Commentary on the UAE’s New Arbitration Law

E-Sports in the GCC Market

Introduction to the Saudi Sport Arbitration Centre (SSAC)

From Expo 2020 to Asian Cup 2019: Developing a protocol for dealing with Ambush Marketing in the GCC

The Calm after the Storm: Saudi Arabia’s Anti-Corruption Tornado and the Investor Impact

Catching the wave: New Data Protection Law in Bahrain
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Welcome to the June/July 2018 edition of Law Update.

This edition’s special focus looks at the Sports & Events Management Sector and Expo 2020. Particular highlights include an in-depth look at the on-going privatization of football clubs in KSA (page 82), the role that blockchain and FinTech will play in the sports and events sector going forwards (page 69), and a special focus on the ramp-up to the grand spectacle that will be Expo 2020 (page 90).

It is beyond doubt that the sports and events sector is booming both globally and regionally. Industry reports predict that the global events industry will grow by 44% between 2017-2020. In Dubai alone, which now hosts over 300 regular sporting events attracting over 1 million attendees, annual expenditure relating to sport has grown to over USD1.7bn.

We expect that KSA and the UAE will continue to take a lead in this area, particularly in support of their respective long-term economic development and diversification plans. However, there are significant opportunities elsewhere in the region that will bring opportunities for well-positioned clients, particularly in Qatar (in the build-up to the 2022 World Cup) and in Bahrain.

With Expo 2020 on the immediate horizon, the time to turn good planning and mindful preparation into active strategies to position participants, suppliers and stakeholders across the spectrum is squarely upon us as stakeholders in the sector. We will continue to closely monitor these developments with our local presence throughout the region whilst engaging with regulators and stakeholders to ensure our clients are best placed to seize the inevitable opportunities that will arise.

With every edition of Law Update, we also aim to provide you with a broad range of recent judgments, legal developments and trends across the region. Therefore, you will find some other interesting topics in this edition including, Enforcement and challenges to Arbitral Awards under the New Arbitration Law in the UAE (page 8) and further Commentary on the New Arbitration Law (page 16), new UAE Finance Company Regulations (page 26),

Some hot topics from around the region include the Amended Arbitration Legislative Framework in Jordan (page 108), Seeking your rights under a commercial mortgage in Qatar and why not to file a case (page 114), and Saudi Arabia’s Anti-Corruption Tornado and the Investor Impact (page 43).

We hope that you find this edition useful and insightful. As always, we welcome your feedback and are happy to discuss any of the updates found in this edition - please feel free to get in touch with me or any of the authors directly.

Best wishes,

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A High Threshold for Suing Arbitrators in UAE

It is rare for arbitrators to be sued in the UAE although the prospect of such steps being taken has garnered much press interest in recent times. The new 2018 arbitration law (UAE Federal Arbitration Law No. 6 of 2018) does not address the issue, and the old law (Articles 208 to 218 of UAE Civil Procedure Law No. 11 of 1992) merely stated that an arbitrator could be liable for damages if the arbitrator resigns without a good reason. However, a recent Dubai Court of Cassation judgment (No. 484 of 2017) has considered the issue and provided helpful guidance. This article considers this important judgment and its implications.

Background

A developer, Al Sayyah & Sons Investments LLC (the “Developer”), sold various units off-plan in a tower it was developing in Dubai Marina. Various purchasers assigned their rights under the sale and purchase agreements they had with the Developer to a real estate finance company, Amlak.

Amlak initiated DIAC arbitration proceedings against the Developer, alleging that the units (now built) were not in conformity with the agreements.

In July 2012 DIAC appointed the sole arbitrator (“Arbitrator No.1”). He issued a partial award in November 2013 determining jurisdictional issues. Arbitrator No.1 resigned in December 2013 due to issues regarding impartiality. Arbitrator No.2 was subsequently appointed as the sole arbitrator by DIAC. Arbitrator No 2 issued a final award against the Developer. The award ordered that the Developer pay Amlak AED 46.5m plus interest, as well as AED 466,788 in arbitration costs. Arbitrator No 2 issued a supplemental award to correct accounting calculation errors in the final award which reduced the amount payable to AED 42.7m.

The final award was ratified by the Dubai Courts and an amount of AED 42.7m was paid in full by the Developer to Amlak.

The Claim Before the Courts

The Developer then filed a claim before the Dubai Court of First Instance alleging that the two arbitrators had committed material errors in their respective awards. It was claimed that:

I. The two arbitrators lacked capacity to decide the dispute.
II. The arbitrator No.1 erred in his award on jurisdiction by holding that Al Sayyah
& Sons Investments LLC and Al Sayyah Investments were the same legal entity. Arbitrator No.2 made the same error by relying on and adopting the terms of the partial award in issuing the final award.

III. The Developer was not a party to the agreements containing the arbitration clause.

IV. Arbitrator No.2 had denied the Developer’s right to submit its defence as Amlak should have been ordered to submit the original agreements.

V. Arbitrator No.2 had altered the terms of the agreement in order to render the final award and had failed to address the issue of lack of jurisdiction.

VI. Arbitrator No.2 failed to include the names of the unit owners and misrepresented the unit area data as set out in the architect’s report in his supplemental award.

VII. Arbitrator No.2 failed to take into consideration the relevant Land Department documents delineating the gross area of the units when making the final award.

For the above reasons the Developer asserted that they were wrongfully ordered to pay Amlak the AED 42m and sought that both arbitrators be held jointly and severally liable to repay this money to the Developer.

The Court of First Instance dismissed the Developer’s claim in January 2017. This was upheld by the Dubai Court of Appeal in September 2017. The Developer appealed to the Dubai Court of Cassation.

The Dubai Court of Cassation judgment

On 21 December 2017 the Court of Cassation dismissed the appeal. The Court of Cassation explained that in order for an arbitrator to be found liable in tort, the following elements had to be proved by the claimant:

I. There had been an act or omission by the arbitrator;  
II. Harm was incurred by the claimant; and  
III. There was a causal link between the act or omission and the harm caused.

Significantly, the Court then went further and stated that the act or omission would need to be “a serious mistake or negligence, whether in judgment or procedure, is not sufficient to hold the arbitrator liable unless it is a serious mistake or fraud”.

The Court held that it is for the trial court to examine the evidence and determine whether an arbitrator is liable. In this case the Court held that the errors which the Developer alleged were errors of judgment for which the two arbitrators could not be sued.

A Step in the Right Direction

The Court found that it was not enough for the claimant to demonstrate that an arbitrator made an error that had caused loss to the claimant. The error has to be a ‘serious mistake’ or one tainted by fraud or deceit or otherwise inexplicable. This suggests a high-threshold and one that should give comfort to arbitrators.

This standard of civil liability is in tune with the threshold found in other laws. Both the DIFC and the ADGM have arbitration laws stating that an arbitrator will not be liable ‘unless they are shown to have caused damage by conscious and deliberate wrongdoing’ (Article 22 of the DIFC Arbitration Law 2008; Article 23 of the ADGM Arbitration Regulations 2015).

Many arbitral rules contain terms stating that the parties agree not to sue the arbitrator. This includes the DIAC rules which state, at Article 40, that no member of a tribunal shall be liable in connection with the arbitration. It is not clear why this was not referred to by the Court in its judgment, but its absence leaves open the question of whether an arbitrator’s liability under the law can be further limited by the consent of the parties.

This Court of Cassation judgment is definitely a positive step forward. It should make arbitrator’s feel more confident that whilst they are not immune from suit, they are protected from spurious claims brought by disgruntled parties.

Al Tamimi uniquely possesses the capability to litigate before both of the financial free zone courts and conduct litigation before the UAE Federal Courts and the courts of each individual Emirate. Al Tamimi & Company’s Arbitration team regularly advises on international investment and commercial arbitration. For further information, please contact Dr. Hassan Arab (h.arab@tamimi.com) or Dalal Al Houti (D.Alhouti@tamimi.com).

The enactment of the New Law confirms the UAE’s commitment to bring its arbitration law in line with internationally accepted best practice. In this article we consider key provisions of the New Law, with particular focus on the enforcement of arbitration awards.

**Key Aspects of the New Law**

Article 2 outlines the scope of application of the New Law. It states that it applies to (i) any arbitration conducted in the UAE, unless the parties agree to another law governing the arbitration proceedings; (ii) any international arbitrations conducted outside the UAE, where the parties agree to apply the New Law to govern such proceedings; and (iii) to any arbitration arising from a dispute in respect of a legal relationship governed by UAE law, save where excepted by special provision.

A significant feature of the New Law is Article 3, which defines ‘international arbitration’. *An arbitration is international if ‘the parties have, at the time of conclusion of the arbitration agreement, their places of business in different States’.*

Moreover, an arbitration is deemed to be international, if the place of arbitration, or the place of performance of the contractual obligations, or the subject matter of the dispute is connected with more than one country, or if the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country. This new feature did not exist in the former arbitration provisions and which were limited to domestic and foreign arbitrations only. They did not consider any aspects of international arbitration, even in cases where the domestic arbitration contained elements...
of international arbitration. The New Law does not, however, confer any additional advantages for international arbitration in terms of the enforcement of an award, as the procedure to ratify an international award is similar to that of domestic awards. The New Law does, however, provide the parties with freedom to choose the New Law to govern the arbitration proceedings, even if the arbitration proceedings are conducted outside the UAE.

Chapter II Article 4 of the New Law deals with the parties’ capacity to enter into an arbitration agreement. Similarly, Articles 5 to 8 of the New Law cover the form, autonomy and subject matter of arbitration agreements.

Unlike the former arbitration provisions, the New Law defines arbitration institutions and confers wide powers on these institutions if the parties to the arbitration agree to apply arbitration institutional rules. The New Law accordingly covers all types of arbitrations, regardless of it being ad-hoc, institutional or arbitration conducted through the Court.

Article 11 provides mechanisms where the parties fail to agree on the appointment of an arbitrator/tribunal. Under the former arbitration provisions (Article 204), in such circumstances, parties were required to file a Court application for direction - which was effectively similar to initiating full litigation proceedings. The New Law allows the parties simply to apply to the relevant authority, which is either the body authorized to administer the arbitration, or the Court.

Under the former arbitration provisions the grounds for challenging an arbitrator were similar to the grounds for the recusal or impleading of judges. The New Law, under Articles 14 and 15, changes this - providing specific grounds and procedures for challenging an arbitrator.

The New Law recognizes key principles and practices of international commercial arbitration including the principles of severability, Article 6(1), and competence-competence - Article 19(1).

Article 21 deals with the jurisdiction of the tribunal to issue interim or conservatory measures concerning arbitration proceedings, at the request of a party or on its own motion.

In contrast to the former arbitration provisions, Article 28 differentiates the ‘place of arbitration’ i.e. the seat of arbitration with which an award is legally connected, and the ‘venue of arbitration’ - where the arbitration sessions or hearings are conducted. Moreover, Article 41(6) provides that an award shall be considered as issued at the place of arbitration, as determined under Article 28, even if the tribunal signed an award outside the place of arbitration. The tribunal may conduct arbitration hearings and deliberations through modern means of communication (according to Article 28(2)(b)). Likewise, Article 35 provides an arbitral tribunal with the discretion to hear any witnesses, including expert witnesses, through modern means of communication.

Enforcement of Awards under the New Law

Article 52 provides that an award issued under the New Law shall have res judicata status and be enforceable as a court judgment. The same article also states that an award must be ratified prior to its enforcement.

Unlike the former arbitration provisions, Article 55(1) states that a party seeking to enforce an award must submit an application to the Chief Justice of the relevant Court, together with supporting documents. The term ‘Court’ is defined as the Federal Court of Appeal or local Courts of Appeal in the UAE. Under Article 55(1), the Chief Justice of the Court (or any judges empowered by the Chief Justice) should issue an order confirming ratification and enforcement of the award within sixty days from the date of the submission of the application, unless any of the grounds for setting aside of the award exists under Article 53(1).

Challenging the Decision against Enforcement of Awards

Under Article 57, a party may challenge a decision of the Court on the ratification of the award, by filing a grievance before the Court within thirty days. Article 57 reads as follows:

“A grievance may be filed against the Court’s decision to grant or deny enforcement of an arbitral award before the competent Court of Appeal within thirty days from the date following notification”.

Article 57 does not confirm whether a decision of the ‘competent Court of Appeal’ is to be considered as final or if an aggrieved party could pursue an appeal before the Cassation Court. Considering the New Law does not provide for an appeal of the decision of the ‘competent Court of Appeal’ on the grievance presented under Article 57, it is our respectful view that the decision of the ‘competent Court of Appeal’ is likely to be deemed as final. Otherwise, this could lead to lengthy procedures and result in delays of enforcement of awards, which is against the core of objectives of the New Law.
Action to set aside Arbitration Awards

Article 53 entitles a party to challenge the enforcement of an award by submitting an application before the Court under one or more grounds contained in Articles 53(1)(a) - (h). Further, Article 53(2) states that the Court shall set aside an award if the subject matter of the dispute is not capable of settlement, or if the award is in conflict with public order.

