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LAW UPDATE

Latest Legal News and Developments from the MENA Region

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Investment Limited Partnerships: A Banking and Finance Perspective

Land allocation in Egypt's New Investment Law

Business Friendly Bahrain is Open for Business

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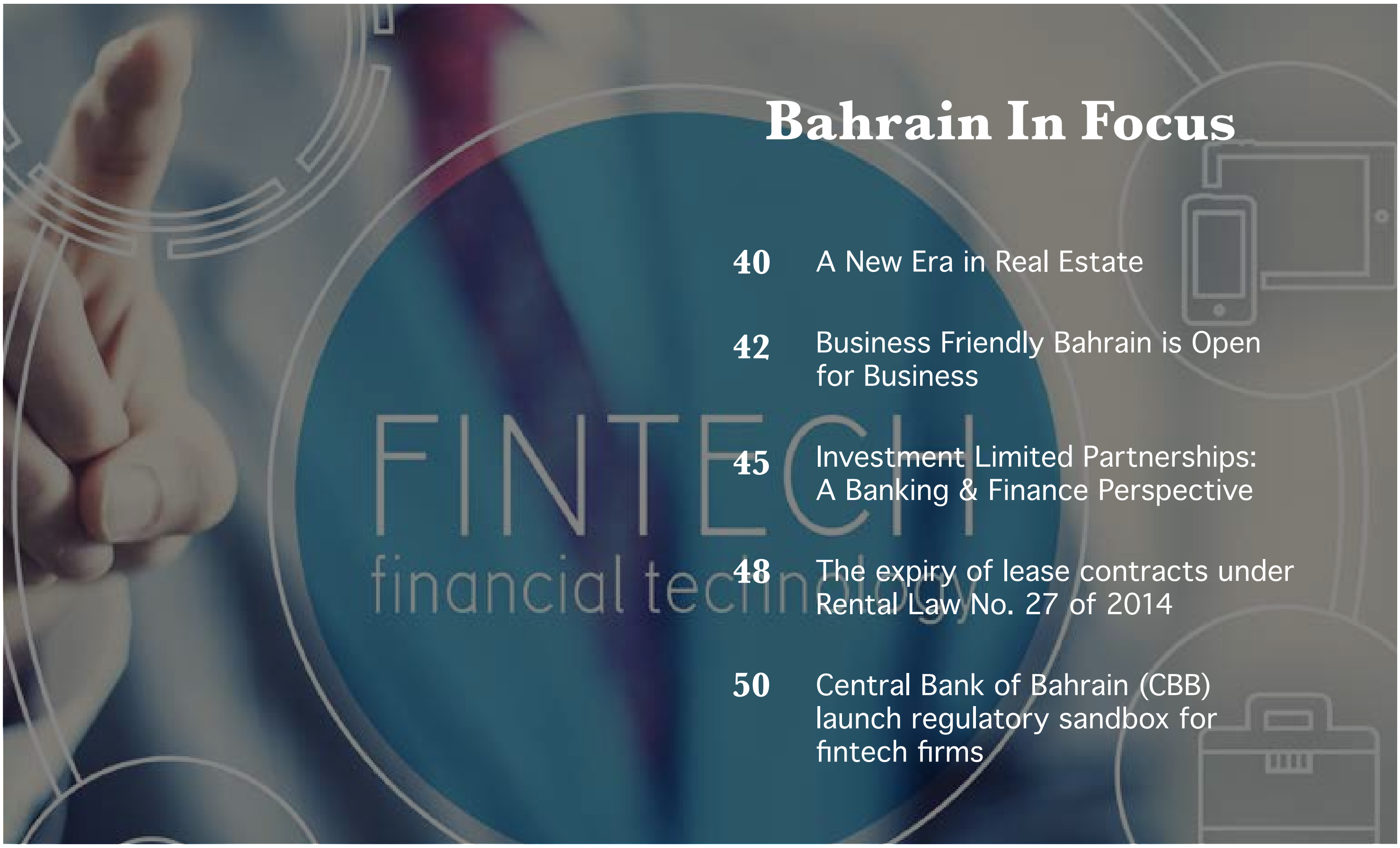

Bahrain In Focus

Jurisdiction Update

In this Issue

Welcome to the February edition of *Law Update.*

This month gives special attention to the Kingdom of Bahrain - frequently called the gateway to the Middle East. As the Gulf has rapidly developed over the past 50 years, Bahrain has held steady at the forefront. With its unique proximity to the region's major economies it has become a leading financial hub, whilst combining traditional with modern, creating an open environment for expatriates and businesses from all over the world to call it home.

Al Tamimi & Company opened its Bahrain office on 01 July 2014, marking a firm wide presence in all GCC countries. Our expanding Bahrain team have provided a number of interesting articles in this edition which highlight some of the key recent developments and changes in the Kingdom.

Bahrain has also been chosen as the location for the upcoming 3rd Annual Arab Lawyers Forum. Over the two days (28 February and 01 March), Arab lawyers from over 70 countries will gather in Manama to address regional developments and discuss specific challenges affecting the Arab legal profession. Exciting 'hot topics' on the agenda include methods of settling ordinary and extraordinary disputes, the application of VAT, and legal developments relating to technology, such as artificial intelligence and social media. If you would like to attend this event please get in touch with our office to arrange your registration.

In our feature this month, we look at how business friendly Bahrain has become in an article on page 42. We discuss the series of banking reforms implemented over the past few years by the government to solidify its position as a financial hub (page 45), and explain the establishment of a Real Estate Regulatory Authority with the implementation of Law 27 of 2017 on page 40.

As always, we aim to provide you with broad coverage of the latest legal developments and trends across the region, and you will find some other interesting topics in this edition. In particular, arbitration is a popular topic of discussion with our UAE team providing a helpful explanation as to why certain commercial and civil disputes cannot be settled via arbitration (page 8), and how the Qatari Court of Cassation has become more "arbitration friendly" due to recent changes (page 12).

We have seen real estate developments with the introduction of Law 19 of 2017 in Dubai, granting developers rights to cancel off plan sale and purchase contracts without a court order (page 32), new land allocations in Egypt's new Investment Law (page 53), and an introduction of a new law regulating dealings with foreign Stock Exchanges in Jordan (page 14).

You can also find updates from our Healthcare, Aviation, Employment, Construction & Infrastructure and Corporate teams discussing updates to FIDIC books and UAE work permits, DoH and MOHAP developments, and the effectiveness of aircraft mortgages in the UAE.

We hope that you find this edition interesting and helpful. We are always grateful to receive your feedback or discuss any of our updates further, so do feel free to get in touch with me or any of our lawyers directly.

Best wishes,

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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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Some Commercial and Civil Disputes that may not be settled by Arbitration in the UAE

Introduction

Generally, UAE law allows parties to arbitrate their disputes provided such disputes are capable of amicable settlement. This means that if the dispute cannot be amicably settled, then, the dispute cannot be arbitrated. Hence, disputes related to public policy, criminal acts, or certain issues of family law may not be settled by arbitration. However, this list is not exhaustive; some commercial and civil disputes that might be expected to be arbitrable are not. I will highlight in this article five types of disputes that cannot be arbitrated under UAE law. Any arbitration agreement relating to these types of disputes will be null and void, and if an arbitration award is issued, the competent court may be expected to nullify it.

Disputes Cannot Be Arbitrated In UAE

1. Rental Disputes In Abu Dhabi:

The Abu Dhabi Lease Law No.: (20) of 2006, as amended by Law No.: (6) of (2009) ("Abu Dhabi Lease Law"), provides that rental disputes must be referred to the Rental Disputes Committee, which is established by the law. However, article (2) stipulates that it applies to all types of property that are rented for a commercial, industrial, or any professional activities, except the following activities, which are not be governed by the Abu Dhabi Lease Law:

1. Agricultural lands and its related buildings.
2. All properties owned by the government, which are rented for residential purposes.
3. All properties related to ADNOC, which are rented for manufacture purposes for the petroleum services.
4. Properties rented for hotel and tourist purposes, including furnished apartments.
5. Certain residential properties.

Based on the above, the cassation precedents issued by Abu Dhabi Cassation Court and the Federal Supreme Court confirm that where the Abu Dhabi Lease Law is applicable to a given rental dispute, the dispute may not be arbitrated and must be referred to the Rental Disputes Committee.

For example, in a dispute that arose between a tenant and a landlord regarding a lease agreement related to a hotel and tourist properties, the tenant filed an arbitration case against the landlord based on an arbitration clause set out in the lease agreement. The tenant obtained an arbitration award on its favor. The tenant filed a case before Abu Dhabi Court of First Instance to ratify the arbitration award. The Court of First Instance and the Appeal Court ratified the arbitration award, and thus the landlord escalated the dispute to the Cassation Court, and requested it to nullify the arbitration award on the premise that one may not be allowed to arbitrate the rental disputes according to the Abu Dhabi Lease Law.

The Abu Dhabi Cassation Court issued its judgment No.: (873) of 2009, in which it confirmed that the Abu Dhabi Lease Law provides that disputes between the tenants and landlords which resulted from the lease agreements, must be referred to the Rental Disputes Committee which is established by the Abu Dhabi Lease Law. The Cassation Court highlighted that the parties to the lease agreements cannot refer their disputes to arbitration, as the jurisdiction of the Committee is related to public policy. Nevertheless, the Cassation Court pointed out that if the Abu Dhabi Lease Law does not govern the rental dispute, such as the rental disputes related to the properties rented for hotel and tourist purposes, then the parties are allowed to arbitrate their rental disputes. Therefore, the Cassation Court upheld the Appeal judgment, which ratified the arbitration award.

In another case, Al Tamimi & Co successfully represented a landlord in a rental dispute before the Rental Disputes Committee against the tenant. The latter requested the said Committee to appoint an arbitrator as the lease agreement contained an arbitration clause. Al Tamimi highlighted to the Committee that the Abu Dhabi Lease Law was applicable to the dispute, and thus the arbitration clause was null and void as the Rental Disputes Committee had exclusive jurisdiction to review the rental disputes as long as the Abu Dhabi Lease Law was applicable on the dispute. The dispute was escalated to the Federal Supreme Court, which issued its judgment number (17/2017). The Court confirmed that the arbitration clause set out in the lease agreement was null and void as the rental disputes were governed by the Abu Dhabi Lease Law and thus could not be arbitrated .

2. Civil Disputes Related to Insurance:

The UAE Civil Transactions Code ("CTC") provides in article (1028) that an arbitration clause may not be included in an insurance policy, unless the arbitration clause is contained in a special agreement separate from the general printed conditions of the insurance policy.

In a dispute between an insurance company and the insurer, the latter filed a case before the Federal Court of First Instance and requested the Court to appoint an arbitrator on the basis that the general printed conditions of the insurance policy contained an arbitration clause. The insurance company objected to the insurer's request, and highlighted that the arbitration clause was null and void based on article (1028) of the UAE CTC, as it was not set out in a special agreement separate from the general printed conditions of the insurance policy. The Federal Court of First Instance, and the Appeal Federal Court rejected the insurance company's defense, and accordingly the insurer's request to appoint an arbitrator was accepted.

The above dispute was escalated to the Federal Supreme Court, which issued its judgment number (278 of 15 judicial year), in which it confirmed that any arbitration clause contained in the general printed conditions of the policy of insurance will be null and void where the UAE CTC applies to the dispute. However, if the dispute that arose from the insurance contract was not governed by the UAE CTC, but governed by the UAE Commercial Transaction Code, then, the arbitration clause set forth in the policy of insurance would be valid, even it was not contained in a special agreement separate from the general printed conditions of the policy of insurance.

3. Disputes Related to Registered Commercial Agencies:

Article number (1) of the UAE Commercial Agency Law No.: (18) of 1981, and its amendments ("CAL") defines a commercial agency ("Commercial Agency") as "Representing the principal by an agent to distribute, sell, present, and/or provide a commodity or service inside the UAE against a commission or profit".

Pursuant to articles numbers (27 & 28) of the UAE CAL a special committee enjoys exclusive jurisdiction to review and decide on disputes relating to the Commercial Agencies. Article number (6) of the UAE CAL law grants the UAE local courts an exclusive jurisdiction to review any dispute resulting from certain (but not all) Commercial Agency contract, and any agreement in contrary shall be null and void. Thus, it is clear that the UAE legislator opted not to allow the parties of a Commercial Agency contract to arbitrate their disputes.

In a dispute arose between the commercial agent in UAE and the principal, the commercial agent resorted to the arbitration according to an arbitration clause set forth in the Commercial Agency contract. The latter obtained an arbitration award on its favor against the principal, whereas the commercial agent was awarded around AED 329 million. The commercial agent filed a case before the Federal Court of First Instance to ratify the arbitration award. The principal requested the Court to nullify the arbitration award as the disputes related to the Commercial Agencies cannot be arbitrated, and consequently the arbitration agreement and the arbitration award ought to be set aside. The Federal Court of First Instance and the Appeal Federal Court rejected the principal's request to nullify the arbitration award, and thus both Courts ratified the arbitration award.

The principal challenged the judgment issued by the Federal Appeal Court before the Federal Supreme Court, which issued its judgment number (814) of 2011. The Court found that any dispute related to a Commercial Agency cannot be arbitrated as long as the said agency is registered in the commercial agency register. Hence, the arbitration award was nullified.

4. Disputes Related To Public Policy:

There is a well established legal principle in UAE provides that any dispute in relation with a mandatory rule related to the public policy, cannot be amicable settled and thus shall not be arbitrated. Accordingly, the arbitrators in UAE are not allowed to review and decide on any dispute that is related to any mandatory rule related to the public policy. This principle is known in the international community as "arbitrabilty". Therefore, we will shed light on two types of disputes that cannot be arbitrated as they relate to mandatory rules that are connected to the public policy.

(a) Certain Disputes Related to Companies:

In a dispute that arose between the partners of a limited liability company located in UAE, one of the partners filed an arbitration case against the other partners, in their personal capacity, without involving the company ("Company"). The claimant relied on the arbitration clause set forth in the company's article of association. The claimant requested the arbitrators to order his withdrawal from the company, and order the remaining partners, in their personal capacity, to pay the value of his shares and outstanding amounts that included profits, market value of the company's reputation, etc. During the arbitration proceedings, the respondents argued that the arbitral tribunal lacked jurisdiction to review the dispute since the related governing articles of the UAE Companies Law are mandatory rules related to the public policy. The arbitral tribunal rejected the respondents' defence. The claimant obtained an arbitration award in its favour, and the claimant thus filed a case before the Dubai Court of First Instance to ratify the arbitration award. The respondents filed a counterclaim to nullify the arbitration award.. The Court of First Instance and the Appeal Court ratified the arbitration award. The dispute relating to the ratification of the arbitration award was escalated to the Dubai Cassation Court.

The Cassation Court issued its judgment number (150) of 2014. The Court asserted that the provisions laid down in the UAE Companies Law in articles numbers (218, 222, and 322) are mandatory rules related to the public policy. These articles provide that (i) the company has an independent artificial capacity and owns all its shares and money (ii) the partners' liability in limited liability companies is limited to their shares in the company, unless there is evidence of a grave error or fraud. The Cassation Court pointed out that the claimant's claim was not addressed to the partners in their personal capacity, as the claim was directed to the Company, nevertheless the claimant did not involve the Company. The Cassation Court further highlighted that the partners' liability was limited to their shares in the Company, unless they committed a fraud or grave error, and these are mandatory rules connected to the public policy, and thus these provisions could not be the subject of an amicable settlement nor arbitrated. Consequently, the Cassation Court decided to overturn the Appeal judgment, and accordingly decided to nullify the arbitration award, as the arbitrators did not have the jurisdiction to review and decide on the dispute as it was governed by mandatory rules related to public policy.

5. Certain Disputes Related To Real Estate:

Article (3) of Dubai Law, which organizes the real estate preliminary register, provides that all the sold off plan properties must be registered in the said preliminary register. If this procedure is not followed, then, the sale and purchase agreement for the off plan property will be null and void. This rule is a mandatory rule that is related to the public policy, and accordingly any agreement between the parties in contrary to Article 3 will be null and void.

Therefore, if the subject of any arbitration case is related to the nullification of a sale and purchase agreement based on a failure to register the off plan property, then, the arbitration award ought to be nullified because the dispute cannot be amicably settled as it relates to a mandatory rule of the public policy.

In a dispute between a purchaser and a developer regarding a sale and purchase agreement related to an off plan property in Dubai, the purchaser filed an arbitration case against the developer; the purchaser requested the arbitral tribunal to nullify the agreement because the respondent failed to register the off plan property on the real estate preliminary register. The arbitration award issued in favor of the purchaser and did nullify the sale and purchase agreement for the aforesaid reason. Thereafter, the purchaser filed a case before Dubai Court to ratify the arbitration award. The developer requested the Court not to ratify the arbitration award as the subject of the arbitration case related to a mandatory rule of the public policy. The Dubai Court of First Instance and the Appeal Court ratified the arbitration award.

The Dubai Cassation Court issued its judgment number (180/2011), in which it highlighted that disputes which could be arbitrated are those which could be amicably settled according to article number (203/4) of the UAE CTC. Accordingly, as long as the dispute is related to a mandatory rule of the public policy, such as the law provision related to registering off plan properties, then, the dispute could not be arbitrated because it could not be amicably settled. Consequently, the Dubai Cassation Court overturned the Appeal judgment, and decided to nullify the arbitration award.

Conclusion

There are certain disputes that cannot be arbitrated under UAE law, such as:

1. Rental disputes in Abu Dhabi, unless they are related to:
   - Agricultural lands and its related buildings.
   - All properties owned by the government, which are rented for residential purposes.
   - All properties related to ADNOC, which are rented for manufacture purposes for the petroleum services.
   - Properties rented for hotel and tourist purposes, including furnished apartments.
   - Certain residential properties.
2. Civil disputes related to the insurance policy, when the arbitration clause is set out in the policy of insurance, unless the arbitration clause is contained in a special agreement separate from the general printed conditions of the policy of insurance (or where the insurance policy is governed by the Civil Transactions Code).
3. Disputes related to Commercial Agency contracts where the relevant agency is registered in the commercial agency register.
4. Disputes related to certain mandatory provisions in the UAE Companies Law, such as those set forth in articles numbers (218, 222, and 322).
5. Real estate disputes in Dubai related to the registration of the sold off plan properties in the real estate preliminary register.

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The Qatari Court of Cassation becomes more Arbitration friendly

The Court of Cassation in Qatar issued an interesting judgment in June 2016 in relation to the enforcement of foreign Arbitral award in Qatar. The Court of Cassation confirmed two important rules related to the recognition and enforcement of a foreign arbitral award. The Court ruled that the award shall be recognized and enforced without any onerous conditions even if an annulment action is filed and pending before the Court at the country where the award was issued.

