBA Annual Conference in Rome on 5th & 6th October 2018, offering a fantastic opportunity for Arab lawyers to engage with their peers and offer the Arab perspective on global issues.

Feedback for the Forum in Bahrain has been overwhelmingly positive, with attendees lauding the conference for its showcase of passion and leadership within the Arab legal community, and initiative in addressing such important issues in an open and constructive manner.

The firm would like to thank sponsors Deloitte and Thomson Reuters for their collaborative efforts and attendees for their ongoing support of the Forum. We hope to see more jurisdictions and Arab lawyers representing the Region's potential next time in Rome.

3rd Annual Ara
Lawyers Forur
2018
المنتدى السنوي للمحامين العرب الثالث ٢٠١٨
3rd Annual Arab Lawyers Forum 2018

Deloitte.
3rd Annual Arab
Lawyers Forum
2018
المنتدى السنوي
للمحامين العرب الثالث
٢٠١٨

United Arab Emirates
Ministry of Justice

48th Year
Issue No. 627
12 Jumada al-Akhir 1439H
28 February 2018

FEDERAL LAWS

1 of 2018	On Quran memorization centers.
2 of 2018	On consolidating the general budget of the Federation and the ancillary budgets for its independent bodies for the financial year 2018.

FEDERAL DECREES

23 of 2018	Establishing a UAE consulate general in Germany.
24 of 2018	Transferring the UAE Ambassador to Morocco to the Headquarters of the Ministry of Foreign Affairs and International Cooperation.
25 of 2018	Transferring the UAE Ambassador to Vietnam to the Headquarters of the Ministry of Foreign Affairs and International Cooperation.
26 of 2018	Transferring the UAE Ambassador to Bahrain to the Headquarters of the Ministry of Foreign Affairs and International Cooperation.
27 of 2018	On performing the duties of the UAE Ambassador to Morocco.
28 of 2018	Promoting a member of the diplomatic and consular corps.
29 of 2018	Appointing the UAE Ambassador to Bahrain.
30 of 2018	Appointing a UAE non-resident ambassador to Honduras.
31 of 2018	Ratifying the Agreement between the UAE and Ecuador for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with Respect to Taxes on Income.
32 of 2018	Ratifying the Agreement between the UAE and Antigua & Barbuda for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital.
33 of 2018	Ratifying the Agreement on Cooperation in the Fields of Security and Counter-Terrorism between the UAE and Tajikistan.
34 of 2018	Ratifying the Comprehensive Strategic Partnership Agreement between the UAE and India.
35 of 2018	Ratifying the Protocol on Making Amendments to the Agreement between the UAE and Costa Rica on the Abolition of the Visa Requirement for Holders of Diplomatic and Special Passport.
36 of 2018	Ratifying the Defense Cooperation Agreement between the UAE and USA.
37 of 2018	Ratifying the Protocol on Making Amendments and Additions to the Agreement between the UAE and Kazakhstan on Mutual Non-Visa Trips of Citizens-Holders of Diplomatic Passports of May 13, 2010.
38 of 2018	Ratifying the Protocol Amending the Agreement on Mutual Exemption of Visas for Holders of Diplomatic Passports between the UAE and Belarus.
39 of 2018	Ratifying the Agreement on the Transfer of Sentenced Persons between the UAE and Nigeria.