An action to set aside an arbitration award must be submitted by a party within thirty days from the date of notification of such award, otherwise the action will be time barred under Article 54(2).

Besides the option of filing an action to set aside an award under Article 53(1), a party seeking to challenge an award may also submit objections to ratifying the award before the Court during the process of ratification in accordance with Article 57. Accordingly, there are three options for a party to challenge the ratification and enforcement of an award:

i. file a case seeking to set aside an award under Article 53(1) before the Court of Appeal and this decision is subject to appeal before the Court of Cassation under Article 54(1);
ii. present a defence to the Court objecting to the ratification and enforcement of the award during the process of ratification initiated by the award creditor under Article 55(1); or
iii. submit a grievance against the Court’s decision to grant or deny enforcement under Article 57.

Mechanism to Recognise and Enforce Foreign Awards

The New Law does not expressly provide for the procedures applicable to the recognition and enforcement of foreign awards in the UAE. This begs the question - what procedures are applicable to the recognition of foreign arbitral awards in the UAE? Should a party seeking recognition apply to the Court of First Instance (the position prior to the enactment of the New Law) or should the parties follow the new procedures for ratifying awards as laid down under the New Law?

Considering that Article 3 of the New York Convention requires Contracting States not to impose substantially more onerous conditions on the recognition and enforcement of foreign awards than are imposed on the enforcement of domestic awards, it is our view that the provisions of the New Law will apply for the recognition and enforcement of foreign awards. Further, the UAE is committed to fulfilling its obligations under applicable international conventions and treaties. It is accordingly inferred that a party seeking recognition of a foreign award should be required to submit an application to the Chief Justice of the Court in accordance with Article 55(1), together with the documents detailed in Article 4 of the New York Convention.

Since the UAE is a signatory to the New York Convention, UAE Courts should take into consideration Article 5, which provides the grounds for refusing recognition of foreign awards, rather than the grounds contained in Article 53(1), as the provisions of the Convention, we suggest, supersede the New Law.

A party seeking to challenge the recognition and enforcement of a foreign award could submit their defence, objecting to enforcement of the foreign award, to the Court during the ratification process initiated by the award creditor under Article 55(1). However, the option for filling an action to set aside an award under Article 53(1) will not be available for foreign awards, as the UAE Courts do not have jurisdiction, in our view, to set aside foreign awards.

Conclusion

The New Law is undoubtedly a great milestone in the progression of international commercial arbitration in the UAE. It has taken into account the particular features and requirements of international commercial arbitration in the UAE. Thus, the New Law should contribute to making the UAE an arbitration hub in the region. However, certain elements of its enforcement provisions may still require clarity.
If an employer decides to terminate a construction contract entered into with a main contractor, and to appoint a new main contractor, will the former main contractor be legally entitled to prevent the employer from appointing the new main contractor, pending the evaluation of the site or is it an absolute right of the employer to appoint a new contractor following the termination of the construction contract?

We explore in this article whether a main contractor can prevent the appointment of a new main contractor based on our recent experience advising and representing a main contractor before the Dubai Urgent Matters Court (“DUMC”).

Background of dispute

An employer entered into a construction contract with a main contractor to construct a number of villas in a prime location in Dubai.

The contract was based on FIDIC (1987) with particular conditions. The main contractor almost completed the project, and was ready to initiate the testing and commissioning for the project. According to the last interim payment certificate, the consultant had certified that around 87% of the main contractor’s works had been successfully completed.

Due to the existence of several disputes between the employer and the contractor relating to the latter’s claim for variations, extension of time, prolongation costs, and overdue payments related to work done on site, the employer terminated the contract. Following the termination, the main contractor applied to DUMC to appoint engineering experts to visit the site, evaluate the percentage of work done, record the status of the work done and scope of the material and equipment on site.

The main contractor sought legal representation when the employer tried to evict the main contractor from the site. Following our advice, a notice was served on the employer warning the employer that, among other things, the site status should remain as is until the DUMC appoints an engineering
expert’s committee to visit the site and record the work done and material and equipment on site. The notice also made it clear to the employer that no new contractor should enter the site, pending the inspection by the aforesaid engineering experts committee.

The employer opted to disregard the notice, and decided to appoint a new main contractor. Consequently, the employer applied to the appropriate authority in Dubai to substitute the main contractor with another one in the records of the authority.

Al Tamimi & Company, as legal counsel for the main contractor, immediately drafted a request to the DUMC highlighting the following:

1. the certification by the project’s consultant confirmed that construction was approximately 87% completed;
2. the employer had purportedly terminated the contract, and alleged that the main contractor had breached its contractual obligations;
3. following the purported termination, the main contractor had applied to the DUMC to appoint an engineering experts’ committee to record the work done on site and the material and equipment on site;
4. the employer had attempted to evict the main contractor from the site, and the employer had accordingly been notified that the site’s status should remain as is and no new main contractor should be appointed until the DUMC appointed engineering experts committee had examined and recorded the works done on site and the material and equipment on site; and
5. the employer had not responded to the notice, and had applied to the relevant authority to change the main contractor with a new one which would allow this new contractor to enter upon and disturb the site.

Having regard to the above, the DUMC were requested to issue an order addressed to the relevant authority rejecting the employer’s request to substitute the main contractor with a new one thereby preventing the new main contractor from interfering with the site.

Dubai Urgent Matters Court’s Decision

The DUMC issued its decision within 72 hours, and accepted Al Tamimi & Company’s request that the site should be left undisturbed pending the appointment of the engineering experts’ committee in accordance with the main contractor’s case before Dubai Court and addressed an order to the relevant authority to suspend the employer’s request to change the main contractor.

Conclusion

Although employers may have the right to terminate a construction contract entered into with the main contractor, an employer should not engage a new main contractor until the work done on site and the material and equipment on site have been recorded by an expert agreed between the parties or appointed by the UAE Courts.

For further information please contact Ahmad Ghoneim (a.ghoneim@tamimi.com).
Admissibility and Reliability of Electronic Evidence before Qatari courts

Do the Qatari courts recognize a contractual relationship that results from an electronic transaction? Do the courts regard electronic evidence, such as emails and electronic receipts as admissible and reliable?

Prior to the recent judgment of the Court of Cassation, the answer to the above questions would be negative. In fact, the Qatari courts had previously dismissed a few cases by denying the admissibility of electronic evidence following a challenge to its validity by the other party. In those cases, the courts held that there was no evidence reflecting the existence of the contractual relationship between the parties.

However, in reliance on Law No. 16 of 2010 Promulgation of the Electronic Commerce and Transactions Law (“The Electronic Commerce Law”), the Court of Cassation has introduced a new principle which is considered to be a turning point for the admissibility and reliability of electronic evidence in litigation cases in Qatar.

Background to the Case

The Claimant had supplied and installed some medical equipment for the Defendant. The Claimant requested the Defendant to pay the outstanding amount for such service. However, the Defendant failed to pay any of the outstanding amounts. The Claimant sent email reminders to the Defendant requesting the Defendant...
to respect their agreement and pay the outstanding amounts, but the Defendant failed to respond and failed to pay the outstanding amounts.

The Case at First Instance:

In 2012, the Claimant filed a civil case against the Defendant claiming the outstanding amount in addition to compensation as result of the non-payment.

The Defendant argued that the case must be dismissed, alleging that there was no existing contractual relationship with the Claimant. In addition, the Defendant challenged the validity of the photocopies of the supporting documents submitted by the Claimant to substantiate the case.

The Court of First Instance appointed an expert to review the case. He reported that there was correspondence which proved the existence of the contractual relationship between the parties, in addition to bank statements evidencing the partial payment of the outstanding amount made by the Defendant.

The First Instance Court dismissed the case based on the following grounds:

- The absence of evidence proving the existence of the contractual relationship between the Claimant and Defendant.
- The Claimant’s inability to provide any original documents, all the submitted documentary evidence being photocopies - accepting the Defendant’s challenge to the validity of the same.

Ruling of the Court of Appeal

The Claimant appealed the decision of the Court of First Instance before the Court of Appeal. The Court of Appeal upheld the finding of the Court of First Instance and dismissed the appeal in 2016.

Judgment of the Court of Cassation

The Claimant challenged the decision of the Court of Appeal before the Court of Cassation. The Claimant relied on the ground that the Court of First Instance erred in its reasoning and application of the law on the facts of the case. The Claimant submitted that the Court of Appeal dismissed the case in contradiction of the following documents:

- The Claimant submitted documentary evidence such as photocopies of emails to prove the contractual relationship between the parties.
- In addition, the “copy” document submitted

The Court of Cassation has implemented a new principle which is considered to be a turning point for the admissibility and reliability of electronic evidence in litigation cases in Qatar.
by the Claimant was only copy of the bank statement to prove that the Defendant had already made partial payment for the outstanding amount due to the Claimant.

The Court of Cassation accepted the Claimant’s argument and reversed the judgment of the Court of Appeal and confirmed the following important rules related to the enforcement of The Electronic Commerce Law:

1) The validity and the admissibility of the electronic transaction as evidence before the Court.

In principle, in order for electronic evidence to be admissible before the court, it must:

a. First take the form of a data message which, according to Article 1(4) of the Electronic Commerce Law is any type of information that was sent, received, displayed or stored by any means of electronic communications; and

b. Secondly, comply with the requirements of Article 26 of the Electronic Commerce Law, which states the following:

“In assessing the evidential weight of information or document in the form of a data message, regard shall be had to the following:
1. The processes and circumstances under which the data message was generated, stored or communicated.
2. The processes and circumstances under which the integrity of the information or document contained in the data message was maintained.
3. The processes and circumstances under which the originator of the data message was identified.
4. Any other relevant process or circumstances.”

Article 26 of the Electronic Commerce Law requires certainty of the origin of the data message and the identity of its receiver to ensure that the data message was not manipulated by the parties or was not a counterfeit. The court in some cases can appoint specialized experts to verify the accuracy of the data messages. As such, if such requirements are applied, then all electronic transactions made in the form of data message are equal to the written and signed documents, with regards to legal effect and admissibility in the court as reliable evidence.

Further, Article 20(1) of the Electronic Commerce Law explicitly states that any information in the form of a data message is legally admissible before a court, the legal effect of which cannot be denied.

Based on the above principles, the Court of Cassation held that all the information that was in the corresponding emails, the receipts and the bank letters are indeed data messages in terms of Article 1(4) and Article 26 of the Electronic Commerce Law.

Therefore, the Court of Cassation ruled that the documents submitted by the Claimant were legally effective and admissible before Court.

2) Electronic transactions such as emails are a reliable means to constitute a valid offer and acceptance for the formation of an agreement.

The Court of Cassation held that, as the corresponding emails between the parties showed without a doubt that the parties intended to enter into an agreement, the judge could recognize the offer and acceptance from the electronic correspondence without the need of written documents. The fact that parties had not physically signed an agreement was not imperative. The Court supported its opinion by Article 4(1) of the Electronic Commerce Law which states:

“An offer or acceptance of an offer may be expressed, in whole or in part, by means of electronic communications.”

The Court of Cassation ruled that electronic transactions have become essential as a means of conducting business or entering an agreement. The use of a paperless mechanism has become the most favourable means of communication between parties for expressing their intention to enter an agreement; therefore, it has become essential to regulate electronic transactions by issuing the Electronic Commerce Law.

Conclusion

This judgment issued by the Court of Cassation constitutes a reform of the methods of submitting proof before courts. The Court of Cassation gives evidential weight to electronic transactions which is equal to written documents in admissibility and reliability before the Qatari courts. In addition, the content of the electronic transactions can itself provide evidence of formation of binding agreements between parties.
Arbitration

The long-awaited Federal arbitration law of the UAE – Federal Law No. 6 of 2018 on Arbitration (“New Arbitration Law” or the “Law”) – was published in the Federal Official Gazette no. 630 of 15 May 2018 and came into effect last June. This standalone piece of legislation repeals the previous outdated and non-comprehensive UAE Chapter on Arbitration contained in articles 203 to 218 of the UAE Civil Procedures Law No. 11 of 1992 (“CPC”).

The New Arbitration Law was long overdue, as the sporadic articles of the CPC did not provide much needed detail and clarity on some of the major points arising out of, or in connection with, arbitral proceedings. Furthermore, the provisions did not conform to the UNCITRAL Model Law on International Commercial Arbitration as adopted by the United Nations Commission on International Trade Law of 1985 and amended in 2006 (“UNCITRAL Model Law”).

The New Arbitration Law provides for a more secure framework for the conduct of arbitral proceedings in the UAE. The six sections of the New Arbitration Law contain 61 articles, most of which can be traced in the UNCITRAL Model Law, and are expected to significantly revamp the UAE chapter on arbitration.

In this article, we intend to provide an overview of the key highlights of the New Arbitration Law with a focus on its practical effects.