Background

An arbitral award was issued in Paris under the Rules of International Chamber of Commerce. The holder of the award (the "Awardee") filed a case before the enforcement court in Qatar requesting the recognition and enforcement of the award.

The other party filed an annulment case in Paris seeking an order to set aside the arbitral award.

Court of First Instance

When the Awardee, as the Claimant, filed an application for enforcement of the arbitral award in Qatar, the other party as the Defendant, argued that the application must be dismissed because the copies of the arbitral award and the underlying arbitration agreement, as submitted by the Claimant, were not authenticated by the relevant authorities in France and Qatar and that submission of authenticated documents is a usual requirement when submitting document before Qatari courts.

The Court of First Instance dismissed the application for recognition and enforcement of the arbitral award based on the abovementioned arguments presented by the Defendant.

Court of Appeal

The Court of Appeal also upheld the judgment of the Court of First Instance.

Court of Cassation

Against the order issued by the Court of Appeal, a further appeal was filed by the Claimant before the Court of Cassation on the grounds that recognition and enforcement of arbitral awards is subject to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (the "New York Convention"), to which France and Qatar are signatories. Accordingly, Clause 3 of the New York Convention should apply and no further conditions other than the ones stated in the New York Convention should be required.

The Court of Cassation accepted the Claimants argument above and reversed the judgment of the Court of Appeal. The Court of Cassation confirmed the following important rules related to the enforcement of arbitral award:

1. According to Article 4 of New York Convention, the documents required for the enforcement of foreign arbitral award are (i) the original award or a certified copy thereof and (ii) the original arbitration agreement or a certified copy thereof, both documents must be translated into Arabic by certified translator.

   The Court of Cassation ruled that there is a legal presumption in favor of the claimant that these documents are true and genuine insofar as they are meeting the forgoing conditions. However, this presumption is rebuttable by the Defendant who has the onus to prove otherwise.

2. Filing an annulment case by the Defendant before the French court for setting aside the award, does not constitute a good reason to stay the enforcement process in Qatar.

3. The Court of Cassation took into consideration the fact that the Claimant submitted a certificate issued by the General Secretariat of the International Court at the International Chamber of Commerce in Paris, confirming that the Arbitral Award being issued under ICC Rules is final and enforceable without any delay on the basis that both parties waived their right to appeal the subject decision.

Significance of the Ruling

This judgment is a very important development as it constitutes a friendly approach adopted by the Qatari Court of Cassation toward the enforcement of foreign arbitration awards. The Court of Cassation applied the provisions of New York Convention in a very efficient manner. This approach will no doubt facilitate the recognition and enforcement process of the foreign arbitral awards in Qatar.

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The Introduction of a New Law Regulating Dealings with Foreign Stock Exchanges in Jordan

Introduction

The aftershocks of the global financial crisis of 2007 deeply affected Jordan's stock market exposing a number of sham transactions in relation to, among other things dealings in foreign stock exchanges. Fast-forward ten years in time and the Jordanian government has issued Law No.1 Regulating Dealings With Foreign Stock Exchanges Law no.1 of 2017 (the "Foreign Exchange Law") to replace Temporary Law No.50 Regulating Dealings With Foreign Stock Exchanges of the year 2008 with the hopes of providing a more tight knit protection scheme for investors to prevent any fraudulent dealings through limiting the scope of entities capable of dealing in foreign stock exchanges.

By virtue of the new Foreign Exchange Law restrictions have been introduced for the first time limiting the entities who are able to broker or mediate on behalf of third parties in foreign stock exchanges to only banks and financial service companies licensed by the Securities Commission.

The below articles outline the major additions introduced by the Foreign Exchange Law and the possible impact the said legislation may have on the ability of foreign banks to operate under the new legislation.

Unprecedented Limitations

Article 3 of the Foreign Exchange Law explicitly states that the practice of dealing in foreign stock exchanges or mediating on behalf third parties in foreign stock exchange, is solely limited to banks and financial services companies licensed by the Jordan Securities Commission. With the exclusion of the banks and/or the licensed financial service companies Article 3 prohibits any entity from partaking or mediating in foreign stock markets whether it be on behalf of another party or on behalf of itself directly or indirectly.

Furthermore, no person is allowed to promote or advertise by any means any mediation services on behalf of third parties in foreign stock markets or to mediate in foreign stock exchange directly or indirectly. Such limitations have been placed to ensure the protection of investors from false advertisement of foreign stock market dealings that had led to the 2007 financial scam.

It is also worth noting that in contrast to the previous Foreign Stock Exchanges Law of 2008, the newly issued Foreign Exchange Law does not expressly exempt foreign banks from the restrictions set out in Article 3 above. Under the previous regime foreign banks could be exempt from such restrictions by the Securities Commission and if approved by the Council of Ministers. Therefore such ambiguity under the

Foreign Exchange Law might affect the ability of a foreign bank to deal on behalf of persons in Jordan with foreign exchange.

Penalties

Article 4 outlines more strict penalties for breaching Article 3(B) and 3(C) of the Foreign Exchange Law and imposes a fine of no less than one thousand (1,000) Jordanian Dinars and no more than one hundred thousand (100,000) Jordanian Dinars, along with one year imprisonment. Such firm penalties enforce the ideal the government is trying to portray of having more regulated dealings in the foreign stock exchange market.

Moreover, any contract or agreement entered into by any party that accordingly infringes Article 3 is considered to be in breach and thus, the infringer must return all the money collected from the contracted party and gained as a result of such breach.

If the party in breach is a company, then its chief executive officer, board of directors or its general manager (if applicable) are considered to be responsible and jointly and severally liable with the company. As such they must return all the money gained as a result of the money received from others.

A Clearer Image

Article 5 dictates that whenever appropriate, the Management Board of the Jordanian Central Bank as well as the Board of Commissioners of the Securities Commission must issue further instructions and decisions necessary to implement the provisions of this law.

Additionally, the Council of Ministers are expected to issue the regulations necessary to implement the provisions of this law.

Such articles are likely to provide further clarity as to the interpretation of the restrictions placed under the Foreign Exchange Law with respect to foreign dealings and exemptions for foreign banks from such restrictions.

Conclusion

It is evident that the new Foreign Exchange Law does not take into consideration many factors that should be encompassed in its articles. Such factors consist of for example, foreign banks and the repercussions that might be incurred as a result of restricting such entities.

Furthermore, it does not take into account the fact that, despite having a licensing mechanism for the eligible entities in Jordan, such authorisation is not automatically translated into foreign markets where some banks or companies licenses may not be recognised by other jurisdictions as being sufficient to give them the authorisation to be able to participate in other foreign stock exchanges and thus, they might need the mediation of other foreign banks or qualified intermediaries to be able to deal in foreign stock exchange. With the New Foreign Exchange Law being silent on such a matter it is not clear whether such acts might be in breach of the New Foreign Exchange Law.

What is more, the new Foreign Exchange Law is also silent regarding the ability of any investor to simply use websites or applications to trade online in foreign stock markets without the need to have a qualified mediator or an approval from the government.

Despite the fact that the new Foreign Exchange Law does not yet clearly portray the full image the government is trying to paint with this new legislation, it definitely takes a step into the right direction taking into consideration the previous blunders caused by loose restrictions and lenient penalties. It is evident that with its new more strict approach in regulating the dealings, it would be providing more sufficient protection for simple and small time investors who lack the adequate experience to detect any fraudulent acts.

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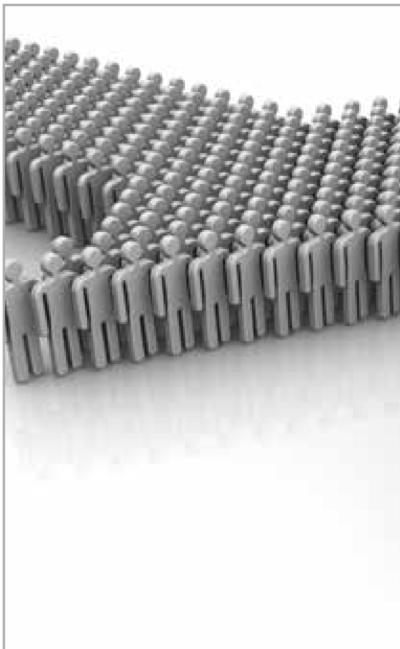
Practical Insights on Related Party Transactions in PJSCs in the UAE

Restrictions on related party transactions are relatively new to the UAE. In a jurisdiction where family-owned businesses controls significant portion of the market, the restrictions provoked a storm of controversy in the legal community when introduced back in 2015 pursuant to the new Federal Commercial Companies Law (CCL).

In particular, there was a concern that such restrictions could have significant implications for corporate transactions in the UAE if they extended to limited liability companies (LLCs). However, such concerns were addressed by Ministerial Decree No. 272 of 2016 which, among other things, explicitly excluded the application of the Article 152 of the Companies Law (which regulates related party transactions) on LLCs.

The position concerning listed companies is addressed by Regulations No. (7 R.M) Concerning Listed Public Joint Stock Companies (PJSCs) Standards of Institutional Discipline and Governance (Governance Rules). The Governance Rules apply additional restrictions and requirements on listed PJSCs when it comes to related party transactions.

In this article, we briefly address issues relating to the restrictions and requirements applied on listed companies pursuant to the Governance Rules together with what we have been touching on the ground in this regard.



What is a related party transaction

Related party transactions are often confused with transactions involving conflict of interest. However, related party transactions and transactions involving conflict of interest are different. Transactions involving conflict of interest only apply in respect of board members and are not necessarily limited to transactions entered directly with board members but are concerned with any transaction in which a board member may have an interest.

A related party transaction, on the other hand, involves transactions entered into with board members, members of the senior executive management, employees of the company, and the companies in which any of such persons holds 30% or more of its capital, as well as subsidiaries, sister and affiliate companies.

The CCL provides that a company shall not enter into a transaction with a related party unless approved by the board for transactions equal or less than 5% of the company's capital. Where this percentage is exceeded, the approval of the general assembly is required. Further, an evaluator accredited by the Securities and Commodities Authority (SCA) is required to evaluate transactions exceeding 5% of the company's capital.

The term "related party" is defined widely under the CCL to include the chairman, the directors, senior executive management and employees (and any companies in which such persons hold at least 30% of the share capital) as well as subsidiary, sister or affiliate companies. The Governance Rules (which only apply to listed companies) use the same definition but - to widen the scope of application – include also definitions for the terms "subsidiary company" (owned by 50% or more or under full control of another company), "affiliate company" (owned by another company by more than 25% but less than 50%), "sister company" (being a company that belongs to the same group to whom another company belongs).

"Certain provisions of the Governance Rules relating to related party transactions have not yet been fully tested on the ground"

Unlike the CCL, the Governance Rules define the term transaction as 'dealings, contracts, or agreements entered into by the a listed public joint stock company, and which do not fall within the main activity of the company or that includes preferential conditions which the company does not usually grant to parties dealing with it'. Thus, theoretically speaking, a transaction entered into with a related party on arm's length basis, which falls within the listed company's activity, should not be subject to the related party rules set out under the Governance Rules. However, in practice, management of listed companies tends to take a conservative approach and have any transaction with a related party channelled through the process prescribed by the law for transactions falling outside the company's main activities.

Additional restrictions on listed companies

Certain provisions of the Governance Rules on related party transactions have not yet been fully tested to date. The Governance Rules set out a number of requirements that a listed company and its management have to comply with before and after entering into a related party transaction. It is worth noting the SCA has shown high levels of scrutiny when reviewing related party transactions.

Prior to presenting the related party transaction to the board and general assembly of the company, the details of the related party transaction have to be presented to the board audit committee to assess the transaction and issue its recommendations. In addition, general disclosure requirements also apply whereby the agenda of the board meeting to which the related party transaction is presented for approval has to be disclosed to the SCA, the relevant financial market and the company's website at least two days prior to the date of the meeting. Results of the board meeting shall be disclosed to the SCA, the relevant financial market and the company's website on the same day of the meeting. As noted earlier, where a transaction exceeds 5% of the company's capital, it must be evaluated by an accredited evaluator and subsequently approved by the general assembly.

The Governance Rules set out certain additional requirements companies must comply with after entering into a related party transaction. Most importantly is that the chairman of the company must notify SCA of the details of the transaction, the nature of and the benefit to the related party in the transaction, together with a written confirmation that the terms of such related party transaction are fair, reasonable and in favour of the company's shareholders. Further, the company shall maintain a special register to record related party transactions and must brief the shareholders of such transactions in the relevant general assembly meeting.

Information rights also apply. Under the Governance Rules, any shareholder holding 5% or more of the share capital is entitled to view all documents and information pertaining a related party transaction. That said, in addition, any shareholder (even those holding less than 5%) is entitled to view such documents and information in the general assembly deliberating the transaction.

Is it possible to avoid the Governance Rules?

In practice, a listed company may avoid the application of the requirements prescribed by the Governance Rules for different reasons (in most of the case to save time and mitigate additional cost).

Unlike other jurisdictions in the region, which explicitly prohibit structures tailored to circumvent the applicable rules, neither the CCL nor the Governance Rules include such a catch-all provision. Thus far, we have not touched upon any similar cases with the SCA or before courts. However, we except that the SCA or a competent court may exercise some discretion and take the view that related party transactions rules should apply to transactions that may confer a benefit to a related party (particularly, if such transaction is not in the best interest of the company and shareholders).

Despite the lack of a catch-all provision, the CCL protects the shareholders against any transaction entered to their detriment. Generally, the CCL nullifies any resolution issued (without consideration of the company's interest) in the interest of a certain category of shareholder or where it damages the company's interest or creates a special benefit to a related party or to others. The CCL, however, provides for sixty-day limit as of the date of the issuance of the appealed resolution to bring the claim.

The Governance Rules ignore this sixty-day' time limit and provide that a shareholder who owns 5% or more of the company capital is entitled to challenge a related-party transaction. If, in such claim, it has been established that the transaction is unfair or involves a conflict of interest and incurs damage to the shareholders, the court may cancel the transaction and oblige the related party to reimburse the company for profits or benefits gained from this transaction and to compensate the company for any other damages.

Who is liable for violations

Under the CCL, directors shall be liable to the company, shareholders and third party for all actions involving fraud, abuse of authority, any violation of the law or the company's articles of association and for errors in management. Such a liability is assumed by all directors if the error results from a unanimously-approved resolution. If the resolution in question is approved by a majority, directors who objected this resolution will not be liable for it if their objection is recorded in the meeting minutes. If any director is absent from the meeting when the resolution was taken, he will not be released from lability unless it is proved that he was not aware of the resolution or if he was aware of it but unable to object to it.

The Governance Rules explicitly address the liability of related parties and the directors when it comes to the violation of the rules governing related party transactions. It provides that the relevant related party and all directors who approved the transaction and did not object it shall be liable to compensate the company for the damage incurred as a result of this related party transaction.

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Understanding Petroleum Regimes in the MENA region

MENA and Petroleum contracts

The Middle East and North Africa (MENA) region has vast petroleum resources with Iran, Kuwait, Saudi Arabia and the United Arab Emirates within the top ten oil producing countries in the World.

National Oil Companies ("NOCs") in conjunction with International Oil Companies ("IOCs") typically develop these petroleum resources and the legal regime governing the relationship between a NOC and an IOC varies depending upon the project, the resource and the host country. Historically, host counties were dependent upon the IOC's know-how, technology and finance but this dependence has reduced as projects were developed and know-how and technology transferred to the NOCs.

Projects are, in the most cases, awarded to IOCs following success bids on tenders and, at the end of 2017, Oman, Egypt and Iraq announced tenders over certain oil and gas blocks in the region.

The legal framework surrounding the development of petroleum projects differ between countries although there are two defined regimes, Concessions and Contracts. It is important to identify and evaluate a country's petroleum regime in order to understand the rights and obligations of, and the relationship between, the IOC and NOC in the event of a successful tender process. The legal regime may also affect the availability of third party funding, if required.

This article will review the basic and general differences between concessions and pure contract-based arrangements in the oil and gas sector.

Concessions

Concession arrangements can be identified as traditional or modern and, under concessions, title to petroleum is generally transferred and owned by the IOC upon extraction at the wellhead. An example of an early concession is the concession agreement between Petroleum Concession Limited (a British based company) and the Sultan of Muscat and Oman which was entered into on 24th June 1937 for a period of 75 years.

Under a traditional concession, the IOC is typically granted long term, uninterrupted and exclusive mining rights over a large defined area of the host country to undertake, at the IOC's sole risk, exploration and production of hydrocarbons. The IOC is allowed control over petroleum operations and, in return, fiscal payments (taxes, bonuses and royalties), based upon the value of production, are made.

The main benefit to the host country under this type of arrangement is that it assumes little or no risk; the IOC funds all operations and takes the risk of discovery. However, the host country invariably has little control over the operations, and together with its long-term nature, the traditional concession is unpopular. This has resulted in the development of the modern concession arrangement.

A modern concession tends to work in phases, the first phase for exploration (generally being between 5 -10 years, and which may include a defined work programme), and a second longer phase, subject to discovery, for production. The owner of the mineral interest (usually the host country) grants a lease or licence to the IOC, in return for payment of a rent and, upon production, a royalty.

"Concessions and Contracts differ in respect of claims to ownership of petroleum, the control and operation by the project, the sharing of hydrocarbon products and the involvement of any National Oil Companies. "

Moreover, national courts and legislation create the regulatory environment within the host country by supplementing concession terms with conditions, including matters of taxation.

Contracts

Under a pure contractual petroleum regime, the entire arrangement between the NOC and IOC is set out in an agreement, which has been negotiated between the parties.

There has been a trend towards more contractual-based arrangements and the MENA region typifies this trend; for example in Egypt where Tax and Royalty Concessions were replaced in the mid 1970's with Production Sharing Agreements and in Kuwait a variety of contracts have been utilised since the late 1990's, including Operating Service Contracts, Enhanced Technical Service Contracts and Oilfield Service Contracts.

The types of contracts vary, but the forms widely used are Production Sharing Agreements, Participation Agreements and Service Contracts.

The Production Sharing Agreement is a commercial and regulatory instrument and allows the host country to regulate operations without the need for adopting specific regulations within its national legislation. Under a Production Sharing Agreement, in most instances, title to the extracted petroleum remains with the host country and the contract grants rights to the IOC to recover its costs from production (cost oil) before dividing the remaining production between the host country and the IOC (profit oil). The precise calculations of cost oil and profit oil are negotiated within the contract and may include adjustments to allow, for instance, for changes in economic conditions and the type of petroleum recovered (oil or natural gas). The contract shall also include any taxes and royalties which are to be paid.

