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LAW UPDATE

Latest Legal News and Developments from the MENA Region

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Artificial Intelligence and International Arbitration: Going Beyond E-mail

Bitcoin, Cryptocurrencies, Blockchain, Real Estate and the UAE

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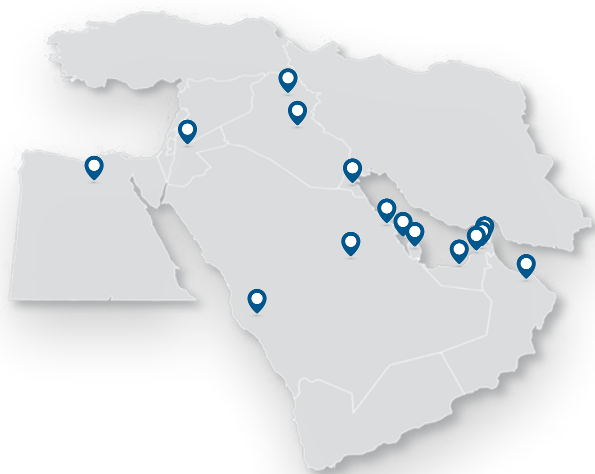
Our Regional Footprint



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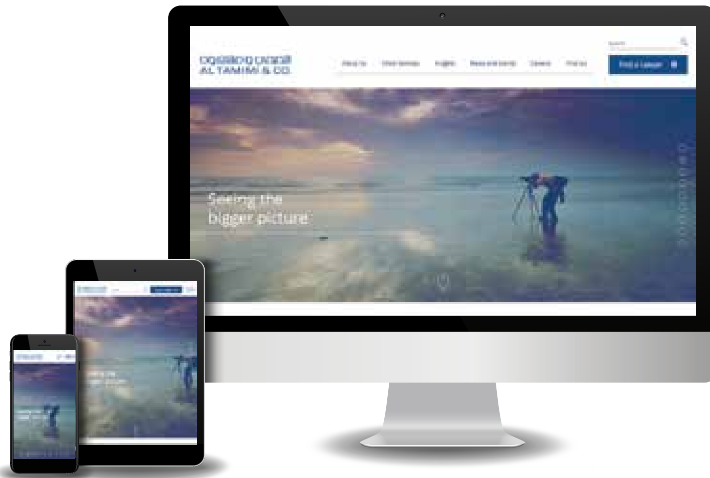

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In this Issue

Welcome to the April edition of *Law Update*.

April has been a very good month for the firm across the region and it gives me great pleasure to share our recent success at the Middle East Legal Awards. Our firm was honoured to win the prestigious Regional Law Firm of the Year - Large Practice award where we were recognised as 'top of our league'. We also took home the Corporate Team of the Year award and were highly commended in the Banking and Finance category.

Adding to this, we achieved record results in the Legal 500 directory, ranking in 37 categories across the Middle East, with 14 in Tier 1. Three of our partners were also named in the Hall of Fame category, Dr Hassan Arab (Litigation), Khaled Saqqaf (Head of Jordan Office) and Omar Obeidat (IP).

These awards and accolades recognise the exceptional achievement and best practice demonstrated by our firm. I thank the team that I am so privileged to work with and you, our clients and friends, who provide us with the opportunity to exceed expectations on a daily basis. We very much look forward to building on our successes in partnership with you.

This edition of *Law Update* focuses on eCommerce and Technology. It is without doubt that almost everything we do in our day-to-day lives is in some way influenced by technology. Klaus Schwab, founder and executive Chairman of the World Economic Forum has put it perfectly: "We are at the beginning of a revolution that is fundamentally changing the way we live, work and relate to each other."

Our team provide an overview of e-Commerce in the UAE on page 18 and from page 22, you can read about e-Commerce regulation in Saudi Arabia. Influencer marketing has gained a lot of attention recently and, on page 26, we outline the top ten tips for an influencer marketing contract. Our IP team look at domain name strategies for brand owners on page 55 and our real estate team look at how blockchain and cryptocurrencies relate to the real estate industry in the UAE. These are just some of the highlights that feature this month as part of our focus.

Our clients often tell us that our judgements are a valuable source of information. Our litigation team take a first look at the criminal liability of one person photographing another in the UAE – a very interesting topic and one that is often discussed. You can read about this on page 6. Our team also look at the enforcement of mortgages through the Abu Dhabi Summary Court on page 8.

As always, please do get in touch if you would like more information, or if you have any feedback to share. We always look forward to hearing from you.

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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Can One Person be Criminally Liable for Photographing another in the UAE?

Can one person be criminally liable for photographing another person in the UAE? They may be, depending on the circumstances. In this article, we will consider when such a liability may arise.

UAE Federal Decree No. 5 of 2012 regarding the Combating of Cybercrimes ("the Cybercrimes Law") forbids any infringement of the right to privacy. Article 21(2) of the Cybercrimes Law states that photographing others or creating, transferring, disclosing, copying or saving electronic photos of others will constitute an invasion of their right to privacy. The penalty for violating Article 21(2) are significant: imprisonment for a period of at least six months and/or a fine of between 150,000-500,000 AED.

So does simply photographing someone else without his or her consent put one at risk of incurring such serious penalties? The answer to that question turns on the elements that constitute the criminal liability when someone uses their camera to photograph someone else without consent. Are there further external elements that must exist before criminal liability arises or will such criminal liability automatically apply once someone photographs another, irrespective of the circumstances?

A useful case in the Abu Dhabi courts recently shed light on this matter.

Two people were driving their cars in Abu Dhabi. A fight arose between them over right to way at the entrance to a particular road. One person insisted he had right of way, and used his mobile phone camera to photograph the other person in order to record the position of his car on the road pending the arrival of the Abu Dhabi police. The second person ('the Claimant') subsequently filed a criminal complaint against the first ('the Defendant'), including allegations relating to the taking of the photo, on the basis that it constituted an invasion of his right to privacy.

The Court of First Instance considered Article 21(2) and found the Defendant guilty. It ordered him to pay 250,000AED as a fine, confiscated the mobile phone, and ordered that the Defendant be deported from the UAE.

The Defendant appealed. The Court of Appeal amended the judgment of the Court of First Instance, reducing the fine to 50,000 AED and to cancelling both the confiscation and deportation orders.

The Abu Dhabi Public Prosecutor and the Defendant made subsequent appeals to the Federal Supreme Court ("FSC"). The Public Prosecutor asked the FSC to apply Article 21(2) literally and not to reduce the penalty as specified in the judgment of the Court of Appeal. For his part, the Defendant asked the FSC to find that the elements of the crime of invasion of the right of privacy set out in Article 21(2) were not met.

The FSC issued its judgment (judgments 544 & 556 of 2017), in which it explained that criminal liability related to the invasion of the right of privacy, by photographing someone without his or her consent, will not exist, unless the Defendant intentionally took the photo in order to invade the right of privacy of the victim without the latter's consent. The FSC considered that the Defendant photographed the Claimant to evidence the position of the Claimant's car on the road, pending the arrival of the Abu Dhabi Police. The FSC did not find from the surrounding circumstances that the Defendant intended to invade the right of the privacy of the Claimant. Thus, the FSC decided to withhold the judgment issued by the Appeal Court and accordingly decided that the Defendant was innocent of the alleged crime.

Conclusion

While it is not permissible for anyone to photograph any other person without his or her consent, they ought not to incur criminal liability (and the associated serious penalties) if the criminal court of competent jurisdiction finds that the alleged criminal actor did intend to invade the privacy of the alleged victim. However, this will depend on the sole discretion of the court, so caution is advised in all cases.

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Mortgage Enforcement through the Abu Dhabi Summary Court

Introduction

The Abu Dhabi Summary Court recently issued an order in relation to enforcement proceedings filed by a bank (mortgagee/creditor) against mortgaged property. The court issued the decision on 7 August 2017 (Grievance 288 of 2017). While there have been similar decisions enforcing mortgages, this is believed to be the first time a court has applied Law No.3 of 2015 concerning the Regulation of the Real Estate Sector in the Emirate of Abu Dhabi ('the Real Estate Regulation Law'). The court confirmed that all the conditions were met for enforcement and that it had jurisdiction to hear the case. The judgment has also been confirmed by the Abu Dhabi Appeal Court.

The Dispute

The bank ('the Claimant') filed a grievance against two respondents ('the Respondents'), before the Judge of Summary Matters, seeking permission to sell two properties by public auction as security for payment of a debt. The properties were mortgaged to the Claimant as security for a debt owed by the first Respondent for which the second Respondent stood as guarantor. The Respondents defaulted on payment thereby rendering the balance of the debt, AED 6,623,416.65, immediately due and payable and entitling the Claimant to take steps to sell the properties pursuant to Articles 53 and 54 of the Real Estate Regulation Law. The Respondents used Article 31 of the UAE Civil Procedure Law to argue that the Court of First Instance lacked jurisdiction over the matter as they were domiciled in Dubai but the grievance was filed in Abu Dhabi and thus the requirements of Articles 53 and 54 of the Real Estate Regulation Law were not met.

The Court held that jurisdiction to grant interim or summary relief belonged to (i) the competent Court of First Instance in the area of the domicile of the defendant or (ii) the court in the area of completion of the procedure where the assets subject to enforcement were located, being the court nearest the place of enforcement.

The Abu Dhabi Court's findings

The Abu Dhabi Summary Court held that the grounds of the grievance were well founded. Article 53 of the Real Estate Regulation Law provides:

1. *The mortgagee/creditor holding a mortgage or his successors or assigns may initiate enforcement proceedings against the mortgaged property in order to sell the same by public auction if the debt is not paid by its due date or if a condition is met as to render the debt due and payable before then.*
2. *The mortgagee shall, prior to initiating enforcement proceedings against the mortgaged property and making an application with the Judge of Summary Matters to attach and sell the mortgaged property by public auction, give written notice to the mortgagor and the guarantor, if any, by registered post with acknowledgement of receipt, informing them of the breach and requesting payment of the debt and other amounts owed within at least 30 days from the date of notice.*

Article 54(1) of the same Law states:

Subject to the provisions of Article 53 (2) of this Law, if the mortgagor or its guarantor or the successors or assigns fail to pay the debt, the Judge of Summary Matters shall, upon request of the mortgagee/creditor, issue a decision directing the sale of the mortgage property by public auction in accordance with the applicable procedures of the competent court."

As a result of these provisions, the Court held that the Judge of Summary Matters had the authority, upon the request of the mortgagee/creditor, to issue a decision

"The intention of the law is to expedite the mortgage enforcement process in order to facilitate the enforcement of debts"

directing the sale of the mortgaged property by public auction in accordance with the applicable procedures of the competent court.

The Court also found that the judge may also defer the sale up to 60 days, but once only, should he find that the mortgagor or its guarantor or their successors or assigns will be able to pay the debt within that period or that the sale of the mortgaged property may cause gross damage to the debtor, after following the procedures outlined in Article 53.

Enforcement against mortgaged property in Abu Dhabi in satisfaction of a secured debt was pursued by means of an application to the Judge of Summary Matters to issue an order in two stages: first, executive attachment of the property, and second, permission to sell the property in the manner stipulated by the Real Estate Regulation Law.

The judge shall, when issuing the order, whether at the stage of executive attachment or the stage of permission to sell by public auction, decide whether one month advance notice of payment was given before the order was filed for an executive attachment to be imposed on the property and whether the mortgagee/creditor holds admissible proof of debt. The proof of debt can be an official or a regular document. The latter includes acts under private signature, admissions and documents the law regards as admissible evidence, including extracts from commercial records, as an exception to the general rule that a party may not manufacture self-serving evidence (Articles 4, 11, 26, 36 of the Commercial Transactions Law).

The Court also held that at the permission to sell stage, the judge would confirm the validity of the procedures which followed the order of executive attachment, as provided for by Article 293 of the Civil Procedure Law. This would be done by way of:

i. an executive attachment being levied on the property without protest if no other creditors come forward from among those holding rights registered on the mortgage register; and

ii. the execution judge responsible for the disputes raised by the parties or third parties proceeding to issue an order for the sale of the mortgaged property as the second and final stage of the process of satisfying the creditor bank's claim out of the proceeds of sale in accordance with the applicable procedures of the competent court, pursuant to Articles 53 and 54 of the Real Estate Regulation Law.

The Importance of the Judgment

The judgment is important as it highlights the stages and the issues the Summary Court will consider before it may issue an order for the enforcement of a mortgage under the Real Estate Regulation Law. In summary, an order is issued in two stages - the 'executive attachment' stage and the 'permission to sell by public auction' stage - pursuant to an order on the basis of an application filed by the mortgagee/creditor. Most importantly, the claimant may file one application for both stages i.e. the claimant may ask the court to order the attachment of the property and at the same time, order the sale of the mortgaged property, which is what occurred in this case.

The intention of the law is to expedite the mortgage enforcement process, in order to facilitate the enforcement of debts resulting from commercial transactions, and ensure expedited enforcement of the mortgagee/creditor's rights, in the interest of providing quick and cost-effective commercial transactions, while ensuring credit protection.

Al Tamimi & Company represented the successful claimant before the Abu Dhabi courts. Our litigation team regularly advises on real estate and banking disputes related to the sale of mortgaged properties by summary court. For further information please contact Hassan Eltahir (h.eltahir@tamimi.com)

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The Reciprocal Enforcement of Judgments, Orders and Arbitral Awards by the ADGM Courts and Abu Dhabi Judicial Department: A Recent and Important Development

On 11 February 2018, the Abu Dhabi Global Market Courts ("ADGM Courts") and the Abu Dhabi Judicial Department ("ADJD") signed a memorandum of understanding ("2018 MoU") to allow the mutual and reciprocal recognition and enforcement of judgments, decisions, orders and ratified arbitral awards between the ADGM Courts and the Courts of the Emirate of Abu Dhabi ("the Abu Dhabi Courts"), which are overseen by the ADJD, without the need for the re-examination of the substance of the dispute on which they have been issued.

The 2018 MoU is a key step taken by the two courts to strengthen the vision of His Highness Sheikh Mansour Bin Zayed Al Nahyan, Deputy Prime Minister and Minister of Presidential Affairs, "to cooperate and integrate with the various government entities towards the enhancement of the competitive position of the Emirate of Abu Dhabi, and to provide excellent government services." In his words, it is also wholly in accordance with Abu Dhabi's "vision of justice and equality, integrity and transparency, and innovation and excellence in judicial services".

Background

The 2018 MoU has been signed pursuant to Article 13(11) of Abu Dhabi Law No. 4 of 2013, which provides for the enforcement of judgments, decisions and orders and arbitral awards ratified by the ADGM Courts in competent entities with jurisdiction outside the ADGM in accordance with the procedure and rules adopted by those entities. This provision extends to include agreements for memoranda of understanding between the Board of Directors of the ADGM's Court and the competent entities outside the ADGM. The 2018 MoU provides further clarity in terms of the specific processes for reciprocal enforcement, which Abu Dhabi Law No. 4 of 2013 did not cover.

In doing so, the 2018 MoU builds on the foundation laid down by an earlier MoU signed between the same parties in April 2016 ("the 2016 MoU"). This established a framework to create judicial cooperation procedures by both parties, specifically in respect to procedures for the reciprocal recognition and enforcement of judgments, decisions, orders and arbitration awards; the exchange of information; the creation of electronic services and communication between the court systems; and the delivery of education. In the words of the ADGM Courts' Chief Justice, the 2016 MoU was intended to contribute to "achieving the highest level of judicial performance in our own courts consistent with best international practice." The 2018 MoU provides a conclusive and more detailed framework for reciprocal enforcement and is undeniably a step forward from the 2016 MoU.

In signing the 2018 MoU, the ADGM Courts and ADJD have demonstrated their determination that litigants will have the clarity and guidance they need regarding the enforcement of judgments in the judicial system of the Emirate of Abu Dhabi. Echoing the purposes of the 2018 MoU, the accompanying press release states that the 2018 MoU is intended to "contribute to the objectives of the Government of

Abu Dhabi to enhance the international competitive position of the Emirate", to "create an environment capable of attracting investment by the realisation of competitive indicators" and provide the business and investor community with the "clarity and guidance they need" regarding enforcement.

The reciprocal process of enforcement under the 2018 MoU

The stated purpose of the 2018 MoU between the Courts is to "formalise the agreed procedures for the reciprocal enforcement of their judgments, decisions and orders, and arbitral awards ratified or recognised by them, without re-examining the substance of the dispute on which they have been issued." The requirements and procedures set out in the MoU are intended to encourage litigants to seek enforcement from the court in whose jurisdiction the subject of enforcement is situated, whether within the ADGM's jurisdiction or within the wider Emirate.

The types of executory instrument covered by the 2018 MoU include all final judgments, judgments for expedited enforcement, and decisions and orders made by the ADJD or ADGM Courts. In addition, the judgments also include ratified or recognised arbitral awards rendered by the ADJD and ADGM Courts. Such arbitral awards are to have the same force as a judgment of either of the courts without the requirement of any further ratification or recognition by the other court. Mutual recognition and enforcement also extends to include court-approved settlement agreements (known as 'memoranda of composition') certified by either court.

For the enforcement of an Abu Dhabi Court-rendered judgment by the ADGM Courts, where the subject of enforcement is situated within the ADGM, an executory formula from the sending court in English must be affixed on the original judgment. The judgment creditor must submit an application to the ADGM Courts in accordance with the ADGM Courts' Procedure Rules and Practice Directions. The enforcement judge at the ADGM Courts will then apply the enforcement procedures set out in the Procedure Rules without re-examining the merits of the original judgment.

For the enforcement of an ADGM Court-rendered judgment by the Abu Dhabi Courts, where the subject of enforcement is situated outside the ADGM but within the Emirate of Abu Dhabi, an executory formula from the ADGM Courts must be affixed on the judgment in Arabic. Mirroring the process outlined above, the judgment creditor must submit an application to the Abu Dhabi Courts subject to the applicable Abu Dhabi Courts' rules and procedures. The enforcement judge in the Abu Dhabi Courts will then apply the enforcement procedures set out in Federal Law No. 11 of 1992 without re-examining the merits of the original judgment of the ADGM Courts.

The 2018 MoU also provides for deputising an enforcement judge from the respective Courts in instances where a judgment creditor registers a judgment issued in one Court for enforcement and where it requires actions or measures to be taken by the other Court. The Courts have agreed to assign an officer at each court to assist judgment creditors and to collaborate and liaise with the other court's officers so as to avoid any duplication of enforcement actions. Collaboration between the ADJD and ADGM Courts extends further to an agreement to keep, provide and publish all information and statistics in relation to any referrals and direct applications made under the 2018 MoU.

Enforcement of Foreign Judgments

The question arises whether the 2018 MoU will enable the enforcement of foreign judgments by the Abu Dhabi Courts, without reopening the merits of the underlying dispute, where they have already been recognized by the ADGM Courts.

ADGM Court Regulations (e.g., Articles 170, 171 and 180 of chapter 10 of the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointment Regulations 2015) allow for the enforcement of foreign judgments and foreign arbitral awards to be recognised by the ADGM Courts provided that the UAE has entered into an applicable treaty with the country in which the foreign award was rendered. In the absence of such a treaty, it is only if the Chief Justice of the ADGM Courts is satisfied that the foreign courts, which rendered the foreign judgment, have agreed to provide reciprocal treatment of recognition and enforcement for ADGM judgments, and having consulted Chairman of the Board, that he may direct that the courts of that foreign country be recognised foreign courts.

"In signing the 2018 MoU, the ADGM Courts and ADJD have demonstrated their determination that litigants will have the clarity and guidance they need regarding the enforcement of judgments in the judicial system of the Emirate of Abu Dhabi."

Likewise, the onshore Abu Dhabi Courts have been generally reluctant to enforce foreign judgments in the absence of an applicable international treaty for the reciprocal recognition and enforcement of judgments.