**Scope of Application**

We note the extensive scope of application of the New Arbitration Law, both in terms of substance and time. Firstly, pursuant to Article 2, the New Arbitration Law shall apply to (i) arbitrations seated in the UAE unless the parties agree on the application of a different arbitration law, provided that such a law does not contravene UAE public policy and morality; (ii) commercial arbitrations taking place outside of the UAE where the parties have agreed to submit the arbitration to the provisions of the New Arbitration Law; and (iii) arbitrations arising out of a legal dispute, whether contractual or non-contractual, governed by the laws of the UAE, unless an exception applies. Accordingly, the New Arbitration Law shall generally apply unless the parties have agreed to apply another arbitration law,
“The UAE Federal Law No. 6 of 2018 on Arbitration undoubtedly constitutes a landmark development for the practice of arbitration in the UAE by filling the large gap caused by the long absence of a standalone arbitration law aligned with international best practices and standards.”

provided that other law is not in conflict with the public policy and morality of the UAE.

Furthermore, we welcome the application of the New Arbitration Law to both domestic and international arbitral proceedings. Contrary to the CPC, which did not contain any reference to international arbitration, Article 3 of the New Arbitration Law introduced the character of international arbitration, which adopts an extraterritorial approach. As such, and under certain circumstances, an arbitration is deemed international even if it is conducted within the UAE.

We also note the absence of an express exclusion regarding the application of the New Arbitration Law to arbitrations seated in either the Dubai International Financial Centre or the Abu Dhabi Global Market. However, pursuant to Article 3(2) of Federal Law No. 8 of 2004 Regarding the Financial Free Zones, we conclude that the New Arbitration Law will not govern arbitrations seated in these two free zones, which will continue to be governed by the relevant free zone’s arbitration laws and regulations.

In relation to the timing of the introduction of the New Arbitration Law, it came into effect “one month from the day following its publication in the
Official Gazette”. It is therefore our view that the New Arbitration Law came into effect on 15 June 2018. It is interesting to note that contrary to recently enacted arbitration laws in the region, the New Arbitration Law will apply retrospectively. Specifically, Article 59 provides that the New Arbitration Law will apply to all ongoing arbitral proceedings at the time of its coming into effect, including arbitrations arising out of existing arbitration agreements. Such a retrospective application is without any prejudice to all proceedings having taken place prior to the entry into force of the New Arbitration Law.

The Competent Court

One of the major procedural highlights of the New Arbitration Law is the designation of the Competent Court, which has been defined as the “Federal or local Court of Appeal agreed upon by the parties or in whose jurisdiction the arbitration is conducted.” We hope that going forward, and in line with other major global arbitration hubs, that a dedicated circuit will hear arbitration matters, with specialised and arbitration-focused members of the judiciary to further support and safeguard the arbitral process.

The Arbitration Agreement

Article 7 confirms the writing requirement for the validity of arbitration agreements. Noteworthy additions to the New Arbitration Law include the expansive interpretation of the writing requirement. As such, an arbitration agreement can be concluded by an exchange of correspondence, including e-mails. Furthermore, the writing requirement is satisfied through the reference in a written contract to an arbitration agreement contained in another document, model contract or international agreement. In Article 5, the Law expressly provides for the notion of arbitration agreements incorporated by reference. Also, an oral agreement to arbitrate during court proceedings is deemed valid if it is recorded in a judgment or if the other party asserts the existence of an arbitration party and the other party does not raise any objection.

Despite the softening of the writing requirement, the New Arbitration Law reconfirms, through Article 4(1), the requirement for arbitration agreements to be signed by persons with authority to do so. Therefore, we draw the attention of parties wishing to enter into an arbitration agreement to the requisite capacity.
requirements provided for under the relevant laws of the UAE, which remain unaffected by the introduction of the New Arbitration Law. For a UAE incorporated limited liability company, it is recommended that the company’s constituting documents are reviewed prior to the execution of an arbitration agreement in order to verify that authority to enter into arbitration agreements, granted by default to the company’s manager, has not been explicitly withdrawn. Article 4(4) explicitly provides that the ex-post lack of capacity of a party entering into an arbitration agreement, which occurs for example as a result of the death of an individual or the expiry of the entity’s term (as prescribed in its constitutional documents) after it has entered into an arbitration agreement, shall not cause the termination of such an arbitration agreement. It is however interesting to note that the Law seemingly intended for such a provision to be non-mandatory as parties may still otherwise agree. Furthermore, Article 4(2) reiterates that there shall not be an agreement to arbitrate matters which are non-conciliatory.

In relation to the validity of arbitration agreements, Article 6, in line with the UNCITRAL Model Law, confirms the separability principle of arbitration agreements. When parties’ agreement to arbitrate is featured within the framework of their main contractual relationship, the New Arbitration Law affirms the independence of the arbitration agreement from the other terms of the main contract in which it is contained. Arbitration agreements are not affected by the nullity, rescission or termination of the main contract, save for grounds arising out of a defective capacity.

Finally, Article 8 provides that the court shall dismiss any action that falls within the scope of an arbitration agreement, provided that the existence of the arbitration agreement is brought to the court’s attention before making any substantive claims or defences on the merits, unless the court decides that the arbitration agreement is invalid or impossible to perform. The filing of such an action does not preclude the commencement or continuance of arbitral proceedings or the issuance of the arbitral award.

Set and Stringent Time Limits

In an effort to promote efficiency and prevent unnecessary prejudicial delays, the legislative draftsman of the New Arbitration Law have aimed to fit the arbitral proceedings within a clear set of, often stringent, time limits.
Arbitration

For example, in the event of alleged non-compliance with the arbitration agreement or the Law, Article 25 provides that if a party does not object within the time limit agreed upon, or within seven days of becoming aware of the alleged non-compliance, that party is deemed to have waived its right to rely on this non-compliance subsequently. It is questionable whether the default seven-day period is reasonable from a practical perspective. However, such a waiver to challenge constitutes an important pro-arbitration provision, which shall have the effect of estopping a party from attempting to halt the conduct of the proceedings if it does not assert any objection in a prompt manner. With that said, we note that a party's right to challenge an award, based on a defective arbitration agreement, or lack thereof, would still be preserved pursuant to Article 53. It is yet to be tested how the courts will interpret and eventually apply Articles 25 and 53.

In relation to the appointment and challenge of arbitrators, the New Arbitration Law has set a reasonable 15-day period. Specifically, pursuant to Article 11(2-3), the parties have a 15-day time limit to agree to the appointment of an arbitrator, from the date of receipt of a request to do so. Under Article 15(1-2), a 15-day time limit has been set for a party to challenge an arbitrator after becoming aware of the arbitrator appointment or after becoming aware of any circumstances justifying the challenge. Such a challenge shall be in a written application addressed to the challenged arbitrator, with a copy of the same addressed to the other members of the tribunal, if any, as well as the other parties. In the event that the arbitrator does not withdraw or the other party does not agree to the removal of the arbitrator, the party making the challenge may present it to the concerned body within 15-days after the lapse of the initial 15-day period.

We note the express acknowledgment of the compétence-compétence principle in Article 19(2) under which the arbitral tribunal has the jurisdiction to rule on its own jurisdiction. Notwithstanding, a party still has the right to challenge a tribunal’s preliminary decision of jurisdiction before the courts within 15 days of the preliminary decision being notified. The Court then has then 30 days to render its decision. While the request is pending, the arbitral proceedings may continue at the request of a party. We note that this possibility to petition the court on the basis of a procedural order and not an award, is unc customary in the UAE and may lead, at least in the beginning, to uncertainty.

“The emphasis on the use and role of technology in the New Arbitration Law is attributed to the drafters’ intention for more efficient proceedings.”

Arbitrator Requirements

The New Arbitration Law brings clarity on the requisite requirements for arbitrators. Article 10(1) specifies that an arbitrator must not be a minor, or be judicially declared as incapacitated, or one without civil rights for the reasons of bankruptcy (unless discharged), or conviction for a crime (even if she or he has been rehabilitated).

Furthermore, Article 10(2) provides that an arbitrator cannot be a member of the Board of Trustees or of the administrative body of the arbitral institution administering the arbitration in which that person is asked to sit. We highlight the expansive application of this provision to arbitrations administered by both domestic arbitration centres, such as the Dubai International Arbitration Centre and the DIFC-LCIA Arbitration Centre, as well as international arbitration centres, such as the International Chamber of Commerce’s International Court of Arbitration, the London Court of International Arbitration and the Singapore International Arbitration Centre. The triggering event prompting the application of Article 10(2) is therefore the UAE seat of such arbitral proceedings. It is regrettable that the Law did not draw a distinction between party-appointed arbitrators, on one hand, and centre-appointed arbitrators, on the other, as we would be of the view that party-appointed arbitrators, even if members of the Board of Trustees or administrative body of an arbitral institution, should not be affected by this provision. Given the retrospective application of the New Arbitration Law to ongoing arbitrations, we note that the entry into force of the Law will most likely cause certain concerned arbitrators to resign.

We also note that the Ministry of Justice or the Chairman of the competent judicial authority are to
compile a list of arbitrators to be appointed in the event of a failure to agree upon the appointment of an arbitrator. As the list has not yet been published, we remain hopeful that the selection process of the prospective arbitrators would follow the international best practices in terms of both procedural knowledge and industry-specific expertise.

Finally, pursuant to Article 58, the Ministry of Economy is to issue a charter on the professional conduct of arbitrators in consultation with the arbitration institutions in the UAE. While the issuance of such a charter is likely to instil confidence within the parties to arbitration in the UAE, we are of the view that the effect of such a charter will remain for guidance purposes only. It is notable that the Law does not address the issues relating to the liability of arbitrators. In our view, it would have been desirable that for the Law to have included a provision confirming the civil immunity of arbitrators.

Arbitral Proceedings

Commencement
According to Article 27(1), arbitral proceedings are deemed to have commenced from the following day after which the arbitral tribunal has been constituted, unless the parties agree otherwise. With that said, in relation to the procedural requirement for a substantive claim to confirm and sustain precautionary attachments, Article 27(2) provides that the arbitral proceedings are deemed to have commenced on the date of the notification of the request for arbitration. Even though the relationship between arbitral and court proceedings relating to arbitration is yet to be tested under the New Arbitration Law, the advancement of the date of commencement of the arbitral proceedings for the purpose of precautionary attachments is a positive provision.

The Language of the Arbitration
Under the New Arbitration Law, the default language of the arbitral proceedings, absent an agreement between the parties, will be Arabic. We therefore draw the attention of foreign parties in particular to the need to agree on a different language for the arbitration should they wish to avoid arbitral proceedings in Arabic, either explicitly, through for example their arbitration agreement, or implicitly, by agreeing to the application of institutional rules.

Acknowledgment of Modern Means of Communication
The emphasis on the use and role of technology in the New Arbitration Law can be attributed to the
Arbitration

There is a desire for more efficient proceedings. There are indeed several references to the use of “modern means of communication” in the Law. For example, written correspondence can now be deemed to have been delivered if sent, amongst other means, by email. Article 28(2) provides that arbitral hearings and deliberations can be conducted by modern means of communication and electronic technology. In addition, Article 33(3) provides that hearing may be held through modern means of communication without the physical presence of the parties at the hearing. Pursuant to Article 35, the arbitral tribunal may question witnesses, including expert witnesses, through modern means of communication without their physical presence at the hearing. The emphasis on the use of technology will undoubtedly modernise arbitral proceedings in the UAE and help instil global confidence in such proceedings.

Confidentiality
Contrary to common belief, arbitral proceedings are not confidential by default. The New Arbitration Law addresses the issue of confidentiality by stating, under Article 33(1), that hearings shall be confidential unless parties have otherwise agreed. The confidentiality of arbitral awards is implicitly recognised pursuant to Article 44. However, the Law does not explicitly provide for the confidentiality of documents, pleadings, evidence or submissions produced by the parties and the tribunal during the proceedings. We recommend that parties address the confidentiality of their arbitral proceedings either through an explicit agreement, or implicitly, through an agreement to apply institutional rules providing for the hoped for confidentiality obligations.

Conduct
It is clear that the New Arbitration Law attempts to instil discipline and efficiency in the conduct of the arbitral proceedings. As noted above, arbitral hearings can be held at any place, and the Law allows arbitral hearings and deliberations to be conducted by modern means of communication and electronic technology. Article 30(1-2) provides, absent an agreement between the parties, for a 14-day period from the date of the composition of the arbitral tribunal for the claimant to communicate the statement of claim in writing to the respondent and to the arbitrators. After receiving the statement of claim, the respondent has a further 14-day period to communicate its statement of defence. The practical difficulties associated with these relatively contracted time limits will most likely prompt parties to agree on different deadlines.
It is worth noting that the New Arbitration Law attempts to put an end to disruptive guerrilla tactics through repetitive challenges of an arbitrator by providing under Article 15(3) that the challenge of an arbitrator does not suspend the arbitral proceedings.

Pursuant to Article 43 of the New Arbitration Law, the arbitral tribunal can decide to continue the arbitral proceedings (i) where there are issues that fall outside the scope of its jurisdiction; (ii) if a document submitted to it is challenged for forgery; or (iii) if criminal proceedings in respect of that document or for any other criminal act which has been instituted. This is a significant improvement as previously, according to the CPC, the tribunal was required to suspend its proceedings under such circumstances.