40 of 2018	Ratifying the Agreement between the UAE and Nigeria on Legal and Judicial Cooperation in Civil and Commercial Matters.
41 of 2018	Ratifying the Agreement on Mutual Legal Assistance in Criminal Matters between the UAE and Nigeria.
42 of 2018	Ratifying the Extradition Agreement between the UAE and Nigeria.
43 of 2018	Appointing the Chief of Presidential Protocol.
44 of 2018	Ratifying the Agreement on the Transfer of Sentenced Persons between the UAE and Tajikistan.
45 of 2018	Ratifying the Security Cooperation Agreement between the UAE and Thailand.
46 of 2018	On the UAE's accession to the International Solar Alliance.
47 of 2018	On the UAE's accession to the Convention on Facilitation of International Maritime Traffic 1965.
48 of 2018	Ratifying the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information.
49 of 2018	Ratifying the Agreement between the UAE and Cameroun for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with Respect to Taxes on Income.
50 of 2018	Ratifying the Agreement between the UAE and Georgia for the Promotion and Reciprocal Protection of Investments.
51 of 2018	Ratifying the Agreement between the UAE and St. Kitts & Nevis for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital.
52 of 2018	Ratifying the Agreement between the UAE and St. Kitts & Nevis for the Promotion and Reciprocal Protection of Investments.
53 of 2018	Ratifying the Articles of Association of the Women's Development Organization in the Member States of the Organization of the Islamic Conference.
54 of 2018	Ratifying the Framework Agreement on Mutual Assistance in Tax Matters.
55 of 2018	Ratifying the Protocol on Amendments to the Agreement between the UAE and Montenegro on Mutual Exemption of Entry Visas for Holders of Diplomatic and Special/Service Passports.
56 of 2018	Ratifying the Agreement between the UAE and El Salvador on Mutual Exemption of Entry Visa Requirements for Holders of Diplomatic, Special, Ordinary and Official/Service Passports.
57 of 2018	Appointing the UAE Ambassador to Kenya.

REGULATORY DECISIONS OF THE CABINET

4 of 2018	On the formation of the Financial Restructuring Committee.

MINISTERIAL DECISIONS

- From the Ministry of Human Resources & Emiratisation:

816 of 2017	Concerning Tas’heel centers.
817 of 2017	On the establishment and licensing of centers that collect information on establishments registered with the Ministry (Taqyeem Service Centers).
818 of 2017	On the establishment and licensing of centers that provide Tawjeeh services (Tawjeeh Centers).
819 of 2017	Concerning Tadbeer Service Centers.
31 of 2018	On the introduction of the part-time employment contract system.

- From the Ministry of Health & Prevention:

28 of 2018	On the registration of innovative and rare medicines.

- From the Ministry of Climate Change & Environment:

21 of 2018	Executive regulations of Federal Law No. (23) of 1999 on the exploitation, protection, and development of living aquatic resources in the UAE, as amended.
36 of 2018	On banned and restricted-use pesticides in the UAE.

- From the Ministry of Community Development:

335 of 2017	On the registration of Emirates Falcons Photography Society.
6 of 2018	On the appointment of an interim board of directors for the Sudanese Social Club.
7 of 2018	On the registration of Emirates Rare Diseases Association.
13 of 2018	On the registration of Emirates Tolerance & Happiness Association.
14 of 2018	On the registration of Emirates Association for Social Development.
15 of 2018	Amending Ministerial Decision No. (150) of 2001 on the registration of Emirates Falconers Club Association.
19 of 2018	On the registration of Emirates Library and Information Association.

ADMINISTRATIVE DECISIONS

- From the Federal Authority for Land & Maritime Transport:

7 of 2018	On the approval, licensing, and monitoring of maritime education and training institutions in the UAE in compliance with the requirements of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978.

- From Emirates Post Group:

5 of 2017	Concerning the regulations for issuing licenses for the transportation of documents, mail letters, and packages.

- From the Securities & Commodities Authority:

4/R.M of 2018	Amending Board Decision No. 43/R of 2008 on dual listing.

5/R.M of 2018	Imposing penalties.
-	Certificate of approval of amendment of the Articles of Association of Al Ramz Corporation Investment & Development PJSC.
-	Certificate of approval of amendment of the Articles of Association of Dubai Investments PJSC.
-	Certificate of approval of amendment of the Articles of Association of Grand Mills Company PJSC.
-	Certificate of approval of amendment of the Articles of Association of Al Ain Food and Beverages PJSC.
-	Certificate of approval of amendment of the Articles of Association of DXB Entertainments PJSC.

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Offices	Countries	Partners	Lawyers	Nationalities

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.