However, unlike the Abu Dhabi Courts, the ADGM Courts, like the DIFC Courts, have strong and developing international links, including with courts in England and Wales, Hong Kong, Australia and Singapore. The ADGM Courts have previously signed international MoUs with the Commercial Court, Queens Bench Division, England and Wales; Supreme Court of the Republic of Singapore; Federal Court of Australia; Supreme Court of New South Wales; and High Court of the Hong Kong special administrative region of the People's Republic of China. These international MoUs provide for enforcement of judgments of the relevant courts without re-examining the merits of their judgments when recognition suits relating to such judgments are filed before the ADGM Courts.

Hence, for a number of years, various paths have existed for the recognition of foreign judgments and arbitral awards by the ADGM Courts based on international treaties, agreements of reciprocity with recognised foreign courts or non-binding international MoUs without any re-examination of the merits of the dispute by the ADGM Courts based on international treaty provisions, agreements of reciprocity with recognised foreign courts or by way of non-binding international MoUs without any re-examination of the merits of the dispute. The question remains whether the 2018 MoU will enable foreign judgments so recognized by the ADGM Courts to be enforced by the Abu Dhabi Courts, without re-examining the merits of the dispute, solely pursuant to the framework provided by the 2018 MoU (since foreign judgments are not expressly included in the definition of "ADGM judgments" in the 2018 MoU).

This question has added significance in light of recent decisions of the Joint Judicial Committee, set up by Decree 19 of 2016, that decides on conflicts of jurisdiction between the DIFC Courts and the Courts of the Emirate of Dubai. The status of the DIFC Courts as a so-called "conduit jurisdiction" is questionable, which will no doubt prompt parties to look closely at the ADGM Courts as an alternative gateway for the recognition and enforcement of foreign judgments by the onshore UAE courts.

Advances at the ADGM Courts

The ADGM is an international financial centre; it commenced operations on 21 October 2015. Established by UAE Federal Decree as a broad-based financial centre, the ADGM aims to position Abu Dhabi as a global centre for business and finance. It is intended to serve as a strategic link between the growing economies of the Middle East, Africa and South Asia, and the rest of the world. It is comprised of three independent authorities: the Registration Authority, the Financial Services Regulatory Authority and the ADGM Courts. It is envisioned to enable registered financial institutions, companies and entities to thrive and operate within an international regulatory framework based on the common law. The ADGM is the second financial free zone in the UAE to have a commercial and civil court based on the common law system operating in English. It is the first jurisdiction to apply directly the English common law and certain English statutes.

The 2018 MoU comes as the ADGM Courts rolls out an innovative new eCourts document handling and communication system. The eCourts platform permits the integrated use of videoconferencing facilities, so that hearings can be held remotely, and allows for the filing and management of all court documents including electronic evidence bundles for trial.

A copy of the MoU - signed by Lord Hope of Craighead, the ADGM Courts Chief Justice, as well as representatives from the ADJD and ADGM - is available at https://www.adgm.com/media/256642/executed-mou-for-reciprocal-enforcement-between-adjd-and-adgm-courts-11022018.pdf

Al Tamimi uniquely possesses the capability to litigate before both of the financial free zone courts and conduct litigation before the UAE Federal Courts and the courts of each individual Emirate. For further information on Abu Dhabi or arbitration, please contact John Gaffney (j.gaffney@tamimi.com). For further information on Dubai, please contact Peter Smith (p.smith@tamimi.com)

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BIM-Enabled Projects and Construction Contracts in the Middle East

As governments and developers in the GCC continue to mandate the use of Building Information Modelling ("BIM") on sophisticated construction projects, a basic understanding of the contractual concepts and alternative procurement models, which deal with the legal issues arising out a BIM-enabled project, is a must.

When Dubai Municipality mandated the use of BIM through Circular No. 196, succeeded by Circular No. 207, on certain categories of building in the Middle East, consultants were generally welcoming, since they understood the advantages that a BIM-enabled project could deliver. This trend has continued and we are now seeing major developers aiming to one day facilitate a working level of BIM similar, or equivalent to, that found in the UK.

In the UK, it is generally understood that the government has been pushing for a working standard of BIM that requires each project member to create a virtual 3D model of their work using object-oriented software and to follow a managed approach to information creation and exchange. It is generally understood that this reflects a level 2 working standard. While the benefits of that level of BIM maturity have been well documented, in practice the collaborative approach required for its adoption has not been readily embraced in the Middle East.

Most projects in the region currently only require BIM up to a level where the model is a managed computer aided design (CAD), with some going slightly further requiring a three dimensional aspect of that design. However, the tide is slowly turning and, while the Middle East may be some way off establishing BIM working levels equivalent to that of the UK, it is essential for the further development of BIM within the region that the ideas of collaboration, information creation, and exchange are fully understood so as they can be embraced.

FIDIC and BIM

In trying to understand how BIM is to be addressed in construction contracts in the Middle East, we first look to the Federation Internationale Des Ingenieurs-Conseils (FIDIC) Rainbow Suite of contracts. The FIDIC suite of contracts is the pre-eminent standard form of contract governing all manner of construction works within the UAE and the wider Gulf region.

With the recent launch of the Second Editions of the Red, Yellow and Silver Books (the "Second Editions"), we saw some significant changes to these standard forms. Notably, however, FIDIC did not address the use of BIM in the General Conditions and only made reference to BIM through a special Advisory Notice within the Special Provisions.

The Advisory Notice suggests that FIDIC is taking its time in finalising its position in relation to BIM but indicates it is currently preparing two documents to address the use of its form of contract for BIM-enabled projects, namely a "Technology Guideline" and a "Definition of Scope Guideline Specific to BIM", which are to be released "shortly".

These documents, at least in title, seem to suggest FIDIC is taking a similar approach to that of some other popular standard form contracts in the UK, namely the Joint Contracts Tribunal ("JCT") and NEC Engineering and Construction Contract ("NEC3"), by including a protocol document and an execution plan that clearly addresses the contractual issues inherent in implementing BIM.

FIDIC's cautious approach allows it to address some of the criticisms aimed at the BIM protocols embraced by other standard form contracts which, as has been discussed in a previous article published by this practice, have arguably failed to provide sufficient detail to be used effectively.

Further, FIDIC has the opportunity to build on the collaborative contractual approach that has been a theme in its amendments to in the Second Editions. For example, the new early warning procedure may be aided by the use of BIM as an early warning tool, identifying potential clashes between design and construction at an earlier stage in the construction cycle.

As FIDIC notes itself, BIM is "founded on a team approach and successful projects utilizing BIM encourage collaboration". BIM can only be as good as the parties who use it and, with the amendments to the Second Editions encouraging a more collaborative approach, FIDIC has a real chance to distinguish itself as the leader in BIM adoption by ensuring that the Technology Guideline and the Definition of Scope Guideline Specific to BIM address collaborative information sharing in the BIM common data environment and deliver a foundation of trustworthiness, safety, and security over the digitally built assets.

Key Risks for BIM

While the benefits of a collaborative approach to BIM are well established, a certain level of caution must be taken and expectations must be managed. In this regard, FIDIC has identified and released its list of key risk areas which it sees as being applicable to any BIM-enabled project, which are as follows:

- misunderstanding of the scope of services;
- use of data for an inappropriate purpose and reliance on inappropriate data;
- ineffective information, document, or data management;

- cyber security and responsibility for "holding" the models or data; and
- definition of deliverables, approval, and delivery.

While we expect the drafting of FIDIC's Technology Guideline and Definition of Scope Guideline Specific to BIM to address these issues, it is also important to consider these issues at the early stage of any BIM- enabled project that does not use the FIDIC form.

Accordingly, extrapolating the key risks identified by FIDIC, parties who are considering the use of BIM on their next projects should give particular consideration to the following:

Process and Data

BIM, at its heart, is a management tool that establishes processes. In order to utilise BIM to its fullest potential, any protocol should include clear and accepted processes, which establish each party's responsibilities. For example, the parties should establish a mechanism for dealing with changes in design and variations, which also considers how to notify all design team members of that change. This may include the appointment of a BIM manager or risk apportionment to a particular party. The parties should also specify the design information to be included within the building model, which party will host or store that model and data, and what security should be provided to ensure there are back-ups of the data.

Interoperability

There remains a risk of a loss of data integrity where different systems and software are used. This is especially so on international projects where companies from different countries are often working together. To reduce this risk, parties should specify compatible software programs that may be used on the model and provide a procedure to minimise the risk of errors in the data infecting the design.

Standardisation and Consistency

Given the collaborative nature of BIM, it is important to have a single dictionary. The parties should agree a dictionary of defined terms, confirm the deliverables, and specify how compliance is demonstrated. As a practical note, contractual conditions should include that the terms and deliverables agreed are to be included in all subcontracts that have a design responsibility.

Copyright and Ownership

Traditionally, the position has been that each party will own the copyright for each element of the design of the model for which they are responsible.

Where parties are to be working on a part of the model for which another party is responsible for the design, the protocol may grant a non-exclusive license. This may also extend to where the owner is to use the model for maintenance purposes before handing over of the project. The parties should define when ownership of the model will vest in the employer or end user.

Risk Allocation

Parties should incorporate a provision for the inclusion of a form of warranty for the data provided in the model by the various designers.

Collaboration

To assist with collaboration, parties should require all designers to attend coordination meetings and to work with any BIM manager who may be appointed.

By carefully considering the key risks identified by FIDIC and the items listed above, parties are well placed to start the conversation on how they wish to best manage the contractual issues that will inherently arise during a BIM-enabled project.

Al Tamimi & Company's Construction and Infrastructure team regularly advises on BIM. For further information please contact Euan Lloyd (e.lloyd@tamimi.com).

E-Commerce in Focus

It is an incredibly exciting time to be in Dubai and part of the growing Technology, Media and Telecommunications (TMT) team at Al Tamimi & Company, the region's leading and largest law firm. A day seldom goes by without a ground-breaking piece of news or a material event relating to TMT in the UAE, or the wider region.

This edition of Law Update will concentrate on eCommerce and Technology, with retail having been revolutionised over the last 20 years by the internet and technological progress, which will only continue to grow and migrate customer's preferences from offline to online / eCommerce.

But first some context, some background and some further TMT-related trends before getting back to the matter in hand. Please bear with me.

"We are at the beginning of a revolution that is fundamentally changing the way we live, work and relate to each other" [*Ed: woo-ah, where did that come from?!*]. So said Klaus Schwab, Founder and Executive Chairman of the World Economic Forum (WEF) and author of "The Fourth Industrial Revolution" [*Ed: Ah, I see, he's the sort of guy people listen to then*].

I recall leaving my West London office on a cold November evening in 2007 and being surprised, but not overly concerned, by the number of (mostly young(er)) people snaking around Hanover Square, along Hanover Street, up Regent's Street and stopping at Apple's London store. They were, of course, tech-die-hards queuing overnight for the first local release of the 1st Generation iPhone. I thought "perhaps a little chilly" but had forgotten about the whole incident by the time I had disappeared into the warmth of the Oxford Circus underground. What should have been echoing through my mind was that "Every once in a while, a revolutionary product comes along that changes everything", as predicted by Apple's Creator-in-Chief. And it did. With 20:20 hindsight, this was the beginning*.

Around a year later, in October 2008, again unbeknownst to me at the time and (again) with 20:20 hindsight a pivotal moment, Satoshi Nakamoto published his/her/their (still don't think anyone knows who him/her/they are) seminal paper on "Bitcoin: A Peer-to-Peer Electronic Cash System" which, in abstract, looked to create a "purely peer-to-peer version of electronic cash [which] would allow online payments to be sent directly from one party to another without going through a financial institution". The paper went on to point out that "Commerce on the Internet has come to rely almost exclusively on financial institutions serving as trusted third parties to process electronic payments." But this was 2008/9 and eCommerce was in its infancy! How prescient. Bitcoin was launched the following year.

As an aside, Bitcoin in itself is not unique - other forms of currency have been conceived through the millennia - but with the combination of the financial crisis, the growth of the ubiquitous internet, smart phones and the underlying technology, i.e. blockchain (the ledger system that powers bitcoin and is also being used by an increasing number of companies for record keeping, for example), cryptocurrencies and Finance have not been the only industry to be disrupted by digital players (we'll come onto eCommerce, if you see the tenuous link there). "In the depths of the global financial crisis, the coincidence of technological developments and collapsing confidence in some banking systems sparked the cryptocurrency revolution." Thanks to Mr. Mark Carney for pointing that out in his speech "The Future of Money" to the inaugural Scottish Economic Conference earlier this year.

Pundits have run hot and cold on the 'cryptos', with their wild price swings, but there has been many positive noises on blockchain. Jamie Dimon said he "regrets" calling bitcoin a "fraud", but that blockchain "is real". Again referring to Mr. Carney's speech, he claims cryptos "are failing" and that they exhibit the "classic hallmarks of bubbles" but "[o]n the upside … the underlying technologies are

exciting [and that] authorities should be careful not to stifle innovations." More on cryptos another time.

Going back to Mr. Schwab's "The Fourth Industrial Revolution", he points out that emerging technologies such as blockchain, AI, robotics, IoT, autonomous vehicles, 3D printing, nanotechnology, biotechnology and quantum computing are revolutionising our world.

And the UAE is leading the world when it comes to adopting Fourth-Industrial-Revolution technologies, so says Mohammed Abdullah Al Gergawi (Minister of Cabinet Affairs and the Future, Co-Chair of the Annual Meeting of the Global Future Councils) prior to the announcement of the establishment of the Fourth Industrial Revolution Council (the first of a six pillared plan to work with the WEF which seeks to transform the Fourth Industrial Revolution into a global movement spearheaded by the UAE).

Connected announcements to this include the launch of the Dubai Blockchain Strategy by Smart Dubai Office and the UAE's appointment of the first Minister of AI. Exciting times indeed.

With the region following the international trend of investing in and adopting innovative technology, and with Dubai being ahead of that curve regionally, we in TMT have been keeping an eye on, and are fortunate to be advising on, many ground breaking tech projects: working with government agencies, departments and regulators, corporates, investors, investees, startups, founders and entrepreneurs, all along the company 'growth-curve'. Projects have included advising on matters as diverse as building platforms for 'blockchain-as-a-service', digital identity, electronic signatures, cloud platforms and Smart Cities, amongst others.

We have been keeping our eyes on:

Self-driving and flying cars

With Smart Cities and Nations high on the regional agenda, technology continues to transform and innovate. In 2013, H. H. Sheikh Mohammed bin Rashid Al Maktoum announced a project to transform Dubai into a Smart City. Under the initiative, earlier this year, the Road and Transport Authority (RTA) announced its plans for self-driving public transport over the coming decade. In fact, the RTA recently tested an "un-crewed two-seater drone" called the Autonomous Air Taxi, which Dubai claims to be the world's first "self-flying taxi service".

5G

Technology enabling self-driving cars would not be possible without the regional telcos investing in AI and IoT, in addition to network expansion. The transition to 5G and resulting implications on machine-to-machine communication is a critical enabler to the adoption of new technology in the region. The implementation of 5G will transform the landscape when it comes to how residents utilise their various connected devices and further strengthen the IoT trend. From press reports, we understand that Etisalat is set to start testing 5G networks in 2018 and launch commercially in 2019 in the UAE.

Data centres

The region is also seeing growth in other parts of the IT ecosystem. Recently, Amazon Web Services announced a plan to launch cloud data centres in Bahrain and Microsoft recently predicted that, as KSA continues its advance to becoming a regional tech hub, the country sees cloud computing to grow by 25% by 2022 (announced during the second edition of Microsoft's Transform 2018, together with some other exciting metrics). This is an important development for the entire region and it has the potential to improve performance of cloud applications for local customers, cut data transport costs for customers and cloud providers, and provide a local application hosting option to customers bound by law to host data within country borders.

Further, we are seeing various pervasive global and regional laws and regulatory changes gaining momentum which will continue to permeate TMT, the digital revolution and beyond. These include the soon to be enforceable General Data Protection Regulation (GDPR), the new media regulations announced by the UAE National Media Council and the new cloud computing regulations in Saudi Arabia.

So, what about the next 10 years? I leave you with a quote from Yuval Noah Harari's book "Homo Deus: A brief History of Tomorrow" who closes with the following question:

"What will happen to society, politics and daily life when non-conscious but highly intelligent algorithms know us better than we know ourselves?"

I'd be interested to know your thoughts.

Read our latest Law Update, with articles ranging from AI to Smart Contracts, from our team of regional tech gurus, and get in touch - we would seriously love to hear from you!

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eCommerce: An Overview

Global B2C eCommerce sales of products and services are forecasted to reach $3.6 trillion in 2019 ($2.3 trillion in 2017), representing 13% of the share of total retail sales. In the U.S. alone, the eCommerce boom has flattened the profitability of traditional 'bricks-and-mortar' retailers, and particularly shopping malls, with eCommerce penetration there representing around 10.5% of retail sales. Comparatively, the percentage of online sales to total retail in the UAE is around 2.9%, which is where the U.S. was in 2005. There is likely to be a more material 'up-tick' in the adoption of technology and eCommerce in the UAE and wider region.

In the early 1990's, retailers had local reach, were store-based, there was limited availability to real-time price comparison, cash-and-carry was the only sales option and retailers had limited scalable business models.

Today we see retailers with global reach, having extensive product range, price comparison options and credit card / card on delivery payment options with 0 – 14 days delivery the norm.

In the future we will see personalised products, real-time pricing, direct billing with at-home 3D printing and drone delivery.

Shopping malls have increasingly become attractions, where consumers can go to the cinema, the gym, look at an aquarium, etc.

7 key trends in eCommerce:

- eCommerce to mCommerce. In 2016 mCommerce already represented 40% of total eCommerce sales;
- Omnichannel for pure plays and brick & mortar. eBay buyers can now pick up their items at one of Argos' 750 stores. Amazon opened its first physical Amazon Books in Seattle in late 2015;
- Fulfilment and delivery as a key differentiator. Amazon, Google and Zaapos launched 'same-day-delivery'. Investment in fulfilment centres, click-and-collect retail and drones;
- Next generation visualisation techniques. Zappos evolving product visualisation from photo to video to virtual reality, i.e. virtual dressing rooms;
- Marketplace consolidates as the dominant model. Profitability and scalability as key drivers for the marketplace;
- Experience personalisation through advanced analytics. Siri, Cortana and GoogleNow become more sophisticated, applying the cognitive power of artificial intelligence to eCommerce; and
- IoT fuelling the growth of alternative product categories. Verticals such as groceries gaining more relevance with players like Amazon investing in smart homes, i.e. Dash Replenishment Service

These are being driven by:

- Millenials and Gen Z changing needs: instant access, tech savvy, low brand loyalty, 24/7 attention;
- Consolidation of tech advancements: automation, digital collaboration, cloud, analytics; and
- Proliferation of connected devices: connected things, 'Smart Everything.

The success of eCommerce growth depends on both macro changes to the environment and micro changes to the value proposition of eCommerce.

- Macro drivers: increase in GDP, population increase and universal internet connectivity; and
- Micro drivers: user experience, efficiency in fulfilment and analytics and segmentation.

All of this bodes well for the regional eCommerce market but the eCommerce boom in MENA is still to come, with eCommerce penetration at only 1.2% (calculated as internet retailing divided by total retail)*.

That said the Middle Eastern eCommerce market is predicted to explode over the next few years with the UAE and KSA continuing to drive the regional market: UAE going from $8.1 billion in sales in 2017 to $14.3 billion in 2020; and KSA from $6.4 to $13.4 billion for the same period. Souk is 'killing-it' over the competition when it comes to website rankings and website visits in both UAE and KSA, but eCommerce in the Middle East is becoming increasingly competitive with a growing presence of global players, like Ebay, Amazon and Asos. Further, ME offline retailers are starting to make moves to diversify revenues and to hedge the risk of losing customers migrating online: Emaar Malls acquired a majority stake in Namshi; and Alabbar Enterprises acquired Jadapado.

eCommerce Laws in the UAE

Electronic communications and transactions in the UAE are primarily regulated by the following Federal legal instruments:

- Federal Law No. 1 of 2006 On Electronic Commerce and Transactions (eCommerce Law);
- Federal Law by Decree No. 5 of 2012 regarding Cyber Crimes (Cybercrime Law); and
- Federal Law No.3 of 1987 on the Issuance of the Penal Code (Penal Code).