The Law provides much needed clarity on the issue of the representation of the parties by non-UAE lawyers. Specifically, Article 33(5) provides that parties may seek the assistance of representatives for their representation in the arbitral proceedings and these representatives may or may not be lawyers. The non-restriction on the appearance of foreign counsel in UAE-seated arbitrations is welcome after the issuance of the 2017 Executive Regulations to the Federal Law No. 23 of 1991 on the Legal Professional, which was interpreted by some to restrict the appearance of non-UAE counsel in arbitral proceedings seated in the UAE.

The Law also provides wide latitude to the parties and the arbitral tribunal to decide upon the conduct of the arbitral proceedings.

Interim and Conservatory Measures
Interim and conservatory measures constitute crucial tools in arbitral proceedings. The CPC did not grant powers to the tribunal to order such measures, which were within the exclusive powers of the courts. In the event that parties agree to grant such powers to the tribunal, either explicitly or implicitly through the application of institutional rules, the enforcement of tribunal-ordered interim and conservatory measures was an impossible task in the UAE before the enactment of the New Arbitration Law.

One of the much anticipated provisions of the New Arbitration Law is Article 21. Through this article, and unless otherwise agreed by the parties, the New Arbitration Law explicitly recognises the arbitral tribunal’s power to award interim or conservatory measures, either on the request of a party or of its own motion, including ordering a party to provide adequate security to cover the costs of such measures. Pursuant to Article 21(4), a party for whom an interim measure has been ordered in its favour may, with written permission from the tribunal, request the competent court to enforce the order of the tribunal within 15 days of receipt of the request.

Notwithstanding the arbitral tribunal’s newly attributed powers to order such interim and conservatory measures, the court also remains competent to grant interim and conservatory measures based on an application by the tribunal or one of the parties in relation to forthcoming or ongoing arbitral proceedings. As per Article 18(3), the arbitral proceedings shall continue notwithstanding any application for interim or conservatory measures relating to an ongoing arbitration and such an application to the court shall not constitute a waiver to the arbitration agreement.

While the receptivity and approach of the courts in relation to these provisions are yet to be tested, we highly welcome these efforts to safeguard more efficient and equitable arbitral proceedings.

The Award
In relation to the issuance of the award, Article 42(1) provides that, unless agreed otherwise, an award must be issued within 6 months from the date of the first hearing of the arbitration. Contrary to the previous CPC regime, such a date can now be extended for an additional 6 months, unless the parties agree to a longer extension, either explicitly or implicitly through the application of institutional rules. Article 42(2) provides that absent such an agreement, further extension of time can only be made by the courts upon petition by the parties or the tribunal itself. It is important to bear in mind in this regard that the failure to meet this time limit is a ground for challenging an award pursuant to Article 53(1)(g) of the New Arbitration Law as discussed further below.

The time limits set forth in Article 42 lack any mechanism for arbitral institutions to grant an extension of time, though it may be argued that parties have agreed to such an extension by virtue of having agreed to the application of particular institutional rules. Under the previous regime, the CPC allowed the parties to agree to extensions of time without the tribunal's consent. The New Arbitration Law expressly states that an extension of time shall be made only upon the request of the parties or by the tribunal.

In our view, Article 41(6) is a very positive introduction, which provides that awards can be signed outside the seat of arbitration and can also be signed electronically. The issuance of the final award shall be deemed to mark the end of the arbitral proceedings. According to Article 44, parties are to be notified of the award within 15 days from the date of issue of the award.
Arbitration

“The New Arbitration Law provides for a more secure framework for the conduct of arbitral proceedings in the UAE.”

The Law explicitly recognises that an arbitral tribunal may interpret an award by issuing an explanatory award pursuant to Article 49. A party may request the tribunal to interpret any obscurity or ambiguity in its award within 30 days of receipt of the award, unless the parties have agreed to different procedures or time limits. The tribunal shall consider and issue its explanatory award within 30 days after the receipt of the request, which may extended by a further 15 days. Such an explanatory award is deemed to supplement the final arbitral award.

Enforcement of Arbitral Awards
The New Arbitration Law clarifies the process for enforcing UAE arbitral awards with a fast-tracked and overhauled procedure. The New Arbitration Law provides that arbitral awards are binding on the parties, res judicata applies and that such awards shall be enforceable in the same manner as a judicial ruling provided ratification is obtained. If the enforcement of the award is sought in the UAE, a ratification of such an award by the court is required in order to proceed with the enforcement of such an award.

A major development in the New Arbitration Law lies in the fact that enforcement proceedings shall now commence directly before the UAE federal or local Court of Appeal, not before the Court of First Instance as before. The form of the enforcement procedure has also been simplified. Instead of filing a case before the court, the award-creditor can seek the ratification and enforcement of an award through the filing of an application with the Chief Justice of the Court of Appeal. Pursuant to Article 55(2), the relevant authority will now have 60 days from the date of the application to order the ratification and enforcement of the award unless it finds grounds for annulment.

Article 57 provides for the possibility of filing a grievance against an order of the Court of Appeal ratifying an award and declaring it enforceable or order of the Court of Appeal denying enforcement. Such a grievance must be filed with the Court of Appeal within 30 days of the Court of Appeal’s notification of the order. We note that it would have been more appropriate for such a grievance to be filed before the Court of Cassation, as the higher appellate court, instead of the Court of Appeal.

In relation to foreign arbitral awards, we note that the Law lacks explicit provisions relating to the enforcement of such awards. It is our view that the CPC provisions, specifically Articles 235 to 238, remain applicable absent a convention or treaty entered into by the UAE dealing with the enforcement of foreign arbitral awards. In the event of enforcement of foreign arbitral awards in the UAE sought on the basis of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (“New York Convention”), it is yet to be tested whether the new expedited enforcement provisions of the Law would apply to such enforcements given that Article III of the New York Convention provides that: “(...) There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.”

Given the absence of any explicit provisions to the contrary within the Law, we are of the view that the new provisions of the Law should apply to enforcements of foreign arbitral awards under the New York Convention.

Award Challenge
The grounds to challenge and set aside an award are limited and consistent with the spirit of Article 34 of the UNCITRAL Model Law. Article 53(1) of the
New Arbitration Law provides for limited grounds for annulment, which include the lack of capacity of a party entering into the arbitration agreement, lack of authorisation to act on the matter or lack of notice. Unlike the UNCITRAL Model Law, the New Arbitration Law also provides that the issuance of a final award which does not apply the substantive law chosen by the parties or the arbitral tribunal’s failure to issue the award within the specified time-frame shall also constitute grounds for challenge. In addition, Article 53(2) provides that the court has the right to set aside the award on its own initiative, if the subject matter of the dispute is not arbitrable or if the award contravenes the public policy and morality of the UAE.

In an effort to preserve the arbitral proceedings, several articles purport to safeguard the sanctity of the arbitral proceedings.

For example, pursuant to Article 50(1-2), a party may request the arbitral tribunal to correct any typographical or clerical errors in the award within 30 days of receipt of the award, unless the parties have agreed to different procedures or time limits. Such correction is to be made within 30 days after the tribunal issues the award or after receiving the request for correction by one of the parties, as the case may be. Such period may be extended by a further 15 days. The arbitral tribunal shall notify the parties after corrections are made within 15 days from the date of issue of correction. Also, Article 51(1-2) provides that a party may request the tribunal to issue an additional award if the party believes that the final award did not deal with some of the requests made. Such a request must be made within 30 days of receipt of the award. If such a request is justified, then the arbitral tribunal shall issue the additional award within 60 days after the receipt of the request and may extend by a further 30 days. In addition, pursuant to Article 54(6), the court may suspend the setting aside proceedings for a period of up to 60 days in order to give the arbitral tribunal an opportunity to take any action or make any amendment to the form of the award.

Whereas under the previous CPC regime, there was no specific deadline for the purpose of filing a set aside action, the New Arbitration Law, pursuant to Article 54(2) provides for a 30-day time limit from the date of receiving notice of the award for a party to commence annulment proceedings. This is a significant change to the previous regime, and we believe that this will contribute to the legal security of final awards. However, Article 54(1) provides that the decision to set aside is final and can only be appealed to the Court of Cassation. We note that there is no set time limit for the Court of Cassation to render its decision.

In line with the general spirit of the New Arbitration Law for more efficient proceedings, an action to set aside an arbitral award does not stay its enforcement. Nevertheless, the court may order a stay of enforcement if a party requests for a stay of enforcement. Such stay of enforcement is to be decided within 15 days after the date of the first scheduled hearing.

**Conclusion**

The UAE Federal Law No. 6 of 2018 on Arbitration undoubtedly constitutes a landmark development for arbitration in the UAE by providing a standalone arbitration law aligned with international best practices and standards. We consider that the overall preservation and respect of party autonomy and the focus on more streamlined and efficient proceedings will build the UAE’s reputation as a preferred seat for international arbitration in the region. We remain hopeful in the courts’ significant role in appropriately applying and preserving the spirit of the Law. The Executive Regulations, which are in the pipeline, will also undoubtedly clarify some of the issues raised in hope of a more rationalised and synchronised proceedings among the various players in UAE seated arbitrations.

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Amongst the several new laws and regulations being introduced in the UAE, the UAE Central Bank ("Central Bank") has on 10 May 2018 issued new Finance Company Regulations ("Regulations" or "2018 Regulations") which are to come into effect one month after its publication.

These Regulations replace the previous finance company regulations issued in 1996 and finance companies regulations for companies conducting business as per Islamic sharia'a principles issued in 2004 ("Previous Regulations") and aim at providing a detailed regulatory framework for Finance Companies to operate and develop within the UAE and also covers in its ambit the framework for protecting the customers of such Finance Companies.

These Regulations consolidate the regulations for both Islamic finance and conventional finance companies ("Finance Company/ies") and incorporate certain significant changes including changes to capital requirements and corporate governance, to also be followed by existing Finance Companies. We have set out below certain noteworthy features of these Regulations and a comparative table on the key changes from the Previous Regulations on subject.

**License Application**

Pursuant to these Regulations, conducting financing activities in the UAE without a central bank license is prohibited. An application for such license must include the proposed scope of activities, a feasibility study illustrating the financial activities and products to be launched, estimated financial projections, risk factors, corporate structure, start-up costs, branches and a recruitment plan.

Another important requisite is for the applicant to provide an unconditional guarantee from a UAE Bank, in favour of the Central Bank for an amount equivalent to the minimum required paid-up capital. The License will be granted for a period of three years and may be renewable for the same period unless otherwise required by the Central Bank.

Any changes to the ownership of the Finance Company of 5% or more will require prior approval from the Central Bank.

**Cancelling or Revoking a License**

The Central Bank has the discretion to approve or refuse the License application, but must notify applicants in writing with reasons in case there is a refusal. Licenses can also be amended, revoked or cancelled at the discretion of the Board. The Regulations set out instances when the license can be cancelled which include providing false/misleading information, risking interests of the potential customers, or if there is a bankruptcy order filed against the Finance Company.

If a Finance Company wishes to cease operations it must apply to the Central Bank at least six months in advance providing the reasons for such a cessation or suspension.

The Regulations also provide for penalties that will be imposed if such company does not follow the
provisions of the Regulations including adhering to the anti-money laundering policies laid down by the Central Bank.

Permitted Activities

Article 10.1 of the Regulation details out the types of activities that are permitted, which are:

1. Retail finance,
2. mortgage finance,
3. wholesale finance,
4. pre-paid cards, and
5. distribution of third party products.

The Central Bank can review and amend this list from time to time.

Article 10 further sets out the do's and don'ts in relation to the business of the Finance Company, certain key features are:

- it can extend loans only to ‘Juridical Persons’ (defined under Article 93 of the UAE Civil Transactions Law) and individuals in the UAE. However, it is prohibited from accepting deposits or loans from individuals.
- it may accept deposits only from Juridical Persons, subject to certain conditions laid out under Article 10.4 and also borrow from UAE banks, and may even receive foreign funding provided that its risk has been adequately hedged. In doing so it must not exceed 25% of the sum of total amount of its debt capital.
- it must obtain a no objection letter from the Central Bank in order to provide any new product line from within activities specified in its license.
- it may only participate in the share capital of brokerage companies, money exchanges, UAE banks and other Finance Companies. Any such single participation cannot exceed 10% of its debt capital and the aggregate participation must not exceed 25% of the debt capital.
- It must obtain approval from the Central Bank in order to issue bonds or sukuks. Such bonds and sukuks shall only be denominated in UAE dirhams or US Dollars.
- it is prohibited from financing a borrower which is not an entity incorporated in the UAE or its free zones, or a UAE resident, or where the mortgaged assets are not in the UAE.
- it is prohibited from entering into the business of money exchange.
- it must not purchase immovable properties unless for its own use or specific approval for the same has been obtained from the Central Bank. This rule does not apply to Islamic Finance Companies (IFC). IFCs may own property including immovable property and goods as part of an underlying financing contract with a borrower.

Minimum Capital, Liquidity Requirements and Credit Exposure Restrictions

The minimum paid-up capital for a Finance Company is 150 million UAE Dirhams. UAE national ownership of the Finance Company must comprise at least 60% of total paid-up capital. Finance Companies must also allocate at least 10% of annual net profits to establishing a statutory reserve until the reserve equals 50% of its paid-up capital.