In a Participation Agreement (either by way of equity or contractual joint venture), the host country will participate with a working, carried and/or free interest. With a working interest, the NOC shall be deemed a private party, sharing risks with the IOC, and contributing to a share of costs, typically after a discovery is made. With a carried interest, the cost of participation by the NOC is funded (that is, "carried") by the IOC with costs recovered from production. With regards to a free interest, the NOC receives a share without obligation for any contribution.

Generally, the potential rewards are considered to be greater for a host country under these types of arrangements than under concession arrangements, although the element of risk is greater too. Control of operations under these arrangements depend on the agreed terms although the IOC will typically take the role of operator under a Production Sharing Agreement and under a Participation Agreement a committee, with members appointed from the IOC and NOC, usually govern operations.

Under Service Contracts, the oil or gas produced remains the property of the host country and the IOC is paid a fee for providing services. Concerns surrounding sovereignty are addressed under Service Contracts, since as the hydrocarbon owner, the host country has management and operation control and the contracting IOC will work under command of the NOC. However, the host country but may not reap the same rewards that a Production Sharing Agreement or Participation Agreement bring.

Depending on the type of Service Contract, the fee may be paid from proceeds of production and the contractor may have a right to acquire petroleum at a discounted price.

Conclusion

Concessions and Contracts are the two defined regimes for the exploration and production of petroleum setting out the roles and responsibilities of the IOC and NOC. Each differ in respect of claims to ownership of petroleum, control over and operation of the project and the sharing of hydrocarbon products.

In the Middle East and North Africa, the trend is towards more contract-based regimes but the regime selected by the host country is generally determined by the type and status of proposed projects, the involvement of any National Oil Company and the requirement to attract foreign investment and know-how.

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An Update to the Rainbow: Second Editions released of the FIDIC Red, Yellow and Silver Books

The Federation Internationale Des Ingenieurs-Conseils (FIDIC) Rainbow 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 launch of the Second Editions of the Red, Yellow and Silver Books (Second Editions) in December 2017 at the International Contract Users Conference in London, we have seen some significant changes to these standard forms. While it may be some time before we see the Second Editions become the contract of choice in the market, we anticipate the Second Editions, or at least parts thereof, will begin to influence into the drafting of contracts in respect of many projects within the region. As such, this article provides a brief overview of some key changes to note.

Why was change needed?

With the release of the First Edition of the Rainbow Suite of contracts in 1999, it has been some 18 years since the contracts have seen any significant amendments. FIDIC sought to address in the Second Editions many of the issues raised by users over the years with the intention of providing a balanced contract suite that meets industry best practices.

Key Changes

The Second Editions of the FIDIC Red, Yellow and Silver forms of contract are significantly longer; a change that is hard to miss with each of the books containing roughly 50% more words than their previous iterations.

This increase in length is mainly attributable to the inclusion of more prescriptive contract administration provisions rather than any notable difference in the risk allocations however, where there is an increase in words, Parties should take care as there is an increase in the risk of misinterpretation and mismanagement.

FIDIC has also made a deliberate effort to focus on dispute avoidance, a theme that runs throughout the Second Editions.

Engineer's Duties

The general increase in length of the contracts is most notable as it applies to the role of the Engineer in the Red and Yellow books. As an example, the role of the Engineer has been amended by Sub-Clause 3.7 so as to provide a more rigid procedure for the Engineer to follow if it is called on to determine any matter or Claim. Interestingly, the Engineer is under a positive obligation to act "neutrally" between the Parties. The standard position will no longer be that the Engineer is deemed to act for the Employer when issuing determinations.

When we enquired as to what the undefined term "neutrally" actually meant, FIDIC stated that the word does not mean "independent" or "impartial" but no 'positive' explanation was provided. What impact the largely untested meaning of "neutrally" will have is yet to be determined but we recommend it should be viewed with some caution and, to avoid this uncertainty, Parties may wish to amended the drafting of Sub-Clause 3.7.

Another subtle but important change to the Engineer's duties, previously under Sub-Clause 3.5 of the First Edition, is in relation to the Engineer's duty to seek an amicable settlement of any claims between the Parties. Previously it was envisaged that the Engineer would simply liaise with each party individually however the drafting of Sub-Clause 3.7 of the Second Editions expressly refers to the Engineer consulting with the parties "jointly" while also requiring the Engineer to "encourage discussion between the Parties in an endeavour to reach an agreement".

The intention of greater involvement from the Engineer (particularly in the context of encouraging dialogue between the Parties) aims to prevent Claims from developing into disputes, a clear continuation of the dispute avoidance theme that runs throughout the Second Editions. We consider this to be a positive development.

Notices

The definition of a notice given under the Contract has been clarified. Where a party is issuing a notice under the Contract, it must state that it is in fact a "Notice". The clause of the contract under which the Notice is issued must also be stated, with the intention of assisting the contract administration process.

In practice, it will be interesting to see how Contractors address this additional information requirement and whether more scrutiny will be placed on if a notice was served in accordance with the contract at the formal dispute stage.

The introduction of this new requirement is likely to be looked at favourably by Employers as it will limit a Contractor's ability to search through written correspondence between the parties in order to point to a contract document, such as a programme update or monthly report, as evidence of giving notice to the Employer of an entitlement to a time or cost claim. Contractors should be alive to this risk.

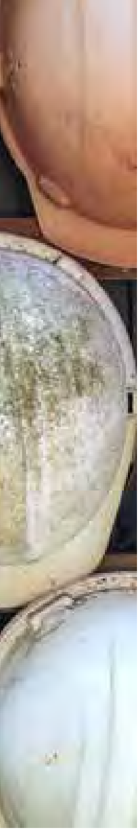
Claims

FIDIC has taken the interesting step to separate the Claims procedure away from that of Disputes. It is hoped that, by separating the contractual procedures for issuing a Claim from those setting out the procedures relating to Dispute, the parties may be both, contractually and psychologically , less entrenched in their positions and the hopes of resolving the matter amicably may be increased. Ultimately time will tell whether this approach has any meaningful impact on dispute avoidance however we consider it to be a positive development.

Another interesting and important change is that the Claims procedure provided at Clause 20 is now applicable to both Employer and Contractor Claims, meaning that Employer Claims are now subject to the same express timebars as those applicable to the Contractor. FIDIC has said this is an attempt to achieve more balance and reciprocity between the parties, with both parties entitlement to Claim now being governed by the same clause.

This departure from the old Employer's Claim clause at 2.5, and the arguably more onerous obligations that used to accompany the Contractor's Claims procedure at Clause 20.1, is likely to be welcomed by Contractors however it will be interesting to see whether the new Clause 20 is adopted by Employers in the region.

As alluded to earlier, the new Clause 20 has also been



significantly expanded to provide additional contract administration obligations on any Party who is seeking to submit a Claim. This is one of the largest clauses in the Contract and as to be expected, the amendments will increase the administrative burden on the Engineer, Employer and Contractor.

Dispute

As a standard position, the Second Editions continues the requirement if its predecessor for the Parties to appoint a standing Dispute Adjudication/Avoidance Board (DAAB). It is intended that the DAAB is to be appointed at the beginning of the Contract and will be required to visit the Site throughout the term of the Contract until the completion of the Works. The DAAB is to consist of either one or three members (three members being the default position).

The standing DAAB will be used as a mechanism for dispute avoidance, as well as to settle any disputes as and when they arise. While there are benefits to the appointment of a standing DAAB, many Employers and Contractors in the region see a standing DAAB as a cost centre which they have been previously happy to forgo.

The usual practice within the GCC is to avoid the appointment of a standing DAAB however time will tell if the market will eventually accept the appointment of standing DAABs (which are frequently used in other regions). It is our view that this is unlikely to occur within the immediate future.

Other Amendments

Another curious change is that of the Force Majeure provisions, with the title being completely replaced by a new clause titled 'Exceptional Events' (provided at the new Clause 18). While the definition of Exceptional Events is largely the same as the Force Majeure provisions of the First Editions, the amendment may cause some confusion given how well understood Force Majeure is in the region.

The amendments to the Second Editions also include a change to the guidance notes wherein FIDIC strongly recommends the Employer, the Contractor and all drafters to have regard to the following five 'Golden Principles':

1. Duties, rights, obligations, roles and responsibilities are generally as deigned in the General Conditions;
2. Clear and unambiguous drafting;
3. Fair and balanced risk allocation;
4. The parties have a reasonable time to perform their obligations and exercise their rights;
5. Disputes must be referred to a Dispute Board for a provisionally binding determination as a condition precedent to arbitration or litigation.

FIDIC justifies this position on the basis that has taken great care in the risk allocation between the parties and is therefore discouraging parties from using the particular conditions of contract to fundamentally change the risk allocation and therefore the very nature of a FIDIC Contract. Notwithstanding the above, we expect the Second Edition will be amended so align with prevailing market standards in the UAE.

Concluding Thoughts

There is a clear focus in the Second Editions on dispute avoidance, with the Engineer being required to take a more proactive approach in seeking to facilitate the resolution of disputes as early (and therefore as cost effectively) as possible.

Given the impact a well managed dispute avoidance mechanism can have on the outcome of a project, it will be interesting to see if Engineers take note of, and fully embrace, the new obligations.

It will also be interesting to see the position Engineers take on seeking an amicable resolution of disputes in their initial stage (and typically before positions have become entrenched).

While amicable resolution is in the clear interests of all stakeholders, given the Employer friendly market conditions within the GCC, time will tell how many of these amendments are taken up and whether these drafting changes will have a significant impact on Engineers' fees.

Finally, the Second Editions contain key changes which both Employer's and Contractor's will need to know and manage or risk losing entitlements to claim.

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UAE work permits: Company Classification, New Fees and Rules

On 4 December 2017, the Ministry of Human Resources and Emiratisation (formerly Ministry of Labour) ("MOL") announced the implementation of a new Ministerial Resolution (No. 729 of 2017) which sets out a revised fee structure for issuing work permits to companies in respect of new employees that they wish to hire.

Under the new system, companies are classified in categories depending on the percentage of skilled employees they employ and the cultural diversity of the employees. This article looks at the different categories and the revised work permit fees which are now applicable.

Skilled/unskilled employees and cultural diversity

A skilled employee is one whose job requires an attested academic degree higher than a high school degree or equivalent. An unskilled employee is one whose job does not require an attested academic degree.

With regard to cultural diversity, as a starting point, the MOL has implemented a formula for calculating cultural diversity as follows: (Number of non-Pakistani, non-Indian and non-Bangladeshi employees / Total number of employees) * 100. Where the cultural diversity percentage is more than 50% (i.e. where non-Pakistani, non-Indian and non-Bangladeshi employees comprise more than 50% of the total employees in a company), then the MOL will consider the percentage of skilled employees in order to categorize the company (see the table below).

Company categories

Pursuant to the new Ministerial Resolution, companies are now categorized as set out in the table below. A company with a higher category can expect to pay lower fees for work permits issued through the MOL.

Class	Cultural diversity and skilled worker percentage requirements
Class 1	No minimum requirement for cultural diversity and skilled workers. Fishing boats owned by UAE nationals and small and medium establishments (subject to certain conditions to be determined by the MOL) fall under this class.
Class 2A	Companies with a cultural diversity percentage of more than 50% (i.e. where non-Pakistani, non-Indian and non-Bangladeshi employees constitute more than 50% of the total employees) AND where over 40% of the employees are skilled workers.
Class 2B	Companies with a cultural diversity percentage of more than 50% (i.e. where non-Pakistani, non-Indian and non-Bangladeshi employees constitute more than 50% of the total employees) AND where 10 - 40% of the employees are skilled workers. Companies with 0 -3 employees fall under Class 2(B) regardless of cultural diversity or skilled worker percentages. Companies with 4 -10 employees and a cultural diversity percentage of more than 50% fall under Class 2(B) regardless of skilled worker percentages.
Class 2C	Companies with cultural diversity percentage of more than 50% (i.e. where non-Pakistani, non-Indian and non-Bangladeshi employees constitute more than 50% of the total employees) AND where 5 -10% of the employees are skilled workers.
Class 2D	Companies with a cultural diversity percentage of less than 50% (i.e. where Pakistani, Indian and Bangladeshi employees constitute more than 50% of the total employees) AND/OR where less than 5% of employees are skilled workers. N.B. Companies with 4 -10 employees who do not have a cultural diversity percentage of at least 50% also fall under this category regardless of the percentage of skilled workers.
Class 3	Companies found to be in violation of certain duties (such as human trafficking, employing illegal employees, falsifying Emiratisation percentages etc) fall under Class 3.

Work permit fees for skilled/unskilled employees from inside/outside the country

The MOL has confirmed that all companies belonging to class 1 are not required to pay any work permit fees. At the other end of the spectrum, companies categorised as class 3 are required to pay a work permit fee of AED 5,000 for each skilled and unskilled employee (regardless of whether such employees are inside or outside the country).

In respect of companies falling under class 2, the following work permit fees are applicable (they differ according to whether the employee is skilled or unskilled and whether he or she is inside or outside the country):

Skilled employees		
	Inside country (new work permit)	Outside county (new or renewal work permit)
Class 2A	AED 250	AED 500
Class 2B	AED 500	AED 1000
Class 2C	AED 750	AED 1500
Class 2D	AED 1000	AED 2000

Unskilled employees		
	Inside country (new work permit)	Outside county (new or renewal work permit)
Class 2A	AED 500	AED 1200
Class 2B	AED 1000	AED 2200
Class 2C	AED 1250	AED 2700
Class 2D	AED 1500	AED 3200

Conclusion

With the introduction of the revised fee structure for issuing work permits to companies depending on the percentage of skilled employees they employ and the cultural diversity of the employees, it demonstrates the government's ongoing commitment to see a much greater percentage of Emiratis working in the private sector and a more skilled and culturally diverse workforce overall. In addition, it is clear that the UAE government is still seeking new methods of instilling discipline in the UAE business community, with regard to immigration and labour law compliance.

Abu Dhabi Department of Health: A New Land Allocation Standard for Healthcare Facilities

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Land Allocation Standard

Identifying a need for healthcare providers, operators and investors to be engaged with the Abu Dhabi Department of Health ("DoH") (formerly the Health Authority Abu Dhabi – HAAD) at a strategic level before developments or investments are undertaken in the Emirate of Abu Dhabi, the DoH issued an updated standard for the allocation, extension, and cancellation of allocated land to build healthcare facilities effective 21 November 2017 ("Land Allocation Standard"). This article considers these new developments and their impact.

In line with the Abu Dhabi Capacity Master Plan of 2016 ("Master Plan"), the Land Allocation Standard seeks to ensure that new healthcare providers give the population timely and convenient access to facilities and services. The standard revamps the process for land allocation to build a healthcare facility and applies to all applicants seeking land allocated by the DoH.

Previously, an investor would first apply for a new licence to operate a healthcare facility, in accordance with the DoH approved application process. It would then request the allocation of reserved land. If land was not available for the proposed healthcare facility, the application was added to the waiting list or a request was made by the DoH to the Abu Dhabi government seeking allocation of government owned land.

Under the new standard, DoH will publically announce the land available for healthcare investment, specifying the area and location, as well as the type of healthcare facility and specialities. Such announcements are based on the priorities identified within the Master Plan and will remain open for one month from announcement. An interested party must first submit an application to the Land Allocation Committee. The committee will review all applications received and select the most suitable investor.

Potential for Enhancement

Whilst the DoH's introduction of the Land Allocation Standard is a welcome step to clarify the land allocation process for building healthcare facilities, we consider that there is potential scope for the process to be further enhanced to deliver wider benefits. At present the standard is only applicable to Emirati nationals seeking land allocations for the development of healthcare facilities and is not applicable to foreign investors. Many leading international healthcare providers have shown keen interest to support Abu Dhabi's healthcare aims and several well-regarded providers have opened facilities in recent years. The extent of this foreign investment has, however, been restrained by a lack of suitable land resulting from restrictions controlling foreign land ownership.

Legal Background

Healthcare providers typically choose to develop custom-built premises to accommodate their facilities, as suitable existing premises are often not available in Abu Dhabi. These premises are costly to build and frequently providers will need to raise finance to meet the costs of construction. Such investment and financing usually requires that the provider is able to hold a secure and long-term legal interest in the premises. In the case of healthcare providers that are wholly owned by Emirati nationals, it is generally relatively straightforward to ensure that legal title to the healthcare facility can be registered at Abu Dhabi Municipality ("ADM") and a title deed issued, with a mortgage registered on the title if necessary.

Healthcare providers that are not wholly owned by Emirati nationals face some challenges when seeking to secure their long-term interests in healthcare facilities. Generally, these providers are restricted to developing facilities in those areas of the Emirate that have been designated for foreign real estate investment ("Investment Areas") pursuant to Abu Dhabi Law No. 19 of 2005 and its subsequent amendments ("Law No. 19").

Law No. 19 allows providers that are wholly owned by Gulf Co-operation Council ("GCC") nationals to own land and buildings within Investment Areas. For these providers, it is possible to purchase a plot of land on a freehold basis within an Investment Area, develop a healthcare facility, raise finance, obtain a title deed and register a mortgage on the title at ADM.

Healthcare providers that are not wholly owned by either UAE or GCC nationals may take leases of land or existing properties for terms of up to 99 years within Investment Areas. GCC nationals are allowed to own freehold land and buildings within Investment Areas so GCC investors are advised to consider this option as a priority. Investors who are neither UAE nationals, nor GCC nationals, may own freehold title to buildings, but not the underlyng land, within Investments Areas. The concept of freehold ownership of buildings in Investment Area is not likely to be helpful in practice for healthcare investors because this structure would require the building to be subdivided on a strata basis and the foreign investor would then own units within the building. It most likely that these non-UAE, non-GCC providers will look to enter into long-term 'musataha' agreements of land within Investment Areas. These agreements can be for a term of 50 years with an option to renew for a further term of 50 years. Musataha agreements are similar to long-term development leases and allow the healthcare providers to arrange construction and then to operate their facilities. It is also possible for the rights granted by these musataha agreements to be registered with ADM and title deeds can be issued in favour of the foreign healthcare provider. If the provider wishes, it can grant a mortgage over its musataha rights and this mortgage can also be registered on the title at ADM.

Outside Investment Areas, foreign healthcare providers

(including GCC owned providers) are restricted to taking leases of land or leases of existing properties for maximum terms of four years. This restriction on lease terms is imposed by the Tawtheeq rules concerning the registration of leases in Abu Dhabi, created pursuant to Executive Council Resolution No. 4 of 2011. Whilst leases can be expressed as being renewable for further terms, that is usually not sufficient security for the substantial investment necessary to develop a new healthcare facility. Obtaining financing for the development is likely to be more difficult as the healthcare provider cannot grant the security of a mortgage over the healthcare facility due to the short-term nature of its lease. These limitations are a major obstacle holding back development of more healthcare facilities throughout the Emirate and in areas where there is often a pressing need for new facilities to open.