Federal Law No. 15 of 1980 regarding Publications and Publishing (Publications Law) regulates the publishing of traditional, as well as digital content.

Various provisions of these laws set out obligations on companies that intend to do business online.

Restrictions that apply to online content are included in:

- Federal Law No.1 of 1980 on printing and publishing (Publications Law).
- President of the National Media Content Resolution No. 20/2010 on the criteria for Media Content (Media Content Resolution).
- Federal Decree – Law No. 5/2012 on Combatting Cyber Crimes (Cyber Crime Law).

"The Middle Eastern eCommerce market is predicted to explode over the next few years"

All of the above laws create restrictions on the type of content which can be published, including content which is shared online. These restrictions are wide in nature and include any content which insults the UAE State or Islam, drugs or alcohol. Further, the Publications Law does not specifically deal with the ownership of liability of the publication of prohibited content, and as such, the provisions can be interpreted such that liability is owned by both a website owner and the user of a website.

There are also laws that deal with defamation in the UAE. Defamation in the UAE is treated differently than in other countries, particularly in the Western world. Any statement which "causes contempt or dishonour" to a person is a defamatory statement under the Penal Code irrespective of whether it is true. This is particularly important for all businesses given how digitalised the world has become and the ease of posting and sharing defamatory statements online.

There are also sector specific laws which impact digital businesses. For example, the UAE published the Regulatory Framework for Stored Values and Electronic Payment System (the EPS Regulations) in January 2017 which regulates businesses offering electronic payment services.

The primary regulatory body responsible for regulating electronic transactions and commerce in the UAE is the Telecommunications Regulatory Authority (TRA). From a content regulation standpoint, the primary regulatory body is the National Media Council (NMC) (see Law Update Article Electronic Media and the New NMC Licensing Regime for the UAE by Fiona Robertson).

It is worth mentioning that certain UAE free zone authorities may also pass rules and regulations that impact on the regulation of business conduct that are applicable to entities licensed and operating in the relevant free zone, and which may impact on those businesses in an online context.

The Department of Economic Development (DED) for each Emirate is also a primary regulatory body responsible for regulating electronic transactions in respect of consumer related commerce.

Setting up a business online in the UAE

Generally speaking, the typical steps that must be taken to set up a company that will conduct business electronically in the UAE are the same as the steps that would need to be taken in the context of any company that conducts business in the UAE.

Firstly, the company must assess and decide on the optimal place of establishment (whether mainland or free zone). Next, the company must decide what type of establishment is appropriate: for certain operations, a registered branch of a foreign company would be sufficient, for some operations, an entity needs to be incorporated.

Factors that would need to be taken into account in the above assessments include:

- The industry or sector in which the company operates;
- The scope of activities the company wishes to conduct in the UAE (for example, whether the operations involve the import of goods);
- Where the entities it intends to conduct business with are based;
- Whether it will be intending to conduct business with both private and public entities. (For example, contracting with entities in certain regulated sectors or with public bodies may not be available as an option to free zone companies, and may instead require a mainland presence.)

Other factors that many digital businesses take into account is whether they will seek investment from angel investors, venture capital firms or other investors (see Law Update Article Know your terms - the key terms of a venture capital deal by Kareem Zureikat).

Once a presence has been established in the applicable UAE jurisdiction and the relevant licences have been obtained, establishing an online presence will require the acquisition of a domain name (if the company does not already have one as part of its existing wider international operations)

(see Law Update Article Domain name strategies by Stephen Jiew).

An online business in the UAE will typically then enter into such contracts with third parties as it may deem necessary to help establish its online presence, such as web developers or designers, hosting companies, search engine optimisation service providers, etc.

With regards 'app' development and distribution, the UAE does not currently address or set out any specific procedures or rules. The preliminary steps that a company would undertake to do so would initially be driven by internal objectives and any potentially wider-reaching legal concerns that may need to be taken into account if the app is also going to be distributed outside of the UAE.

Some local legal and regulatory concerns that a company must consider:

- **IP rights and ownership.** The company must ensure that rights in the app (and its entire constituent works) have been properly assigned under the development agreement.
- **Restricted/regulated products and services** in the UAE.
- **Content restrictions.** In general, the distribution of any content which is contrary to public order or national security or is offensive to morality, rulers or religion (or otherwise prohibited under UAE law) is not permitted in the UAE.

Electronic contracts

Federal Law No. 1 of 2006 Concerning Electronic Transactions & Commerce (eCommerce Law):

- recognises electronic contracts and, amongst other things, provides that if the law requires a signature on a document, this requirement is satisfied if a reliable electronic signature is used;
- is the primary law in the UAE governing contracting on the internet;
- Generally, the law does not set out any specific remedies unique to the breach of an electronic contract, therefore, remedial action sought in the event of a breach of an electronic contract would generally follow the same course as remedies that may be sought for breach of a non-electronic contract in the UAE.

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The Riyal Deal: Regulation of e-Commerce in Saudi Arabia

With a population in excess of 30 million people, many of whom are young, rich and tech-savvy consumers, it is no surprise that experts hold high hopes for the development of the e-commerce market in Saudi Arabia. Saudi Arabian consumers are ranked highly in terms of purchasing power. The population is highly urbanized. Internet penetration is high, at about 75%, with mobile devices being most popular for online purchases. There is high social media use. Sectors such as electronics and fashion are popular.

The market is not without its challenges, despite looking like it is ripe for an explosion in e-commerce offerings. Lack of clarity around issues such as the security of personal data, the application of local discount regulations to online sales, and the lack of any cohesive consumer protection rules, also create some degree of unease for would-be on-line shoppers and e-commerce platform operators alike. Logistics and distribution hassle are compounded by inaccurate postal addresses and a preference to pay by cash on delivery. With these types of issues in mind, the Ministry of Commerce & Investment (previously the Ministry of Commerce & Industry) has issued draft regulations on electronic commerce ("Draft Regulations") in order to promote confidence in e-commerce transactions and provide protection to consumers. The Draft Regulations are pending, and have not yet come into effect.

The Draft Regulations are intended to enhance confidence in the validity and integrity of e-commerce transactions, protect consumers from fraud, deception and disinformation, and support the development of e-commerce in Saudi Arabia. They are intended to apply to all those who engage in e-commerce in Saudi Arabia, or who offer goods or services, or make them available, in the Kingdom. Other laws, such as the Electronic Transactions Law and the Anti-Cyber Crimes Law, will continue to have relevance in the context of e-commerce.

"The Draft Regulation is intended to enhance confidence in e-commerce transactions, protect consumers from fraud, deception and disinformation, and support the development of e-commerce in Saudi Arabia."

E-commerce operators are, at a minimum, required to provide consumers with certain details, including the e-commerce operator's name and registration details. In determining the place of business of an e-commerce operator, the Draft Regulations make clear that the place of business shall not be determined solely due to the location of supporting technology (e.g. servers), or due to the use of a domain name with a particular country code extension.

There is an obligation for the e-commerce operator to provide the consumer with terms and conditions of contract. As well as information about the e-commerce operator, such information should include the steps required to conclude the contract, a description of the goods or services, details of the price and any fees or additional amounts, arrangements for payment, delivery and implementation, and any warranty information. The e-commerce operator's invoice must set out the cost of each item or service, as well as the total cost including all fees and the delivery date. Now that VAT applies in Saudi Arabia, this will also need to be reflected.

When a consumer makes a mistake in an electronic contracting situation, and there is no mechanism for correcting the error, the Draft Regulations provide the right to withdraw, subject to notifying the e-commerce operator promptly upon becoming aware of the mistake, and provided the consumer has not used or obtained any benefit from the goods or services. The parties may agree additional terms in respect of the effects of errors. Consumers have right to terminate a contract concluded electronically within fifteen days following the date of receipt of the goods or the date of contracting for services, subject to certain limitations set out in the Draft Regulations.

The Draft Regulations consider that advertisements constitute contractual representations, complementary to the other contractual terms and conditions agreed between the parties. There is a specific prohibition on advertisements that contain false representations, or that are expressed in terms that would deceive or mislead the consumer, as well as advertisements infringing third party trade marks. Failure to withdraw an offending advertisement within one day of receiving notice is an offence. Where an advertisement is not withdrawn upon being notified the Ministry is able to liaise with the Communications and Information Technology Commission (the communications authority in Saudi Arabia) to have the e-commerce platform blocked in the Kingdom.

There are provisions addressing responsibility for personal data, requiring it to be retained only for as long as it necessary for the transaction, and using it only for permitted purposes, or otherwise with the consent of the consumer. There is an obligation on e-commerce operators to take responsibility for the security of personal information in their custody or control.

It is important to note that the Draft Regulations are not yet in force, and whether they will be officially gazetted in their current form is unclear. While the Ministry has identified, and sought to address, some of the inhibitors to e-commerce uptake at the consumer level, the Draft Regulations themselves might benefit from further refinement.

Al Tamimi & Company's Technology, Media & Telecommunications team regularly advises on issues relating to e-commerce in Saudi Arabia, and elsewhere in the Middle East. For further information please contact Nick O'Connell (n.oconnell@tamimi.com).

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Electronic Media and the New NMC Licensing Regime for the UAE

The National Media Council added a new resolution to their library this month, the Electronic Media Activity Regulation Resolution 2018 ('Resolution'). Many expected the move, as the Council had been discussing this addition to its suite of regulations for some time.

The Resolution features a licensing system for any entity that is involved in 'E-Media'. The definition is clear and broad in scope: Electronic Media is a 'media activity that is practiced through the tools and means of electronic publication.'

For even greater clarity, the resolution sets out its intended scope at the beginning:

'This Resolution applies to all Electronic Media activities carried out within the State, including those in free zones. It is prohibited to conduct any of the Electronic Media activities determined by the National Media Council unless a decision has been issued to grant of the media license.' (emphasis added)

Two key things are of importance to highlight.

Firstly, there is a clear extension of the trade licence activities that now require a licence from the Council. Under the previous system, trade licences in the category of broadcasting and publishing (in the traditional sense) had to be approved by the Council. However, operators of websites that created and published such content, despite being publishers in the broadest definition of the term, were not covered under those regulations.

This now differs, with specific reference to the following business operations:

1. Websites of trading, offering and selling of audiovisual and print material;
2. On-demand electronic publishing and printing;
3. Specialized Websites (e-ads, news sites, ... etc.); and
4. Any electronic activity that the Council may determine to add.'

Note that this is a direct quote from the Resolution.

Section 1 and 2 above are clear in scope – they relate to entities that sell or create items such as books, newspapers, or magazines. Section 3, however, potentially extends the scope for licensing to any site that is involved in Electronic Advertising, as the term is defined in the Resolution ('[a]ny paid or unpaid form of presentation or promotion of ideas, goods or services by electronic means or network applications'). The scope of this section is potentially quite broad, certainly covering entities that advertise third party goods for sale, aggregate content for sale, and provide news sites of all persuasions. We understand from the Council (and this seems clear from the drafting), that they do not intend to cover entities that facilitate publication by third parties (such as Facebook or Instagram). However, any entity that uses those platforms to

"We envisage that this Resolution will have a major effect on the industry that has grown up around this developing commercial practice. One particular point of note is that Electronic Advertising is defined as being 'paid or unpaid'; as long as it is intended to promote then it is captured by the Resolution.

sell such goods or otherwise engage in this type of commercial activity must have a licence.

The process for obtaining a licence is reasonably transparent; we will address this and other issues relating to the licence itself (including whether or not a trade licence is required in order to obtain a media licence under this Resolution) in a separate alert in the near future.

Exempt from the requirement to obtain a licence are government education providers and the government itself. We see this as being applicable more particularly in relation to the provision of (for example) academic papers, laws, and advisory notes to the public.

The second matter, and the one that appears to have captured the imagination of news outlets, is that 'influencers' and indeed anyone that undertakes any media activities on a commercial basis by way of social media will now have to secure a licence in order to operate. We have long held the view that any person that obtains cash or benefits in exchange for promoting a product is operating a business and so should have a trade licence. The Resolution requires them to now have a media licence.

We envisage that this Resolution will have a major effect on the industry that has grown up around this developing commercial practice. One particular point of note is that Electronic Advertising is defined as being 'paid or unpaid'; as long as it is intended to promote then it is captured by the Resolution. This certainly clarifies the question as to whether the provision of goods or services instead of cash means that a post is no longer an advertisement. Under this definition, it captures both with little ambiguity.

Regarding influencers generally, it has been asked if this Resolution requires influencers to declare their content as advertising so that consumers are aware of that. It does not. That is covered in the National Media Council Resolution No 35 of 2012 on Advertising (‘"The advertising identity shall be clearly determined, and it shall appear as unique and separate from other editorial or media material, and there shall be limits separating the advertisement from any other material in addition to time lapses in case of radio or television broadcasting'), and also in the recent Cabinet Decision 23 of 2017 ('All paid advertising material must be explicitly and clearly stated as paid advertising material'). Both of these are clear, in our opinion, although we have not yet encountered any prosecutions on the matter. The Resolution does state the following: 'Ads that are presented on Social Media shall be subject to the advertising standards that are applicable at the Council'. This is a clear and unambiguous direction.

In addition, the new Resolution states that websites of traditional media, being television, radio, newspapers, and magazines, are deemed to be licensed already. These companies are already licensed for media activities, so the exemption is logical. Free zone companies are specifically noted as being subject to compliance as well.

The Council has allowed three months for all entities to become compliant. Therefore, we advise all entities to be fully compliant by the first week of June 2018.

(The following is a news alert that was sent to Al Tamimi client base in April.)

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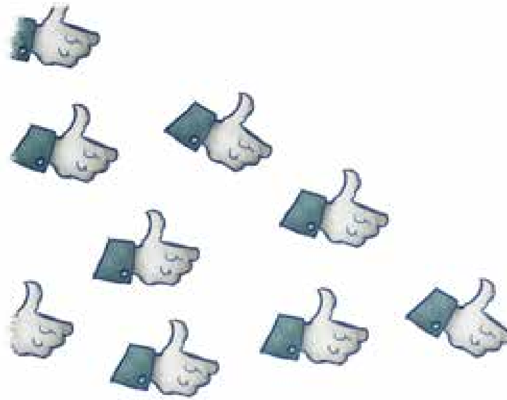

Turning Clicks into Contracts: Top Ten Tips for an Influencer Marketing Contracts

The rise of the influencer as a marketing tool has been much discussed in the Middle East. From Kuwaiti beauty bloggers, who attract several million followers, to Saudi comedians with strong and loyal fan bases, more and more legitimate brands are using the voices and names of media influencers to assist with the promotion of their brand.

In all of this, as with all activities where third parties are associated with a brand, it is imperative that influencers are closely monitored to ensure that they are complying with the brand's guidelines and the law. The most practical way to ensure this level of compliance is create a contract between the brand and the influencer. But, aside from trying to ensure that they comply with the law, what else should go into this contract?

Proper identification of the influencer

Under UAE law, a business should only be operated by way of a trade license. An influencer acting in their personal name may not be acting legally. If it is in their personal name, it may be that they have a freelance visa or a licence from the DED. It is also possible that the influencer is operating a side business with consent of their employer and, if this is the case, they should provide a no objection certificate to that effect. Some agencies are now entering into contracts on behalf of influencers.

In all cases, it is important to ask for the paperwork that establishes the arrangement, be it a licence or contractual. Then ensure that the full and correct details of the contracting party are used in the contract itself and all subsequent paperwork (purchase orders and invoices for example).

Scoping of services

Before the rise of influencer marketing, when brands initiated product placement deals and sponsorship for a brand, it was necessary to scope out the type of services and deliverables that would be provided by the brand ambassador. This may include a certain number of attendances at events or perhaps an agreement to meet a member of the public. There may be television commercials and public appearances. No matter what was agreed, the obligations were always scoped carefully in order to ensure that the brand received the exposure it anticipated. With social media, it can be much harder to properly define the services that an influencer is expected to provide and, because of this, it is easy to fall into the trap of not scoping them well, or not scoping them at all. However, including a clear scope is vital. We have seen deal memos where the deliverable is "tweets", without any reference to numbers across the term or to frequency. This becomes extremely difficult to manage, as the expectations of both parties may well be very different. Three a week may be the brand expectations, with the influencer intending to deliver only two a month.

Many influencers work across multiple social media platforms and each platform has its own particular style of messaging – thus it is important to ensure that the social media platform (Instagram, for example) is clearly noted with reference to the way in which brand must be shown on a product in the image (such as a t-shirt or hat) or referenced in the words. Do all Instagram images have to contain the brand logo or can this be limited to, say, one image per week and one further mention per

"With social media, it can be much harder to properly define the services that an influencer is expected to provide and, because of this, it is easy to fall into the trap of not scoping them well, or not scoping them at all. However, including a clear scope is vital."

week? The more clarity that is provided within the services, the more readily the influencer can comply with the terms.

For brands, dates are often incredibly important. Product launches or major marketing campaigns will often need that extra push that an influencer can provide. If this the case, dates needs to be included in the contract with clear deliverables around the relevant activities. If you need them to attend and event or do an interview for a magazine, ensure that it is clear that this will be arranged for and that they must attend.

Ownership of the influencer's output

It is difficult to analyse a tweet or an Instagram post in the light of the complexities of copyright law. Whilst we can assume such rights do exist, they may not be protectable in all instances.

However, even if that is the case, the usage that can be made by both parties of the content created for your brand should be clear and unambiguous. It is likely that a brand will want to reuse posted images in its own social media pages or possibly share them via its website or on other platforms. This should be clear in the contract. It should also be clear that the influencers themselves cannot use brand associated images for any other purpose. Using them outside of the campaign would not be acceptable except with the brand's prior written consent.

But what about timelines? How long do you want the content to be on the social media feed? Does it need to be taken down at any point or can it remain there but with the proviso that it is not be reposted at any point without permission. Brands tend to target particular messaging within campaigns for a particular period of time. Old campaigns may not be compatible with the new messaging yet may resurface six or twelve months later. If this may be problematic, then ensure the contract includes a take down date. Either way, the brand should always have the right to request a takedown of any content for any reason. These rights should continue beyond the term of the contract.

Approval rights

Influencers are often followed by numerous consumers because of the nature of their "voice". This may mean they have particular sense of humour or a unique way of expressing themselves. Because of this, many are very particular about maintaining that voice and tone for their audience, safe in the knowledge that this is the very reason that their followers are with them in the first place. It can be therefore difficult for brands to require approval rights over posts. And further, it would be unusual for an influencer to agree that a brand could write post for them or on their behalf. It would also be unusual as an example for them to agree that you can change a post before it is sent.

However, it is not unreasonable to request a review of a post before it is made public, particularly where the marketing message is important to other aspects of the current brand messaging. Compromises can always be reached so if you cannot agree that approval is appropriate; perhaps it can be agreed that the brand has veto right if a content that fails to meet the brand messaging expectation.

In this matter, some compromises may have to be made by both parties. But there can be no doubt that for significant launch campaigns or rebranding campaigns, where a lot of money is at stake, brands will not be as flexible as the influencer may usually like. It is important that all parties recognise that both of their interests lie in maintaining an honest voice from the influencer in the public forum. This voice is, after all, what they are being paid for.

Data

More sophisticated influencers have access to a lot of volumes of data about their engagement with

consumers - more detailed than a simple log of 'views' and 'likes'. If this is available, it is in the interest of the brand to seek access to that data by requiring it under the contract.

Declaring content to be sponsored

In many foreign markets, influencers commonly declare that content is an advertisement where they are paid to provide the message. This is not yet the case in the Middle East, within influencers still largely pushing back on this requirement when it is requested. However, we consider that the provisions of National Medial Council Regulation No. 30 of 2012 on Advertising and Cabinet Resolution No. 23 of 2017, when read in conjunction the recently passed Electronic Media Activity Regulation Resolution 2018 are quite clear. Advertising content should be identified as such when payment changes hands, and should nonetheless be clearly delineated from editorial content.