To withstand short-term liquidity stress, Finance Companies are required to hold an amount equivalent to 10% of their aggregate liabilities in liquid assets i.e. cash held in UAE bank, Certificates of deposit issued by the Central Bank held via a UAE bank, short term deposits with a UAE bank with maturity upto 30 days and UAE federal and local government bonds, which must not exceed 30% of the total liquid assets. For the purpose of calculating the 10% amount, a Finance Company may deduct from its aggregate liabilities, cash collateral, bank guarantees from UAE banks and sovereign guarantees.
The credit exposure is considered ‘large’ if the value of such exposure to one borrower or group of related entities is 7% or more. The Regulations set out maximum exposure limits for different borrower types.

Organisational Structure, Composition and Policies of the Finance Company

a. Founding shareholders - Founding shareholders must satisfy “Fit and Proper” criteria as defined by the Central Bank and their appointment must be in line with the Commercial Companies Law.

b. Board of Directors - The board of directors of a Finance Company must have no fewer than five members. At least 60% of the board members of an IFC must have knowledge of the banking business or Islamic finance and banking business as the case may be. The Regulations provide for detailed selection processes and guidances in relation to the board of directors.

c. Sharia’a Supervision Committee and other committees - An IFC must have a Sharia’a Supervision Committee, and its role must be laid out in the policies of the IFC. Finance Companies must also have a board committee and credit committee.

d. Senior Management – Finance Companies must comply with the ‘fit and proper’ test set out by the Central Bank and must be professional who understands the business of finance and was experience of not less than 10 years in the field of finance. Person within the senior management cannot be a part of the board.

e. Corporate Governance - While the Regulations set out certain minimum requirements for corporate governance, Finance Companies are permitted to set out their own policies and framework for corporate governance (complying with the Regulations), however these must be approved by its board of directors and a copy of such policies must be provided to the Central Bank.

f. Internal Policies – the Regulations set out the requirements that need to be adhered to by Finance Companies and IFC with respect to its internal policies in relation to management, risk management, extension of credit, compliance, information technology, security, audit, remuneration, outsourcing, etc.

“These Regulations consolidate the regulations for both Islamic finance and conventional finance companies (“Finance Company/ies”) and incorporate certain significant changes including changes to capital requirements and corporate governance, to also be followed by existing Finance Companies.”

Other provisions

i. Consumer Protection: the Name of the finance company must not include the words “bank”, “investment company” or and other term which may mislead its customer. It must provide its customers with sufficient information regarding its products, etc. in order for them to be able to make an informed decision. The Finance Company must follow the Central Bank guidelines in relation to ‘Consumer Protection’.

ii. Credit Reports - Every Finance Company must adhere to the credit reporting requirements of the Al Etihad Credit Bureau and other credit agencies to provide to and obtain information of the Borrower.

iii. Accounting Standards - A Finance Company must implement all applicable International Accounting Standards/International Financial Reporting Standards and provide the Central Bank with two copies of signed audited financial statements, including external auditor reports, before 31st March every year. The Central Bank may require the Finance Company to appoint another auditor if the size and nature of the business of the Finance Company so requires.
Differences in the new Regulations from the Previous Regulations

The 2018 Regulations are far more detailed in the nature of investments permitted, liquidity requirements, organisational structure to be followed, investor guidance; we have set out below certain differences in the provisions between the Previous Regulations and 2018 Regulations.

<table>
<thead>
<tr>
<th>Previous Regulations</th>
<th>2018 Regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td>License Validity</td>
<td>Valid for two years and renewable for a further year</td>
</tr>
<tr>
<td></td>
<td>Valid for three years and renewable for same period unless required by Central Bank</td>
</tr>
<tr>
<td>Outward Investment</td>
<td>Prohibited to lend, deposit or invest in more than 7% in one institution or in one group</td>
</tr>
<tr>
<td></td>
<td>Participation in the share capital only of certain types of companies and each such participation must not exceed 10% of its aggregate capital</td>
</tr>
<tr>
<td>Minimum Paid Up Capital</td>
<td>AED 35 million or 50 million for LLCs</td>
</tr>
<tr>
<td></td>
<td>AED 150 million irrespective of the form of company</td>
</tr>
<tr>
<td>Application - Proof of Paid-up Capital</td>
<td>AED15 million deposit certificate with a bank operating in UAE + undertaking for the rest of the amount</td>
</tr>
<tr>
<td></td>
<td>AED 25 million deposit certificate with a UAE Bank + undertaking for the rest of the amount</td>
</tr>
<tr>
<td></td>
<td>Letter of unconditional guarantee from a UAE bank for the entire sum of the paid-up capital</td>
</tr>
</tbody>
</table>

Key Additions to the 2018 Regulations

**Prepaid Cards**
Finance Companies can act as program managers for reliable prepaid cards

**Introduction of outsourcing activities**
The Regulations permit outsourcing of its permitted activities and lays out the requirements for such processes. This is the first time that the Central Bank has included outsourcing as a part of certain regulations.

**Confidentiality of data**
Another first being the Regulations lay emphasis on confidentiality of data available to it and safeguarding of such confidential data even while outsourcing.

**IT technology and Security**
The Regulations details out technical facilities that must be available with finance companies in order to keep the records of its customers

These Regulations apply to all Finance Companies. Accordingly companies licensed prior to the date of the issuance of these Regulations need to comply with the 2018 Regulations and are given a period not exceeding 3 years from the publication to conform. However, the Central Bank may amend the requirement of compliance within 3 years if it deems the finance company to be substantially in compliance with these Regulations. All existing Finance Companies will require to provide the Central Bank with a detailed adjustment plan to comply with the articles of these Regulations.

*Al Tamimi & Company’s Banking and Finance team regularly advises on the Finance Company Regulations. For further information please contact Mark Brown (m.brown@tamimi.com) or Maymoona Talib (m.talib@tamimi.com).*
Corporate Commercial

Global Legal Insights:
Initial Public Offerings 2018
United Arab Emirates Chapter

Introduction

An initial public offering ("IPO") is a process by which a company offers its shares, for the first time, to the public by virtue of drafting and publishing a prospectus on the company and carrying out a public subscription of its shares, after submitting required documentation to the relevant governmental authorities and obtaining their approvals in relation thereto.

Under the laws and regulations of the United Arab Emirates ("UAE"), in order for a company to offer its shares to the public, the said company must be or take up the legal form of a public joint stock company. Accordingly, a company wishing to execute an IPO will be either a newly incorporated public joint stock company, or a company assuming the legal form of a private joint stock company or a limited liability company that undergoes a conversion process to become a public joint stock company.

Introducing a brief on the history of IPOs in the UAE, there have only been a few IPOs in the past few years, only two of which have been executed in 2017 after the issuance of the new UAE Federal Law No. 2 of 2015 concerning Commercial Companies ("Companies Law"). We envisage that, in 2018, the market appetite will uphold the trend of one to two IPOs a year.

It is also worth noting in this regard that the companies that have undergone IPOs in the period between 2014 until 2017 operated in fundamental yet diversified industries such as the real estate, investment, leisure and entertainment, and oil and gas sectors.

Generally speaking, companies that choose to go public in the UAE and offer their shares in an IPO usually seek to raise their capital in global markets. This is supported and facilitated by the local regulators and the regulatory schemes set by the governmental authorities.

It should be noted that, for the purposes of this chapter, any reference to the UAE (which includes the Emirates of Abu Dhabi, Dubai and the five other emirates making up the UAE) excludes the geographical areas of the Dubai International Financial Centre ("DIFC") and the Abu Dhabi General Market ("ADGM"). The civil and commercial laws of the UAE (including the UAE’s securities market laws and regulations discussed in this chapter) are not applicable to the DIFC or ADGM and vice versa.

In the UAE, there are three financial exchange markets, two of which are onshore, being the Abu Dhabi Securities Exchange ("ADX") and Dubai Financial Market ("DFM"), while the third financial market is located within the jurisdiction of the DIFC, being NASDAQ Dubai. ADX and DFM are subject to the supervisory authority of the UAE Securities and Commodities Authority ("SCA"), while the Dubai Financial Supervisory Authority regulates NASDAQ Dubai in its capacity as the securities supervisory authority within the DIFC. As at the time of writing, there is no financial market that is located in the ADGM.
This chapter excludes any regulations applicable to NASDAQ Dubai and any of the below regulations are applicable only to ADX and DFM where the text allows for the same.

ADX and DFM are governed and regulated by SCA, which has the authority to impose laws, regulations and standards with which both ADX and DFM must comply. ADX and DFM work proactively with SCA to protect investors and provide optimum trading platforms for securities trading.

Both ADX and DFM operate as a securities exchange market for trading securities including shares issued by public joint stock companies.

The IPO process: steps, timing and parties and market practice

Despite the fact that an IPO is a process carried out in a very similar manner across the globe, the mechanics of such procedure differ from one country to another in terms of the applicable laws and regulations, required documentation, governmental approvals, and timeline of its procedures.

The IPO process in the UAE slightly varies according to the business and structure of the company undergoing the IPO process, i.e. whether the company is a newly established public joint stock company or a company undergoing a conversion process to become a public joint stock company, in which emirate the company has its place of business and on which market the company will be listed. Accordingly, we have set out below two different procedures and series of steps for each company structure as detailed hereunder.

Newly established public joint stock company

*First stage: initial approvals*

Generally, greenfield (i.e. newly established) public joint stock companies require additional approvals from SCA to go through the route of the IPO. Some of these requirements include: (i) a special approval from the board of directors of SCA for incorporating the greenfield company; (ii) there is sufficient working capital for the twelve (12) months post the incorporation; and (iii) the offered shares are limited to qualified institutional investors and high-net-worth individuals for amounts that are no less than AED 5 million.

The founders committee of the new company (to be established) must refer to the Department of Economic Development (“DED”) to obtain initial approval to establish the company as a public joint stock company in accordance with the provisions of Article (113) of the Companies Law.

After obtaining the approval of the DED, the founders committee must apply for the preliminary approval of SCA for the establishment of the public joint stock company, accompanied by all the necessary documents; namely, the memorandum of association (“MoA”), articles of association (“AoA”), an economic feasibility study for the venture, the SCA application form requesting incorporation of a public joint stock company, a draft prospectus, a subscription application form, and evidence of payment in respect of subscription.

If the company has shares issued in-kind, the value of the in-kind shares will be assessed by one or more financial advisors chosen by SCA from those accredited by it, or those with technical and financial expertise in the subject of evaluation who are approved by SCA. SCA then considers the application for incorporation and notifies the founders committee of its observations within ten (10) working days from the date of submission of the application in full.

The founders committee completes any deficiencies or makes the amendments deemed necessary by SCA to complete the application for incorporation within fifteen (15) working days from the date of notification. Otherwise, SCA may consider this a waiver of the application for incorporation.

SCA sends a copy of the documents to the DED after they have been completed. (The period of SCA’s review is ten (10) working days from the date of completing the application.)

A meeting is then held between SCA and the DED to study the application for incorporation and its documents. The meeting must be held within ten (10) working days from the date of the submission of documents by SCA to the DED.

In case there are any comments made by the DED, SCA informs the founders committee. The amendments be made within ten (10) working days from the date of informing the founders committee.

SCA ensures that the application and all documents and observations are completed and that the amended versions are sent to the DED. No particulars may be amended in the application after submitting it to the DED during any stage of incorporation either in respect of the capital of the company or its objectives or the names of its founders or any other data in the application for incorporation.

On approval of the incorporation application, the DED then issues a decision to license the incorporation of the company, which is announced in the official gazette at the expense of the founders.
**Second stage: pre-subscription period**
The founders committee attest the MoA and AoA before a notary public.

**Third stage: public subscription/public offering**
The founders committee must then commence the subscription process, as per the template provided by SCA, for the shares within fifteen (15) days from the date of issuance of the above-mentioned decision. The founders shall subscribe for not less than thirty percent (30%) and not more than seventy percent (70%) of the issued capital of the company, prior to the invitation to public subscription and offering for the remaining percentage of the share capital. In this regard, the founders may not subscribe to the shares offered for public subscription.

_N.B._: Prior to such step, the founders committee must provide SCA and the DED with a bank certificate evidencing payment of the value of their shares in accordance with the above-prescribed percentages. Additionally, they must submit an undertaking, as per the template provided by SCA, to deposit the proceeds generated from the subscription of the total shares to the account of the company under incorporation as well as refunding the surplus funds to subscribers within fifteen (15) days from the date of the subscription closure, if any.

Once SCA’s approval of the prospectus is obtained, the prospectus is then published in two local Arabic daily newspapers at least five (5) days prior to commencement of the subscription. This is the invitation to the public offering.

The subscription must be kept open for no less than ten (10) days and no more than thirty (30) days, open to extension by an additional period of ten (10) days subject to SCA and the DED’s approvals.

A company issuing its shares in accordance with the share book-building mechanism shall enter into a contract with a financial advisor in order to carry out the IPO and for them to supervise the same. Such financial advisor shall have a number of roles, including presenting the company’s business to investors and ultimately setting the price of shares in the final prospectus after analysing the data from the book-building.