CLIENT SERVICES

PRACTICES

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

SECTORS

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

COUNTRY GROUPS

China | India | Iran | Italy | Korea

> *We appreciate the diversity of the lawyers' backgrounds - there's always someone qualified to answer any query.*
>
> Chambers Global

> *Al Tamimi's key strength is providing quality service - maintaining international standards whilst providing the advantage of being a cost-effective external provider.*
>
> Chambers Global

PUBLICATIONS

Al Tamimi & Company is at the forefront of sharing knowledge and insights from the Middle East with publications such as Law Update, our monthly magazine that provides the latest legal news and developments, and our "Doing Business" and "Setting Up" books, which have proven to be valuable resources for companies looking to do business in the region. You can find these resources at www.tamimi.com.

REGIONAL FOOTPRINT

UAE
Abu Dhabi
Dubai, DIC
Dubai, DIFC
Dubai, The Maze Tower
Ras Al Khaimah
Sharjah

BAHRAIN
Manama

EGYPT
Cairo

IRAQ
Baghdad
Erbil

JORDAN
Amman

KUWAIT
Kuwait City

OMAN
Muscat

QATAR
Doha

SAUDI ARABIA
Al Khobar
Jeddah
Riyadh

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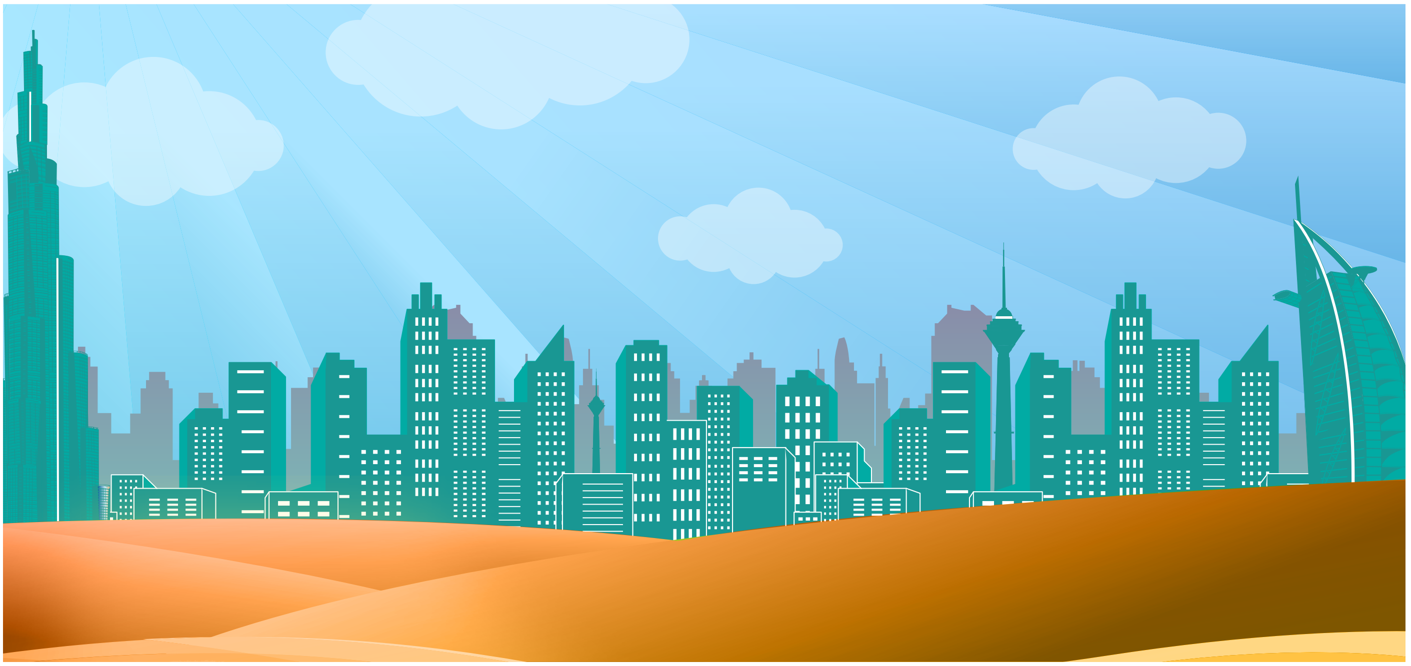

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