Because at this stage, influencers are not inclined to include "ad" or "sponsored" within a post, the brands must request that this be done within the contract. In relation to specific terms, the contract may simply require the influencer to conspicuously declare the commercial relationship between the parties but it may go as far as to mandate particular wording such as "#ad" within the post.

Controversial content

In the UAE, under the Electronic Media Activity Regulation Resolution 2018, social media posts should comply with the content and advertising regulations of the jurisdiction. Aside from requiring that an influencer "comply with the content regulations set out in the laws and regulations within the UAE" it may also be prudent to clearly establish content that would be unacceptable to the brands.

Some brands require influencers to sign a statement of conduct including laws as well as the moral and social concerns of the brand to ensure that the content is of the required standards. Whilst a statement of conduct does not have more strength than the contract itself, it indicates to the influencer that the brand is serious about this aspect of the relationship. Naturally, any breach of the statement of conduct should give rise to a right of termination.

Brands may also require that the influencer does not radically alter their online persona. For example, it might be problematic for a youth focused soda brand if a video game blogger begins discussing parenting issues because they became a mother.

Conflicting brand relationships

Inevitably, influencers that are chosen to represent one brand will also be working with other brands in the same country. It is important that the level of exclusivity is specified, including the duration of the exclusivity. It may reasonably extend beyond the end of the term so that there is a buffer between the commercial association with one brand and the subsequent one with the competing brand.

It is also important to scope the conflicting brand activities concisely. The difference between 'telecommunications' and 'mobile phone handset' is vast.

A brand may also want to consider whether the influencer must only post items that are solely related to that product. Influencers often put multiple brands within a single post. This may be appropriate but you may wish to have some control or approval over the other brand that is involved – weedkiller is not okay with organic tomatoes – and it may also be prudent to consider if a discount applies to the fee in these cases.

Payment and fees

The Middle East market is proving to be lucrative for influencers. Because of this, many influencers will not start a campaign unless they are paid however there is no commercial reason why all fees should be paid upfront. Some should reasonably be held back until the last activity is undertaken by the influencer.

It is also best practice to ensure that fees are allocated against each activity where multiple activities are involved in contract. So, for example, if the services comprise tweets, Instagram posts, a billboard campaign, and an interview then the fees should be allocated amongst each of these activities to ensure that, if the relationship is terminated, it is easy to determine the fees that are payable for the services that have actually been provided up to the date of termination of the relationship.

And don't forget to add VAT.

Conclusion

Relationships with influencers are becoming part of mainstream business and an acceptable part of any marketing campaign. However, failure to properly contract with the influencer may mean that a brand is left without the exposure and deliverables that were expected. With influencers now coming with a hefty price tag, it is imperative that brands provide clear and proper contracts to ensure that all parties understand what the relationship requires.

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A Beginner's Guide to Smart Contracts

''Smart' contracts will have a disruptive effect on traditional contractual performance, both practically and conceptually. However, are smart contracts actually "contracts" and are they really "smart"?

What are smart contracts?

Smart contracts are computer protocols, not contracts in the strict legal sense. They execute commercial transactions or enforce legal agreements in a manner that eliminates the need for intermediaries and their associated transaction costs.

Smart contracts represent a progression of blockchain technology from a financial transaction protocol (e.g. bitcoin) to a multi-purpose mechanism to effect business activities involving purchases and exchanges of virtually any goods, services or rights.

Smart contracts can be stored on a blockchain, interact with external data feeds and then self-execute payments, shipments of products or other actions based on conditional logic (programmed as traditional "if-then" statements – if A occurs, then B happens), agreed verifiable proof of performance, or other trigger events. In computer code, this looks something like:

```
function payOut(address _recipient, uint _amount)
returns (bool) {
 if (msg.sender != owner || msg.value > 0 ||
(payOwnerOnly && _recipient != owner))
 throw;
 if (_recipient.call.value(_amount)()) {
 PayOut(_recipient, _amount);
 return true;
 } else {
 return false;
 }
}
```

How is a smart contract different from making purchases on the internet or setting up an automatic payment for utility bills? Generally, when you sign up online for a website you are usually directed to terms and conditions that you click to accept. Those terms and conditions are a human-readable contract. It is the same contract as you could get in hard copy just in electronic form. Laws such as the Federal Law No.1 of 2006 on Electronic Commerce and Transactions give that contract effect even though it is in electronic form.

By contrast, with a smart contract there is nothing (in theory at least) but a digital agreement. Everything from the forming of the agreement all the way to its completion happens digitally.

What are the potential uses of smart contracts?

Ethereum, which is a decentralized computing platform and operating system that is built specifically for creating and executing smart contracts for the "Ether" cryptocurrency using blockchain technology, is a notable smart contract application.

However, potential uses of smart contracts extend way beyond the movement of digital currency. Smart contracts could potentially be used to create peer-to-peer versions of any business model that currently involves intermediaries who handle processing and payments for a fee (e.g. banks, security exchanges, Uber or Airbnb).

By way of example, some potential uses for smart contracts across industry sectors are described in the table below:

Uses		What the smart contract can do
Financial Services	Trade clearing and settlement	Manage approval workflows between counterparties, calculate trade settlement amounts, and transfer funds automatically.
Healthcare	Electronic medical records	Provide transfer and/or access to medical health records upon multi-signature approvals between patients and providers.
Technology, media and telecom	Royalty distribution	Calculate and distribute royalty payments to artists and other associated parties according to the contract.
Cross-industry	Peer-to-peer transacting	Match parties and transfer payments automatically for various peer-to-peer applications such as lending, insurance, energy credits, etc.

"Smart contracts represent a progression of blockchain technology from a financial transaction protocol (e.g. bitcoin) to a multi-purpose mechanism to effect business activities involving purchases and exchanges of virtually any goods, services or rights"

Smart contracts and the law

"The first thing we do, let's kill all the lawyers" (William Shakespeare "Henry VI", Part II, Act IV, Scene II, Line 73)

As smart contracts are automatically enforced, smart contract enthusiasts assert that this removes the need for contract law as there is no longer any uncertainty in a smart contract transaction. From a legal perspective, smart contracts may not be that simple.

In the UAE, Article 12 of Federal Law No.1 of 2006 on Electronic Commerce and Transactions allows "smart contracts" as it provides that valid and enforceable contracts can be formed by computer programs (defined as "automated electronic agents") that include two or more electronic information systems preset and pre-programmed to carry out the transaction, even if no individual is directly involved.

The law of contract has various requirements for a contract to be valid and enforceable. For example, you cannot make an illegal contract. In the UAE a contract for gambling is illegal. You cannot have a contract to kill a person. No court will enforce such contracts.

By contrast, a smart contract is a set of instructions written in computer code that self-executes. A smart contract will do exactly what the code dictates, however ludicrous (a smart contract is not necessarily smart).

There are situations where computers cannot render contracts effectively. By way of example, written contracts frequently use wording that a party will use "reasonable endeavours". What does that mean and how do you write that in computer code?

Other fundamental legal concepts such as "good faith" and "negligence" are also very difficult to encode. These concepts are used to give the contracting parties flexibility in respect of certain obligations by not specifically determining in advance exactly what those obligations entail.

When parties agree a traditional contract, if circumstances subsequently change, there is the possibility of varying that contract. Unless the parties build into a smart contract, at the beginning, code that allows for modifications, a smart contract is not smart enough to allow for variations.

Currently, if the meaning of a contract is disputed, a court will consider what that agreement would mean to an objective and reasonable human observer. There is no such thing as a reasonable computer. Computers do not apply common sense because they are not programmed to do so.

Despite their name, smart contracts are necessarily always strictly legal contracts. At a minimum a legal contract must include the elements of offer, acceptance and the intention of the parties to enter into a legal agreement.

Conclusion

To the extent that legal relationships can be reduced neatly into code – so that terms are automatically enforced once the pre-programmed conditions are satisfied – smart contract technology represents an unstoppable disruptive force.

At this point in time, it seems likely that there will be a continuum between smart contracts and traditional contracts depending on the underlying transaction. A very simple contract can be fully automated (the contract is entirely in smart contract code that is stored, verified and executed on a block chain.) However more complex "smart" contracts may require a combination of both self-executing terms and contractual terms that are outside the software code. This is because:

- the subject of the contract may not be readily distilled into a logic statement; and
- human judgment may still be needed to determine how aspects of the contract are to be performed.

In the future, natural language computing and artificial intelligence may also overcome these barriers as well.

What is clear now is that smart contracts will revolutionise agreement making and performance of transactions.

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GDPR: A Plain English Guide to the Implications for Middle East Marketing Activities

The advertising marketing world is becoming more reliant on data secured from online sources. All of the entities that are involved in the delivery of advertising content to consumers are able to receive, store and use data about consumer's likes and dislikes, with the aim of ultimately understanding buyer preferences.

Some entities are scrupulous in collecting and maintaining the integrity of that data, not revealing or providing it to third parties for any reason. Other entities are less likely to exhibit this level of behaviour and, taking advantage of some less prescriptive laws in some parts of the world, may take a less ethical approach to the receipt, storage and use of data. The recent scandals that have engulfed the use of Facebook data has shown that there can be unexpected failures, even by entities that proclaim compliance to high standards in using data from the general public.

Into this world of data reliance and scrutiny, the European Union has been long debating, and now finalising, the General Data Protection Regulation, known as the GDPR. The GDPR is intended to protect the data of residents of EU countries but in doing so, there are claims that it has the capacity to extend beyond the jurisdiction of the European Union to the operations of entities outside that region.

The intention of this article is not to provide an in depth analysis of the GDPR – we will leave the EU lawyers to drill down on the small print. However, the publicity being given to the GDPR has meant that many local entities are focussing on data issues. We are receiving many queries about data, with entities often not understanding the complexity of their own data collection and storage protocols. Very often they do not realise that the operation of these protocols potentially give rise to a requirement to comply with the GDPR.

In this article, we will pose some simple questions for companies to consider when analysing their protocols and, whilst the article does focus on issues of compliance for marketing industries in particular,

it will certainly guide other industries in this analysis. All companies need to properly review their data collection and storage protocols and must properly consider whether they need to alter those protocols in order to ensure that they are not placing themselves, their clients or their EU affiliates in a position where they are in breach of the GDPR.

Getting the consent

The cornerstone of the GDPR is the consent that has to be acquired from all subjects – consent to the collection and use of their data. However, the manner in which the consent can be obtained is not ambiguous. There are three critical areas that are to be considered when consent is given under the GDPR.

First, the notice that is provided to the data subject at the time the consent is obtain must be phrased in such a way that the data subject is going to be "informed" at the time that consent is provided. On this basis, the current view is that all aspects of storage and use of material should be clearly laid out – how long it will be stored for, what will it be used for, what rights will the data subject have, will data be transferred to third party countries, and of course the all-important question: what will the data be used for? In marketing, this might be when the person signs up for a newsletter, or adds their name to a competition database.

Getting the consent: properly

The second key component that must be reviewed and properly undertaken is the method by which the consent is obtained. To simplify this aspect of the GDPR, the most important thing to know is that consent requires affirmative action from the data subject. It is no longer acceptable to assume opt-in from conduct. Further, it would not be acceptable to have a pre-ticked box that already accepted that the data will be used on specific terms. The GDPR indicates that the data subject must actively do something – tick a box for example, or choose a setting from a drop box or perhaps type some wording into a form.

Consent cannot be bundled with other issues. So for example it is ineffective to have a tick box that said "I agree to receive newsletters and for the company to use my data". This separation permits the data subject to choose to agree to some aspect of data use without having to agree to all of them. In the case cited above for example, the subject may agree to receive newsletters but does not agree to the general use of the data. Marketers that are, for example, using a social media competition to create

"So in the end, a brand or marketing manager must ask themselves the following questions: Who is touching the data in my chain? What data is being collected and where is it being collected? And how it is going to be used within this transaction? These questions should provide answers in relation to the need for compliance with the GDPR."

a targeted mailing list, will have to consider whether the simple act of 'liking' the post will be sufficient for these stringent requirements.

Reiterating the first point, however the consent is obtained, the wording and meaning should remain clear and unambiguous at this second stage. General commentary on this point agrees that uncertainty or lack of clarity at this stage may cause difficulties under the GDPR. It is also advisable to ensure at this point that the data subject is reminded that they are able to withdraw their consent at any time. The data subject should also be informed about the manner in which they can get access the information if they wish to do so.

It should be noted that there are some special cases where consent must be specifically and explicitly provided. This would include cases where the data will be transferred internationally, which could prove to be extremely important for companies that are part of larger global operations.

Recording and filing the consent

Finally, in relation to consent, it is important that the company collecting the data is able to demonstrate that they have received a valid consent by way of appropriate records. All details of the record of consent must be maintained as a complete record. The record must include at least the following: who consented, what they were consenting to, when they provided the consent and the manner in which they provided the consent.

We note that consent is not the only legal basis upon which the data can be collected as a process but it is likely to be the most common for the marketing industry. If a company wishes to bypass consent and utilise other methods, specific legal advice should be sought regarding the particular position.

Rights of the data subject

Under the GDPR, the data subject has various rights that are particularly relevant to entities undertaking marketing activities. For example the data subject has a right to access any data that has been collected and they have the right to rectify any data that is incorrect. Even further, they have right to have their data records erased completely at any time and for no reason. They may also come back at a later date to request restrictions on processing of their data – they literally can alter the consent that was originally given.

Territoriality

The concept of territoriality – a fundamental issue when considering whether or not GDPR will apply to you or your organisation – is complex. What is clear is that entities with an EU presence will be covered by the GDPR and any entities that are targeting residents of the EU will also have to comply. On this basis, there are some scenarios that could mean that a company from the Middle East may also have to comply with the GDPR.

For example, a social media marketing firm that is directly targeting businesses that wish to expand into the Middle East by speaking at various conferences in Europe and providing materials for European based business publications could find that the GDPR considers them to be targeting European residents. In fact, it seems highly likely that they would be. Despite the fact these European residents may only make up small percentage of their target client based, the outcome remains the same: they are targeting EU residents for the purposes of their business. The question remain is to whether they only need to maintain this data standards just for those few data subjects that they encounter during EU targeted activities, or whether they have to upgrade their entire database to GDPR standards. In other words, can they keep two databases with differing standards?

But this can get even more complex. If a media agency, for example, is undertaking a multimedia buy for a client, there is a strong possibility that some of those publishers will be subject to the GDPR. In undertaking this media plan, does that media agency utilise databases that are or could be held by its European counterparts or otherwise targeting EU residents? When we look at the complex chain of relationships between the brand and the consumers, including agencies, publishers, various DSPs and others, the client cannot guarantee that all of these links do not expose the transaction to databases that are subject to the GDPR.

Conclusion

So in the end, a brand or marketing manager must ask themselves the following questions: Who is touching the data in my chain? What data is being collected and where is it being collected? And how it is going to be used within this transaction? These questions should provide answers in relation to the need for compliance with the GDPR.

Of course none of this is simple. The GDPR itself is already raising difficulties in interpretation before it has been put into place. Perhaps a small data breach in the Middle East may not be initially noticed, or if it is it may not give rise to the high fines that have been often discussed in GDPR articles – the maximum fine is set at 4% of global revenue or € 20 million. However as we have seen on so many occasions, when consumer data is used in a way that was unintended or beyond the acceptable scope the result is often a legal issue, accompanied by a large public relations issue. Once EU and global consumers become used to having extra protection in relation to their data and accustomed to seeing complex consent and detailed description of use cases, we will no doubt start to see a new brand of informed and diligent consumer who will be very comfortable in generating publicity against a brand that does not provide that protection.

Whilst, in the face of it, GDPR may not obviously apply to all businesses, we suggest that marketing companies and related businesses undertake a thorough audit of their processes, partners and data points so that compliance can be assessed and, where necessary, assured.

Artificial Intelligence and International Arbitration: Going Beyond E-mail

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The last two decades have witnessed phenomenal advancements in information technology (IT), which have fostered a remarkable level of innovation in products and services offered across numerous industries. Yet, international arbitration, forming part of the legal services industry, has been so far practically unaffected by such developments.

To be sure, one can find examples where the international arbitration community has been improving its services through implementation of new IT: video conferencing, e-disclosure, use of online platforms and cloud-based technologies. However, these and other similar steps are improvements of an incremental nature, well known to most and successfully practised by many arbitration practitioners and institutions. Accordingly, this article will look forward and concentrate on a ground-breaking technology that within the next 100 years will, apart from affecting all aspects of our lives in ways that we cannot yet imagine, create genuine innovation in international arbitration – Artificial Intelligence (AI).

The Advent of AI

In 1955, John McCarthy suggested the term 'artificial intelligence' in a research project proposal, which described AI as a problem '*of making a machine behave in ways that would be called intelligent if a human were so behaving*'.

Sixty years later, after several hype cycles inevitably followed by 'AI winters', the general consensus is that scientists are finally creating systems sophisticated enough to fall within the meaning of AI. IBM's Watson, '*a technology platform that uses natural language processing and machine learning to reveal insights from large amounts of unstructured data*', is the most celebrated example of AI machinery. Watson may comprise multiple enabling technologies that may be added and configured depending on the required functionality. Two technologies are of fundamental importance to its 'intelligence': (i) natural language processing (NLP) and (ii) machine learning (ML). NLP may be described as a '*problem of understanding strings of characters that form words, sentences, or larger assemblages of text in "natural"*

language, such as English'. ML may be defined as *'a set of methods that can automatically detect patterns in data, and then use the uncovered patterns to predict future data, or perform other kinds of decision making under uncertainty (such as planning how to collect more data!)'*.

Since its triumph at Jeopardy in 2011, Watson has unequivocally established that AI machines can 'understand' text, including grammar and context, and 'learn' through making decisions in response to altering circumstances.

An international arbitration specialist may now begin to contemplate the potential use of such technologies in her/his practice.

Legal Research and Document Review

The practice of international arbitration often entails having a grasp of international law and several domestic legal systems at the same time. Moreover, parties submit to tribunals voluminous hard copy and electronic documents. Accordingly, international arbitration is a document intensive field of law that requires counsel and arbitrators to spend countless hours on legal research and document review. Due to an ever-growing demand for speed and efficiency, the present state of affairs cannot last.

A significant amount of legal research and document review has now shifted from libraries and client basement archives onto online platforms. However, in the hunt for exhaustive research/review, counsel and arbitrators still read through innumerable pages, frequently containing irrelevant text. Application of search terms to text is mostly of assistance but is regularly impeded by false positive results and, in any case, requires constant human supervision.

Use of AI for legal research and document review in the foreseeable future will cut the time necessary for such exercises from hours/days/months/years to seconds (in some instances to milliseconds).

AI: Trusted Assistant to International Arbitration

Speech Recognition

Arguably one of the most important enabling technologies for AI, after NLP and ML, is speech recognition (SP) technology. The technology has made great improvements in quality; now SP may not only recognise different accents and languages with very impressive accuracy but it can also identify the voices of particular individuals. Let us consider just a few potential uses for an SP enabled AI platform:

"With time, AI will reach a stage when its use in arbitration will be universal and its cost will be no higher than one of the average office computers of today."

Transcripts: Generally, the parties in international arbitration prefer to use the services of transcription service providers at hearings. Instructing such specialists, of course, is an additional expense for the disputing parties that involves various logistical arrangements and complications. AI may render the use of court reporters obsolete as the AI platform would be able to record the hearing via microphones and provide a real-time transcript with speaker identification for all concerned.

Interpretation: Parties in international arbitration often need to present witnesses that may require the assistance of interpreters. This also involves time and costs that may be cut by using AI for interpretation purposes at the hearing.

Translation: A document-heavy international arbitration may force parties to translate evidence into the language of arbitration, thus incurring substantial costs and extending the arbitration process. AI will, of course, be capable of translating thousands of documents in seconds with very high accuracy, including scanned, hand-written or annotated documents.

Drafting of Awards

Arbitrators spend a lot of time on drafting standard sections of their arbitration awards, e.g., the parties, the procedural history, the arbitration clause, the governing law, the parties' positions, and the arbitration costs. Arbitrators may save time and parties' fees by delegating the drafting of such 'boilerplate' sections to AI machines.