Companies issuing shares in an IPO process, and wishing to use the book-building process, must comply with the following:

- An application will be submitted to SCA using the form prepared for such purpose in order to obtain approval on book-building.
- The company shall neither announce nor disclose, by any means whatsoever, its intention to issue or sell shares through the book-building process before obtaining SCA’s approval.
- Not less than twenty percent (20%) of the subscription shares shall be offered to retail investors, and not less than sixty percent (60%) shall be offered to qualified investors, excluding newly established companies, in which case the subscription is restricted to qualified investors only.
- Allocate to qualified investors, based upon the subscription applications submitted by them, any shares not subscribed by retail investors.

The price set for retail investors may be discounted compared to the one set for qualified investors in accordance with disclosures made in the final prospectus.
Retail investors shall pay the full value of their subscribed shares upon subscription. Qualified investors may pay the value of their subscribed shares after allocation.

The allotment of shares and refund of the surplus funds must be made within five (5) working days from the date of the subscription. In the event that the subscription applications exceed the number of shares offered, the shares shall be distributed to subscribers proportionally to their subscribed amounts or as determined in the prospectus and approved by SCA, and the distribution shall be made to the nearest whole share.

After the allocation has been made, the company must send the shareholders register to the UAE financial market (i.e. ADX or DFM) on which the shares will be listed.

The entities receiving the subscription keep the payments made by subscribers; in this regard any returns gained in relation thereto are for the account of the company under incorporation. The receiving entities will not deliver such amounts to the board of directors until the incorporation certificate has been issued and the company is registered before the commercial registrar at the DED.

Fourth stage: incorporation announcement
The company must announce an invitation to the subscribers to attend the constitutive general assembly meeting (after obtaining approval of SCA) to be held within fifteen (15) days from the date of the subscription closure. The agenda of the first constitutive general assembly must include certain matters prescribed by the SCA.

If a quorum has not been met at the first meeting, the meeting must be held within five (5) to fifteen (15) days from the date of the first meeting, and the second meeting will be deemed to satisfy the legal quorum regardless of the number of the attendees.

Within ten (10) days from the date of the constitutive general assembly, the founders will submit an application to SCA, for issue of the incorporation certificate, and will enclose the documents stipulated under Article (133) of the Companies Law.

Afterwards, SCA issues the incorporation certificate within five (5) working days.

Fifth stage: registration before the competent authorities and SCA

• The board of directors of the newly incorporated company must complete the registration procedures before DED in anticipation of its listing in the financial market within ten (10) days from the date of issuance of the incorporation certificate.

• The DED must then register the company before the commercial registrar and issue the company’s trade licence within five (5) working days.

• Afterwards, the chairman of the board of directors of the newly incorporated company must, within five (5) working days from the date of issuance of the company’s trade licence, provide the AoA, MoA and company licence to the company registrar to register the company in the companies register.

Sixth stage: listing on UAE financial markets
The board of directors of the newly incorporated company must, within fifteen (15) working days from the date of the company’s registration before the commercial registrar, list its shares on any of the UAE financial markets (i.e. ADX or DFM) and revert to such financial market with a listing request in accordance with the listing regulations adopted by SCA and the financial market on which the shares will be listed.

Newly converted public joint stock company
Existing companies wishing to convert into public joint stock companies follow the same rules and steps applicable to newly established public joint stock companies except in relation to the following:
Companies wishing to convert into a public joint stock company are required to fulfil, amongst others, the following requirements:

- the value of the issued shares of the company wishing to convert has been paid in full;
- the completion of at least two fiscal years prior to the application;
- the company has realised, within the two financial years preceding the approval on the conversion application, net operational profits that are distributable to shareholders of no less than ten percent (10%) of the company’s capital as an average; and
- a special resolution (depending on the legal form of the company and its constitutional documents, this should be passed by no less than three quarters of either: (i) the share capital of the company; or (ii) the shares being represented in a general assembly meeting) issued by the shareholders of the company approving its conversion into a public joint stock company.

- The founders may sell by way of IPO up to thirty percent (30%) of its share capital. In this regard, the founders may not subscribe to the shares offered for public subscription.

- The founders committee (to be established by way of a shareholders’ resolution) of the existing company that wishes to convert to a public joint stock company must draft a letter to SCA requesting a listing window reservation and confirming eligibility.

- Afterwards, the founders committee applies to SCA for a public joint stock conversion accompanied by its shareholders’ resolution approving such conversion.

- Simultaneously, the said company appoints, approves and forms the said founders committee.

- Subsequently, the founders committee files with SCA the first draft of the local prospectus as well as the shareholders’ resolution of the existing company approving the conversion, a final draft of the IPO MoA and AoA, a business plan review, and a final real estate valuation report.

- SCA will examine the conversion application and filed documents and produce a decision on the request within a period of ten (10) working days.

- In case of approval of the conversion by SCA, the founders committee must announce the conversion and notify its shareholders and creditors (if any) of such conversion via written notice within a period of five (5) working days from the date of SCA’s approval.

- Shareholders and/or creditors of the company are given a period of fifteen (15) working days to object to the conversion.

- Afterwards, the company files with SCA a copy of the resolution and confirmation that the opposition period has expired. SCA forms a committee to evaluate the company assets. The process of this evaluation process is thirty (30) working days.

- A meeting between SCA and the DED is then held to examine the conversion application and its documents. The time for such procedure is five (5) working days.

- In case of final approval of the conversion application, SCA issues a licence to the company and such licensing decision is then published in the official gazette at the expense of the company founders.

- The company then proceeds with the IPO and listing in the same manner as a newly established public joint stock company.

**Regulatory architecture: overview of the regulators and key regulations**

The key regulators in the UAE in respect of the IPO process are the Securities and Commodities Authority (SCA) and the Department of Economic Development (DED). Additionally, and depending on the nature of the company’s business, the company may be required to obtain the approval of other relevant governmental authorities or regulators such as the Central Bank or the Insurance Authority in the UAE.

Other than the key regulators mentioned above and as part of the IPO process, the company is required to liaise with ADX or DFM for the listing of its shares and their offering to the public.

In addition to the Companies Law, one of the important regulations in respect of an IPO are the Companies Law, and the Chairman of SCA’s Resolution No. (11/R.M.) of 2016 governing public offering and issuance of shares of public joint stock companies.

**Public company responsibilities**

Public joint stock companies are subject to a more refined governing structure in comparison to other legal forms of companies. The main differences
manifest in the ‘corporate governance’ and the ‘disclosure and transparency’ regulations applicable to public joint stock companies.

Disclosure and transparency regulations

Post the IPO, the company and its shareholders have additional disclosure and transparency obligations, which include restrictions on dealing with the securities of the company, notification obligations in relation to material developments affecting the company, restrictions on publishing certain data relating to the company and to provide SCA with copies of certain documents including financial reports, and details of general assemblies and resolutions.

Corporate governance regulations

Public joint stock companies are obliged to follow separate regulations for corporate governance in addition to those specified in the Companies Law. Such set of corporate governance regulations can be found in SCA’s Resolution No. (7/R.M.) of 2016 concerning the standards of institutional discipline and governance of public joint stock companies (“CGR”). These include, amongst other obligations (i) that the company is obliged to obtain approval from its shareholders and maintain records of transactions that take place with related parties, (ii) all shares issued in the company must be in the same class with equal rights attached to them, (iii) the AoA and internal by-laws of the company should include controls to protect shareholders’ rights, and (iv) the company must have internal control systems to ensure compliance with corporate governance rules.

The company is also obliged to issue a ‘Corporate Governance Report’, which has to provide details of all remuneration and compensation paid to the board; such report must be available to the shareholders prior to the annual general meeting.

Potential risks, liabilities and pitfalls

Given that the IPO is a simple and straightforward process, there should be no potential legal risks, liabilities or pitfalls with regards to undertaking the IPO process should the above-mentioned procedures be thoroughly followed and all governmental approvals obtained. This is notwithstanding any risks, liabilities and pitfalls related to the business of the company itself or any market risks occurring during the IPO process. However, any negligence on the part of the company or its advisors may expose the company and its founders to risk. The IPO is a lengthy and detailed process that needs to be dealt with by advisors who are experienced in the field of IPOs, in order for them to handle the requirements and ensure compliance with all regulations in an efficient manner and minimise any risk to the company and its founders.

Acknowledgment

The authors would like to thank Sarah Tomy and Anna Robinson for their invaluable assistance in the preparation of this chapter.

NB: This article was previously published in the second edition of the Initial Public Offerings 2018 book by Global Legal Insights in May 2018.
The new DIFC Companies Law is expected to come into force in August / September 2018. The new law will make a number of major changes to the rules governing DIFC-established companies, including:

i. the removal of the category of limited liability companies (as an option to the company limited by shares) and the introduction of differing regulatory requirements imposed on private and public companies respectively; and

ii. the introduction of more detailed and explicit provisions imposing and regulating directors’ duties.

This article concerns the most innovative feature of the new law, the introduction of a legal framework for corporate schemes of arrangement.

A scheme of arrangement is a process which empowers companies to enter an array of binding arrangements and agreements with its shareholders and/or creditors as classes. Where an arrangement is supported by 75% of the relevant classes of creditors or shareholders, the Court has power to sanction it and to bind all the stakeholders, including any dissenting minority. Schemes of arrangement are used extensively in England and in other common law jurisdictions, so it is a welcome innovation for DIFC companies.

The legal process for schemes of arrangement was originally developed in England but the new DIFC provisions are closely modelled on Jersey law, which is less detailed and prescriptive than the legislation now applying in England and Wales. The DIFC provisions relating to compromises and arrangements can be found in Articles 124 to 126 of the new Companies Law.

How are Schemes Commonly Used?

Schemes of arrangement are extremely flexible and the legislation does not restrict the form or content of the compromise or arrangement. Here are a number of examples of how schemes have been employed successfully in the UK:

- Reducing debt and carrying out debt for equity swaps

Sometimes, a scheme of arrangement can be used to reduce the value of claims from both secured and unsecured creditors. Debt reduction can occur as part of a compromise, where creditors agree to accept a pro-rated percentage of the total debt so the company can continue to be viable. Often, in these circumstances, a creditor will ‘swap’ some of its debt in the company for equity in a new holding company. This reduces the debt of the operating company, allows it to continue trading and provides for a cash injection into the new holding company.

For example, in the *Countrywide* plc case, the company had issued senior secured loan notes worth £470 million which were reduced to £175 million and the holder of the senior
secured loan notes agreed to inject capital into a new holding company in return for 35% of the equity in that company. In addition, it was agreed to convert unsecured loan notes worth £170 million to 5% of equity in the new holding company. The proposal was supported by the majority of the loan note holders and so the court approved the agreement.

• An alternative to liquidation
Schemes can also be used as an alternative to a formal liquidation process. The terms of the scheme will prescribe a distribution of the company’s assets between the creditors. This can be helpful when there are a number of contingent claims which may be difficult to quantify and would delay the liquidation process or where assets of a group of companies are difficult to identify as owned by a particular member of a group.

• Where the company seeks to assure future solvency by “ring fencing” contingent claims
In Re Cape plc & Ors, Cape plc and its subsidiary companies called a meeting of creditors to approve a solvent scheme of arrangement.

Cape plc’s group business was asbestos mining and the manufacture, distribution and installation of asbestos products. The company was solvent, but faced many future contingent claims due to its employees’ past exposure to asbestos dust. Given the slow emergence of medical problems caused by exposure to asbestos, it was clear that the company would face claims in the future, but at the time of proposing the scheme no one could quantify the value of these claims with precision.

The scheme of arrangement was designed to protect the group’s ongoing businesses from the asbestos claims, whilst at the same time diverting a percentage of its earnings into a sinking fund for the payment of those claims. The Court approved the proposed scheme, thereby allowing Cape plc to create a subsidiary company to deal with all present and future claims, effectively ring-fencing the rest of the Cape group from the disruptive effect of the claims.

• Takeovers
Schemes of arrangement are used in the UK as an alternative way to implement a company takeover rather than following the City Code on Takeovers and Mergers Takeover Regulations (“UK Takeover Regulations”). Consent is only required from 75% of the shareholders for all shareholders to be bound and liable to
compulsory acquisition; whereas 90% of the shareholders are required to consent under the UK Takeover Regulations to achieve a ‘squeeze-out’.

An example of this in practice is the case of TDG plc. There the company applied for an order under the Companies Act 2006 sanctioning a scheme of arrangement, the object of which was to facilitate the acquisition of shares in the company by a buyer. A minority shareholder opposed the approval of the scheme. The scheme was approved by the court as reasonable so all shareholders were bound to transfer their shares to the acquiring company.

The provisions of the old DIFC Companies law in respect of takeovers contain the same threshold to that of the UK Takeover Regulations (consent of 90% of the shareholders). The introduction of the New Law will enable all shareholders to be bound by the arrangement with only the consent of 75% of the shareholders. This is likely to facilitate takeovers in the DIFC, particularly in circumstances where there are dissenting or ‘lost’ shareholders. The provisions can also be used to implement a ‘squeeze-out’.