Application Requirements

The investor applying for the allocation must be an Emirati national and should include various documents supporting the application, such as:

- new healthcare facility licensing application;
- initial trade name reservation from the Abu Dhabi Department of Economic Development;
- evidence of the applicant's experience in healthcare investment;
- documents detailing the proposed financing for the project; and
- project plan for building the facility, including its projected cost and the project management organisational chart.

Approval Process

Upon preliminary approval of the application for land allocation, the investor must apply for the healthcare facility licence within one month of the allocation approval. The preliminary approval will be valid for one year. During this time the schematic drawings must be submitted for approval, within six months of preliminary approval, in accordance with the DoH facility guidelines. Once the drawings are approved, the investor must apply and obtain the necessary approvals from the relevant government entities, including the Department of Urban Planning & Municipalities. Further, within six months of DoH's approval of the detailed drawings, construction of the healthcare facility must commence. Inspections will generally take place once 90% of the construction has been completed, and again once fully completed.

Cancellation

At any time, the DoH may cancel the land allocation in the event of the following:

- non-compliance with the project time schedule, and failure to provide clear and convincing explanation for the non-compliance;
- non-compliance with the DoH approved legal rules and regulations pertaining to the project;
- selling or renting of the land by the investor;
- breach of the undertaking signed by the investor; and
- non-compliance with the Land Allocation Standard.

Conclusion

As of 2016, there were 3.04 million residents in Abu Dhabi, of which 18.2 per cent were UAE nationals. The median age for UAE nationals was 19 and 31 for expatriates. By the end of 2016, there were 2,455 licensed facilities, including 56 hospitals (with 5,240 beds), 1,324 centres and clinics, and 750 pharmacies. The population is concentrated on or nearby Abu Dhabi island, with expected areas of growth in the short to medium term in Zayed City, Al Reem Island, Jabel Hafeet and Al Shamkha. Significant growth in demand is expected for primary care and services linked to lifestyle related diseases, such as diabetes and cardiovascular diseases and cancer. Capacity gaps have been identified in primary care, emergency care, psychiatry, obstetrics, neonatology, specialist paediatric care, orthopaedics, transplant surgery, as well as non-acute and long-term care beds.

Considerable investment will be needed in new healthcare facilities throughout the whole Emirate of Abu Dhabi over the coming years to ensure that the goals set by both the Master Plan and the Land Allocation Standard are achieved. New healthcare facilities will be needed in all parts of the Emirate, not only within the Investment Areas in Abu Dhabi City, but also in more peripheral areas. Meeting this need will be particularly challenging whilst international healthcare providers are not always able to secure long-term interests over the land on which they wish to develop facilities. We understand that the Abu Dhabi Government is aware of this concern and is currently giving consideration as to how the challenge may be overcome. One of the possible solutions that is being considered is to allow foreign investors to own musataha rights to properties outside Investment Areas. This would allow healthcare investors to develop and then use facilities for terms of up to 50 years with an option of being renewed for a further period of 50 years. Stay tuned for upcoming announcements from the DOH regarding lands available for healthcare investment in Abu Dhabi.

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UAE Issues New Code Governing the Promotion and Distribution of Medical Products

Introduction

In November 2017, the United Arab Emirates ("UAE") Ministry of Health and Prevention ("MOHAP") issued the "Code of Ethical Practices for the Promotion and Distribution of Medical Products in the UAE" ("Code"), which provides directives for the ethical promotion and distribution of medical products in the UAE. It covers the minimum standards that should govern the interaction between medical product companies or their representatives and the healthcare professionals. It aims to ensure that all interactions between such parties are intended to advance healthcare practices and to benefit patients.

Scope of Code

The Code has been adopted and is applicable to all entities involved in the promotion of medical products in UAE, including and not limited to: marketing authorisation holders and whoever acts on their behalf, distributors, and marketing consultants, as well as individuals and entities involved in the prescription, dispensing, purchasing, enlisting, and reimbursement of medical products in the private and governmental sectors, including all medical and pharmaceutical facilities in the UAE.

The Code covers promotional practice relating to the following topics:

- Marketing authorization and approved labelling;
- Promotional materials and information to be made available;
- Promotion and its substantiation;
- Distribution of promotional materials;
- Transparency of promotional activities;
- Events and hospitality;
- Gifts and other items;
- Distribution and commercialisation of medical products;
- Samples and/or demonstration products;
- Support for education;
- Consultancy services;
- Clinical research, including post marketing assessment studies;
- Grants and donations;
- Improvement in patient care through educational and medical programs;
- Company staff obligations;
- Enforcement procedure.

Bonus Payments / Monetary and Non-Monetary Benefits

The Code provides key points of clarity regarding certain promotional practices that have typically been a "grey area". A matter that has been of particular contention is the provision of "bonus" payments by suppliers to pharmacies. Typically, these types of bonus payments were considered to be in violation of UAE Ministry of Health and Prevention Circular No. 171 of 2011 ("Circular 171"), which strictly prohibits the provision of bonus payments, direct discounts, to private pharmacies and private hospitals on pharmaceuticals that are priced by the UAE Ministry of Health and Prevention. One of the rationales give for such a restriction under Circular 171 was that the approved prices take into consideration the profit of the pharmacies and the importing agent and should, thus, not be amended by the suppliers.

The Code, however, states that "[m]edical products companies and their distributors can offer a quantity of free of charge goods (bonus) up to 15% of the invoiced quantity to pharmacies." In the same section, the Code clarifies that the "permitted quantity of free of charge goods (bonuses) indicated can be amended by increase, decrease or nullification via a decree issued by the Minister of Health and Prevention, whenever such amendment is needed". Hence, the Code introduces a significant change to the treatment of bonus payments, superseding the blanket ban previously created under Circular 171.

Apart from this, the Code prohibits any monetary benefit, or equivalent, such as additional bonuses, discounts or any other forms of financial benefit to be offered to pharmacies or healthcare facilities. Specifically prohibited are any benefits for the execution of regular business activities, such as and not limited to: allowing medical representatives access to the facility, visits to healthcare professionals, enlisting products in formularies, and making products available on the shelves.

The standard tendering and purchasing channels for government funded institutions remain outside of the Code, permitting such institutions to negotiate orders and prices of medicines and medical products with suppliers.

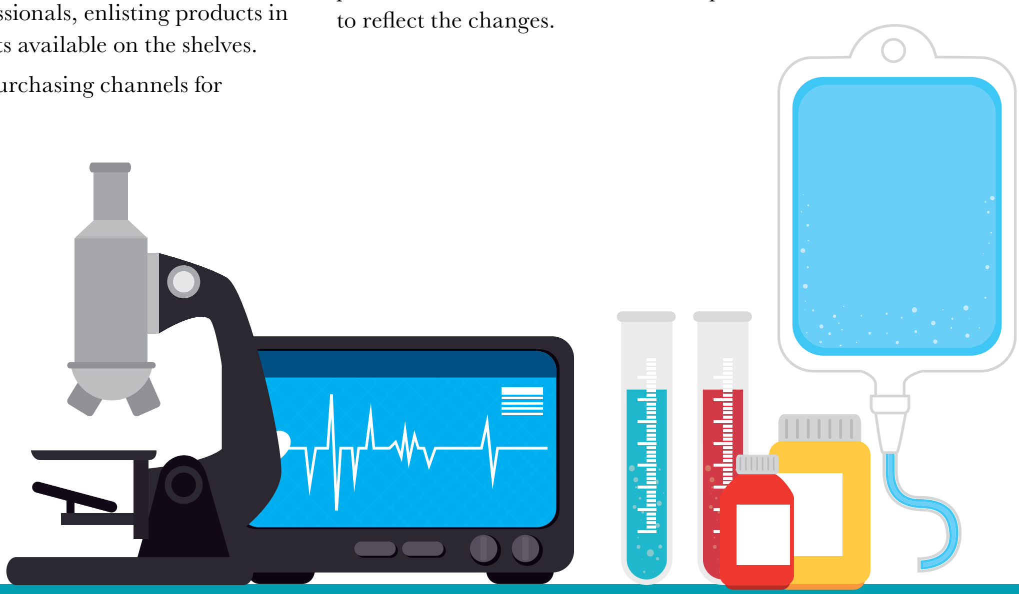
Events and Hospitality

Another section of particular interest is that on events and hospitality. This section demonstrates MOHAP's increased focus on targeting mechanisms by which healthcare professionals prescribing may be influenced in a way that is not centred solely upon the benefit of the prescription to the patient. Specifically, the Code prohibits the use of hotels that are well known as recreation locations (such as resorts, spas, golf hotels) for promotional, scientific, educational, or professional meetings, as well as congresses, conferences, symposia, and other similar events. Medical product companies are further limited to paying for reasonable and actual travel, meal, accommodation, and genuine registration expenses of healthcare professionals from the UAE, and are prohibited from extending hospitality to any spouses or guests of the healthcare professional.

Compliance with the Code

MOHAP reserves the right to audit medical product companies, pharmacies, and healthcare facilities to ensure compliance with the Code. Particularly, the Code requires that each company appoint at least one senior employee who will be responsible for supervising the company and its subsidiaries to ensure that compliance with the Code is maintained. MOHAP may request, at any time, all necessary documentation to prove compliance with the Code. Violations of the Code are considered to be violations of the 'parent law', Federal Law 4 of 1983, concerning "Pharmaceutical Professions and Institutions", and will be referred to the relevant health authority's licensing committee to take appropriate action.

The Code introduces significant clarifications and changes to the governing laws on the promotion of medical products in the UAE. Internal policies and business practices of pharmaceutical and distribution companies should be revised to reflect the changes.



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Developers in Dubai can terminate without court order

On 18 October 2017 His Highness Sheikh Mohammed Bin Rashid Al Maktoum issued Law No. 19 of 2017, amending Article 11 of Law No. 13 of 2008 which regulates the Interim Real Estate Register in the Emirate of Dubai (“Law 19”). Law 19 outlines procedures to be followed by a developer in the event of default by an off plan investor, leading to termination of the sale and purchase agreement (“SPA”) and de-registration of the SPAs by the Dubai Land Department (“DLD”). These procedures are a matter of public policy and a developer is not permitted to contract out of its obligations.

Article 11 was initially amended by Law No. 9 of 2009 which was then subsequently further explained in Articles 15 and 16 of Executive Council Resolution No. 6 of 2010.

Law 19 takes effect from the date of its issuance, being 18 October 2017, and will apply retrospectively. The only exception to the application of Law 19 is in the case of land sales that have no off-plan sales, which remain subject to the provisions stated in the SPA.

Law 19 also implicitly confirms the right of the DLD to de-register off-plan SPAs in the event of termination without the need to obtain a court order.

How can the developer terminate?

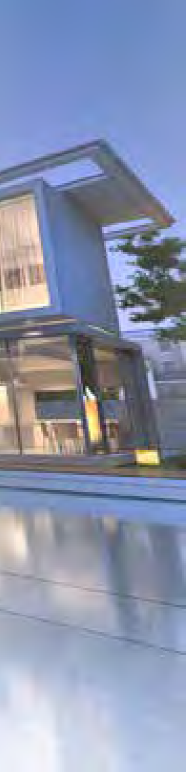
Law 19 has introduced set procedures with timelines which are to be complied with by a developer prior to termination of the SPA of the defaulting off-plan purchaser. Law 19 sets out the following procedures:

a. Notification to DLD by developer: A developer must inform the DLD of any default committed by the off plan purchaser pursuant to the terms of the SPA. The developer’s notification to the DLD must set out a description of the default, details of the purchaser and developer, a description of the property and any other detail as requested by the DLD.

b. DLD Notice to purchaser: The DLD will consider the developer’s request and upon necessary verification, the DLD will serve a written notification to the defaulting purchaser (by way of registered mail, email or any other approved method by the DLD) with a 30 days’ notice period to rectify its default (“DLD Notice”). The DLD may also initiate amicable settlement between the parties and if a settlement is possible, the parties will enter into a settlement agreement.

c. Issue of DLD Report: If the purchaser fails to rectify its default within the said 30 days’ notice period of the DLD Notice or fails to settle the issue with the developer, then the DLD will proceed to issue its report, which will state the following: (i) the developer satisfied its obligations pursuant to Law 19; and (ii) the current percentage of completion of the property (“DLD Report”). The issue of DLD Report indicates that the DLD shall de-register the SPAs upon the request from the developer without the need for any court order or arbitration award.

d. Developer’s rights of termination: Upon receipt of the DLD Report, the developer has the right to terminate the SPA of the defaulting purchaser without the need for any further court order/ arbitration in the following manner:



i. If completion exceeds 80%: In the event that the percentage of completion of the sold property exceeds 80%, then the developer has the right to exercise one of three options:
   1. to continue with the SPA with the defaulting purchaser and retain all amounts paid and request for the outstanding payments from the purchaser;
   2. the developer may ask the DLD to sell the property by way of public auction and the proceeds received shall be collected by the developer and offset the outstanding balance purchase price due from the purchaser; or
   3. to terminate the SPA unilaterally without the need of obtaining a prior court order and retain 40% of the purchase price and return the excess amounts back to the purchaser within one year of date of termination or within sixty days of the date of successful resale of the property to a third party purchaser, whichever is earlier.

ii. If completion is between 60 to 80%: In the event that the percentage of completion of the sold property is between 60% to 80%, the developer has the option to terminate the SPA unilaterally without need for further court order and deduct no more than 40% of the purchase price and refund the remaining back to the purchaser either within (1) year of date of termination or within (60) days of the date of successful resale of the property to a third party purchaser, whichever is earlier.

iii. If completion is less than 60%: In the event that the percentage of completion of the sold property is less than 60%, the developer has the option to terminate the SPA unilaterally without the need for a further court order and deduct no more than 25% of the purchase price and refund the remaining amount back to the purchaser either within one year of date of termination or within sixty days of the date of successful resale of the property to a third party purchaser, whichever is earlier.

iv. If construction has not commenced: In the event that the developer has not commenced construction of the real estate project due to reasons beyond its control and without any negligence on its part, then the developer has the right to terminate the SPA unilaterally without the need for a further court order and deduct no more than 30% of the amount paid by the purchaser and refund the remaining amount back to the purchaser within sixty days of date of termination.

Where a real estate project is cancelled by RERA, Law 19 obliges the developer to refund all paid monies back to its purchasers in accordance with Law No. 8 of 2007 concerning real estate development trust accounts in Dubai.

If the defaulting purchaser is of view that the termination by the developer was not done in good faith, then Article 11 (4f) of Law 19 allows such purchaser to approach the courts or arbitration to challenge the termination.

Conclusion

Law 19 has certainly stirred the real estate market in a progressive manner whereby investors are encouraged to comply with their obligations, failing which the developer has the right to terminate and de—register the purchaser's SPA from the DLD's interim real estate register with clear steps laid out in Law 19. Also, Law 19 is an important pillar for the off-plan regime in Dubai and will help developers to save the cost and time arising from unnecessary litigation.

Law 19 clarifies a widespread misunderstanding which existed prior to the enactment of this law, namely whether an order from the DLD is sufficient to terminate a SPA or whether a developer is also required to approach the court to obtain an order confirming termination of a SPA. The most important aspect of Law 19 is the developer's right to unilaterally request from the DLD termination of the SPA without a court order.

Termination of the SPA by the developer in the above manner indicates that the DLD will legally deregister the SPA in the DLD Interim Property Register upon the developer's request, without the requirement of a court order confirming the termination. Nonetheless, the purchaser still has the right to challenge termination before the Dubai Courts in cases where the developer has abused its rights under Law 19.

Another notable feature of Law 19 is that the DLD shall only consider the relevant completion percentage, of the unit which is the subject matter of the dispute, rather than the total completion percentage of the project. The general practice followed by the DLD prior to the enactment of Law 19 was to issue completion certificate for the project as a whole rather than issuing a certificate for the relevant unit.

Although Law 19 provides that the developer may terminate the SPA unilaterally, in our view, in order for the provisions of Law 19 to be applicable, the procedures for terminating a SPA should be commenced by notifying the defaulting purchaser through the DLD. This means that, in cases where the developer has already served a notice on the defaulting purchaser prior to the issuance of Law 19, then the developer should recommence the notification process by serving a notice through the DLD in order to comply with the formalities of Law 19. However this particular legal question has not been tested before Dubai courts, thus there is no precedent to follow and it is yet to be seen how Dubai courts shall interpret this issue.

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Compliance with UAE Regulations on the Restriction of Hazardous Substances (RoHS): What you need to know

The first critical deadline for compliance with regulations governing restrictions on the use of hazardous substances in electrical and electronic equipment of 1 January 2018 has now passed. In this article, we examine the current regulatory environment and offer some helpful insights into issues that could be faced if starting the process after the prescribed deadline.

The Emirates Authority for Standardisation and Metrology ('ESMA') was established as the sole standardisation body in the UAE under the Law No. 28 of 2001. In line with its directives, ESMA issued UAE Cabinet Decision No. 10 of 2017, published in the Official Gazette on 27 April 2017, regulating the restriction of hazardous substances in electrical and electronic equipment ('RoHS'). The RoHS regulation prescribes three significant deadlines for the application of the mandatory substance restrictions. The UAE ROHS is the same, in terms of requirements, as the European Union Directive 2011/65/EU on the restriction of the use of certain hazardous substances in EEE, which was published in the Official Journal of the European Union on July 1, 2011 and entered into force on July 21, 2011. The first deadline of January 1, 2018 required the registration of a certain group of electrical and electronic equipment ('EEE') with ESMA.

Scope of regulations

RoHS applies to companies importing EEE on the UAE market. EEE is defined as 'equipment, which is dependent on electric currents or electromagnetic fields to work properly, and equipment for the generation, transfer and measurement of such currents and fields. In addition to equipment designed for use with a voltage rating not exceeding 1000 volts for alternating current and 1500 volts for direct current'.

The RoHS regulation covers the following products:

1. Large household appliances;
2. Small household appliances;
3. IT and telecommunication equipment;
4. Consumer equipment;
5. Lighting equipment;
6. Electrical and electronic tools (with the exception of large-scale stationary industrial tools);
7. Toys leisure and sport equipment;
8. Medical devices (with the exception of all implanted and infected products);
9. Monitoring and control instruments including industrial monitoring and control instruments;

10. Automatic dispensers; and
11. Other EEE not covered by any of the categories above or, and falling within the definition of article one (products operated by electric power or electromagnetic field and designed to operate at a voltage of not more than 1000 volts for alternating current and 1500 volts for direct current).