Appointing Authority

When the parties fail to appoint arbitrators or when arbitrators fail to agree on a chair, generally

a default appointing authority will come into play. AI may assist with such appointments by providing its list of potentially suitable candidates based on multiple variables, for example, knowledge and experience in particular areas of law, languages, number of pending and concluded arbitrations, level of party satisfaction in previous cases, time taken to render a final award (on average), and, importantly, potential conflict of interest that AI may identify by scanning through databases and the Internet.

AI – Expert / Arbitrator

It seems possible to suggest that AI designed for international arbitration will continue to rapidly improve, reaching a stage when it would be conceivable to request AI for an expert opinion and even to render an award. An easily identifiable area of discomfort and an obstacle to allowing AI to perform such functions is the lack of understanding of how the decision was reached. However, Watson's developers claim that when answering questions, Watson develops hypotheses and makes evidence based decisions (taking into account a degree of confidence in percentage terms based on the preponderance of evidence). Therefore, AI is capable of reasoning and, over time, AI will begin producing lines of reasoning logical to a person.

As mentioned previously, the costs and time involved in creating an AI-generated expert opinion or an arbitral award will be cut to an absolute minimum: a development which, without a doubt, will be welcomed by the international arbitration community.

Legal Framework

In order for AI to be successfully integrated into the system of international arbitration in the future, its definition should be crystallised and its use should be regulated. Perhaps, some would suggest creating a custom (state-of-the-art) legal framework for dispute settlement by AI. Yet, another route may be to amend the existing arbitration rules, domestic legislation, and international agreements. The suggestions below are of a general and non-exhaustive nature.

Arbitration Rules

Let us use the DIFC-LCIA Arbitration Rules (effective 1 October 2016) as an example to suggest amendments that would allow the DIFC-LCIA to offer AI to the disputing parties.

Article 5.2 of the DIFC-LCIA Rules may be amended by introducing a new defined term in the following manner:

> *The expression the "Arbitral Tribunal" includes a sole arbitrator or all the arbitrators where more than one. [An arbitrator includes Artificial Intelligence Software].*

Additionally, drawing inspiration from Article 9B ('Emergency Arbitrator') of the DIFC-LCIA Rules, a new AI-specific article could be introduced into the DIFC-LCIA Rules containing a definition and provisions pertinent to the use of AI, including which articles of the DIFC-LCIA Rules do or do not apply to AI.

Consequently, and unless otherwise agreed by the parties, AI may become a default sole arbitrator in certain disputes, for example, disputes under a certain amount or of a certain complexity/sector (e.g., construction).

Domestic Legislation

Changes in domestic arbitration laws would be strongly recommended to provide certainty to the international arbitration community (arbitral institutions, counsel, and parties) that the use of such technology for settlement of disputes by arbitration is legal. Taking the DIFC-LCIA Law No. 1 of 2008 (DIFC-LCIA Arbitration Law) as an example of domestic legislation that may be amended to introduce and reflect the practice of dispute settlement by AI, one suggestion would be to amend Article 16 of the DIFC-LCIA Arbitration Law as follows:

> The parties are free to determine the number of arbitrators provided that it is an odd number. *[An arbitrator includes Artificial Intelligence Software]*.

Alternatively, and possibly more appropriate, is to amend the Schedule – Interpretation, in its relevant part, as follows:

> D. Defined Terms
> Arbitral Tribunal | a sole arbitrator or a panel of arbitrators [and Artificial Intelligence Software]

However, it is not yet clear how AI would co-operate in 'mixed' arbitral tribunals (consisting of AI and human arbitrators). Therefore, it is possible that a separate section dealing exclusively with AI as a sole arbitrator may be required.

International Agreements

For AI to become commonly used by the arbitral community, it is essential, for reasons of legal certainty, that major international agreements concerning international arbitration recognise AI as equivalent to arbitrators or arbitral tribunals. Of course, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the NY Convention), to which the United Arab Emirates and other GCC states are parties, is one of the most important international agreements of such a kind.

One might be courageous enough to advocate, for example, an amendment to Article I (2) of the NY Convention in the following way:

> The term "arbitral awards" shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted. *[For the avoidance of doubt, the term "arbitrator" shall include Artificial Intelligence Software.]*

However, it does not seem realistic, considering the amount of time that was required for 156 States to become parties to the NY Convention, to obtain signature to such an amendment in the near future.

Conclusion

Regardless how the above may sound, large international law firms already employ 'data scientists', 'legal solutions architects' and 'heads of strategic client technology', who focus on IT and AI solutions that would assist human counsel. New companies are being incorporated with a particular focus on AI solutions for legal research. One law firm went far enough to employ two computers as partners.

As is the case with any new technology, AI will require a significant influx of capital at the beginning. It will also require constant development and improvement. In this regard, software developers will have to work closely with arbitration practitioners to identify problems that may occur and to streamline processes. With time, AI will reach a stage when its use in arbitration will be universal and its cost will be no higher than one of the average office computers of today.

AI will become an assistant to arbitrators and, in some cases, even an arbitrator possessing vital qualities for human arbitrators as being relentless, consistent, systematic, impartial; and it will continue to improve and grow to be powerful. Yet, there exists some scepticism towards an idea of assisting an arbitrator with AI, and even more – replacing a human arbitrator with AI. To shift thinking in line with technological development, one should consider this: airplanes are being landed using autopilot; cars are being driven autonomously. If humans entrust their lives to machines/computers, why should not AI take care of, perhaps, less important matters like settling arbitration disputes?

Al Tamimi & Company's Arbitration team regularly advises on international investment and commercial arbitration. For further information, please contact Thomas Snider (t.snider@tamimi.com) or Sergejs Dilevka (s.dilevka@tamimi.com).

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An Update on the Regulatory Framework for Crowdfunding Platforms in the UAE

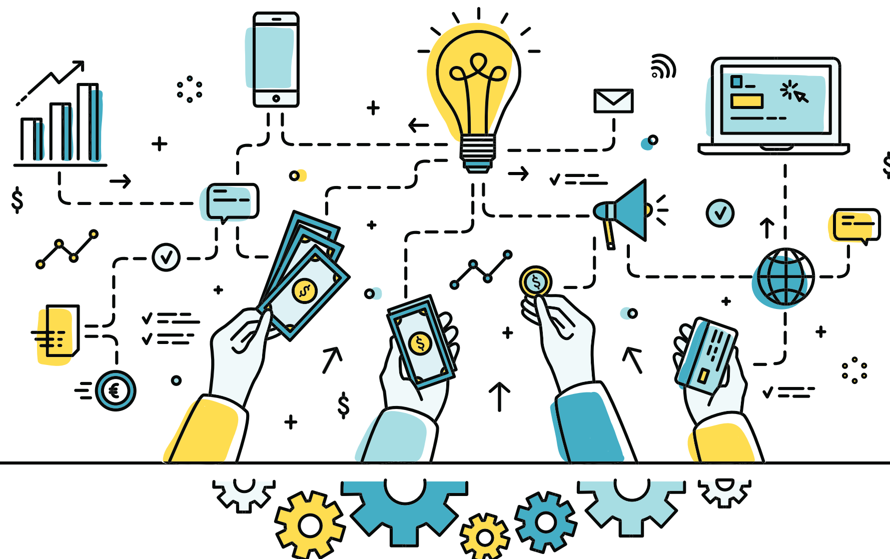
In the June-July 2016 edition of Al Tamimi's Law Update Article (http://www.tamimi.com/law-update-articles/crowdfunding-platforms-in-the-uae/), we have previously provided an overview on the Crowdfunding Platforms in the UAE and highlighted some of the key regulatory issues commonly encountered. In an effort to facilitate the growth of the SME sector and FinTech innovations in the region while managing investors risks, there have been a number of welcomed developments and regulatory updates in the alternate funding space.

In this article, we set out the latest regulatory updates governing the operation of crowdfunding platforms in the Dubai International Financial Centre ("DIFC"), Abu Dhabi Global Market ("ADGM") and onshore UAE respectively.

DFSA Regulatory Framework

In August 2017, the Dubai Financial Services Authority ("DFSA") launched its regulatory framework ("DFSA Framework") for loan and investment-based crowdfunding platforms, the first such regulatory framework in the GCC countries. The DFSA Framework aims to license, organise and protect the rights and obligations of all parties involved in specific crowdfunding activities which provide finance solutions for SMEs in the region.

Some of the key requirements under the DFSA Framework include:



“The implementation of robust governance frameworks and legislative initiatives is a healthy sign evidencing that regulators are proactive in adapting to market needs and developments in the financial services sector.”

Introduction of a new Financial Services Activity

A new financial service activity of “Operating a Crowdfunding Platform” has been established, which covers both operating a “Loan Crowdfunding Platform” and an “Investmen Crowdfunding Platform”.

Note that the DFSA will not be regulating crowdfunding operators who run a reward or donation based platform.

Restrictions on Provision of Advice / Assets Management / Managing a Collective Investment Fund

An operator of a crowdfunding platform is not permitted to provide advice or have the discretion to manage assets or manage a collective investment fund; and must not operate a platform that facilitates a person investing in specified investments (i.e. warrants, certificates, units, structured products or derivatives through the platform.

New Category of Exempt Offers

A new category of exempt offers has been introduced and is available exclusively to issuers of securities made through an Investment Crowdfunding Platform.

Prudential Requirements

The Prudential Requirements as set out in Prudential, Investment, Insurance and Banking Module (PIB) is applicable to an operator of a crowdfunding platform whereby it is required to comply with the prescribed base capital requirement and expenditure based capital minimum requirements depending on its business model.

Legal Form

All crowdfunding operators must establish as a body corporate in the DIFC (i.e. they cannot be a branch) and must hold capital according to the PIB requirements.

FSRA Proposed Framework

In March 2018, the Financial Services Regulatory Authority (“FSRA”) has published a discussion paper setting out its proposed regulatory framework (the “PFP Framework”) for operators of financing platforms for non-public companies (“Private Financing Platforms” or “PFPs”).

The PFP Framework aims to facilitate access by start-ups and SMEs to new alternate sources of funding, albeit primarily from Professional Clients (as defined in the relevant FSRA regulations), as an alternative to more traditional channels for financing, while applying the necessary regulatory safeguards to ensure they operate in a safe and sound manner for those clients.

Currently, the FSRA is seeking comments on its proposal to create a new regulated activity specifically for PFPs operators. This would be called “Operating a Private Financing Platform” that would capture two types of PFP Transactions to be offered in or from the ADGM. These would be loan-based or investment-based crowdfunding, where activity may be undertaken on a single or distinct PFP. For loan-based PFPs, the operator would connect several clients to a single borrower, but for investment-based PFPs, the operator would seek to connect several clients to a single issuer - with clients investing money in expectation of dividend payments and a positive return on investment over time. In this regard, the FSRA is considering the introduction of a new regulated Activity of “Operating a Private Financing Platform” that would solely capture loan-based and investment-based PFPs and fall within Category 4 for the purposes of prudential supervision.

In view of the potentially high lending risks associated with PFP transactions, the FSRA proposes to restrict accessibility to PFPs under the PFP Framework to Professional Clients. In this regard, the FSRA also believes that Professional Clients are better placed to assist start-ups and SMEs by contributing their expertise, experience and contact networks. Nevertheless, the FSRA proposes to allow PFP operators to serve Retail Clients (as defined in the relevant FSRA regulations), on an exceptional basis, subject to the PFP operator putting in place proper policies and procedures to perform pre-qualification of Retail Clients by way of a client suitability test.

Depending on its business model, a PFP operator would be subject to the specific capital requirements as prescribed under the Prudential Rulebook. As with other Category 4 firms, the PFP operator would be required to maintain professional indemnity insurance cover appropriate to the nature, size, and risk profile of its business. PFP operators will also be subject to risk disclosure requirements.

As the FSRA Framework is still in the discussion paper phase, it remains to be seen whether or not additional requirements will be put in place.

SCA Initiative

On the sidelines of the 14th Annual One on One Conference held in March 2018, the Securities and Commodities Authority (“SCA”) revealed that it is about to introduce a quality initiative for crowdfunding SMEs, in collaboration with the Organization for Economic Co-operation and Development. Such initiative is intended to offer a platform similar to crowdfunding for companies operating in free zones to facilitate their access to funding.

Central Bank Initiative

During the fifth Middle East Banking Forum hosted by the UAE Banks Federation held in November 2017, the Central Bank governor had indicated the Central Bank’s intention to regulate crowdfunding platforms in the emirates as part of measures to boost financing for small and medium enterprises.

Conclusion

The implementation of robust governance frameworks and legislative initiatives is a healthy sign evidencing that regulators are proactive in adapting to market needs and developments in the financial services sector. Notwithstanding so, it should be borne in mind that the regulatory ambit of financial free zones only extend to such activities performed in or from the relevant financial free zones. Therefore, any regulated activities that are performed out of the financial free zones but within UAE would still be subject to the regulation of either the Central Bank in respect of banking and debt financing activities or the SCA in respect of securities, fund formation and operation or other financial services related activities.

Al Tamimi & Company’s Financial Regulatory team regularly advises on licensing issues relating to the provisions of regulated activities in the UAE, DIFC and ADGM. For further information please contact Divya Abrol Gambhir (D.Abrol@tamimi.com)

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The Regulation of Electronic Transactions in Oman

With the fast development and implementation of technology and the internet in processing operations in private and public sectors, and concluding transactions locally and internationally online or electronically on a cross-border basis, it has become essential to develop a legal framework to safeguard the rights and interests of stakeholders utilising such electronic platforms.

The Oman government has accordingly issued the Sultani Decree 69/2008 - entitled "the Electronic Transactions Law" ("the Law"). This legislation was in response to the increasing number of electronic transactions, and resulting amount of cases before Omani courts which did not have a sufficient laws to rely on when adjudicating these bespoke issues.

Electronic Transactions Law

The Law applies, pursuant to Article 3, to electronic transactions, records, signatures and to electronic messages. The Law does not however apply to transactions and matters related to personal status law, such as marriage, divorce and wills. It also does not apply to court procedures, judicial summons, proclamations, summons, arrest orders and judicial decrees. Generally, the provisions of the Law apply to transactions between the parties who agree on conducting their transactions by electronic means and the consent of each party may be inferred from his conduct. In relation to the Government as a party to such transactions, its consent shall be given expressly in writing. Any agreement between the

parties to conduct any transaction by electronic means shall not be obligatory on either party to conduct other transactions by the same means.

Electronic communication including messages shall have the same legal effect and force like any other enforceable written document if the conditions provided for in this Law and its implementing regulations are observed.

Where there is a specific requirement contained in any other legislation, for instance the requirement of the Law of Commerce and Employment Law to retain any document or information for any reasons whether they relate to a transaction or an employee, then such retention shall be ascertained by retaining that document or record or information or data in electronic form. This requirement arises if the following conditions are satisfied:

a. The document, record, information or data are retained electronically in the form they were originated or sent or received or in a form capable of proving accurately that the document or record or information or data originated or sent or received in its original form;
b. The document, record, information or data shall remain retained in a way to render it accessible, usable and retrievable for subsequent reference; and
c. The document, record, information or data shall be retained in a way to enable the identification of their origin and destination and the date and time when they were sent or received.

Where the law requires the provision of a message, record or document in its original form and provides for consequences otherwise, then the electronic message or electronic record or electronic document will be regarded as original if there exist a reliable assurance or means allowing display of the information intended to be provided in an understandable way and to verify the integrity of the information contained in any of the documents.

For the purpose of using electronic messages, information, records or data as an evidence in any legal proceedings, nothing shall apply so as to deny the admissibility of the electronic message on the ground that it is not in its original form if the message is the best evidence that the person adducing it could reasonably be expected to obtain.

The message presented in a legal proceeding, shall have evidential weight subject to the following factors:

a. The reliability of the manner in which the message was performed, entered, generated, processed, stored or presented;
b. The reliability of the manner in which the integrity of the information was maintained;
c. The reliability of the source of information if such source is well known;
d. The reliability of the manner in which its originator was identified; and
e. Any other relevant factor.

For the purpose of contract formation, an offer and acceptance could be expressed by the parties to the contract through exchange of electronic messages. This will lead to a binding contract on all parties. The validity or enforceability of the contract cannot be challenged or questioned on the ground that it was formed through exchange of electronic message if expressly or impliedly conveys the intention of each party to enter into the contract.

The application of the Law extends to the governmental use of electronic records and signatures. By way of example, the Oman government may use electronic records and signatures to carry out any of the following tasks:

a. Accepting, depositing, presenting, originating or maintaining documents;
b. Issuing any decision, permission, license or approval;
c. Accepting fees of any payments; and
d. Issuing tenders and receiving bids related to government purchases.

Although the Law regulates provision of services relating to authentication service providers in relation to electronic authentication certificates issuance or any other services relating to electronic signatures, there are not many authentication services providers licensed by the information technology authority in Oman. Further, the Law provides for the protection of the personal data not to be shared or used for any other purpose other than the purpose which was obtained for in the first place.

The Oman Government, in order to combat the information technology related crimes, has issued Sultani Decree 12/2011(“Combating of Information Technology Crimes Law”) which criminalizes certain acts relating to the infringement of safety and confidentiality of electronic information and information systems, as well as the misuses of information technology means.

"Individuals, organisations and governmental entities sooner or later will need to develop an internal regulation setting out the criteria for its employees to follow when entering transactions electronically or online"

E-Government

The Information Technology Authority ("ITA") in Oman is taking the lead in implementing the government of Oman's strategy of converting the Sultanate into a knowledgeable and sustainable society through the implementation of information and communication technological means to promote governmental services, enrichment of the private sector and enabling individuals in digital dealings. To this end, the ITA has taken some initiatives that include:

a. Setting up a unified basic infrastructure for the electronic government which includes the relevant applications and the database;
b. Connecting all governmental institutions through a secured network;
c. Creation of a work framework for the electronic management; and
d. Provision of unique electronic services designed especially for the customers to serve the needs of individuals and private sector; and
e. Development of plans and policies relating to training of individuals in the field of information technology.

Governmental bodies in Oman which have started using electronic systems for processing transactions for individuals and companies are Royal Oman Police, Ministry of Commerce and Industry, Ministry of Manpower and Ministry of Climate Affairs. In order to submit or register any transaction it must be made online through insertion of the ID card in a special reader, entering the details necessary and uploading the required documents. Any missing information or documents required to be provided or whenever the application is approved, the applicant will receive an electronic message via email or telephone confirming this.

Conclusion

The Oman Government has enacted the basic legislations which includes the Law and the Combating of Information Technology Crimes Law which regulates how the electronic transactions and contract are concluded and formed. Further, it has established bodies like ITA to ensure proper implementation of the provisions of the Law and the use of the same by other governmental bodies like Royal Oman Police and Ministry of Commerce and Industry. The enactment of the Combating of Information Technology Crimes Law has strengthened the use of information technology in Oman and provides additional protection to its users from any infringement or abuse. Recovering any damages or returns of goods represent another challenge that need to be contractually regulated and set out clearly in the terms and conditions or the contract terms if the execution takes place in different territories.

However and with the increase in the number of transactions entered into by individuals, companies and the government entered into online or electronically, there are still number of areas that the Law is silent about and need to be regulated in the contractual terms given its importance like the jurisdiction, governing law, the courts to hear the disputes. This area is problematic and challenging to determine if not expressly provided in the contract provide that parties may reside in different states with different laws.

Individuals, organisations and governmental entities soon or later will need to develop an internal regulation setting out the criteria for its employees to follow when entering transactions electronically or online starting from verification process of the other contracting party, ensuring protection of its data and processing of information up to conclusion of the contract and its enforceability.

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Know Your Terms: The Key Terms of a Venture Capital Deal

The number of e-commerce startups in Dubai is burgeoning; so the Emirate has seen a significant increase in the number of private investors and venture capital funds active in this field. Growth during the early stages of a startup's cycle requires significant funding, and banks usually step away from investments which are considered high risk. Venture capital firms and private investors fill this space vacated by conventional financial institutions.