- Demergers

In the case of BGEO Group plc the applicant company applied for the court to sanction a scheme of arrangement to split its investment
business from its banking business. The scheme involved the insertion of a new holding company and, once the scheme had taken effect, the demerger of the group’s two businesses. The new holding company would undertake a swap reduction of capital for the purpose of demerging the investment business. The shareholder agreed to swap their shares in the applicant company for shares in the new holding company on a one-for-one basis.

Benefits to companies incorporated in the DIFC

The new provisions will open up wide range of flexible options for restructuring debt or equity. In certain scenarios, additional requirements of the DIFC companies law will also need to be taken into account, in particular the rules governing any return of capital to shareholders, so there may need to be parallel compliance.

What types of compromises or arrangements will be approved?

Subject to the required formalities and approvals, schemes can be used to bind all shareholders of the relevant class(es) of creditors and/or shareholders to almost any type of reorganisation. Nothing in the new law limits the subject matter of a scheme. In theory a scheme could be a compromise or arrangement between a company and its creditors or shareholders about anything which they can properly agree amongst themselves.

However, a scheme must be a ‘genuine’ and ‘effective’ arrangement or compromise. This means that the shareholders and creditors of the company which participate in the scheme must obtain some advantage in compensation for the scheme’s alteration of their pre-scheme rights entitlements.

The procedure

For a company to obtain a sanctioned compromise or arrangement in accordance with the New Law, the following steps will need to be undertaken:

- The person proposing the scheme of arrangement must seek a court order to convene creditor and/or shareholder meetings (as relevant) in order to vote on the proposed scheme;
- The notice calling for the meeting whether by letter or advertisement, must include a statement containing details of: (i) the effect of the proposed compromise or arrangements, (ii) material interests of the directors of the company in the arrangement, (iii) if any debentures have been issued by the company how the arrangement or compromise would affect the rights of the debenture holders; and (iv) any other matter which would have a material impact on the company, its creditors and shareholder.
- Compromise or arrangement schemes require approval by at least 75% in value of each class of the creditors who vote on the compromise or arrangements or the holders of 75% of the voting rights of the shareholders or class of shareholders, as the case may be, present and voting either in person or by proxy at the meeting;
- After the scheme has been approved by the shareholders or creditor, it must then be sanctioned by the court;
- Any interested shareholder or creditor can be represented when the court considers the application to sanction the scheme, and may argue for or against the sanctioning of the scheme.
- A copy of the court order must then be sent to the Registrar and the Registrar will ensure that a copy of the court order is included in the company’s articles of association.

Applications for a scheme of arrangement can be made by the company, a creditor or shareholder or in the case of a company being wound up its liquidator.

Conclusion

The introduction of schemes of arrangement in the DIFC paves the way to greater flexibility in implementing a range of sophisticated deals within the DIFC from equity swaps, to demergers, to corporate turnarounds.

Al Tamimi & Company’s Corporate and Commercial team regularly advises on restructuring and take over arrangements. For further information please contact Anna Robinson, a.robinson@tamimi.com or Richard Catling, r.catling@tamimi.com.
The United Arab Emirates (UAE) has long been described as a business-friendly country in the mainstream media and in widely followed surveys of competitiveness. The last couple of months have seen a wave of official measures and initiatives that aim to make Dubai and Abu Dhabi more cost effective (and easier) places in which to live and to run businesses.

Even more open for business

On 20 May 2018, the Cabinet of the UAE announced two major changes, both of which were highlighted in tweets by HH Sheikh Mohammed bin Rashid Al Maktoum, the Ruler of Dubai and the Prime Minister of the UAE:

1. Long Term Residency Visas
Under a new visa regime, 10-year residency visas will be available for ‘specialists in medical, scientific, research and technical fields, as well as for all scientists and innovators’. The new visa regime will also include five-year residency visas for students who are studying in the UAE and up to 10 years for ‘exceptional students’.

2. 100% Foreign Business Ownership
In a strategic move to boost the economy and attract global investments, it was announced that the UAE will allow foreign investors in specific sectors to wholly own their businesses by the end of 2018.

Whilst it has not yet been decided as to which sectors will benefit from the announcement, we believe that the decision will be linked to factors such as job creation and significant investments relating to advanced technology and artificial intelligence.

From these breakthrough decisions, it is clear to see that the UAE governments are working hard to maintain their title of global leader and the “business hub” for
foreign investment. It is well documented that the UAE never does things by half and therefore not surprisingly, the exciting announcements did not stop there...

More Action to Reduce Business Costs

Waiver of Corporate Fines

On 29 May 2018, Dubai’s Department of Economic Development (“DED”) drew attention to Decree No. 20 of 2018, which exempts companies that operate in the Emirate from paying all fines imposed on them, and which facilitates the renewal of licences. HE Sami Al Qamzi, the Director General of Dubai’s DED, noted that ‘[the Decree] will add to the financial benefits of the owners of expired business licenses, restore legal records and licenses, and help the business community in Dubai enhance their competitiveness.’

Subsequent press reports from 9 June 2018 indicated that the waiver of fines applies to fines that have been issued before 14 April 2018. Businesses that have received fines since then can pay the amounts owing in instalments by arrangement with the DED. The press reports also noted that businesses have until the end of 2018 to renew their licences to operate in Dubai.

Abu Dhabi’s DED announced similar exemptions ‘for establishments whose licences have expired for more than 24 months from paying the delayed and accumulated fees’. HE Mohammed Munif Al Mansoori, the Chief Executive of Abu Dhabi Business Centre, emphasised that the exemptions apply to all establishments regardless of their size or type. The exemptions are valid in all three of the main regions of the Emirate - Abu Dhabi, Al Dhafra and Al Ain.

As expected, these initiatives have created a huge media buzz in the country, with all sorts of opinions and questions being asked about what it all means for the future. While this largely remains to be seen, what really matters is that the governments are now acting decisively to address the biggest problem for most establishments in the UAE.

This is at a time that the high costs of doing business in Dubai and Abu Dhabi have been boosted by the introduction of Value Added Tax (VAT) from the beginning of 2018.

Hype and Hard Numbers: the UAE was already a competitive country

These announcements are remarkable for two reasons. One is that so many of them have been made in a short period of time by the governments of the UAE, namely in Abu Dhabi and Dubai. The other is that conventional wisdom already sees the UAE as having a (very) competitive business environment in both a regional and a global context. A lot of positive publicity has, for instance, been generated by Expo 2020, which will take place in Dubai.

The hype is supported by hard numbers. In May 2018, the Lausanne-based Institute for International Management Development (IMD - a leading business school) published its 2018 World Competitiveness...
Ranking. The UAE is currently in seventh place overall (between Denmark and Norway), having been in 10th place in 2017. The UAE is ranked second of the 63 countries assessed in terms of business efficiency (after Hong Kong), third in terms of economic performance (after the United States and mainland China), and fourth for government efficiency (after Hong Kong, Switzerland and Singapore). The UAE is also the only GCC country whose ranking in terms of the Global Competitiveness Index (GCI) calculated by the World Economic Forum (WEF) has clearly improved over the last five years. In 2012-13, the UAE was ranked at 24/144. In 2017-18, the country’s position had advanced to 17/137.

Addressing the main problem, and ensuring a legacy beyond Expo 2020

A clue as to why the UAE’s governments are taking these steps now comes from that part of the WEF’s research, which deals with the most problematic factors for doing business, in the opinion of the various companies that were surveyed. In most of the Gulf Cooperation Council (GCC) countries, the key challenges are restrictive labour regulations and lack of access to finance. Lack of finance was the most serious problem in the UAE. However, inflation – a minor challenge in the other GCC countries - came in as a close second.

The impact of inflation depends on two factors. One is the rate of change of prices in the basket of goods and services that is being considered. The other is the base from which prices are rising. In the case of the UAE, that base is already high by global standards. In the Cost of Living survey compiled by consultancy Mercer in mid 2017, Dubai and Abu Dhabi were, respectively, the 19th and 22nd most expensive cities for expatriates. The survey covered 209 cities. The UAE’s two main cities are, for expatriates, about as costly as San Francisco (21st) and more expensive than London (29th).

To watch

While it is fair to say that the particulars of the announcements are not yet known; what we can rely on is the fact that the UAE has an excellent track record of following through in delivering their promises, meaning that investors and talented individuals alike should expect positive news in the near future.

We believe that the key measure of success of the initiatives will be linked to the number of new enterprises that are incorporated in Dubai and Abu Dhabi in the future. With the array of incentives such as long term visas and reductions in set-up fees, it is hard to see why people would not jump at the chance of doing business in the region.

For now, observers in the rest of the world will focus on the UAE like never before when Expo 2020 comes to Dubai. The latest announcements should have a positive impact on perceptions and the realities of the UAE’s economy.

Over the long-term, the governments will do whatever it takes to maintain the competitiveness of Dubai and Abu Dhabi in a regional, and indeed global, context. The UAE’s economy should continue to flourish and diversify long after Expo 2020.

Al Tamimi & Company’s Corporate Structuring team regularly advises on new changes taking place. For further information please contact Samer Qudah, s.qudah@tamimi.com.
The Calm After the Storm: Saudi Arabia’s Anti-Corruption Tornado and the Investor Impact

Saudi Arabia is undergoing significant reform but, beyond the maelstrom of political speculation and conjecture, what are the practical and legal implications of the anti-corruption drive for investors?

Saudi Arabia has seen tumultuous reform in the last 12 months as Crown Prince Mohammed bin Salman has sought to propel Saudi Arabia towards Vision 2030. International attention has been riveted to the government’s surging anti-corruption drive since a number of high-profile individuals were detained on corruption charges towards the end of 2017. Much of this attention, however, has been tangential, without providing clear insight into what impact such radical measures will have on the country’s legal framework and business climate.

A Favourable Forecast? The Business Outlook on Anti-Corruption

The extent and boldness of the recent measures taken in Saudi Arabia are indicative of the government’s resolve to eliminate corruption in the system. The Kingdom has been signatory to the United National Convention Against Corruption (UNCAC) since 2004, though it only ratified the agreement in 2013. The events that have garnered so much international attention are only the latest in a long-term initiative to address corrupt practices in the business sector. Between 2012 and 2017, Saudi Arabia has improved its score on the Transparency International Corruption Perceptions Index (CPI) from 44 to 49. Whilst this score still reflects significant room for improvement, it also charts measurable progress in a region that continues to face drastic change, and provides impetus for the more recent measures that clearly demonstrate the elevated priority of anti-corruption reform.

In order for the Kingdom to benefit from its drive for sustainability and prosperity, however, its determination to eradicate corruption must be symbiotic with its ability to assure investor confidence. The zero-tolerance approach that has surfaced over the past year has the potential to greatly improve the integrity of Saudi Arabia’s business market, but lingering concerns surround residual corruption with certain businesses continuing to question the feasibility and longevity of trading in the Kingdom.

The United Nations Conference on Trade and Development (UNCTD) World Investment Report 2018 suggests that, in the short term at least, the anti-corruption drive has done little to improve investor confidence and may even have exacerbated feelings of uncertainty. Inward Foreign Direct Investment (FDI) flows have fallen by more than 80% between 2016 and 2017. Whilst this trend cannot be entirely attributed to the anti-corruption sweep that happened late in the final quarter of the year, it is certainly likely to have been a contributory factor in unsettling investor confidence. From a long-term perspective, however, efforts to level the playing field in Saudi Arabia may bring fairer weather to businesses as the obstacles associated with pervasive corruption are gradually eliminated from the system.

Saudi Arabia is far from being alone in its fight against corruption; it is one of the most prevalent and pressing issues facing systems across the globe, and countries...
Bribery of Public Officials

The Anti-Bribery Law is primarily focused on public servants. In order to maintain maximum protection for its public sector, the definition is intentionally broad, extending to personnel of joint stock companies, along with their board members and directors. It may also capture private sector individuals who are working on government-related projects, such as consultants to government projects, including temporary employees, experts appointed by the government or judiciary, or even employees of private companies contracted to provide public services. Employees of joint stock companies are also subject to the Anti-Bribery Law, as well as employees of companies and sole proprietorships engaged in banking services.

The Anti-Bribery Law broadly defines a bribee as any public servant who solicits, accepts or receives for himself or for others, a gift or payment of any sort, or a promise thereof, as consideration for any act that impinges on the integrity of office. Defences against such practices are fortified by the absence of any exemption, caveat or even significant qualifying criteria for the type of act that could invoke bribery provisions. Any act can be considered corrupt, regardless of its...
legitimacy, whether it is a positive act or an omission, whether it has been done in the absence of a prior agreement, and even where it involves using the influence attached to a public office to gain benefit, rather than the performance of a relevant duty.

Given the traditionally prominent role of the government in the national economy, the Anti-Bribery Law does provide relatively wide protection, despite the obvious lack of corresponding safeguards applicable to the private sector. Privatisation targets encapsulated by Vision 2030, however, necessitate more complete protection and new measures that target both the public and private sector are a requirement going forward.