The RoHS regulation aims to control or limit the presence of the following hazardous substances in EEEs:

No.	**Restricted Substance**	**Maximum Threshold Limit**
1	Lead (Pb)	(0.1%)
2	Mercury (Hg)	(0.1%)
3	Cadmium (Cd)	(0.01%)
4	Hexavalent chromium (Vi)	(0.1%)
5	Polybrominated biphenyl (PBB)	(0.1%)
6	Polybrominated biphenyl ethers (PBDE)	(0.1%)
7	Bis (2-ethylhexyl) phthalate (DEHP)	(0.1%)
8	Butyl benzyl phthalate (BBP)	(0.1%)
9	Dibutyl phthalate (DBP)	(0.1%)
10	Diisobutyl phthalate (DIBP)	(0.1%)

Certain products are exempt from the requirement to obtain registration. Such exempt products include EEEs used for the following: military/security; outer space; specially designed equipment; large-scale stationary industrial tools; large-scale fixed installations; non-type approved means of transportation; non-road mobile machinery made available exclusively for professional use; active implantable medical devices;professional photovoltaic panels; research and development equipment for business-to-business basis; and products for general lighting covered under UAE Cabinet Decision No. 24 of 2012.

Who should apply / Suppliers' obligations

The authorised representative, or supplier, is responsible for the confirmation and acknowledgement that the EEE meets the requirements of the technical regulation. The term 'supplier' is defined as:

'The factory, importer, agent or assembler of the product, or any main or secondary distributor whose activity affects the product properties or any commercial or legal representative responsible for the import, installation and operation of the product subject to the provisions hereof who practices his business through a company or individual establishment licensed in the State.'

Conformity Assessment Options

There are two options to comply with RoHS requirements:

Option 1: Mandatory under the Emirates Conformity Assessment Scheme ('ECAS')

a. A risk assessment is to be submitted in case the full product assessment for RoHS is not completed;
b. Applicant executes a Declaration of Conformity ('DoC'), on ESMA's template, including only the critical components;
c. Applicant submits a full RoHS test report of the complete product (if available). Otherwise, test reports of at least three critical component need to be submitted; and
d. ESMA verifies compliance and issues a Certificate of Conformity ('CoC').

Under this option, critical components are those where their failure could lead to a breach of electrical safety. (i.e. electrical plug, motor, insulation/body, etc.). They may also be identified by the manufacturer based on their own risk assessment procedure. The justification used to identify the critical components is to be indicated in the DOC form. It is worth noting that ESMA accepted internal test reports for applications made only up to December 31, 2018.

A CoC is valid for one year only. In the event that a change in component (i.e. a new component was utilised for the manufacture of the already certified product) occur during the validity of the certificate, the certificate holder shall ensure continued compliance of the certified product and that changes has to be updated in the technical file during certificate renewal.

Option 2: Module H under the Emirates Quality Mark ('EQM') scheme

a. Applicant will execute a DoC;
b. Applicant will submit risk assessment documents based on IEC 63000, IEC 62476 and IEC 62474;
c. A technical audit and verification is conducted through ESMA undertaking a site visit at the manufacturing facility; and
d. ESMA verifies compliance then issues approval for the use of the EQM on the products manufactured by the facility.

Under this option, the manufacturing facility itself is evaluated for compliance. EQM approvals are valid for three years.

Costs / Timelines

The fees for registration under Option 1 are AED 4,300 per application. One application can include up to 45 products within the same application. The average timeframe for service completion is four working days, assuming all the documentations are complete.

The fees for Option 2 can exceed AED 40,000, which includes the application fee and the costs of two auditors visiting the factory where the products are manufactured (not including travel and accommodation fees). There is no specific timeframe for service completion, as it would depend on the auditors' availability, number of factories and length of visit.

The next critical deadlines is set for 1 January 2020 and applies to the use of hazardous substances in the following categories, amongst others:

a. Medical devices;
b. In vitro diagnostic medical devices;
c. Monitoring and control instruments;
d. Industrial monitoring and control instruments; and
e. EEE other than in group A, along with cables and spare parts for the repair, reuse, updating or functionalities or upgrading of capacity of EEE placed on the market, with some exceptions.

Applications should be submitted six months before the deadline, ESMA advises, to prevent last minute applications being subject to delays in processing.

Penalties for non-compliance

Failure to register products falling within the scope of RoHS is an offence with the additional knock-on effect that products entering the country will not be cleared through customs. A supplier may be obliged to withdraw non-compliant products from the market and incur all resultant costs. Penalties include imprisonment and fines of up to AED 30,000 according to the Federal Law No. 28 of 2001 on the establishment of ESMA.

Next steps

For those companies currently navigating the registration process, that are already working with one of ESMA's notified bodies, who are in the process of, or have completed, reviewing the documents, once the document reviews are complete, i.e. the DoCs on ESMA's template are signed and stamped by the applicant, and the risk assessment / technical reports are all in compliance with ESMA's requirements, the same will be uploaded onto ESMA's online portal. Companies are then required to pay the fees online, which include the cost for the document review by the notified bodies. ESMA will issue an electronic certificate of conformity to be presented by the supplier to the customs authority when clearing goods through customs.

For those companies that have not yet started the process, these companies would be considered in breach of the RoHS regulation if they have products already in the UAE market that require registration, and could face the penalties outlined above. We would advise these companies to start the process immediately and to seek advice on the best route to engaging in a dialogue with ESMA to allow late applications whilst reducing the risk of regulatory sanctions being applied.

Please contact the Al Tamimi & Company Regulatory department if you require any assistance related to the legal compliance of RoHS regulations.

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Effectiveness of Aircraft Mortgages in the UAE

In recent years, the aviation finance industry has experienced high-growth to meet the needs of burgeoning aircraft demand globally. In the UAE, the aviation industry has been and will continue to be a significant contributor to its economic development, as the nation aims to achieve a sustainable and fully diversified economy. As the fleet size of UAE based airlines expand, investments in aircraft finance assets in the UAE are expected to increase. Given the asset-based nature of aircraft finance transactions, the recognition and validity of security interests over aircraft has historically been a key consideration for financiers.

In view of the cross-border nature of the operation of aircraft, it is a common market practice for financiers to take either an English law or a New York law mortgage over aircrafts, owing to the long developed history of jurisprudence in both jurisdictions. Nevertheless, the laws of the state of registration of the aircraft is of significant importance in the context of lex-situs issues. In this article, we set out a high-level summary on the effectiveness of aircraft mortgages in the UAE.

Registration of Mortgage with the GCAA

The General Civil Aviation Authority ('GCAA') is the responsible aviation authority for the registration of aircrafts in the UAE. The UAE has ratified the Convention on International Interests in Mobile Equipment in 2001 and the Protocol to the Cape Town Convention on International Interests in Mobile Equipment 2001 (together the 'Convention') on 1 August 2009. Pursuant to the Civil Aviation Regulations, Part V Registration of Civil Aircraft ('Regulations'), international interests as set out under the Convention are thus recognised in the UAE.

The GCAA maintains a national aircraft register in accordance with Article 28(2) of the UAE Civil Aviation Law (Federal Law No. 20 of 1991), which provides that an aircraft is to be registered according to the conditions and procedures provided therein ('Aircraft Register'). The GCAA does not maintain a separate registry for security interests over aircraft; however, the GCAA permits the registration of mortgages governed by foreign law under the Aircraft Register and the notation of the name of the mortgagee on the certificate of registration issued by it in respect of an aircraft.

While it is not a condition to the validity or the enforceability of an aircraft mortgage that it be filed or recorded by the GCAA under UAE Law, such a filling will normally constitute a protection of the mortgagee against the owner's attempt to sell or deregister the aircraft without obtaining the mortgagee's prior written consent.

In addition to the registration of a mortgage with the GCAA, the Regulations allows the person in whose favour the Irrevocable De-registration and Export Request Authorisation ('IDERA') has been issued, (i.e. the authorized party or its certified designee) to request the deregistration of the aircraft from the GCAA by submitting an application form by way of the enforcement of an IDERA. The exercise of such remedy must be effected in accordance with provisions of the Regulations and the Convention.

No Self-Help Remedies

UAE law has made several declarations under the Convention at the time of its accession and, as a result, any remedies under the Convention that do not require a court judgment may not be recognised by UAE courts. Accordingly, a claimant that requires the repossession of an aircraft may file a court application for an attachment.

Such proceedings are generally referred to as 'retrieval proceedings', as further described in the below paragraph.

In the event of a dispute over the right to possession of an aircraft or where the mortgagee by reason of claims against mortgagor disputes the entitlement of the mortgagor to retain the aircraft and thereby seeks to remove or export the aircraft from the UAE, then the mortgagee may pursue attachment of the aircraft by court proceedings in the local UAE court where the aircraft is located followed by substantive legal proceedings on the actual subject matter (e.g. non-payment of lease rental or loan repayments).

Requirements of Mortgage under UAE Law

UAE law recognises the principle of freedom of contract, which theoretically also extends to choice of law provisions. In practice, however, UAE courts are reluctant to recognise the choice of a foreign law as the governing law of an agreement on grounds of public policy and tend to apply UAE law to foreign law mortgages when they are the subject matter of UAE court proceedings.

Although a foreign law mortgage may be upheld as a valid mortgage in the UAE, it must be borne in mind that the mortgage normally will be interpreted through the perspective of local UAE laws. This should not result in an interpretation vastly different to that in any other jurisdiction. However, it is imperative to ensure that the key UAE legal requirements concerning security interests over moveable assets are satisfied, which would offer great weightage in contentious proceedings.

The provisions concerning mortgages over moveable assets which apply to aircrafts are provided under the UAE Commercial Code (Federal Law No. 18 of 1993). There are no specific aircraft mortgage provisions in UAE aviation law, therefore under the Commercial Code the mortgagee must have possession over the aircraft. While the Commercial Code is silent as to what conditions would satisfy the possession test, such consideration is ultimately a question of fact. Accordingly, the possession test would be deemed satisfied by the following grounds as the prevailing market position:

1. The installation of fire-proof name plates on the aircraft and engines, noting the security interest of the mortgagee;
2. The recordation of the mortgagee's interest on the certificate of registration of the aircraft to be issued by the GCAA; and
3. Registration of the mortgage as an international interest under the Convention.

As a procedural point, it is also worth noting that all documentation brought before the UAE courts in respect of any matter to be heard by them must be in the Arabic language. In the case of documentation, which is originally in a language other than Arabic, the certified Arabic translation submitted to the UAE courts will be deemed to be the definitive and binding version for the purposes of all proceedings before the UAE courts.

Conclusion

Notwithstanding that mortgagees are unable to rely on any self-help remedies provided under the Convention for the purposes aircraft repossession in the UAE, mortgagee can take comfort that a default under a mortgage can form the basis for an attachment order and the ultimate repossession of the aircraft before the UAE courts. While retrieval proceedings in aircraft repossessions have only been tested in a single case before the UAE courts, it is probable that the UAE courts would generally respect and give effect to the provisions of the Convention as applied by the Regulations, to the extent that it is not inconsistent with UAE laws or contrary to public policy.

A Focus on Bahrain

I am delighted to have the opportunity to shine the spotlight on Bahrain - a country with a long and rich history in a range of business sectors, at the forefront of modernisation and liberalisation amongst its surrounding GCC states.

Our decision to open an office in Bahrain was driven by a number of factors, primarily the demand from our clients wanting to do business there. Its business friendly approach to foreign investment and its proximity to the Eastern Province of Saudi Arabia, and the ties Bahrain has with the rest of the GCC and the region are key to its success. We proudly launched our office in the Bahrain Financial Harbour on 01 July 2014, thus marking our presence in all GCC countries.

Since opening, we have focused on building a team of experienced lawyers who can cover every aspect of our clients' contentious and non-contentious legal requirements on the ground. We also receive significant regional support from Al Tamimi's network of offices throughout the Middle East – we are now 17 offices in nine countries! Our spread of experienced lawyers across the region enables us to work in multidisciplinary teams and handle all aspects of any legal matter, in any sector.

Our team have provided a number of interesting articles in this edition, which highlight some of the key recent developments and changes in the Kingdom. Corporate lawyer, Rad El Treki, tells us why "Business Friendly Bahrain is Open for Business" (page 42). Head of our Corporate Team, Raj Pahuja, discusses the series of banking reforms implemented over the past few years by the government to solidify its position as a financial hub (page 45). Senior Real Estate Associate, Unkar Chanian, explains the establishment of a Real Estate Regulatory Authority ("RERA") with the implementation of Law 27 of 2017 (page 40).

We are very excited to be hosting and attending the 3rd Annual Arab Lawyers Forum in Bahrain at the end of February which welcomes Arab lawyers from over 70 countries to address regional developments and discuss specific challenges affecting the Arab legal profession. Exciting 'hot topics' on the agenda include methods of settling ordinary and extraordinary disputes, the application of VAT, and legal developments relating to technology, such as artificial intelligence and social media. If you would like to attend this event, please get in touch with us to arrange your registration.

With such an open and welcoming environment for expatriates and businesses from all over the world, we look forward to what is set to be a busy and exciting year ahead!

If you have any questions in relation to our articles or wish to discuss business in Bahrain in general, please do not hesitate to reach out to us, as we would be delighted to hear from you.

Best regards,

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Bahrain: A New Era in Real Estate

Law 27 of 2017.

Law No. 27 of 2017 concerning the Promulgation of the Real Estate Sector Regulation Law (New Law) was issued in the Official Gazette on 03 August 2017, with Chapter One coming into effect on 01 September 2017, and the remaining sections of the New Law coming into effect on 01 March 2018. The New Law contains 109 Articles and is a comprehensive piece of legislation which covers a wide range of issues relating to the Real Estate sector. The main areas are as follows:

Establishment of a Real Estate Regulatory Authority

Chapter One of the New Law deals with the establishment of a Real Estate Regulatory Agency (RERA) which will regulate the Real Estate sector in Bahrain. The board of directors of RERA (Board) has recently been announced, and the CEO of RERA, Sheikh Mohammed bin Khalifa bin Abdulla Al Khalifa, has been duly appointed.

The Board has a number of tasks ahead of it, including the implementation of a national plan concerning the regulation of the Real Estate sector and issuing regulations for the operation of the New Law.

Off-Plan Development in Bahrain

One of the most eagerly awaited aspects of the New Law was the regulation of off-plan developments. The New Law has replaced Law No. 28 of 2014 concerning Property Development which previously governed all off-plan developments, albeit the New Law contains a number of similar requirements.

Developers who sell off-plan properties will need to obtain a “Developer’s Licence” prior to carrying out any development activities – a resolution from the Cabinet of Ministers will determine what is a “property development” and the Board will issue a resolution determining the requirements for obtaining, renewing and amending a “Developer’s Licence”.

Once a developer has obtained a “Developer’s Licence” its details shall be recorded in a “Developer’s Register” which shall be kept by RERA.

As well as obtaining a “Developer’s Licence”, the New Law requires each development or project to obtain a “Development Licence”. RERA will keep a “Development Register” which shall include the following information for each registered development:

- Plans and specifications, designs and drawings of the development;
- Details of the Escrow Account and any financial guarantees; and

- Any other data deemed appropriate by the Board.

When obtaining a "Development Licence", a developer must submit to RERA, amongst other items, the following:

- The title deeds or its substitute;
- Approved architectural and structural engineering plans;
- Method statement detailing the completion and implementation of any phases of the development;
- The building permit;
- A valuation of the development from a COEPP licenced engineer; and
- Any other information required by RERA as determined by a resolution from the Board.

The New Law places an obligation on developers to proceed with the development and RERA has the power to withdraw a "Development Licence" should the development not proceed as required. The exact criteria will be determined by a resolution of the Board.

Similar to previous legislation and other GCC markets, a Developer will be required to create an Escrow Account with a registered Escrow Agent. An Escrow Account will be used to deposit the sums obtained from the sale of units in a development and will include any finance obtained for the development. Further details of the amount of the initial deposit and the rules relating to the Escrow Account will be issued by way of a resolution by the Board in coordination with the Central Bank of Bahrain.

The Escrow Account shall be exclusively designated for the development, and any sums deposited within the Escrow Account shall be "ring fenced" and will not be able to be seized or utilised by any creditor of the developer. A certain percentage of the structural value of the development shall be required to be kept in the Escrow Account for 12 months following the sale of the last unit within the development. Such sum shall be utilised to remedy any defects within the development.

An important requirement of the New Law prevents any marketing of the off-plan development, whether locally or internationally, without the development being registered. Various other regulations are awaited from the Board, some of which will deal with the following:

- The terms and conditions of sale contracts used in an off-plan development;
- The on-sale of a unit by a buyer to another party prior to completion; and
- The cancellation of the development.

Brokerage, Valuers and Property Management

Sections 3, 4 and 5 of the New Law cover brokers, valuers and property management respectively, with each profession being required to obtain a licence from RERA to practice. Resolutions setting out further requirements will be issued by the Board, however one important restriction of the New Law is that Valuation and Brokerage activities cannot be undertaken by the same business.

Joint Ownership and Home Owners Associations

The main changes from the previous law is that a Home Owners Association (HOA) is required to be established on the sale of one unit (rather than 4) and shall be an incorporated entity. Also, a HOA will now be capable of being registered at the Survey and Land Registration Bureau and will form part of the title deed of any common property which is jointly owned.

Registration of Rights

The New Law requires all property "real" rights to be registered and these will include long-term leases, rights of Musataha and mortgages.

Penalties

Non-compliance with the New Law carries severe penalties which range from up to 2 years imprisonment and a fine of up to BHD50, 000.

Conclusion

The New Law with the ensuing resolutions will provide comprehensive legislation dealing with the Real Estate sector in Bahrain. The establishment of RERA as the regulator creates the necessary government authority to implement the New Law and regulations with such regulation having the potential to provide a level playing field for stakeholders and give greater confidence in the market to investors.

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Business Friendly Bahrain is Open for Business

Bahrain is currently going through a period of transformation in terms of its regulatory and business environment. Like many countries in the Gulf Co-operation Council ("GCC"), Bahrain is tax free for most private companies (except for those in the oil and gas exploration, refining and production sectors). However, unlike many countries in the GCC, Bahrain allows 100% ownership of business assets in certain sectors and in which, the entire country is effectively a free zone.

Over the years, Bahrain has been making a conscious effort to attract investment onto its shores and is consistently ranked as one of the top open economies for doing business. Bahrain has traditionally been known for its well regulated financial services sector and has recently introduced various innovative laws to enable further investment and growth in that sector.