The relationship between the founder and the investors is critical to the growth and success of the business and should always be approached with care. Because founders will find themselves negotiating against their investors during each funding round, it is useful for both the founders and the investors to be well versed in some of the basic venture capital funding market practices and terminology. This will help their mutual expectations, and hopefully minimize areas of disagreement. A lack of this market knowledge may lead to protracted negotiations which can kill a venture capital deal outright or impair the surviving founder-investor relationship.

The following is a summary of the main documents and key provisions of an equity funding round for a startup.

The Transaction Documents

Term Sheet

Every venture capital transaction starts with the term sheet. Whilst a term sheet is typically expressed as a non-binding document, it is the foundation on which all other (binding) transaction documents are drafted. It is usual for investors and founders to outright reject any term in the (binding) transaction documents which does not reflect the provisions of the term sheet.

Subscription Agreements and Subscription Letters

In order to "lock-in" the investment, binding subscription agreements are prepared setting out the key terms of the investment. Investors (other than the lead investor) will sign a simple subscription letter confirming the investment amount per investor, the number and class of shares being issued in consideration for the investment and the expected date on which the round will complete.

A long form subscription agreement is commonly entered into between the company, the founders and the lead investor (and in certain instances, the co-lead investor(s)). This includes more comprehensive provisions normally geared towards protecting the lead investors' interest (such as warranties as to the condition, affairs and accounts of the business), and may also include requirements to restructure the company's management and operations either prior to or after the investment round.

Shareholders' Agreement

The shareholders' agreement is the key binding agreement and will reflect, in binding form, the terms agreed in the term sheet. It will set out the rights of the investors and the founders, and will contain provisions that govern the management and operation of the startup.

Key Terms of the Transaction Documents

As the party taking the financial risk, each investor will seek preferential economic (and occasionally voting) rights over the rights of existing shareholders (including the startup founders). A substantial portion of the provisions of each of the term sheet and the shareholder agreement will be geared towards protecting the investor's investment and ensuring that, at the appropriate time, the investor is able to liquidate its investment in priority (and on terms generally more favourable) to the previous round investors as well as the startup founder.

The following are the key terms which investors will seek to include in a venture capital transaction.

Preferred Shares and Conversion

New round investors are typically offered preferred shares (or generally shares of a different class to the founders), which carry certain preferential economic and voting rights over the founders' ordinary shares (Preferred Shares).

Preferred Shares are usually convertible into ordinary shares whenever this is beneficial to the investor(s). It is also common to detail circumstances or events which would lead to automatic conversion of the preferred shares, for example, in the event of an initial public offering of the company, where it is typically the case that only one class of shares (the ordinary shares) are listed on the exchange. The decision as to when the investor will convert its shares and the number of ordinary shares that it will receive in exchange is based on several factors, the most important being an assessment of whether or not the investor's liquidation preferences and participation rights (described below) would yield higher returns if the preferred shares were converted into ordinary shares at that time.

"Legal advice on any funding round is an absolute must; a bad call on a key funding provision could prove to be a costly and destructive mistake for a founder, an investor or even the business in the future."

Liquidation Preference and Participation

A liquidation preference is a right of the investor to receive proceeds from a "liquidity event" in priority to other classes of shareholders. What this means is that an investor will receive payment, as a result of such "liquidity event", before any of the founders or holders of ordinary shares. The definition of a "liquidity event" can vary, but typically includes the sale of a majority of the startup's shares (or a sale of a controlling interest), a sale of a substantial portion of the startup's assets or the winding up of the startup.

A liquidation preference typically grants the preferred shareholder a minimum return equal to a multiple of the capital invested, in addition to any declared or unpaid dividends payable to the holder of the preferred shares. While investors may seek to negotiate higher return multiples, the standard market practice in the Middle East is to limit the liquidation preference payment to the capital invested by the investor, together with any declared or unpaid dividends locked into the entity.

By way of example, assume an investor made an investment of AED 1 million in consideration for 100,000 Preferred Shares, for a resulting ownership of 50% of the startup's share capital (i.e. the startup's entire share capital comprises of 200,000 shares). The terms of the investment include a liquidation preference equal to the full value of the AED 1 million investment. The startup does not perform as expected, and one year later, 100% of the startup's shares are sold to a private equity investor at a total valuation of AED 1.5 million. Given that our investor has a liquidation preference in respect of the full value of its investment, the investor will receive AED 1 million from the buyout, with the remaining AED 500,000 distributed to all shareholders pro rata. Had no such liquidation preference been included, the investor

would have received AED 750,000, representing its 50% share of the total purchase price.

The holder of a Preferred Share will typically be entitled to "participate" in the proceeds of a liquidity event pro rata to its shareholding in the company. This right only crystallises after the preferred shareholder has received its liquidation preference described above. This would therefore mean that the preferred shareholder would first receive its capital invested before other shareholders (as provided for by its liquidation preference), and would then share (or "participate" in) the remaining proceeds of the "liquidity event" with all other shareholders pro rata.

Using our example above, in the event the investor also has participation rights, the investor would first receive its AED 1 million, and would then be able to participate, on a pro rata basis, with the remaining shareholders in the AED 500,000. The investor would therefore receive AED 1.25 million, which is its AED 1 million investment, plus its pro rata share (namely 50%) of the remaining AED 500,000, which is an amount equal to AED 250,000.

Liquidation rights and participation rights can carry significant implication for the return realized by the investor and the founders in some scenarios, so it is vital that legal and financial advice is sought prior to agreeing to confer any such rights under the term sheet or the shareholders' agreement.

Anti-Dilution

A key feature of these startup funding transactions is the anti-dilution right. This should not be confused with a pre-emption right (see "Share Transfer Provisions – Pre-emption rights" below for more details).

An anti-dilution right operates to protect an investor's ownership interest if the value of the startup diminishes after the date of the investment. Therefore, on a subsequent issue of new shares, if the shares are issued at a price-per-share that is lower than the price which the investor paid during its funding round (this is commonly termed a "down round"), the anti-dilution right would come into effect. The right is built into what is known as a "conversion price", which is the reference point of a price per share at which Preferred Shares would convert into ordinary shares.

Continuing with our case example, if an investor in a Series A funding round subscribed for 50% of the total shares at a price of AED 10 per share with a total investment of AED 1 million, that investor would receive 100,000 shares. If, during a Series B funding round, the startup's valuation has diminished, and new shares were offered to Series B investors at price of AED 5 per share, the Series A investor's anti-dilution right would kick-in and the Series A investor would be deemed to have originally invested at a price per share that is lower than AED 10. A lower conversion price translates to more shares, given that the value of the investor's subscription (AED 1 million) is divided by a lower price-per-share (for example a price of AED 5 per share).

There are two approaches to determining the conversion price; the first is the more simple approach of using a "full ratchet" conversion formula, where the share price originally paid (i.e. AED 10 in our example) is automatically reduced to the price-per-share of the new round (i.e. AED 5 in our example). The second, and more complicated approach, is using a "weighted average" conversion formula, which takes into account the weighted average value of previous issues of shares as well as the current issue. The more common approach in the region is the "weighted average" calculation.

Control

Lead investors will always wish to ensure that their investment proceeds are being employed for the agreed purpose. They would also want to make sure that the startup does not take any critical decision without the investor's approval. These decisions are commonly referred to as "reserved matters" and include any decision to (i) reduce or otherwise alter the rights attached to the investor's shares, (ii) involve material capital or operational expenditure or (iii) change the nature of the business. These are three examples of what is usually a two-page list of "reserved matters" in respect of which the investor would reserve a veto right.

Reserved matters typically operate at the board level, where the lead investor in a funding round would be given a board seat. It is a standard approach to have board meetings only deemed to be quorate with the presence of the investor-nominated director, and the "reserved matter" decision would only pass provided the investor-nominated director votes affirmatively on that decision. Reserved matters also operate on the shareholder level in respect of certain key decisions, including those which, as a requirement of applicable law, require the affirmative vote of the shareholders. In this instance, it is common for the "reserved matter" shareholder resolution to require the affirmative vote of a certain percentage of the holders of Preferred Shares.

Share Transfer Provisions

There are five key clauses that grant the shareholders of a startup (including its investors)

certain protections in connection with the transfer of the startup's shares or the issue of new shares by the startup. These are found in the shareholders' agreement and are usually built into the articles of association of the startup.

Pre-emption rights

A pre-emption right is offered to existing shareholders in respect of any future issues of shares (or other "equity securities") by the startup, giving the existing shareholders the first option to purchase the newly issued shares. A pre-emption right typically offers the shareholders a right to maintain (or increase) their ownership percentage by subscribing for new shares on a pro rata basis. A failure by the existing shareholders to subscribe for the shares typically allows the startup to offer these shares (or any remaining portion that remains unsubscribed by the existing shareholders) to third parties.

A standard approach to every new funding round is to either obtain waivers from all non-participating shareholders in respect of their pre-emption rights, or otherwise offer the new shares to the existing shareholders first, and then (after the expiry of the period during which existing shareholders may exercise their pre-emption rights) offer the new shares to the new investors.

Rights of first refusal

A right of first refusal is offered to existing shareholders in respect of any transfer of shares by a shareholder in the startup to a third party. The right gives the existing shareholders of the startup a right to purchase the shares being sold before a third party can acquire the shares. In a venture capital transaction, a right of first refusal may also be granted to the startup in priority to the existing shareholders.

Tag along (co-sale) rights

A tag along (or co-sale) right is typically offered to the holders of Preferred Shares upon the transfer of shares in the startup to a third party. The right gives the investor (as minority shareholder and holder of Preferred Shares) the right to join the sale of shares to a third party. Investors and founders should be very careful when drafting the tag along right, as the key players should seek to limit the tag along right to circumstances where a majority of the startup's shares are being sold, or otherwise in circumstances when the founders seek to dispose of a significant percentage of their shares. Otherwise, any transfer of shares by a minority shareholder could trigger a flood of accepting (also known as "tagging") shareholders.

Drag along rights

A drag along right is usually offered to a majority of the shareholders (or such number of shareholders that can exercise control over the startup's management and affairs). It is usually triggered upon the sale of the company, which is typically described as a sale of 50% or more of the company's assets or shares. The drag along right gives the controlling shareholders the power to force the sale of the minority shareholders' shares alongside their own. Investors and founders should discuss the appropriate triggers for a drag along right and should ensure that only significant transfers trigger a drag along right.

Change of control restrictions

A change of control restriction is a restriction that prohibits any change in the identity of the person (or company) that owns and/or controls an existing shareholder of the startup. This prevents existing shareholders from circumventing applicable rights of first refusal, and ensures that the identity of the person (or company) that controls an existing shareholder does not change, for example, to become a competitor to the startup's business.

Final considerations

While once a simple transaction drawn up on a single page setting out indicative terms for the investment, funding round transaction documents have over time grown in length and complexity. A term sheet now can easily exceed 10 pages, with transaction documents much longer.

Legal advice on any funding round is an absolute must; a bad call on a key funding provision could prove to be a costly and destructive mistake for a founder, an investor or even the business in the future. It is therefore essential that entrepreneurs and investors familiarize themselves with industry practices and expectations as to how these arrangements will work.

Al Tamimi & Company's private equity team regularly advises on venture capital transactions, representing investors, founders and companies on all stages of their funding. For further information please contact Alex Saleh (alex.saleh@tamimi.com), Richard Catling (r.catling@tamimi.com) or Kareem Zureikat (k.zureikat@tamimi.com).

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Bahrain's Pitch for Start-Up Success

Since the launch of Bahrain's Labour Fund 12 years ago, and as part of Bahrain's continued move to diversify its economy, the government of Bahrain has placed considerable emphasis on the development of a digital, knowledge-based economy, focusing on SMEs and start-ups as well as seeking to empower eager Bahrain based millennials.

This vision of sustainable development has resulted in a continued raft of holistic legislative changes and developments and initiatives aimed at diversifying means of funding, streamlining administrative procedures, the ease of doing business, and fostering electronic transactions. These include Bahrain taking to the cloud in preparation for the regional boom in data storage and cloud computing - the community initiative bears the name 'Start-Up Bahrain' whereby investors, incubators, entrepreneurs, academic institutions and the Government have come together to help start-ups realize the full potential and gain attainable from the Gulf marketplace. Bahrain has also implemented a regulatory sandbox as a framework and process to facilitate and encourage the development of digital technology. This article sets out some of the key initiatives and changes being implemented in Bahrain to encourage the start-up, scale-up and SME sectors in the country.

The SME Directorate

The Ministry of Industry, Commerce and Tourism has taken the initiative of establishing the SME Directorate (the 'Directorate'), with the task of addressing the stumbling blocks currently facing SMEs in Bahrain, and proposing enabling legislation to assist the development of the sector.

The Directorate has categorized SME companies as per the number of employees and generated revenue in a move that defines the status of each start-up. Note that SMEs form 90% of registered businesses in Bahrain.

Category (Business size)	No. of Employees	Total revenue in BHD (per annum)
Micro	1-5	1- 50,000
Small	6-50	50,001- 1,000,000
Medium	51-100	1,000,001- 3,000,000

The Directorate understands that most SMEs are transforming their ideas into 'protectable' concepts. In a move that demonstrates a modern perspective of appreciating intangible assets, the Directorate is said to be liaising with Bahrain's banking community in pursuit of considering start-up intellectual property as a means for securing much needed loans.

Start–up and Scale-up Incubation and Acceleration Centres

Adhering to the demands of key players in the start-up scene, and closely aligned with the said objectives, the newly established Directorate recently issued Decision (84) 2017 Organising the Activity of Incubators and Accelerators. This decision enables incubation and acceleration centres (in both the private and public sector) to register as licensed centres, and thus ensures that start-ups residing in such licensed incubators or accelerators receive necessary mentoring, coaching and networking opportunities for the duration of their stay. Subject to satisfying the relevant requirements, the resident start-ups are also able to register the licensed incubation/acceleration centre as their official address for the purposes of their commercial

registration. Such licensed incubation/acceleration centres currently include Corporate Hub 9 and the London and Washington owned C5-Accelerate.

On a quasi-governmental level, the month of February 2018 saw another effort by Bahrain to display its commitment to the development of the financial technology sector in Bahrain, in the launch of a FinTech Bay, a 10,000 square feet collegiate working hub. Providing shared workspaces, technology start-up subculture communities and services for entrepreneurs, start-ups, small business and large enterprises, Bahrain FinTech Bay aims to create support tools and features that compete with traditional financial delivery methods. Some international start-ups are already set to take up residency include US-based RobustWealth, Offrbox and Sigma Ratings as well as Jordanian start-up, Labiba.

The start of March 2018 also witnessed the launch of Bahrain's start-up week. Beginning with a large networking platform linking brands and corporates with disruptive technology, products and services, Unbound, an innovation festival organizer, took the opportunity to mark its regional debut and add Bahrain to a calendar that includes destinations such as Singapore, Miami and London. A gaming conference followed in collaboration with Bahrain Polytechnic University brought enthusiasts in close contact with developers and programmers.

The Regulatory Sandbox

Defined as "a safe space in which businesses can test innovative products, services, business models and delivery mechanisms without immediately incurring all the normal regulatory and financial consequences", here, and under a hands-off method of supervision administered by the Central Bank of Bahrain ('CBB'), cutting edge financial products and technologies and new modalities of existing tools are put on a pilot scheme in an environment lacking the onerous regulatory burden of normal licensing. Participants that satisfy the criteria set out by the CBB can apply for the relevant license subsequently bearing in mind that they might face early elimination after a defined period of time. The CBB believes that the Regulatory Sandbox allows both existing licensed financial institutions and newcomers to the market to experiment with innovative financial services for a specified period of time in an environment where actual products and services are rendered to customers, but where the risks to said customers and to the local financial system as a whole are clearly defined and mitigated.

"The holistic and cohesive approach taken by the Bahraini authorities is succeeding in creating the right legal framework and environment to encourage and stimulate the growth of the start-up, scale-up and SME ecosystems and sectors in Bahrain, and is commensurate with the country's long standing commitment to the continued diversification of its economy."

Connectivity

A key feature for fostering growth within the start-up community is connectivity. In a remarkable achievement, Bahrain topped the list of Arab countries in the International Telecommunication Union's ICT Development Index for the year 2017. The report infers the country's evident dynamism in information and communication technology which is expected to lead to a digital revolution. Four key developments are at the heart of this revolution: the Internet of Things ('IoT'), cloud computing, big data analytics, and artificial intelligence. Bahrain is now seeing a pull towards big-data. Huawei and VIVA Bahrain have merged the mediums delivering over the top media, voice and data channels into a single, hybrid network architectural concept, possibly making it the first telecom operator globally to deploy a hybrid network function virtualization cloud core network.

Closely connected to this, Batelco, Bahrain's largest telecom operator, has launched an incubator for testing hardware systems in collaboration with the ultra-hands on IoT accelerator, Brinc.

Crowdfunding, Grants & Micro-finance

Crowdfunding regulations (providing both for Islamic and conventional funding) have been put in place by the CBB as an alternative method for raising capital. This method of reaching out to speculators has conventionally been the alternative tool of choice for start-ups substituting traditional bank financing. Subject to obtaining a license to perform the activity of a lending platform, SMEs with a paid-up capital below BHD 250,000 will be able to receive up to BHD 100,000 annually in funding through these platforms hinging on securing at least 80% of their posted collection targets.

Funding is also available in abundance for entrepreneurs venturing into the field of agriculture. Food supply is a matter of national security and the Government, through the National Initiative for Agricultural Development, has put in place generous schemes and subsidies in order to spur growth within the industry. Agricultural finance made available in the form of tailored-facilities shaped by Bahrain Development Bank and Bank Ebdaa funded the creation of prolific hydroponic farms offering their local harvest in supermarkets today.

New Bankruptcy Law

Bankruptcy codes that are debtor-friendly can be considered to be one of the most powerful tools available to legislators to foster innovation and to motivate entrepreneurs to venture further as they accommodate for when businesses fail.

Consistent with Bahrain's push to encourage innovation, the Bahraini Government has indicated that a new bankruptcy code will be introduced in the near future. Some features that are expected to be addressed in this upcoming piece of legislation include swifter filing procedures and the maintenance of business flow during the filing process with the least amount of hurdles. Start-ups look for creditor collaboration in allowing necessary breathing space while restructuring, with the possibility of receiving new streams of finance as start-ups pull themselves out of a crisis. The high-tech industry is known for being very volatile and prone to multiple failures during its course of development and any new laws should take that into consideration.

Conclusion

The holistic and cohesive approach taken by the Bahraini authorities is succeeding in creating the right legal framework and environment to encourage and stimulate the growth of the start-up, scale-up and SME ecosystems and sectors in Bahrain, and is commensurate with country's long standing commitment to the continued diversification of its economy.

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The Growth of the Gig Economy

Companies such as Uber, Airbnb and Deliveroo, have become international household names over the past few years. These technology companies are rapidly taking over the markets in which they operate and are pushing the gig economy into new sectors.

The gig economy has led to an increased trend in flexi-working models, with control over working schedules and activities. Uber, for instance, created a model that operates on a technology platform thereby allowing its contracted drivers, who are predominately self-employed, to work at their convenience by accessing the platform through the Uber app when they wish to work.

Conversely, self-employed individuals do not have the same benefits, rights and protections as employees and this has created an ongoing dispute in many jurisdictions. For Uber, the exclusion of rights and protection is hugely beneficial, and means that it is does not have to provide the same benefits as it would for its employees. For the individuals themselves, this position is, of course, disadvantageous.

The UK, as an example, has been engaged in a legal battle over the last three years in which Uber drivers claim that they are entitled to the same benefits generally provided to employees, such as protection of wages, and an entitlement to the national minimum salary. In 2015, an employment tribunal determined that Uber drivers were employees and were entitled to the same benefits as a full time worker. Uber appealed the decision and argued that Uber was an agent for its drivers, as reinforced by the fact that the two parties had not signed an employment contract. Unfortunately, for Uber, the appellate court upheld the tribunal's decision. In the court's view, any driver who:

1. had the app switched on;
2. was operating within the territory in which he or she is authorised to work; and
3. was both able and willing to accept assignments;

was deemed to be working for Uber under a contract of employment.

The judgment is an important one as it sets the tone for other tech-companies operating under similar models and concepts.

There are an increasing number of people willing to work part-time or in temporary positions within the remit of the gig economy culminating in cheaper, more efficient services. In the modern digital world, it is becoming increasingly common for people to work remotely or from home, ultimately facilitating independent contracting work. Despite this, a number of jurisdictions, including the UK, have attempted to re-characterise the independent contractor/self-employed status of individuals to permanent employees. Many believe that this re-characterisation is contrary to the model that gig economy companies are attempting to develop.

How does the gig economy work in the UAE?

The UAE is not as flexible as other jurisdictions and does not accommodate many types of business models. Before an expatriate is eligible to work in the UAE, they must receive approval from the UAE immigration and labour authorities and are required to obtain a residence visa and work permit. As part of this process, individuals are required to enter into a standard short form employment contract prescribed by the UAE authorities.

Because of this requirement, the set-up of on-demand companies such as Uber and Careem is significantly different to the model in other jurisdictions, and follows the classic employer-employee relationship. As such, the individuals (such as the drivers of the Uber cars) are entitled to the same statutory protections as all other employees in the UAE, including overtime, sick leave and pay, annual leave, the right not to be unfairly dismissed and end-of-service gratuity. This model is also encapsulated throughout the GCC region and works in the following way:

1. The booking platform operator (for example Deliveroo) enters into a commercial services agreement with a locally licensed and registered transportation services company; and
2. Deliveroo effectively agrees the outsourcing of its deliveries to the transportation services so that, Deliveroo does not engage the riders directly. This means that the rider remain employees of the transportation services company throughout – not Deliveroo. The fact that the UAE does not permit a rider to be engaged directly by Deliveroo (as there are licensing constraints) is not generally a matter of consideration in other countries in which these type of models operate, making the operation of the gig economy in the UAE unique.

The future of the gig economy in the UAE

In recent times, the number of consultancy-type arrangements within the UAE has significantly increased for the reasons mentioned below. Over the past couple of years, an excess of US$3 billion has been raised on the back of technology investments in the region with Careem becoming the UAE's first tech start-up with a valuation of over US$1 billion.

With the increased focus on investment in the gig economy, more and more individuals are looking to provide their services as freelancers, with the flexibility that this offers to them. The UAE has also recently simplified the process to set up SMEs, which will help entrepreneurs to be their own sponsor for immigration purposes. Free zones become much more accommodating to the concept of freelancers and contractors can set up their own businesses to render services to other companies. For example, both Twofour54, a media and entertainment free zone in Abu Dhabi, as well as the Dubai Creative Clusters (formally known as TECOM) free zone in Dubai, accommodate freelancer arrangements and have numerous freelancers available for hire who are registered through their databases. Work outside of the free zone is not permitted and as such, there is a limit as to how far this approach can be adopted within other free zones or onshore.

Currently, given the above restrictions, the ability of residents to work flexibly in the UAE remains challenging. However, it is clear that the UAE is accommodating greater flexibility and the trend of flexible working is increasing. As a further example, the Ministry of Human Resources and Emiratisation has now established a part-time working regime whereby certain skilled employees are able to work part time for up to two employers. The individual would require a temporary work permit specifically for part-time jobs, and consent of both companies in order to do so.

With employers looking to cut down on permanent employees but retain the flexibility to access certain services when required, flexible working would open up the employer's ability to access a more substantial pool of labour without incurring the same risk and financial exposure associated with hiring full-time employees. Such trends are going to inevitably increase and we are likely to see a parallel development of the gig economy in the UAE as legislative concessions continue in the years ahead.

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Domain Name Strategies for Brand Owners

Having a website is essential for any business wishing to have an online presence. In doing so, brand owners are well advised to take control of their domain name management. It is a truism that any brand worth protecting is worth hijacking and nowhere is it easier to misappropriate than in cyberspace where domain names are available on a first registrant basis and the costs of registration are low.

If there is a brand reputation existing in cyberspace, it is at risk of brand misappropriation. There will be cyberpirates or competitors who have designs on the brand reputation ready to misappropriate the brand wholesale or devise brands close to it via 'me – too' brands in a bid to usurp the vault of goodwill and reputation inherent in a brand. The threat of a brand being misappropriated and appearing as a domain name of another is increasingly on the rise due to the spread of social media and with the ever deepening level of internet penetration.

As such, brand owners ought to be cognisant of certain measures in devising a strategy to manage their domain names.

Registration

With the ever more significant role of e-commerce and the correlated proliferation of generic Top Level domains ('gLTDS') such as .cafe, .ceo, .fashion, .clinic, .education, .love, .rocks, .technology, and others, there are more than 1,000 gLTDS up for grabs today. Never before has the threat of a brand being misappropriated and appearing as a domain name of another been more present.

"Brand owners are advised to employ strategies in combating potential misappropriation in cyberspace as more and more consumers shop online and resort to the internet as a first port of call for brand equity information"

As a result, brand owners should seriously consider the different kinds of potential misuses of their trademarks in domain names. This consideration applies at all times and to all types of businesses and sizes - from start-ups to SMEs to conglomerates.

Registration of all domain names, which are likely to lead consumers to believe that the brand owners own and operate them, would be the ideal solution to prevent third party registrations or cybersquatting. Clearly, however, it would be a strain on the budgets of most companies to even try to attempt to register every potential domain or every derivative thereof. Nonetheless, in devising the most suitable strategy for protecting a brand's online presence, brand owners must weigh budgetary costs and limitations against other competing considerations. Surely, a balance must be struck between such factors, but brand owners would be wise to seek intellectual property ('IP') legal counsel in striking that balance. For one, consider the situation where the brand owner would need to expend significant time and financial resources in retrieving a registration that a cybersquatter has usurped. Moreover, consider as well the lost revenue from the diversion of business and the potential brand dilution that such cybersquatting would cause. Other considerations include potential damage to the brand owner's business reputation and good will. The list can go on, depending on the type and scale of the business the brand owner is running.

Importantly too, are third party registrations of domain names that may not only include those that are identical to a brand owner's trademark but rather incorporate a confusingly similar mark, misspellings of the mark, foreign language adoption of a mark, or indicia comprising the trademark with additional non distinctive words or those with negative connotations. In such situations, brand owners are advised to ascertain the availability or existence of such domain registrations by conducting searches and to decide whether such domain registrations are worth acquiring or disputing.

In the next sections, we will briefly discuss some of the available online options for trademark protection.

TMCH

A relatively new online tool fortunately exists to help reduce the misappropriation of trademarks as they are released in new domains. Brand owners may avail and take advantage of the Trademark Clearinghouse ('TMCH'). The TMCH is a centralised database devised by the Internet Corporation for Assigned Names and Numbers ('ICANN') as part of a regime to protect brands and intellectual property rights. Basically, it comprises a central repository, which is managed by Deloitte, wherein brand owners may submit their trademarks for validation and registration.

Trademark registrations with the TMCH will be valid for one, three, or five years and may be re-validated once per year or registered for multiple years in advance. TMCH trademark registrations allow registrants to have priority over registering domain names that are identical to their marks in the new gTLDs. For a TMCH priority claim to prevent or contest a third party registration of the domain name, the domain name that a third party attempts to register must be identical to the trademark registered at the TMCH. Therefore, a slight difference in the domain name that a third party attempts to register would still trump the TMCH registration priority. Yet, having the TMCH registration at minimum enables brand owners to contest, on a priority basis, the third party registration of domain names incorporating identical marks. Having some form of protection is better than having none as brand owners who fail to register their trademarks at the TMCH will have to compete with the online masses on a first come first serve basis.

Blocking

Following on from registering with the TMCH, one further measure to securing online protection

of a trademark is blocking. Brand owners can prevent unauthorised registration of their trademarks at the Second Level Domain in all Top Level Domains offered by various registries using the Domains Protected Marks List ('DPML'). The Second Level Domain is an essential part of the hierarchical Domain Name System. It is the second part of the full domain name after the Top Level Domain, on its left side. The Second Level Domain is often the same as the website name, the company, or the individual that registered it. For example, in www.tamimi.com there are three domain name levels: the first, the Top Level Domain is the .com part, the Second Level Domain is .tamimi, and the Domain on the third level is the www segment. Brand owners can add their trademark-related terms into the DPML and have them blocked from registration. The beauty of this tool is that it protects trademark holders against cybersquatting at a fraction of the cost of registering domains defensively. Brand owners pay a flat fee for five years of protection.

This tool obviously affords a much more inexpensive option, compared to having to acquire defensive registration or attempting to acquire a domain name from another.

The DPML is, however, a registry specific list that requires a trademark holder to first register their trademark with the TMCH. A trademark should remain current in the TMCH throughout the life of the DPML subscription. The registry may elect to remove a DPML block for certain domains, if the corresponding trademark is not kept current in the TMCH. Registrants with the DMPL do not actually need to register the domain names they wish to block as the DMPL will automatically block registration of the trademark at the second level of the new domain.

A DPML block on a specific domain may only be overridden by a DMPL registered trademark owner, who is then entitled to register the unblocked gLTDs in the future.

Monitoring

As the DPML registry does not encompass all registries offering registration of Top Level Domains, brand owners are also well advised to implement a strategy of watching for problematic domain names that seek to misappropriate the goodwill and reputation of their brand equity. This is essential to prevent brand dilution, consumer confusion, and cybersquatting. By doing so, brand owners would ensure the robustness of their brand and avoid brand genericide.

The TMCH services will allow brand owners preliminary monitoring advantages. However, the TMCH will not detect if someone applies for a domain name that is confusingly similar but not identical to a deposited trademark.

Consequently, the TMCH option needs to be complemented by a watching service for variants or merely similar domain names applied for by third parties. By engaging such a watching service, brand owners would then be notified by the watch service provider of domain names that may be considered to be confusingly similar to the relevant trademarks. Such watching services are highly expert services drawing upon the skills of trademark specialists proficient in the nuances of trademark comparison rules and methodologies.

Conclusion

To sum up, one strong starting point towards safeguarding a brand online (as far as domain name registrations are concerned) is to follow this three pronged strategy:

1. Validate and register trademark(s) with the TMCH;
2. Follow up the TMCH registration and add the trademark related terms to the DPML to have them blocked from third party domain name registration; and
3. Use a watch service to monitor attempted third party registrations of domain names incorporating identical or confusingly similar insignias to the trademark(s) in question.

Brand owners are advised to employ strategies in combating potential misappropriation in cyberspace as more and more consumers shop online and resort to the internet as a first port of call for brand equity information. The above three pronged strategy will assist brand owners as they invest in their brand equity in cyberspace.

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Bitcoin, Cryptocurrencies, Blockchain, Real Estate and the UAE

Whilst the rise in popularity of cryptocurrencies and blockchain technology may appear to be a very recent phenomenon, their origins go back decades. Prior to the 1970s, cryptography was primarily used for secret military or espionage purposes. However, over time and following various legal challenges, such secret information gradually crept into the public domain with open source encryption software code becoming more widely available. In the late 1980s/early 1990s, the "cypherpunk" movement was born in San Francisco with the primary objective of developing and exchanging ideas on privacy enhancing technology in an increasingly digital age (which is particularly prescient given current debates on such issues). Out of the cypherpunk movement and following several earlier attempts at creating digital money by members of the cypherpunk movement, bitcoin was born on 31 October 2008 with the publication of the bitcoin whitepaper by Satoshi Nakomoto (a probable pseudonym for a, as yet unidentified, developer or group of developers) and released as open source software code in 2009. Through the creation of bitcoin, which for the first time created a platform where trust is achieved through network consensus and verification (rather than being reliant on a third party) and money could be transferred digitally without being copied or "double spent", Satoshi Nakamoto invented blockchain technology. Pandora's box was quietly opened.

It is not a coincidence that bitcoin's genesis was in the midst of the 2007/2008 global financial crisis. With a perceived lack of faith in the existing banking sector, bitcoin created a new, immutable and completely decentralised peer-to-peer payment network that does not need banks, intermediaries or centralised infrastructure of any kind to work. Whilst central banks across the US and Europe embarked upon quantitative easing programmes, effectively printing money to alleviate the crisis, bitcoin was purposely designed as deflationary in nature with a fixed supply cap of 21 million bitcoins (as much as 4 million of which are widely believed to have been lost forever). This element of scarcity of supply, combined with the anti-fragile and immutable nature of the blockchain technology, has led many to believe that, in the long term, bitcoin may be superior to, and more robust than,

traditional "fiat" currency as a unit of account, store of value and medium of exchange.

Alt-coins, ICOs and Tokenisation

As bitcoin is open source and, due to its decentralised nature, is not protected by any intellectual property rights, alternative cryptocurrencies (so called "alt-coins"), usually based upon a modification or "fork" of the original Satoshi blockchain, have flourished. Some have questioned whether this ability to create alt-coins dilutes the scarcity of supply of bitcoin. However, although certain currently popular alt-coins may have certain qualities or functions that, at the moment, bitcoin is perceived as lacking e.g. Litecoin (fast transaction speed), Ethereum (smart contracts, creation of new ICOs), Monero (privacy) and Ripple (use for bank to bank transactions), bitcoin remains at present the most secure, tested and truly decentralised network, with the most development being carried out on it. In addition, the network effect of bitcoin and the recent increase in interest from institutional investors means that bitcoin is likely to retain its market dominance in the space for some years to come.

In 2017, there was also an enormous rise in, what are termed, initial coin offerings ('ICOs'). An ICO is a fund raising exercise whereby crypto tokens on a blockchain (usually Ethereum) are issued to investors and then tradeable on cryptocurrency exchanges. There are two main types of tokens: i) utility tokens, which have a payment function and represent future access to a company's goods and services (which may not yet be developed); and (ii) security tokens which provide its holder with a right derived from an underlying financial asset. Whilst security tokens are largely regulated by existing laws regulating securities, utility tokens are not, despite being acquired and traded mostly for purely speculative purposes rather than their future utility potential.

This gap has been exploited by a large number of "pump and dump" style scams in recent times. Supposed utility tokens, with little or no future potential use case, have been pumped through online forums by its founders and insiders who then sell their tokens on the wave of an initial, short lived meteoric rise in price on cryptoexchanges, which then crashes never to return, leaving, in many cases, the second wave of investors holding virtually useless and worthless tokens. It is not dissimilar to the penny stock pump and dump schemes of the late 80s/early 90s as shown in the film The Wolf of Wall Street. There are also echoes of the late 90s dotcom bubble with projects having little or no utility potential being speculated upon just because it had a name associated with the tech boom – just substitute the word "dotcom" for "blockchain". Historically, technology generally outpaces regulation. However, there will inevitably be a regulatory crackdown globally on such market manipulation through such schemes, which has already begun.

However, although there are a large number of bad actors in the ICO space, as the market matures and regulation improves, genuinely useful, bone fide and successful projects are likely to emerge. In particular, the proliferation and adoption of asset-backed tokenisation may be a growth area in the future. Just as bitcoin has digitised cash, other asset classes may also be digitised by appending a highly divisible, digital representation of the relevant asset to the blockchain – eliminating much of the friction and third party costs associated with holding, storing and transacting such assets and increasing their liquidity. This could lead, for example, to the issuing of tokens that represent a company's stock or real estate assets.

Types of blockchain: public and private

Blockchain technology is evolving at a very fast rate and into many different, complex forms. However, one key distinction to grasp is the difference between a public and a private blockchain.

The original bitcoin blockchain is a public blockchain. It is truly public and open ended in that anyone can participate without permission. It is decentralised and self-governed through network consensus and validation (most commonly proof of work consensus algorithms or "mining"). The transactions carried out on it are transparent and publicly accessible. It is also described as a "censorship resistant" blockchain.

Conversely, a private blockchain (also sometimes referred to as a "permissioned" blockchain) is a closed system whereby permission is required for a person to participate. A person or group of persons control the network by writing and verifying each transaction. They usually do not involve any proof or work element. Many purists do not consider private blockchains to be true blockchains and consider them merely to be large databases that just use cryptography to secure them. However, they are generally faster and more efficient than a public blockchain and more suited to traditional companies and governments. One such government use of private blockchains is with land registries (as discussed below). Some countries such as Sweden and Georgia have already implemented blockchain technology with their land registries and Dubai has also announced its intention to similarly do so.

Real Estate

As with most jurisdictions across the world, the legal and regulatory framework in the UAE concerning cryptocurrency related matters is very much a work in progress and is a fluid and fast evolving area beyond the scope of this article.

There have been recent media reports of some developers in Dubai offering off-plan apartments for sale in exchange for bitcoin or offering discounts if payment is made in cryptocurrency. This appears to be more of a marketing ploy by such developers. To offset the volatility risk, we would assume that such apartments have a set price in UAE dirhams for which an equivalent value in bitcoins (or a combination of cash and bitcoins) may be paid. It is likely that the developer would then immediately upon receipt of such bitcoins convert the value into fiat currency.

Bitcoin is still very much at the early adopter stage of its development and mainstream use for transactional purposes has yet to materialise. The scalability of the blockchain has always been a problematic issue for widespread, high volume and fast transactional use (although this may be significantly improved through developments such as the "Lightning Network" or other "off chain" solutions layered on top of the bitcoin protocol and which are due to be rolled out very soon). Most cryptocurrency is held at the moment for purely speculative purposes, although such property deals may hold some attraction to long term holders of bitcoin who have amassed a large number of coins in the very early stages of its development when the price was very low and now wish to convert such coins into a more traditional asset class.

Payment of the purchase price in cryptocurrency would not work in Dubai in the secondary sales market. The Dubai Land Department would not

currently accept this as a method of payment in order to transfer property. The legality of such offers is also uncertain.

Nevertheless, cryptocurrencies and blockchain have the potential to have a significant, disruptive effect on the real estate industry in the next 5 to 10 years.

Land registries

Most land registry systems across the world remain paper-based, although many countries are making the transition to recording the ownership of land online. The United Kingdom for example now stores all records online on the HM Land Registry database, but there are still vast amounts of paper such as original deeds and correspondence involved.

This process involves all documents being manually checked before the information is uploaded to the database, resulting in some information being missed or incorrectly inputted resulting in a delay in the transaction being registered and visible online.

The use of private, permissioned blockchains by land registries has the potential to reduce some of these difficulties. The benefit of a blockchain system is in creating a secure, immutable database that records the details of current and historic property ownership, dealings and encumbrances. The conveyancing process could also be significantly streamlined with the in-built trust mechanisms of blockchain and use of smart contracts removing the need for escrow arrangements and allowing for instantaneous and simultaneous processes relating to purchaser payment, title transfer and mortgage discharge. It also has the potential to significantly reduce the level of government costs and resources involved.

The use of blockchain in land registries also has the potential to significantly reduce the scope for fraud as the information on a blockchain cannot be tampered with and its transparency means that all parties with permission to use the ledger can check the information in it. This could be particularly useful for countries in the developing world where the land registration system is not secure and is open to corruption and manipulation. However, although the relevant software may be available, it is only as good as the information that is inputted on to it and any such process needs to be very carefully managed.

Dubai has announced its intentions to be the first blockchain powered government and be a leading centre for blockchain development. The Dubai Blockchain Strategy was announced in late 2016 and built upon the three pillars of:

- government efficiency;
- industry creation; and
- international leadership.

As part of this strategy, the Dubai Land Department ('DLD') is in the process of migrating its land records to a blockchain based system and developing systems to simplify the overall property transaction process.

Tokenisation of real estate assets

The idea of tokenisation is the process of converting rights to a real world asset into a digital token on a blockchain which can be traded like a cryptocurrency on a digital exchange.

Real estate assets are, by their very nature, illiquid, non-fungible assets. Sale and purchase transactions take time to complete and there are a number of set processes that need to be carried out in order to complete the transaction by various third parties and intermediaries with associated transaction costs. Asset backed tokenisation has the potential to reduce these liquidity obstacles.