Bahrain was one of the first countries in the region to have a trusts law and to recognise the concept of trusts. The earlier trusts law was introduced in 2006 but has been replaced by Decree 23 of 2016 ("Trusts Law"). The Trusts Law creates a legal framework for the creation of a trust and its liabilities, and allows the establishment of trusts for charitable and non-charitable purposes, as well as 'Purpose Trusts'.

Law 22 of 2016 relating to Protected Cell Companies ("PCC") introduces PCC's in Collective Investment Undertaking, Private Investment Undertaking and insurance captives. Under this law, investors are able to separate their private assets from the company running their chosen fund allowing investors to set-up and liquidate cells more efficiently. In addition to the law regarding PCC's, Bahrain is the first GCC country to introduce an Investment Limited Partnership Law (Law 18 of 2016). This law enables investors to utilise new financing structures in order to raise capital and establish financial investment funds.

Bahrain has also recently opened the Bahrain Investment Market, which is an equity market for growing business ventures in both Bahrain and the MENA region. It supports companies who are looking to raise capital to fund future growth, such as entrepreneurial ventures and mature family businesses.

Further recent initiatives introduced by the Bahrain government include regulations relating to Crowdfunding and a Regulatory Sandbox.

A further innovation includes the announcement relating to the launch of the Bahrain FinTech Bay ("BFB"), which will be the largest FinTech Hub in the Middle East. BFB, with an area of over 10,000 square feet of usable space, will be located in the Arcapita building in the capital of Manama, overlooking the waters of Bahrain Bay and the Arabian Gulf. Scheduled to open on 21st February 2018, it will comprise co-working spaces, communal areas, workstations, hot desks, and a variety of other shared infrastructure. It will also act as the platform from which Bahrain will develop its fintech ecosystem further. BFB is being founded together with a number of regional and international founding partners, strong support and partnership with the Bahrain Economic Development Board, Central Bank of Bahrain, other government entities, financial institutions, educational institutions and others.

Fintech Consortium, the ecosystem builder based out of Singapore, New York and now Bahrain, will be the operator of BFB. Fintech Consortium will apply physical and digital solutions in BFB and integrate it into its platforms including blockchain, insurtech and regtech. This initiative further supports Bahrain's lure for investors and innovators.

All companies looking to carry out business in Bahrain essentially need to have a licensed business presence in Bahrain. A commercial company established in accordance with the Commercial Companies Law (21 of 2001) (as amended) ("CCL") is the most common form of business vehicle used in the Kingdom. As mentioned, it is possible for foreign investors to have 100% legal interest in particular Bahraini business vehicles but there are sector-related restrictions which can apply.

It is important to consider this a little more closely and the impact that this may have on potential foreign investors. Some sectors and activities are only allowed to be carried out by Bahrainis or entities fully owned by them and some are only open to Bahrainis and GCC nationals. Further, some business activities may require a minimum Bahraini investment, such as 51%.

The sectors in which a business vehicle cannot be 100% foreign owned generally include construction, press, publishing and distribution, car and motorbike rental, fishing, foreign manpower supply, land transportation of goods and passengers, trading, small businesses, foreign manpower, commercial agencies, certain real estate services, gas bottling and distribution and gas cylinder distribution.

Notwithstanding the above, there are many industry sectors which allow for 100% foreign investment such as but not limited to, technology and manufacturing, although these have to be considered separately and may be subject to other restrictions.

Minimum capital requirements for incorporating a company have also been reduced in most sectors making it more cost effective and attractive to incorporate in Bahrain.

It is worth considering the types of business vehicles that are commonly used in Bahrain. Certain business vehicles cannot be used in certain sectors, for example, businesses looking to engage in banking and insurance activities in Bahrain, can generally only do so through Public and Closed Joint Stock Companies and Foreign Branch Companies. These companies are also subject to approvals and regulations of the Central Bank of Bahrain.

This form of company consists of a minimum of seven shareholders and the shareholders are liable for the company's debts and obligations only to the extent of the value of their shares. The minimum share capital required is BHD1 million and there must be a minimum of five directors. The shares can be offered to the public and any offering of shares to the public must be subject to approval from the Central Bank of Bahrain and in compliance with the CBB's new Offering of Securities Module (Volume 6 of the CBB Rulebook) and subject to approval of the Ministry of Industry and Commerce.

This is commonly known as a Closed Joint Stock Company and consists of a minimum of two shareholders. Shares in these companies cannot be offered for sale to the public and as is the case with public shareholding companies, shareholders are liable for the company's debts and obligations only to the extent of the value of their shares and the minimum number of directors is three. A Closed Joint Stock Company can be 100% foreign owned but this is dependent on the business activity of the company.

Both Joint Stock Companies and Closed Joint Stock Companies must adhere to the Corporate Governance Code issued by the Ministry of Industry and Commerce. There are further regulatory requirements on companies licensed or regulated by the Central Bank of Bahrain which may, amongst other things, increase the minimum share capital requirement and board composition.

A With Limited Liability Company ("WLL") is comparable to a Limited Liability Company in the UAE and is the most common form of business vehicle. WLL's must consist of a minimum of two and a maximum of 50 shareholders who are natural or legal persons. The shareholders are responsible for the company's debts and obligations only to the extent of their respective share in the capital. WLL's are required to appoint at least one general manager who has the same obligations, duties and responsibilities as a director in a Joint Stock Company. The company cannot issue public shares and can be 100% foreign-owned, again depending on the business activity.

A Single Person Company ("SPC") is a company which is fully owned by a single natural or corporate person. The owner is liable for the company's debts and obligations only to the extent of the value of his capital investment in the company. There must be at least one director and foreign and non-GCC nationals can set up an SPC provided that there are no restrictions on the business activity.

In very broad terms, the concept of residency tax does not exist in Bahrain. Further, employees are not required to pay income tax to Bahraini authorities and there is no wealth tax, tax on capital gains or inheritance tax. There are also no corporate taxes on companies carrying out business in Bahrain and no withholding tax. However, taxes are payable in relation to the profits earned by companies engaged in oil, gas or petroleum exploration, production and refining in Bahrain.

Employers must pay social security contributions in relation an employee's monthly salary to the Social Insurance Organisation. This applies to both Bahraini and non-Bahraini employees, although the percentage payable differs.

Bahrain has no exchange control restrictions on repatriation of capital, profits or dividends, which allows them to be fully transferred. The Bahraini dinar is pegged to the United States dollar at a fixed rate of US$1 to BHD 0.377. Bahrain has not yet introduced value added tax like the UAE and Saudi Arabia but it is understood that it will do so later in 2018.

The above is a brief overview of the recent developments concerning the Bahrain legal landscape for investors. Bahrain is also in the process of considering a variety of amendments to its other laws, including its bankruptcy law. These will no doubt go some way towards making Bahrain a more investor friendly business jurisdiction.

Investment Limited Partnerships: A Banking & Finance Perspective

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There have been a series of reforms in Bahrain over the last couple of years in an attempt by the government to re-establish Bahrain's position as a regional financial hub in the Middle East. One such change has been the introduction of investment limited partnerships and protected cell companies (which we discussed in the December/January 2017 edition of Law Update). This article focuses on investment limited partnerships and its commercial advantages from a banking and finance perspective.

Investment Limited Partnerships ('ILP')

An investment fund is a pooled investment vehicle which acquires, holds and disposes of equity and equity related investments in unlisted companies. The investment strategy of a private equity fund will specify its target sectors (for example pharmaceutical companies) and its geographical target area (for example Europe). There are many legal structures available for such an investment fund such as a company (in Bahrain this is generally a joint stock company); an investment limited partnership or trusts and contractual arrangements. The limited partnership is the vehicle of choice worldwide for closed-ended investment funds.

The Law on Investment Limited Partnerships (Law No. 18 of 2016) was implemented on 4 August 2016 ('ILP Law'). An ILP can only undertake the Permitted Activities (which are exactly the same activities a PCC can undertake). An ILP is similar to a limited partnership company in that a general (defined as an 'Active Partner' in the ILP Law) partner's liability is unlimited and a sleeping (defined as a 'Dormant Partner' in the ILP Law) partner's liability is unlimited. ILPs are regulated by the CBB.

Bahrain is now a challenger to offshore fund jurisdictions as it has a state of the art ILP Law; it is a tax advantaged regime and it has a sophisticated regulatory regime.

Management and decision making in an ILP

The general partners manage the fund or contract with the manager. The general partners sign on behalf of the fund. The limited partners cannot take part in management. There are safe harbour provisions for limited partners including:

1. holding office or interest in general partner;
2. contracting with the fund;
3. consulting with or advising the general partner;
4. reviewing and approving partnership accounts and business affairs;
5. participating in partner meetings;
6. sitting on investment boards or other committees;
7. voting on specified decisions;
8. taking certain legal actions;
9. approving changes to the partnership agreement.

Duties of the general partner

The general partners have a duty:

1. not to conduct affairs in a way prejudicial to partners;
2. to render true accounts and full information about partnership to other partners;
3. to exercise powers to meet the fund's objectives;
4. not to compete unless specified consent is provided;
5. to disclose personal interests in accordance with partnership agreement; and
6. to compensate for any breach of duty or law.

Limited partner rights

The limited partners have the following rights:

1. limited liability;
2. access to partnership information;
3. to take certain action on behalf of the partnership;
4. compliance by the general partner with partnership agreement and the law;
5. protection from prejudicial actions; and
6. preference over general partner on distribution/dissolution.

Requirements for registration of an ILP

Registration of an ILP requires a:

1. no objection letter from the Central Bank of Bahrain ("CBB");
2. notarised statement from general partner including:
   - name of investment fund partnership;
   - particulars of business;
   - address of registered office;
   - statement of duration;
   - identification of general partners;
   - statement of partners' capital and manner of payment;
3. formal identification documents for general partnership;
4. limited partnership agreement; and
5. fee for registration and the no objection letter.

Investment Fund Partnership Agreement

An investment fund partnership agreement ("ILP Agreement") is a written binding contract between all the partners. The ILP Agreement is filed with the CBB. The ILP Agreement must contain the following minimum information, namely:

1. the manner and timing of contributions;
2. the restrictions of transfer of interests (if any);
3. the business of the ILP;
4. any profit entitlements of the partners;
5. any restrictions on the general partner;
6. when partner meetings are to be held;
7. when the fund terminates; and
8. conflict of interest policy.

Advantages of an ILP

Limited partnerships are the most popular structure for closed ended funds internationally and its structure is understood by international fund investors. ILPs allows clear legislative backing to popular fund structure choice internationally. It also provides an additional option to fund promoters. ILPs catches up with neighbouring Gulf Cooperation Council ("GCC") jurisdictions namely Dubai, Abu Dhabi and Qatar. ILPs also permit clear options to be given on investors' rights and permits flexibility of constitutional documents.

ILPs clearly designates responsible entity for fund management and control. It allows flexibility for division of profits from a fund. It avoids corporate requirements for capital maintenance. Further, it places clear fiduciary responsibilities on the general partner. ILPs provides investors access and transparency. ILPs are the first GCC 'onshore' limited partnership.

With partnership laws being well established in common law jurisdictions, such as London, New York, and Singapore, the ILP Law allows firms in and/or from such jurisdictions to operate in Bahrain within a legal framework with which they are familiar. The ILP Law also supports investment companies in establishing financial investment funds, and enables them to access new funding mechanisms.

Conclusion

Bahrain is now a challenger to offshore fund jurisdictions as it has a state of the art limited partnership law, a tax advantaged regime and a sophisticated regulatory regime. It is hoped that the ILP Law will provide a strong boost to the financial sector in Bahrain and support growth in real estate funds, private equity funds, venture capital and technology funds, start-ups, and Shariah-compliant funds, as well as captive insurance. However, as the ILP Law and ILPs have only recently been implemented in Bahrain, it may take some time before ILPs are widely adopted and are the structure of choice for investment funds in Bahrain. Nevertheless, it is expected that ILPs will enhance Bahrain's competitiveness in the financial services sector by making it easier to structure investment activities.

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The expiry of lease contracts under Rental Law No. 27 of 2014

In February 2018, Article 4 of the Rental Law No. 27 of 2014 (the "Rent Law") will come into force. Article 4 deals with the right of the landlord to terminate a lease contract that has been concluded before the law comes into force.

The Rent Law is long-awaited as there was previously no single consolidated rental law and the provisions governing leases were to be found in numerous laws. Article 2 of the Rent Law provides for the abrogation of all existing rental laws, whilst Article 3 provides for the application of Civil Law No 19 of 2001 in the absence of a relevant provision in the Rent Law. In addition, the promulgation law states that the Rent Law shall be applied in accordance with Article 6, which states that the law shall come into force six months from the date of its publication in the Official Gazette (i.e. on 8 February 2015).

Leases that are subject to the provisions of Decree Law No. 9 of 1970 shall remain valid for a period of three years. The three-year period shall come into effect on 8 February 8 2015 and end on 7 February 2018. However, new contracts between landlords and tenants shall be concluded according to the new Rental Law. That is to say, contracts under Decree Law No. 9 of 1970 shall be renewed and extended by force of law for a period of three years. The tenant shall be afforded his rights under the agreement for this period, on the assumption that he complies with his legal obligations.

Over the past 70 years, leases have been subject to various laws, including the Civil Code and Act No. 9 of 1970. The significant difference between these laws and the recent Rental Law is on the issue of the legal extension of leases, which had been initially implemented in the Manama and Muharraq governorates, but was later extended to all governorates across the Kingdom by the Constitutional Court in a landmark judgment in case no. 2 of 2013.

Under legal extension, it is impossible for the lessor to evict the tenant if the leased unit is used for business purposes. The tenants occupied the premises without the landlord being able to evict the tenant, and without the landlord being able to increase the rent more than once and for a total percentage exceeding 10%.

By 8 February 2018, legal extension will be no longer be available and the landlord will be entitled to request the tenant to vacate the leased premises immediately upon expiry of the contract. Some therefore consider the new law to be in the favour of landlords, after a long period in which the law had given priority to the rights and interests of tenants.

As Article 4 of the Rent Law comes into force, there is a legal issue that requires the attention of landlords before a tenant can be evicted. The Rent law requires the landlord to notify the tenant that he will need to vacate the premises at least three months prior to the eviction request. Article 34/B of the Rent Law states:

"The Lessee shall, if he desires to vacate the Leased Premises, give the Lessor a registered letter informing the Lessor, and obtain an acknowledgment of receipt of the same, at least three months before the expiry of the Agreement".

As a result, it is unlikely that business owners will be made to vacate immediately after the implementation of Article 4 or be evicted without being given proper notice and being afforded a reasonable period of time to find alternative units.

It is important for landlords to comply with the new law when seeking to evict tenants. The tenant must be notified three months before the relevant date and by a method that is in accordance with the law (i.e. registered mail with an acknowledgment of receipt). Such a method of service enables the court to ensure that the tenant is on notice. A failure to satisfy these legal requirements may result in the eviction proceedings being rejected by the Lease Disputes Committee.

However, it is still difficult to predict the quantum of damages that will be awarded to a tenant for an unlawful eviction, which is something that may be clarified in the coming months. It also remains to be seen whether the judiciary will afford legal protection and remedies to any tenant if is proven that the landlord is abusing his right to evict the tenant.

Article 28 of the Civil Law states:

"The exercise of a right shall be unlawful in the following cases:

1. if the sole aim thereof is to harm another person;
2. if it is aimed to achieve unlawful interest or interests;
3. if the benefit or benefits it is desired to realise is out of proportion to the harm caused thereby to another person; and
4. if it is designed to cause a serious and unusual damage to third parties".

The aforementioned Article of the Civil Law may afford legal protection to tenants against unlawful eviction. The likely remedy would be compensation, rather than forcing the landlord to renew the lease contract. However, the interpretation of Article 4 is untested before the Bahraini Courts and, in practice, it may be difficult for tenants to establish an abuse by the landlord.

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Central Bank of Bahrain (CBB) launch regulatory sandbox for fintech firms

June 2017 witnessed the introduction by the Central Bank of Bahrain ("CBB") of a regulatory sandbox aimed at enabling firms to test and develop their products in a virtual space. The introduction of the regime positions the Kingdom of Bahrain ("Bahrain") as only the second state within the Gulf Cooperation Council to implement such a framework. This article provides an overview of the new framework, including eligibility requirements and the application procedure and timelines.

A regulatory sandbox can be considered to be a framework and process that facilitates and encourages the development of the financial technology ("FinTech") sector in a safe, measured and pragmatic manner. The virtual space created by such a framework provides a safe area in which FinTech businesses (both established and start-ups) can test and refine their technology based innovative products, services and platforms without being immediately burdened by the usual regulatory and financial requirements which would otherwise apply to their activities. The effect is that FinTech firms are able to experiment with their products and services for a specified timeframe within a partially deregulated environment where the firms are able to offer their products and services to customers, but where risks to customers (and to the wider financial system as a whole) are mitigated none the less.

Key characteristics of the Bahrain Regulatory Sandbox

Some of the particularly notable features of the Bahrain regulatory sandbox include the following:-

- The regulatory sandbox is open to existing CBB licensees as well as to entities or firms which are not currently licensed by the CBB (both Bahraini and foreign). Such non-licensed firms or entities may include financial sector companies as well as technology and telecom companies; professional services firms which partner with or service financial institutions; and any other type of applicant working within the financial services industry and deemed acceptable by the CBB.

- The regulatory sandbox is open both to existing FinTech solutions which have been tested within a lab environment, as well as to ideas and solutions which are yet to be fully developed and/or tested.
- The timeframe for any applicant to remain within the regulatory sandbox is a maximum of nine months (with the possibility of an entirely discretional extension of three months).
- The testing of the product or service by the applicant may be limited by the CBB in terms of the number of volunteer customers and/or the amounts involved.

Eligibility Criteria

The key eligibility criteria to be satisfied by applicants include the following, all of which must be evidentially demonstrated to the satisfaction of the CBB:

- Innovation. The applicant's product or service (or its use) must be shown to be truly innovative or be significantly different to existing solutions within the Bahrain market.
- Customer Benefits. The applicant's product or service (or its use) should offer tangible direct or indirect benefits to customers, supported by quantifiable estimates or demonstrations.
- Technical Testing (for existing solutions). Where the applicant's product or service involves an existing solution, the solution needs to have undergone technical testing with the results to be provided to the CBB. In the alternative, external validation of the technical soundness of the solution from a reputable third party may be accepted.
- Regulatory testing readiness. Applicants are required to show evidence of a well developed regulatory testing plan, to include highlighting of the key risks the solution poses; details of how these will be mitigated; and details of adequate safeguards to protect customers.
- Post-testing deployment in Bahrain. The applicant should demonstrate both its intention and ability to deploy the proposed solution in Bahrain by way of submission of a Sandbox exit strategy (to include specific details of proposed scale-up and future deployment).

Application Procedure

Applicants are required to submit their application in writing to the CBB using the template CBB application form, attaching all relevant supporting documentation. The application form includes sections in which applicants must provide details of the following:

- A description of the applicant's organisation including its corporate structure, key business lines and centres, and its financial standing and technical expertise;
- The proposed innovative financial solution, and how it satisfies the eligibility criteria discussed above;
- The information as to the type (and number) of volunteer customers to be included in the applicants sandbox testing; how these will be sourced, and proposals to protect the volunteer customers and their confidentiality;
- Key performance indicators and targets which will be used to determine the success of the testing whilst in the regulatory sandbox;
- The cyber security and other relevant measures to be taken by the applicant to maintain security of the solution service or product; and
- The applicant's exit plan, plans for scale up and deployment strategy, together with a timeline of steps to be taken to meet the additional legal and regulatory requirements to be satisfied after exiting the regulatory sandbox.

The CBB has the right to relax certain requirements on a case by case basis.

Upon receipt of the completed application and all accompanying documentation together with the application fee (current set at one hundred Bahraini Dinars) the CBB will review the application and endeavour to respond to the applicant within fifteen days, either approving or rejecting the applicant's application.

Where approved, the applicant is then able to enter the regulatory sandbox in accordance with the terms and conditions of the framework and the applicant's application and commence the testing of its product or service based solution. The CBB have indicated that arrangements have been put in place with the other relevant Bahraini government authorities (for example, the Ministry of Industry Commerce and Tourism and the Labour Market Regulatory Authority) to enable applicants to, for example, employ and sponsor (for visa purposes) employees in Bahrain during the testing phase. Full details of these arrangements and how they operate are awaited.

Whilst in the regulatory sandbox, applicants are required to adhere to the relevant CBB regulations with regards to Know Your Customer (KYC), Anti-Money Laundering (AML) and Countering

Financing of Terrorism (CFT). Additionally, in so far as the applicant will as part of its sandbox testing be receiving any money from the volunteer customers, the applicant is required to entrust the handling of these funds to CBB licensed retail banks.

At the end of the designated sandbox period (which as mentioned, is a maximum of nine months with the possibility of an entirely discretional extension of three months) the applicant exits the regulatory sandbox, and may apply for the relevant CBB licence depending on the precise activities of the applicant.

Since the launch of the new framework, six entrants have so far been welcomed into the regulatory sandbox, including London based Tramonex (a forex start-up focused on facilitating conversion and settlement services to automate cross border transaction); Dubai firm Now Money (one of the first FinTech companies in the Gulf to use mobile banking technology to provide accounts, financial inclusion and a range of low cost money remittance options to low-income workers); and Belfrics Global (a Malaysian based Bitcoin technology provider).

The CBB has also established a dedicated FinTech Unit within the CBB with the mandate of ensuring the provision of the best services to individual and corporate licensees in the financial sector. The FinTech Unit is responsible for the approval process to participate in the regulatory sandbox, as well as supervision of licensed companies' activities and operations, including cloud computing, payment and settlement systems, and monitoring technical and regulatory developments in the FinTech field.

The introduction of the new framework and the creation of a dedicated FinTech Unit within the CBB is consistent with Bahrain's continued focus on further developing the Kingdom as the emerging FinTech and financial services hub of the Middle East region, promoting increased competitiveness and the encouraging the embracing of new technologies. At the same time, the safeguards built into the scheme will assist to maintain the required level of consumer protection and regulatory oversight which have long established Bahrain as one of key financial sector hubs in the region.

Land Allocation in Egypt's New Investment Law

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Investment Law No. 72 of 2017 ("Investment Law") came into effect on 1st June 2017. By repealing Law No. 8 of 1997, the newly promulgated law aims to promote foreign investments through the reduction of bureaucracy and the simplification and enhancement of processes in relation to the acquisition and allocation of properties by exploring the provisions of the Investment Law, as well as its Executive Regulations No. 2310 of 2017 ("Executive Regulations"). As part of the government's plan to increase revenue and exports, the land allocation provisions in the Investment Law and its Executive Regulations, which detail the process of acquisition and allocation of property by the government to investors serve as a way to optimise use of the properties under its jurisdiction and allow for far more investment opportunities than ever before.

With regards to the allocation of land, Article 55 of the Investment Law provides that the investor has the right to obtain the required properties for pursuing its activity, subject to the special laws that regulate properties located in certain geographical areas. Accordingly, the competent administrative authorities shall provide, through detailed maps, the availability of properties and the investment activities suitable for their nature, as provided by Article 56 of the Investment Law.

Types of Land Allocation and Partnerships

Pursuant to Article 58 of the Investment Law (and subject to the provisions of Article 37 of the same law) and further stipulated in Article 47 of its Executive Regulations, the properties required for investment projects shall be disposed of through one of the following means:

- Sale;
- Rent;
- Rent to own; or
- License to use, where the license to use or lease is only valid for a period that does not exceed 50 years.

Accordingly, Article 62 requires that the transfer of ownership, in case of sale or rent of properties, be conditional upon the full price payment. Moreover, pursuant to Article 58, the competent administrative authority which has jurisdiction may participate in the investment projects conducted, with the property being an in-kind share or through a partnership in the cases determined by a decree issued by the Cabinet of Ministers. Consequently, Article 48 of the Executive Regulations details that this participation could take the form of either:

- a Public-Private Partnership (PPP);
- a Long-Term Partnership;
- a Build, Operate, Transfer ("BOT");
- a Build, Own, Operate, Transfer ("BOOT"); or
- a Revenue Sharing Partnership.

Pursuant to the Investment Law and Articles 45 and 46 of its Executive Regulations, a database shall be created (and updated every 6 months) in order to comprise a list of these properties, their sizes, established heights as well as estimated price, and the method of disposal thereof. The allocation of land is conditional upon the approval of the Cabinet of Ministers and the President of the Republic issuing a decree transferring the title and jurisdiction of the property from the administrative body which has jurisdiction, to the General Authority of Free Zones and Investment (GAFI), in order to execute the investment plan and dispose of said property according to the provisions of the Investment Law.

It is noteworthy that the provisions of the Investment Law currently allow for a dual route to obtaining property from the government. One way is to obtain property directly from the competent administrative authorities and the other is to deal with GAFI, whereby the property would initially be transferred to GAFI and then onto the investor. This serves to allow more flexibility to the investor in terms of deciding which path would be more convenient. This was not present under previous iterations of such provisions. The only path for the investor is to seek land allocation through the competent authorities, which may lead to several bureaucratic obstacles that arise from dealing with several authorities and their respective requirements. Such a system also ensures that GAFI, a national body for investments, allocate disposition of land and property according to a wider vision for the economy.

Requirements and Conditions

In cases where the investor requires a privately state-owned property, Article 59 of the Investment Law requires the investor to indicate such requirements in its application, by specifying the purpose, size and location of the desired property. Moreover, for purposes of development, Article 60 of the same Law allows for the free disposal of privately state-owned properties to investors in areas determined by a decree issued by the President of Republic, where the investment projects meet technical and financial criteria, determined by a decree issued by the Cabinet of Ministers. This free disposal of properties is conditional upon the investor providing a cash guarantee not exceeding 5% of the overall value of the investment project's cost.

In particular, according to Article 49 of the Executive Regulations, where it concerns an activity involving production, the investor shall provide a cash guarantee representing 1% of the overall value of the investment project's cost. Where the activity concerned involves services, the investor shall provide a cash guarantee representing 3% of the overall value of the investment project's cost. Finally, where the activity concerned involves storage, the investor shall provide a cash guarantee representing 5% of the overall value of the investment project's cost. This guarantee shall be refunded after three years from the actual commencement date of production of projects of a productive nature or the commencement of any of the other aforementioned activities, provided that the investor complies with the conditions of disposal. In the event that this contract is not completed for reasons attributed to the investor, the said guarantee is returned after the deduction of any administrative expenses incurred by GAFI or the concerned administrative body without the need for any judicial proceedings.

Pricing and Selection Criteria

Article 63 of the Investment Law stipulates that investors or investment projects are chosen according to a points-based

system, ranking projects based on preference principles according to technical or financial specifications, or based on the value of the bid. In particular, Article 51 of the Executive Regulations stipulates that these points be calculated according to:

1. The investor's previous experience;
2. The investor's international standing;
3. The project's ability to generate foreign currency, either by exporting its products abroad or by providing a local substitute for a product imported from abroad;
4. Projected investment costs;
5. The value of the bid and payment method.

In case the competition, i.e. the points, prove to be close, the value of the bid takes precedence during the decision-making process. Furthermore, Article 64 of the Investment Law requires that any price estimation for the value of the properties, be it for sale, rent, or for other uses, such estimation of value shall be conducted by the General Authority for Governmental Services for the Higher Committee of State Land Pricing in the Ministry of Agriculture, the New Urban Communities Authority, The General Authority for Tourism Development, or the General Authority for Industrial Development. The enumeration of such standards in pricing and decision-making raises confidence in the transparency of the process and prevents potential legal battles concerning misallocation, bribery or profiteering. When the process is fair and transparent, investors are more confident and willing to enter a bid knowing that there won't be any foul play.

The involvement of the abovementioned authorities shall vary according to the nature of the project. Following the decision of the relevant authority's Executive Officer, in addition to the approval of the competent Minister, Article 65 of the Investment Law and Articles 54 and 55 of the Executive Regulations, condition the creation of one or more committees in order to include technical, financial, and legal teams whose positions and expertise correspond with the significance and nature of the projects, to decide on the applications for disposal of the properties as submitted by investors. In the application of the provisions of Article 66 of the Investment Law, and as per Article 57 of the Executive Regulations, the investor shall be bound by the initial purpose for which the property was disposed of. The investor may not change the purpose stipulated in the contract unless after the receipt of a written approval from the relevant Administrative Authority. A change in purpose may ensue after one year from the date of commencement of production or any other activity following the consent of all concerned parties, provided that the investor pays at least 50% of the difference between the value of the property when obtained and the market value at the date of submission of the application. This applies to properties disposed of by public legal persons and to privately state-owned properties.

Finally, as per Article 67 of the Investment Law and Articles 58 and 59 of the Executive Regulations, the competent administrative authority may terminate the contract (based on follow-up reports submitted by employees of the administrative authority) of sale, lease, lease-to-own, or license to use, and recover the property. This termination is subject to the investor's failure to:

1. Receive the property for 90 days from the date of receiving a notification of receipt;
2. Start the implementation of the project within 90 days of receipt of the property;
3. Comply with the terms of payment of financial dues;
4. Comply with the initial agreed upon purposes of the use of the property;
5. Comply with the terms of the contract or license to use at any stage of the project.

Conclusion

The new land allocation provisions allow for more partnerships between the government and investors and to establish a framework under which such partnerships may be concluded under fair, transparent, and expedited conditions. Moreover, it allows all transactions to be centralised through GAFI, which in turn enhances the ability of the government to ensure that its resources are being utilised efficiently and according to the wider investment vision.

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Clean Energy in Oman

Overview

Oman's National Energy Strategy identified that the country's power demands require a greater mix of energy contributors and that at least 10% of the country's power requirements should be capable of being derived from renewable energy sources by 2025. It is expected that the majority of the renewable energy will be onshore wind and solar projects, with the state controlled Petroleum Development Oman focusing on ensuring that renewable energy infrastructure projects gain traction during 2018 and beyond. There are a number of reasons for driving forward with solar and wind projects from the Government's perspective—greater competition, reducing Oman's carbon footprint and economic diversification are key catalysts. From a socio-economic perspective, the importance of sustaining the demands of a growing, energy hungry population are unavoidable.

Solar Power

Petroleum Development Oman (PDO), Oman's leading exploration and production company, has until very recently focused on the country's production of crude oil and supply of natural gas. PDO has made significant strides towards creating a sustainable renewable energy market through its support of a number of projects involving the installation of solar photo voltaic modules in existing concession areas. Energy from the photo voltaic modules is used to provide power for PDO's office buildings saving over 3.1 million cubic metres of gas annually. The cells provide enough electricity for approximately 1,000 homes. PDO is already using solar energy for street lighting and water heating in one of its employee housing developments and has recently completed the first block of the largest solar energy plant in the world (at full capacity) in southern Oman. The project involves using solar power (in place of natural gas) to create steam to use in thermal enhanced oil recovery.

In addition to issuing tenders for up to five 20 megawatt solar projects in Oman, PDO (soon to be renamed, Energy Development Oman) is proposing to work with Oman Power and Water Procurement Company on a solar project with an expected capacity of 500 megawatt.

Wind Power

Oman's commitment to clean energy can be further demonstrated through the recent creation of a joint venture between the Rural Areas Electricity Company and UAE based Masdar. The joint venture awarded an EPC contract to an international consortium to build the first large scale wind farm in South Oman on a 1,900 hectare site. The wind farm is estimated to generate 50 megawatts to supply 16,000 homes, representing approximately 7% of the total installed power generation capacity in the local area. GE the consortium lead member, will supply thirteen 3.8 megawatt wind turbines with construction support being provided by TSK, another consortium member. It is expected that the success of this project will set the blueprint for other projects in Oman and across the GCC region and potentially lead to a higher contribution by wind power to the country's power requirements. The speed of growth in this sector in part depends on whether coastal regions can be made available to house wind power stations without upsetting the natural aesthetic appeal of the landscape which might better be served to create income generating tourist infrastructure.

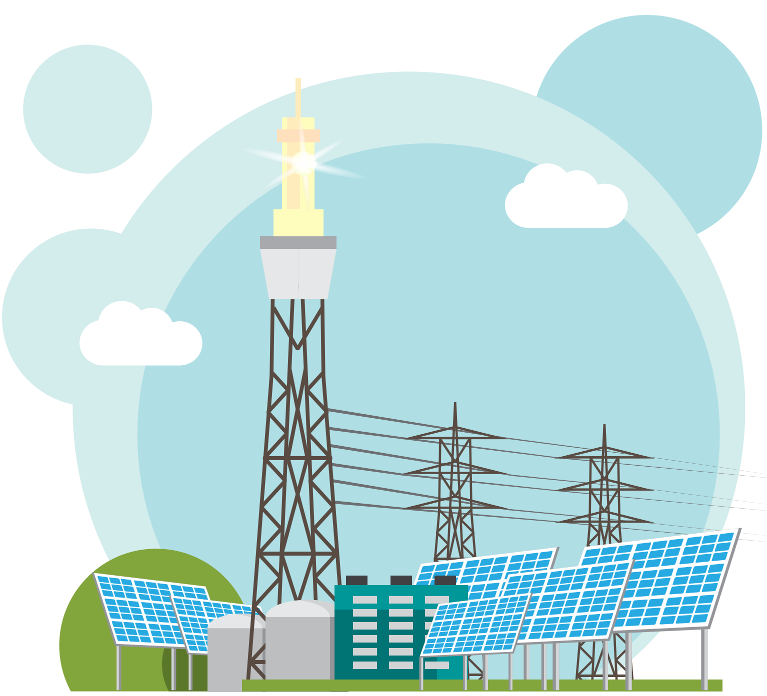
Legislative Framework and Regulator

Legislation relating to clean energy is spread between health and safety rules and the rules relating to the electrical standards imposed on licence holders. The Authority for Electricity Regulation ("AER") holds responsibility for ensuring the safe and secure development of the electricity and water sector and conducts regular audits to assess the policies, plans, processes and procedures of licence holders. A technical team conducts incident investigations into safety related incidents with the public prosecutor becoming involved if required.

AER is also charged with monitoring continuity of supply. This is achieved by ensuring the licencees comply with the electrical standards and related regulations.

The AER is also responsible for monitoring the efficiency of capital investments as part of general capital expenditure control. Technical reviews are undertaken at the beginning of a project and continue throughout its life to ensure technical and procurement efficiency is maintained.

The AER has also taken responsibility for monitoring abuse of market power by enforcing economic purchase conditions, approving price structures of intra-sector transactions and using retail price index controls. Consumers are at risk of escalation of electricity prices in a market where the market players are, at least currently, state owned entities with monopoly in the sector and the AER will monitor this area closely to ensure that there is no breach of Oman's competition and consumer protection legislation.



Regulatory Framework for Electric Vehicles

An area of interest for the growing electric vehicles ("EV") market is the AER's recent decision to introduce framework legislation in Oman to support the introduction of vehicles which are powered solely by electricity. The AER is currently undertaking a review of international best practice in relation to the regulatory framework including potential capital costs of developing public EV recharge stations, network and connection issues, safety issues, metering costs and modifications to the licensing regime. Regulations are expected to be introduced towards the end of 2018. EVs are being adopted rapidly by other global markets and the Government of Oman is keen to ensure that infrastructure and regulations are in place to support users as the market for EVs expands. As part of the Global Electrical Vehicle Road Trip which was held in January 2018, the first charging stations were introduced in Oman's two main commercial cities, Muscat and Sohar and additional stations are opening up across the country. The road trip involved electric vehicles conducting a 1,217km road trip starting in Abu Dhabi, stopping in Sohar, Muscat and ending in Dubai to showcase EV technology.

Clean Energy Opportunities in Oman

It is clear that the clean energy market is ready for further growth in Oman over the coming 12-24 months. Through the successful implementation of the projects outlined in the paragraphs above, further tenders will be issued by Oman's state owned entities and opportunities are likely to be created for existing providers of clean energy technology as well as financiers of large infrastructure projects.

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The impact of new EU data protection rules on Qatar businesses

Background/Introduction

Qatar recently introduced legislation in respect of privacy and data protection (Law No. 13 of 2016, the "Data Protection Law"), which is based on, and tries to capture certain aspects of, European-style data protection and privacy. Due to the absence of the relevant regulations relating to the Data Protection Law, it is difficult to properly understand how the law and its procedures will be applied in practice. On the other hand, the new General Data Protection Regulation ("GDPR") is due to come into force across the European Union ("EU") on 25 May 2018. Consequently, in addition to understanding and complying with the provisions of the Data Protection Law, certain Qatari entities may also be subject to, or may need to comply with, the GDPR due to its intended extra-territorial reach.

GDPR Scope

The previous data protection regulation for the EU (the Data Protection Directive) was also intended to have a broad scope. Its provisions, however, covered only data processing activities carried out within the EU unless there was deemed to be an "inextricable link" between such activities carried out by an entity outside the EU and an entity located within the EU. This prevented EU organisations and competition authorities from regulating data processing activities in respect of EU individuals where such processing activities were performed by data controllers outside of the EU.

The need for extended territorial scope is due to (i) increase in global access to, and use of, the internet, (ii) online/electronic commerce, (iii) establishment of global corporate networks and (iv) growth of cloud services.