Publicly listed Real Estate Investment Trusts ('REITs') already provide a degree of liquidity for real estate investors. However, with a token, it has been speculated that this liquidity could be even further increased with: even smaller financial barriers to entry with tokens that can be divided into much smaller units (such as bitcoin where each coin is subdivided into one hundred million, tradeable units called "satoshis"); the ability to tokenise an individual real estate asset (rather than having a basket of assets as with a REIT); and providing a cryptomarket place that is always open at any time of any day in any place in the world (traditional markets only trade during certain times on weekdays and are tied to a geographical location). Such liquidity has the potential to enhance the value of the underlying real estate asset by way of a liquidity premium as it mitigates the risk of not being able to sell the assets quickly if, for example, there was a sudden dip in the market.

Fractional and proportional ownership is one of the more interesting potential applications for real estate. For example, token ownership of a multi-let commercial property could give the token holder fractional ownership of the property and a proportionate right to rental income and the proceeds of sale upon disposal. As blockchain also functions as a ledger, and through the use of smart contracts, the token itself could potentially also contain in-built title and other key information about the property and its performance or governance mechanisms with voting rights regarding the management of a particular building.

If such tokenisation materialises as a widely adopted structure in the future, it is probably more suitable for commercial property and it is also likely that we would first see it developing alongside multi-layered, traditional ownership structures with fund or REIT ownership stakes being tokenised (rather than the direct ownership of the real estate asset with individual buildings going public).

In addition, the legal and regulatory approach of governments and relevant authorities to any such new types of proposed ownership structures are likely to take a long time to evolve particularly in areas such as AML/KYC requirements, consumer protection, taxation and transfer fees and foreign ownership considerations.

Summary

It is clear that a significant paradigm shift is underway with the proliferation of cryptocurrency and blockchain technology likely to have a transformative effect on a wide range of industries, such as real estate. Although the technology is advancing with breakneck speed, it will take time for legal and regulatory frameworks to develop and catch up. One difficulty is that cryptocurrency seems to be an entirely new, non-correlated form of asset class – whilst it simultaneously exhibits characteristics of currency, securities and commodities, placing it into just one of such categories creates challenges.

The common perception of cryptocurrency as being used for illicit or nefarious purposes (such as with its early connections with the dark web and the Silk Road online platform) is looking increasingly outdated. There have been some clear signs of increased mainstream acceptance internationally such as: the Goldman Sachs backed start up, Circle, recently purchasing the US cryptocurrency exchange, Poloniex; bitcoin futures launching on the Chicago Mercantile Exchange; some largely positive messages coming out of the US from the relevant regulatory authorities (except in relation to utility token ICOs); government recognition of cryptocurrency as a means of payment in Japan; and, in the UAE, the DMCC freezone introducing the licensed activity of "proprietary trading in crypto-commodities". Like it or not, its increased use and acceptance seems inevitable. However, the exact form and shape of how the space will develop remains a very open question.

For further information, please contact Ian Arnott (i.arnott@tamimi.com).

New Requirements for Conducting Commercial Agency, Distribution, and Franchise Activities in Iraq

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Introduction and Highlights of the New Iraqi Commercial Agency Law

In line with other efforts to ease and facilitate trade, the Iraqi government recently issued Law No. 79 of 2017 on regulating commercial agencies. The new commercial agency law was published in the Iraqi official gazette on 13 November 2017 and became effective on the same date. It affords regulated entities one year from its effective date to comply with its requirements. One of the most important changes introduced in the new law is that, unlike the old commercial agency law, the definition of commercial agencies now extends to franchise agreements, distribution agreements, as well as actual agencies. The new commercial agency law defines commercial agency as follows:

> *"A contractual arrangement whereby a natural or legal person is entrusted with the sale or distribution of commodities or products or the provision of services within Iraq as an agent, distributor or franchisee for the overseas Principal for a profit or commission, in addition to the provision of after-sale services, maintenance support, and spare parts for the products and commodities marketed by such person."*

This change in the definition of commercial agency includes distribution and franchise activities, which were not previously considered commercial agency activities. The change results in greater need for clear contractual language to define what type of relationship the parties intend to have. The term "commercial agency" now has a number of meanings under Iraqi law, including an actual agency. Another notable change is that commercial agents are now allowed to deal with government procuring entities and contract directly with the government. Finally, the new commercial agency law contains rules regulating parallel importation of goods.

Requirements to Conduct Commercial Agency Activities and Consequences of Non-Compliance

Registration of commercial agents and commercial agency agreements remains mandatory under the new law. In order to obtain the required licence, the applicant must:

a. be an Iraqi national;
b. have full legal capacity;
c. not have been sentenced for a felony or misdemeanour involving moral turpitude;
d. have a commercial office in Iraq for carrying on his business;
e. be affiliated with a chamber of commerce in Iraq and have a trade name;
f. not be a civil servant or public employee; and
g. have at least one commercial agency agreement duly authenticated according to the law.

The new law further states the following requirement to verify that agents deal directly with the principal service or goods providers with no more than one link in between:

> *"Agency agreements submitted by a Commercial Agent must be submitted on behalf of companies that produce or manufacture commodities and provide services, or through the original company owned by the company producing or manufacturing the commodities or providing the services and formally authorized to grant subsidiary agencies in Iraq. In addition, the registration requirements for Commercial Agency agreements shall be determined by instructions to be issued by the Minister."*

Non-compliance with the requirements of the new commercial agency law can invite fines and a cessation of operations. In addition, an unregistered commercial agency agreement is not admissible or recognised before Iraqi authorities, rendering it unenforceable by both parties. Although the courts treated unregistered commercial agency agreements as unenforceable prior to the new rules coming into effect, this position is now sanctioned expressly.

Term and Termination of Commercial Agency Agreements

The new commercial agency law introduces limits on termination of commercial agency agreements. It states:

> *"A Principal may not terminate or not renew the agency agreement except for good cause. An agency agreement may, however, be terminated by mutual agreement between the Agent and the Principal or in accordance with an agreement concluded between the parties providing for arbitration and designating a tribunal as well as the governing law."*

The above language has not been tested and it is currently difficult to predict how the Iraqi Courts will apply the new rules on termination of commercial agency agreements.
In addition, it is worth noting that the new law does not expressly address the effects of deregistration of a commercial agency agreement, which is possible in the following circumstances:

- if it is proven that the commercial agency agreement had been registered on the basis of false information or documents;
- if either the commercial agent or the principal requests termination of the agreement, provided that such termination is not intended to prejudice the interests of either party;
- if it is proven that the foreign principal company has breached its obligations towards Iraq and has accordingly been blacklisted;
- if 90 days have elapsed from the date the Registrar notified the commercial agent of the expiry of the term of the agreement; or
- if, after revocation of the commercial agent's licence, he fails to obtain a new licence within 180 days from the revocation date.

However, it is generally expected that the effects of non-registration would be from the date of deregistration of a previously registered agreement.

Application of the New Commercial Agency Law in Kurdistan

Federal laws, such as the new commercial agency, are enforced in Kurdistan after they are ratified by the Kurdistan Parliament. The Kurdistan Parliament has not been ratifying important federal laws recently for political reasons. Kurdistan currently applies the old Commercial Agency Law No. 51 of 2000. This old law was restricted to actual agency relationships, which could be terminated at any time by the principal. Kurdistan adds its own regulations to the old commercial agency law, which contain rules on parallel importation and other areas addressed in the new commercial agency law. It is important to note that the situation in Kurdistan is contested as the federal Iraqi government is pushing to assert its authority over Iraq's borders. The application of federal laws, and border issues, are being negotiated between the Iraqi federal government and Kurdistan. The future deal between the federal Iraqi government and Kurdistan will affect the application of many federal laws in Kurdistan, including the commercial agency law.

Al Tamimi & Company's Iraq team regularly advises on commercial agency and trade matters For further information please contact Ali Al Dabbagh A.AlDabbagh@tamimi.com or Jawad Khalaf J.Khalaf@tamimi.com

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Forensic Accounting in Light of the New Experts Law in Qatar

The combination of two scientific backgrounds by the same person can lead to significant specialised understanding and amazing results.

An interesting example closely related to litigation is that of Forensic Accounting, a unique combination between law and accounting. This combination has been introduced in Qatar by the implementation of the new Law no. 16 of 2017 on regulating works of expertise (the "Experts Law").

Qatar: Positive steps in the right direction: Introduction to the Experts Law

On 11 March 2018, the Ministry of Justice ("MOJ") in Qatar organised a seminar introducing, explaining and highlighting the key features of the Experts Law. The new law does not specify particular types of expert services but does however provide a broad definition, which includes any technical services provided to a judicial or an official authority, including translation. This definition applies to all experts registered within the MOJ's list to act before the courts, as well as administrative experts appointed by the Ministry. Furthermore, the law also sets out the conditions of registering experts before the court; with one such condition specified as the individual having a minimum of ten years of experience within the related field.

Previously, registering an expert within the court's list of approved experts was not governed by a specific law. Therefore, there were no specific conditions or criteria for registering such experts. In essence, other than being a certified accountant in Qatar, no further criteria was prescribed to register an expert accountant. Such criteria was not sufficient as the requirements for a certified accountant in Qatar, in accordance with Law No. 30 of 2004 organising the accounting profession, was to obtain a bachelor's degree

in accounting and have three years of practical experience. Passing further accounting or legislative exams, similar to other countries, was not required.

The Experts Law organises expert's registration and services and sets out further conditions to improve the quality of expert services.

In addition to the above, the MOJ in Qatar is taking practical steps to ensure the best implementation of the law. This has been reflected by an announcement during the organised seminar in launching a training course for experts including accountants, covering the Experts Law, the Civil Code, the Criminal Code, and Civil and Criminal Procedures Laws and introducing the legal principles related to the expert's mission.

This training course has the possibility to lead the way to a local forensic accounting qualification for Qatari accountants.

What Is Forensic Accounting?

According to the Association of Certified Fraud Examiners (ACFE), forensic accounting is the use of professional accounting skills in matters involving potential or actual civil or criminal litigation.

This combination between the study of law and the study of accounting can be achieved in two ways; introducing lawyers to the principles of accounting, or introducing accountants to the study of law.

Considering that certified accountants are required to obtain some legal background as part of their accounting curriculum, adding further legal knowledge to a certified accountant is more common.

Accountant's legislative knowledge and qualification exams in many countries are mainly related to the laws which are akin to the commercial code, company laws, tax laws, and anti-money laundering laws, as such laws are directly related to the field of accounting. However, additional legal knowledge required for qualifying as a forensic accountant is mainly related to laws involving the civil code, the criminal code, and civil and criminal procedures laws.

This additional legal knowledge allows a forensic accountant to understand the concepts of civil liability, criminal liability as well as investigation and court procedures. This allows the forensic accountant to assist in solving complicated financial crimes, or preparing professional expert reports which can be understood by lawyers and courts.

Forensic Accounting Services

There are two main categories of forensic accounting services; acting as investigators, and acting as experts. Both services are required either before a court action, or during a court proceeding.

Investigation services are often used before filing the court action to determine if there is:

i. a basis for a financial crime to be referred to court (criminal liability);
ii. a basis for claiming compensation (civil liability); or
iii. no basis for a court action, whether based on the law or based on practical and feasibility considerations.

While acting as an expert is often required after the case is filed before the court, providing this particular service requires understanding of what an expert mission is, how the expert report should be prepared, what should be included in such report and what is considered exceeding an expert's mission.

Qualifying as a Forensic Accountant

In addition to combining accounting and legal knowledge, forensic accountants require certain skills to blend the two studies together in a practical and useful way.

Critical thinking, problem solving, and strong communication skills are essential. As investigators it is imperative to know where to look, what to ask and who to ask when solving a financial crime. While as a court expert, the ability to relate the findings and represent them in a properly drafted expert report lead to the acknowledgement of the report by the court and rendering a decision based on the report..

Conclusion

In all the countries around the world, including Arab countries, accountants and auditors play a significant role in assisting courts and lawyers in aspects related to accounting within legal services and disputes.

Accountants and auditors are already acting as forensic accountants by being listed within the court's expert list and acting as experts in various court actions.

The Experts Law aims at organising and structuring an important practice. Adding certification requirements, imposing legal and technical training and creating a regulatory body, which will enhance the services provided by the experts in a more institutionalised manner.

The initiative taken by the Ministry of Justice in Qatar to offer legal training courses to experts is a significant start. Providing specialised training for accountants, as opposed to general courses, and the addition of forensic accounting skills courses may shift this initiative to become a regionally acknowledged forensic accounting certification, considering the similarities between the GCC legal systems and laws.

2018 Korea-Saudi Partnership Plaza

On 11 April, Al Tamimi & Company once again made our presence heard and felt in Seoul by participating in the 2018 Korea-Saudi Partnership Plaza. The forum was held by the Korea Trade-Investment Promotion Agency (KOTRA) as part of its efforts to provide Korean businesses with a bridge-way to KSA. We were represented by Jongeun (Christina) Lee, Head of Korea Group, Ahmed Basrawi, Senior Associate (Jeddah, KSA), and Hyungmin (James) Song, Senior Associate who will be permanently based in KSA for expanding our network with Korean companies.

Dr Basrawi delivered a fruitful presentation on engaging Saudi partners and agents. At the forum, Dr Basrawi, Christina and James had one-to-one meetings with more than 10 companies, including LG Electronics, POSCO ICT, Mecen IPC, Sungwon Industry and Mimicry. Contributions were also made by ARAMCO, SAGIA, and Al Akaria Hanmi, Riyadh-based joint venture between the largest Saudi developer and a leading Korean project management company, as the name suggests. Shortly after this informative and interactive event, Yonhap News Agency came to have news coverage on Al Tamimi & Company's activities.

We look forward to enhancing business opportunities in KSA.

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6 MARCH
Dubai

Client Seminar

Third-Party Funding in International Arbitration

Al Tamimi & Company
DIFC Office

Speakers:
Thomas Snider
Partner, Head of Arbitration, Al Tamimi & Company

External speakers:
David Hunt
Associate, Boies Schiller Flexner LLP, London

Hannah van Roessel
Director, Senior Legal Counsel, Omni Bridgeway, Amsterdam

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11 MARCH
Egypt

Client Seminar

Investment Opportunities in Dubai & Egypt

Al Tamimi & Company
Four Seasons Hotel, Cairo

Speakers:
Ayman Nour
Partner, Head of Office - Cairo

Samer Qudah
Partner, Head of Corporate Structuring

Izabella Szadkowska
Partner Corporate Structuring

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19 MARCH
Dubai

Client Seminar

International Arbitration: Enforcing Annulled Awards & Competing Legitimacies

Al Tamimi & Company
DIFC Office

External Speakers:
Dr Hakeem Seriki
Senior Lecturer in Commercial/Trade Law, School of Law, University of East Anglia

Dr Youseph Farah
Senior Lecturer in Commercial Law, School of Law, University of East Anglia

20 MARCH
Kuwait

Client Seminar

Future of the Shipping Industry in Kuwait

Al Tamimi & Company and Kuwait Shipping Companies & Agents Association (KSCAA)
Radisson Blu Hotel, Kuwait

Speakers:
Omar Omar
Partner & Head of Transport & Insurance, Al Tamimi & Co.

Ahmed Rezeik
Head of Dispute Resolution, Transport & Insurance, Al Tamimi & Co

Karim Marouny
Senior Associate, Al Tamimi & Company

External speakers:
Ahmed Eid
Executive Director, KSCAA

Dr. Abdul Amir Al Farag
Overseas Captain

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26 MARCH
Dubai

Launch Event

Launch of the UAE Chapter of the Paris: MENA Legal Club

Al Tamimi & Company and MENA Legal Club
DIFC Office

United Arab Emirates
Ministry of Justice

48th Year
Issue No. 628
11 Rajab 1439H
29 March 2018

FEDERAL DECREES

58 of 2018	Appointing judges in the federal courts.
60 of 2018	Ratifying the Agreement between the UAE and Afghanistan for Mutual Allocation of Land in Abu Dhabi and Kabul for the Construction of Buildings to House Diplomatic Missions.
61 of 2018	Ratifying the Agreement on the Encouragement and Reciprocal Protection of Investments between the UAE and Cambodia.
62 of 2018	Ratifying the Agreement for the Avoidance of Double Taxation & Prevention of Fiscal Evasion with respect to Taxes on Income and Capital between the UAE and Iraq.
63 of 2018	Ratifying the Agreement on the Encouragement and Reciprocal Protection of Investments between the UAE and Angola.
64 of 2018	Ratifying the Agreement on the Encouragement and Reciprocal Protection of Investments between the UAE and the Maldives.
65 of 2018	Ratifying the Agreement for the Avoidance of Double Taxation & Prevention of Fiscal Evasion with respect to Taxes on Income between the UAE and Burundi.
66 of 2018	Ratifying the Agreement on the Encouragement and Reciprocal Protection of Investments between the UAE and Paraguay.
67 of 2018	Ratifying the Agreement on the Encouragement and Reciprocal Protection of Investments between the UAE and Burundi.
68 of 2018	Ratifying the Agreement for the Avoidance of Double Taxation & Prevention of Fiscal Evasion with respect to Taxes on Income and Capital between the UAE and the Maldives.
69 of 2018	Terminating the duties of a UAE non-resident ambassador.
70 of 2018	Reappointing a member of the diplomatic and consular corps.
71 of 2018	Appointing the UAE Ambassador to Bangladesh.
72 of 2018	On performing the duties of the UAE Ambassador to Rwanda.
73 of 2018	On performing the duties of the UAE Ambassador to Vietnam.
74 of 2018	On performing the duties of the Permanent Representative of the UAE to the International Renewable Energy Agency (IRENA).

REGULATORY DECISIONS OF THE CABINET

5 of 2018	The executive regulations of Federal Law No. (20) of 2016 on the mortgage of movable assets as surety for debts.
6 of 2018	On the establishment of a register of legal rights over moveable assets.
8 of 2018	The executive regulations of Federal Law No. (1) of 2017 on anti-dumping and remedial and preventive measures.

9 of 2018	Repealing Cabinet Decision No. (12) of 2008 on the Education Coordination and Integration Council.

NOTICE OF CORRECTION

-	Cabinet Decision No. (32) of 2017 on the organizational structure of the Ministry of Climate Change and Environment, published in the August 2017 supplementary issue no. 621.

DECISIONS OF THE DEPUTY PRIME MINISTER

1 of 2018	Deputy Prime Minister, Minister of Presidential Affairs decision concerning the regulation on fees for metrological services.

MINISTERIAL DECISIONS

- From the Ministry of Justice:

116 of 2018	Authorizing staff to enforce the law as judicial officers.

- From the Ministry of Climate Change and Environment:

27 of 2018	On the procedure for registration and import of pesticides.

ADMINISTRATIVE DECISIONS

- From Federal Authority for Identity and Citizenship:

7 of 2018	Specifying the fees for digital validation gateway and elink online services.

- From the Securities and Commodities Authority:

-	Certificate of incorporation of Shurooq Holding PJSC.

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17	9	60	350	50
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 unrivaled experience, having operated in the region for over 30 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 and 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 expect further growth in line with our commitment toward the region's flourishing business across the Middle East.

CLIENT SERVICES

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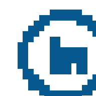
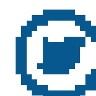
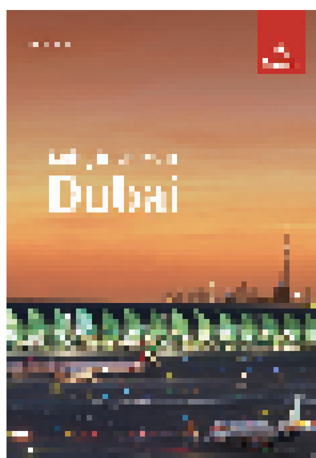
> “We appreciate the diversity of the lawyers' backgrounds - there's always someone qualified to answer any query.
>
> Chambers Global

> “Al Tamimi's key strength is providing quality service - maintaining international standards whilst providing the advantages 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.



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