Due to the above, territorial borders have become blurred and caused concerns relating to protection of privacy when processing personal data in connection with online services (specifically cross-border ones). The GDPR thus extends its territorial scope to data controllers and processors outside the EU in certain instances. There are exemptions available in circumstances where (i) personal data from EU individuals is only occasionally processed, (ii) processing is not on a large scale and (iii) the nature and purpose of the processing is unlikely to result in a risk to the privacy rights of the relevant individuals.

As a consequence, certain non-EU organisations now fall within the scope of the GDPR in relation to either: i) targeting, or ii) monitoring, individuals in Europe and would be determined on a case-by-case basis.

GDPR indirect application to Foreign Entities:

The GDPR provisions would also apply indirectly to a foreign entity that has an agreement with an EU entity (eg. for agency or marketing services) involving data processing activities. In such an event, the agreement between such entities would need to provide for compliance with the GDPR and the foreign entity would be required, as data processor, to comply with all applicable GDPR measures.

GDPR application by way of Targeting

For GDPR to be applicable by way of targeting, it is envisaged that there needs to be an active direction of activities towards individuals within the EU rather than mere availability of a website or online advertising to EU individuals. The targeting of individuals in EU would need to include additional factors such as:

1. contact details in the EU,
2. option of accessing the website in one or more of the various European languages,
3. allowing for payment in the Euro currency,
4. use of any EU domain name (such as ".eu" or ".de" for Germany or ".it" for Italy), and
5. references to/from EU customers.

Interestingly, the GDPR will apply whether the offered goods or services are paid for or free.

GDPR application by way of Monitoring:

In order for the GDPR to be applicable by way of monitoring, the behaviour and/or movement of individuals within the EU needs to be monitored. Again, this is determined on a case-by-case basis but can be undertaken or deemed to occur by (i) gathering location data, (ii) allowing EU individuals to join/use a social network and (iii) tracking online activities of EU individuals to create profiles (for purposes of analysing or predicting personal preferences, behaviours and attitudes).

GDPR Obligations:

A foreign entity which falls within the scope of the GDPR, acting as data processor or controller (as applicable), would be required to comply with some or all of the following obligations:

- general data protection principles relating to, inter alia, purpose, transparency, erasure, lawfulness, fairness and accountability in respect of personal data processed;
- appointment of a data protection representative based within the EU, subject to certain exemptions;
- appointment of a Data Protection Officer (mainly applicable to public authorities, organisations engaged in large scale monitoring, and organisations engaged in large scale processing of personal data);
- maintenance of records and related documentation requirements;
- conduct of a data protection impact assessment ("DPIA") before undertaking certain processing activities with high privacy risk;
- implementation of various data protection measures, e.g. pseudonymisation of data;
- implementation of necessary organisational and technical measures to ensure appropriate level of security; and
- notification of any security breaches to the relevant data protection authorities and, in certain cases, the relevant individual.

Sanction for Non-Compliance

Breach of the GDPR can result in the imposition of different categorised fines, with the maximum level of fine being an amount equal to Euro 20,000,000 or 4% of the defaulting organisation's total, global annual turnover (whichever is the highest).

Commentary vis-à-vis Qatar and Enforcement

With the extended scope of GDPR, non-EU entities dealing with EU data may be concerned as they may have to take into consideration, and comply with, extensive EU data protection requirements.

The GDPR may also extend to Qatar-based entities (without any EU presence or establishment) actively targeting and/or conducting EU business, based on (substantial) targeting and monitoring provisions referred to above. However, this is yet to be tested. Generally, not every web-based Qatari business that is accessible from within the EU would fall under the GDPR.

It is unlikely that any EU-based organisation or competition authority would look to implement and enforce the GDPR provisions against such Qatari entities because enforcement of any applicable sanction/fine would need to be undertaken via the application of international law and any existing or potential cooperation agreement or treaty and would ultimately require the assistance of local Qatari authorities.

Notwithstanding the above, it is advisable for any Qatari entities that are conducting business and/or monitoring individuals within the EU as part of their global services that are unsure as to whether or not they need to comply with the GDPR (or that simply wish to pursue "best practice") to do the following:

1. review their relevant data processing activities;
2. inventory all data;
3. carry out an impact assessment to determine any risk of infringing the GDPR; and
4. establish/update any privacy policies and/or data handling procedures in line with GDPR.

Entities should also note that under the GDPR a much wider definition is given to personal data and includes online identifiers such as IP addresses and cookie identifiers vis-à-vis the Data Protection Law.

In respect of Qatari entities that have operations or establishments in the EU (through any legal form including a branch, a subsidiary, or a joint venture), the data processing activities of such establishment will be subject to the GDPR irrespective of whether the processing takes place in the EU or not. In order to ensure that they will be compliant with the new GDPR provisions, such Qatari entities should immediately undertake appropriate measures and implement plans to meet the eventual compliance requirements, including, without limitation:

1. adapting their systems for purposes of data protection requirements;
2. reviewing global services arrangements (particularly with the EU) and data collection practices; and
3. reviewing and testing their security standards and/or reviewing back-ups for record-keeping purposes and future audits.

News & Events

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DEC

Tumoohi Annual Event

On Monday, 11the December, Al Tamimi & Company attended Jebel Ali Free Zone's (JAFZA) first Tumoohi Annual Event. During the event we were honoured to be invited to sign a partnership with JAFZA in order to promote their Tumoohi programme.

Tumoohi, which translates to 'my ambition' in English, is JAFZA's initiative for the career development of UAE Nationals, where freshly graduated and inexperienced UAE Nationals have the opportunity to be introduced into the workforce and placed at one of the partner companies / firms.

On behalf of Al Tamimi & Company, our Partner Hussain Eisa Al Shiri, Partner, Co-Head of Litigation signed the agreement with Sultan Ahmed Bin Sulayem, the Group Chairman and Chief Executive Officer of DP World, and Chairman of Ports, Customs and Free Zone Corporations. For 2018, we are pleased to announce that we will begin our partnership by taking on board two Tumoohi Trainees within our Business Services departments, specifically in HR and IT. This program will ultimately benefit the UAE community by opening up the corporate world for young professionals to gain the practical experience needed to understand their passion, and find the right job with the right employers.

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JAN

Financial Crime Breakfast Seminar on Anti-Bribery Provisions in the UAE

Lawyers from the Regional Financial Crime practice Ibtissem Lassoued, Partner, Osama Daneshyar, Senior Associate, and Adam Wolstenholme, Senior Associate, took a proactive approach to the start of the year by hosting an early talk on anti-bribery provisions for existing clients at the ATCO DIFC offices.

During the session, Osama and Adam addressed a number of pertinent issues relating to domestic anti-corruption controls and covered the extraterritorial reach of foreign jurisdictions. Their points highlighted some of the lesser known legal considerations applicable to attendees and Ibtissem provided valuable examples and expertise, gained through her international experience of corruption and bribery matters.

The information was well-received and provoked a number of questions on the interaction between jurisdictions and the extent of additional considerations for those defined as public officials under the UAE Penal Code. The attendees expressed their gratitude to the team for putting on the session and were especially thankful for the clarification on how expensive a box of dates would have to be to constitute a bribe.

Financial Crime issues are both sensitive and pervasive but awareness is a powerful defence against running afoul of the relevant laws and regulations. If you are interested in attending a seminar or have any other queries on related

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Launch of the Arabic translation of the DIFC-LCIA Arbitration and Mediation Rules

On the 17th January, Al Tamimi & Company and Clyde & Co announced the launch of the Arabic translation of the DIFC-LCIA Arbitration and Mediation Rules to support the local arbitration community and help users and practitioners better understand the rules of one of the leading arbitration centres in the Middle East.

As enthusiasm grows for the United Arab Emirates as an international business hub for investment into the Arab world and beyond, arbitration and mediation have gained momentum as leading forms of dispute resolution in the Middle East region. Essam Al Tamimi, Senior Partner and Founder, Al Tamimi gave a welcome address where he shared his thoughts on the importance of the project and how the translation will serve both the Arabic and international community.

The reception at the Capital Club was a thoroughly enjoyable night and it was great to also hear from speakers Robert Stephen, Registrar of the DIFC-LCIA Arbitration Centre and Nassif BouMalhab, Lead Partner, Clyde & Co.

The translation of the DIFC-LCIA Arbitration and Mediation Rules are available on our website www.tamimi.com.

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Laila El Shentenawi
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Protecting Intellectual Property Rights

On Monday, 22 January Al Tamimi & Company in partnership with the Rowad Program and StartUp Bahrain held an informative seminar at the Capital Club, Bahrain.

For many businesses, Intellectual Property (IP) protects more than just a concept – it protects the business assets at the very core of your business services, over a long period of time. Ahmad Saleh, Partner, Head of Patents & Design provided an insightful presentation on Intellectual Property rights relevant to many businesses and the available protection options in relation to patents, copyright and IP licensing.

Ivor McGettigan, Partner, Head of Education Sector also addressed the recent updates in the Education Sector in the GCC region.

The seminar was a perfect opportunity for the attendees to hear about the latest developments within IP and education.

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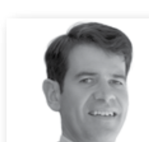

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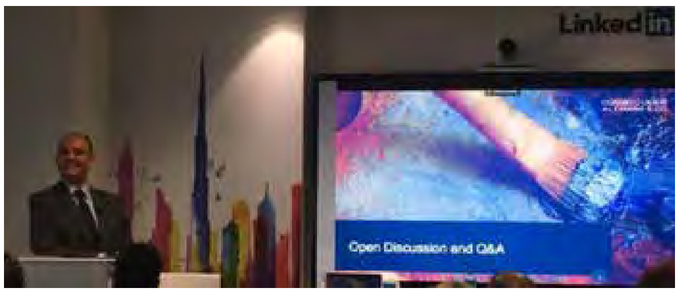
LinkedIn Seminar – Search and Staffing Forum

On Wednesday, 24th January in partnership with LinkedIn we held the first newly launched Search & Staffing networking series ‘The Forum’.

Samir Kantaria, Partner, Head of Employment, Al Tamimi & Company addressed some of the key themes and HR Issues for 2018. Areas discussed included: Emiratisation, VAT and the recently passed Code of Conduct Certificate.

The session was followed by a lively open discussion which allowed attendees to share their thoughts and experiences. We look forward to collaborating with LinkedIn on the next Forum briefing.



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JAN

Health Breakfast Briefing

On Tuesday, 30th January Al Tamimi & Company in collaboration with McDermott Will & Emery are held a breakfast briefing in Dubai, which focused on international business collaborations in Healthcare. Topics addressed included; connected health, smart healthcare, digital health and specialist areas such as cancer care.

Andrea Tithecott, Partner, Head of Regulatory, Al Tamimi & Company, outlined the relevant legal issues surrounding healthcare businesses and explained how to make the most of collaborations. Andrew Fawcett, Senior Counsel, Telecommunications, Al Tamimi & Company spoke about collaborations in e-Health and gave an overview of healthcare across the GCC.

We were also fortunate enough to have healthcare representatives from McDermott Will & Emery’s London and Washington offices. Hamid Yunis, Partner and Head of Healthcare Practice and Dale Van Denmark, Partner, Healthcare spoke about global affiliation models in healthcare and delved deeper in to the models of collaborations and key considerations and success factors.

For more information on upcoming Healthcare seminars, please contact events@tamimi.com.

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The 2018 Arab Knowledge Forum

The Annual Arab Knowledge Forum took place on Tuesday, 30th January at The Majid Al Futtaim Leadership Institute in Dubai. The Forum was held under the patronage and in the presence of His Highness Sheikh Nahayan Mabarak Al Nahayan, UAE Minister of Tolerance, Chairman of the University Leadership council and Honorary Chairman of Bunyan Initiative for the capacity-building of the youth.

Essam Al Tamimi, Senior Partner and Founder, joined this important discussion to share his insights on education, entrepreneurship and leadership. In an open and uplifting keynote address Essam mentioned the importance of ensuring that our youth have the tools needed, and that the UAE education is adequately preparing students with applicable skills for the workforce.

The Fourm was a great platform to bring together business leaders, education representatives and students in-order to discuss way to enhance the UAE's growth for a robust knowledge economy.

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JAN

Healthcare Dinner

With the 2018 Arab Health Conference in full swing, Al Tamimi & Company in collaboration with Bevan Brittan and Healthcare UK took the opportunity to host a private healthcare dinner discussion to address some of the leading healthcare themes.

Al Tamimi's healthcare experts Andrea Tithecott and Christina Sochacki shared their insights on the new developments taking place within the UAE healthcare sector. We were fortunate to also be joined by Deborah Kobewka, Managing Director of Healthcare UK where she welcomed guests and opened up the discussion.

The evening was a great success and we look forward to seeing further developments within the healthcare sector.

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United Arab Emirates
Ministry of Justice

48th Year
Issue No. 626
15 Jumada al-Awwal 1439H
31 January 2018

FEDERAL DECREES

183 of 2017	On performing the duties of the UAE Ambassador to Norway.
1 of 2018	Appointing the Director of the National Security Advisor's Office.
4 of 2018	On the reconstitution of the Board of Directors of Etihad Rail.
6 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 Paraguay.
7 of 2018	Ratifying the Agreement on the Encouragement and Reciprocal Protection of Investments between the UAE and Antigua & Barbuda.
8 of 2018	Ratifying the Agreement on the Encouragement and Reciprocal Protection of Investments between the UAE and Ethiopia.
9 of 2018	Approving the Articles of Association of the GCC Judiciary Economic Authority.
10 of 2018	Ratifying the Agreement on Strategic Cooperation in the Fight against Serious Crime and Terrorism between the UAE and the European Police Office (Europol).
11 of 2018	Ratifying the Agreement on Cooperation in the Field of Security and Counter-Terrorism between the UAE and Armenia.
12 of 2018	Ratifying the Agreement on Technical-Military Cooperation between the UAE and the Cabinet of Ministers of Ukraine.
13 of 2018	Ratifying the Agreement between the UAE and Liberia for Air Services Between and Beyond their Respective Territories.
14 of 2018	Ratifying the Agreement between the UAE and Brazil for Air Services Between and Beyond their Respective Territories.
15 of 2018	Ratifying protocols relating to an amendment of the Convention on International Civil Aviation.
16 of 2018	Ratifying the Agreement between the UAE and Cape Verde for Air Services Between and Beyond their Respective Territories.
20 of 2018	Establishing a UAE consulate general in Nigeria.
21 of 2018	Appointing the UAE Ambassador to Sri Lanka.

REGULATORY DECISIONS OF THE CABINET

60 of 2017	Amending Cabinet Decision No. (24) of 2015 on the Government Financial Policy Coordination Council.
61 of 2017	On the fees for acts performed by notaries public and the fees for services provided to private notaries.

62 of 2017	Introducing fees for digital attestation and elink online portal services provided by the Federal Authority for Identity & Citizenship.
1 of 2018	The executive regulations of Federal Decree-Law No. (11) of 2008 on Federal Government Human Resources.
2 of 2018	On corporate social responsibility.
3 of 2018	Approving the Unified National Classification System for Persons with Disabilities.

MINISTERIAL DECISIONS

- From the Ministry of Justice:

4 of 2018	Appointing a Federal Supreme Court judge to the Supreme Arbitration Committee for the Settlement of Collective Labor Disputes.

- From the Ministry of Health & Prevention:

1400 of 2017	On the pricing of medicines.
1448 of 2017	Approving the Code of Ethics & Professional Conduct for Health Professionals.

- From the Ministry of Climate Change & Environment:

721 of 2017	Amending Schedule 1 to Federal Law No. (22) of 2016 regulating the possession of dangerous animals.

ADMINISTRATIVE DECISIONS

- From the General Pension & Social Security Authority:

37 of 2017	Extending an official's assignment.

- From the Federal Authority for Land & Maritime Transport:

102 of 2017	On the AIS requirement for foreign-flag vessels in the territorial waters and ports of the UAE.
1 of 2018	On the compulsory insurance requirements relating to shipowners' liability with respect to crew in the UAE.

- From the Insurance Authority:

41 of 2017	Amending BoD Resolution No. (30) of 2016 promulgating the motor vehicle insurance rates regulation.
42 of 2017	Amending BoD Resolution No. (25) of 2016 promulgating the unified regulation for motor insurance policies.

- From the Telecommunications Regulatory Authority:

72 of 2017	On Al Yah Satellite Communications Company PSC.
73 of 2017	Approving proposed amendments to the MoA of Al Maisan Satellite Communications Company LLC.

76 of 2017	Approving the Universal Service Policy.
77 of 2017	Approving the Cost Accounting, Accounting Separation and LRIC Modelling Instructions.
78 of 2017	Approving the Regulatory Policy for Internet Services in Public Places.

- From the UAE Central Bank:

1/COMMEMORATIVE COIN/2018	Central Bank BoD resolution approving the issue of a commemorative silver coin on the occasion of the official opening of Oumolat Security Printing Company.

- From the Securities & Commodities Authority:

-	Certificate of approval of amendment of the Articles of Association of Emirates Integrated Telecommunications Company PJSC.
-	Certificate of approval of amendment of the Articles of Association of Sharjah Cement & Industrial Development Company PJSC.
-	Certificate of approval of amendment of the Articles of Association of Emirates Investment Bank PJSC.

17	9	60	350	45
Offices	Countries	Partners	Lawyers	Nationalities

ABOUT US

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

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

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

CLIENT SERVICES

PRACTICES

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

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China | India | Iran | Italy | Korea

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

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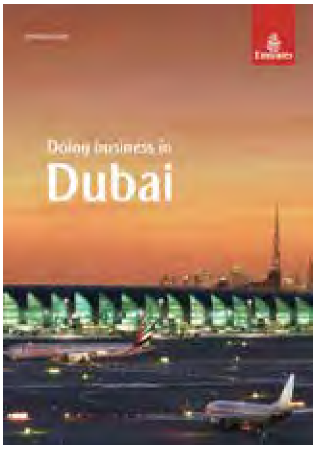

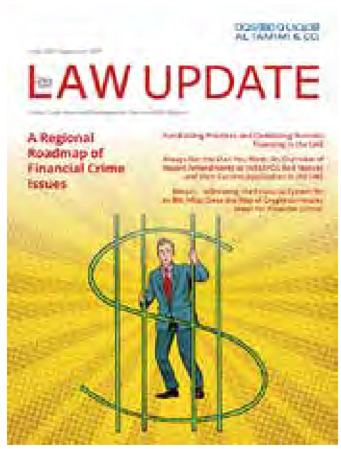

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Dubai, MAZE Tower
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Sharjah

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Doha

SAUDI ARABIA
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