Penalties and Enforcement

Under the Anti-Bribery Law, penalties for the offences set out above can reach maximum penalties of imprisonment for a term not exceeding ten years and/or a fine not exceeding one million riyals (about USD 275,000).

Along with the specific penalties applicable to public servants who accept a bribe, it should be noted that the Anti-Bribery Law provides for the person offering the bribe (whether it is accepted

“In order for the Kingdom to benefit from its drive for sustainability and prosperity, its determination to eradicate corruption must be symbiotic with its ability to assure investor confidence.”
or not, and any accomplice, to be susceptible to corresponding punishments.

To protect a culture of respect for public officials, conviction on bribery offences also leads to dismissal and a bar from public office for a minimum of five years. In an attempt to prevent perpetrators from benefitting from the proceeds of crime, the Anti-Bribery Law provides that any money, benefit or privilege derived from committal of the offence be confiscated wherever possible.

**Gifts and Hospitality**

No exemptions are provided for gifts and hospitality in the Anti-Bribery Law. Any benefit or privilege obtained by the bribee, regardless of its type or designation, whether material or otherwise, shall be considered a (prohibited) gift or promise. This has led to confusion in the past, as conventional business practices that would be widely accepted in other systems appeared to invoke the strict anti-bribery restrictions.

This matter was somewhat elucidated with the passing of the Rules on Gifts to Officials. Pursuant to these Rules, an official may accept gifts, given at visits and official occasions or at receptions of official guests, in accordance with custom and the courtesy protocols of such visits and occasions, though they cannot be cash and must be conventional in the context in which it is given. Crucially, businesses must be cognisant that generally, when reviewing the appositeness of a gift, the authorities will consider a number of contextual factors, including the proximity of the gift-giving to any relevant business deal, common courtesy practices of the firm in question, proportionality of the gift to conventional customs, and the appropriateness of the benefit given.

Though further provisions on the permissibility of certain types of gifts are outlined in the Rules, gifts and hospitality continue to be point of concern for business and can prove problematic in a culture where generosity is an ever-present feature of relations.

**Exposure for Corporate Entities**

Significantly, where the manager or any employee of a private company is convicted of any offence under the Anti-Bribery Law, and the offence was committed for the benefit of such company, the law provides for a fine not exceeding ten times the value of the bribe and/or a ban from entering into public procurement or project contracts of at least 5 years. The briber can be exempted from punishment if he informs the authorities prior to the discovery of the offence, and this may provide some means by which corporate entities can limit their exposure upon becoming aware of any apparent offences under the Anti-Bribery Law.

**Preparing for the Tempest: Bolstering Defences Ahead Of Reform**

From a strategic perspective, since bribery is rarely an isolated issue, responses need to be thorough and comprehensive; part of an overarching coordinated national strategy that provides protection across an entire economic system and all branches of government. In order to ensure that such strategies are effective and aligned across institutions and businesses, they require constant monitoring and enforcement by a dedicated and independent authority. Where these institutions also act as the recipient in a sound and efficient reporting mechanism, the presence of a clear and trustworthy process increases the confidence of international investors.

Aside from the well-publicised arrests, Saudi Arabia’s corruption reform has extended to measures in other parts of its anti-corruption framework that have more sustainable implications for how it will address corrupt practices in future. These bold new mechanisms also enhance the country’s invigorated anti-corruption culture, which marks an abrupt departure from its previous presumed reticence on corruption matters.
Newly-formed Supreme Committee for Anti-Corruption

The formation of the Supreme Committee is indicative of the greater strategic importance of anti-graft efforts to the country’s wider reform programme. Chaired by the Crown Prince and comprised of high-ranking officials from various sectors of governance, including security, finance and existing anti-corruption bodies, the Committee acts as a mechanism that will immediately elevate corruption instances to the remit of the highest echelons of government. In so doing, the Kingdom is sending a strong message that it will no longer turn a blind eye to practices that compromise its financial system or rule of law.

The new Supreme Committee will have vastly advanced investigative and prosecutorial powers, including the capacity to issue arrest warrants and order interim measures such as issuing travel bans and asset freezing orders. This is a critical limitation of the existing National Anti-Corruption Commission, more commonly known as Nazaha, which was established in 2012 and has limited capacity, despite its function as the primary recipient of reports of corrupt activity. The new committee will not replace Nazaha, which will continue to target the protection of national integrity, investigate instances of graft in government contracts and refer any incidents to the relevant authorities and public prosecution as and when necessary.

By coordinating the activities of both the Supreme Committee and Nazaha, the efficacy of existing measures will be boosted by covering a wider scope of prosecutorial powers, increased authority with which to pursue perpetrators, and greater scrutiny through public awareness.

Specialised Anti-corruption Units Within the Public Prosecution Department

As an additional measure, the Saudi government announced as recently as March 2018 that it had established new specialised anti-corruption units within the Public Prosecution. Cases prosecuted by these units would be carried out under the direct oversight of the Attorney General, once again demonstrating the paramount importance of corruption-related cases. Though it is unclear when the dedicated units will become operational, in creating this new advanced capacity the Saudi government has improved its ability to investigate and prosecute corrupt activity and, in so doing, will add an extra deterrent against illicit practices.

Whistleblower Culture

Whistleblower protection is a significant point of departure in many regimes across the globe. Whilst some Western systems, such as the US, actively promote whistleblowing activity through substantial financial incentives, most countries in the Middle East have thus far been slow to introduce formal protection for whistleblowers, preferring instead to rely on a positive reporting duty and conscionable actions by citizens.

In this context, Saudi Arabia’s more proactive approach appears as an outlier. Article 17 of the Anti-Bribery Law provides for rewards for information substantiating an offence. Any person who is not a briber, or an accomplice, and who provides incriminating information substantiating any offence set out in Anti-Bribery Law, shall receive a reward not less than five thousand riyals (about USD 1,350) and not more than half of the money confiscated. There may be scope for a higher reward to be approved in appropriate circumstances.

In addition, King Salman’s recent order in May 2018 to provide whistle blower protection is progressive in its outlook and signifies Saudi Arabia’s willingness to accede to international standards of rights and transparency when it comes to prosecuting corruption crimes. If Saudi Arabia is mindful of the risks posed by the potential for
spurious claims and introduces adequate measures to prevent abuse of the reporting system, whistle blower protection is yet a further measure that will likely serve to reinforce the culture of zero tolerance that Saudi Arabia is attempting to cultivate.

Impending Amendments to the Anti-Bribery Law

On 2 July 2018, Saudi Arabia’s Shoura (Consultative) Council approved draft amendments to the Anti-Bribery Law. The changes, which are yet to be implemented, are reportedly aimed at providing enhanced protection to public utilities through sound prosecution procedures and severe punishment for offences, as well as further enshrining the principles and commitments contained in the United Nations Convention Against Corruption (UNCAC). At present, the extent and exact nature of the amendments are unknown, but once officially passed into law, they have the potential to radically modernise Saudi Arabia’s anti-bribery legislation. This critical development warrants close attention over the coming months as the process to implementation progresses, and could assist investors in assessing the long-term outlook for Saudi Arabia’s economic integrity.

A Weather Eye on the Horizon: Is Further Change an Inevitability?

Anti-corruption measures are an ancillary part of the legal reform process in KSA, but do not represent the totality of the country’s ongoing transition. New money-laundering laws passed in October 2017 are emblematic of the Kingdom’s resolve to eradicate illicit practices from its system. Corruption is symptomatic of countries where there is weak rule of law, but Saudi Arabia’s legal fortifications will go a long way to stamping out the nexus of criminal behaviour that facilitates and drives corruption trends. These are important contributory factors that should be considered by foreign investors when making an assessment of Saudi Arabia’s economic security.

The changes that have already been implemented will only improve the prognosis of anti-corruption in Saudi Arabia. The continued momentum garnered from these initiatives will drive awareness of corruption problems, aided by the combined activity of Nazaha and the newly formed Supreme Committee for Anti-Corruption.

This is a pivotal time for Saudi Arabia and the long-term outlook is positive – there is already evidence of widespread reform to protect the Kingdom’s economic stability and integrity and address systemic weaknesses. Simultaneously, the changes that have been gradually introduced by Saudi Arabia’s General Investment Authority (SAGIA) since 2015 to liberalise the national economy and provide space for full foreign ownership in key sectors, are creating new incentive for foreign investors to tap into the largest market in the Middle East.

Equally, investors must strike the appropriate balance between caution and enthusiasm when encountering new opportunities in the market. Corruption challenges are persistent and pervasive and will require sustained redress for the foreseeable future. Though it is yet undetermined what new mechanisms and measures may be deployed in the Kingdom in future, it is likely that subsequent steps taken to quash illicit practices will have considerable consequences for domestic and foreign investors alike. This will require that foreign investors understand the legal framework and secure their interests against inevitable shifts in the Saudi market as reform measures revolutionise the domestic business culture.

Overall, however, Saudi Arabia’s recent multifaceted approach to reform has created the perfect storm for investors and, with an impending multitude of investment projects, businesses have a prime opportunity to invest at the leading edge of FDI, assured that corrupt practices are not operating with impunity.
Stuck between a rock and a hard place... : The UK’s Unexplained Wealth Orders and the effect in the Middle East

The UK legislature has recently introduced domestic legislation aimed at money launderers, potentially resulting in unintended consequences for foreign nationals who have legitimate assets in the UK. These orders demand the intended target provide information about the origin of their wealth, and refusal to disclose that information may render the target subject to criminal prosecution in the UK. However, if the foreign national does comply with the Unexplained Wealth Order (UWO), then that individual may be subject to criminal prosecution in another State... a real Catch 22.

Controversially, there is no need for a foreign national to be accused of money laundering, or any criminality whatsoever, before they could be made subject to a UWO, which would lead to the freezing of their assets, or, worse, criminal prosecution.

The following article introduces UWOs to our clients and examines how one must be careful in weighing up their rights and obligations in respect of the request of a foreign State’s investigative authorities as it may impact their rights in the UAE, and around the GCC.

What is a UWO?

On 31st January 2018, the UK introduced their latest attempt at stemming money laundering in the UK: Unexplained Wealth Orders. UWOs are civil investigative powers that are aimed at tackling those who use the UK as a destination for money laundering, or as a destination for those who wish to spend their ill-gotten gains.

UWOs have been introduced in the UK at a time when London, and the UK, is facing scrutiny as a perceived hotbed of money laundering and revelry. A main proponent of UWOs has been Transparency International UK’s corruption taskforce, who, amongst others, have repeatedly called for greater investigative action to be taken in the UK against individuals and entities thought to have been complicit in corruption, and have led the drive to bring UWOs into action in UK law.

UWOs are given legal effect pursuant to the UK Proceeds of Crime Act 2002 Article 362A, as introduced by the Criminal Finances Act 2017, and is defined in the legislation as:

‘An unexplained wealth order is an order requiring the respondent [i.e. the target of the order] to provide a statement—

a. setting out the nature and extent of the respondent’s interest in the property in respect of which the order is made,

b. explaining how the respondent obtained the property (including, in particular, how any costs incurred in obtaining it were met),

c. where the property is held by the trustees of a settlement, setting out such details of the settlement as may be specified in the order, and

d. setting out such other information in connection with the property as may be so specified.’
The clear advantage that UWOs provide for UK investigative authorities is that it is no longer necessary for the UK authorities to demonstrate that an individual has been subject to a conviction for a criminal offence (either in the UK or abroad) in order to obtain information and take measures against a specific property.

Two months after the introduction of the legislation, in March 2018, it would appear that the first orders are now being made. We have seen the first use of these orders, not on a UK national, but on an Asian politician who owns two properties, worth USD $30 million, in the UK. The specific identity of this individual has not been disclosed as matters are ongoing, and no further details are available publically.

This means that if an individual owns assets in the UK and they are made subject to a UWO, they will be forced to declare how they obtained this asset, and if they fail to do so they would be subject to criminal prosecution by the UK authorities. This may lead to foreign individuals being stuck between a rock and a hard place, with nowhere to turn and no route of escape.

Why is it Relevant To You?

As will be apparent from the first orders made against the Asian politician, whilst UWOs do apply to individuals who are reasonably suspected of being involved in crime, the UWOs will also target politically exposed individuals who have not been subject to criminal conviction, or investigation, either in the UK or internationally.

The definition of a PEP, or Politically Exposed Person, varies from State to State, but for the purposes of the UK legislation, the legislators have defined PEPs as the following:

‘(a) an individual who is, or has been, entrusted with prominent public functions by an international body or by a State other than the UK or other [European Economic Area] State; (b) a family member of a person within paragraph (a); or (c) known to be a close associate of a person within […] paragraph [a].’

Evidently from this definition, paying particularly close attention to (c) namely ‘a close associate’ of an individual with prominent public functions, there is a very expansive definition of PEP, and this will likely include many unsuspecting individuals. The effect of this definition is that if you are an individual who has prominent public functions, or you are a close associate of another who has been entrusted with public functions, then you may now be targeted by the UK authorities with a UWO. Alarmingly, there is no need for you to have committed a crime, nor to have been suspected of being involved in a crime, for these orders to apply to you.

Specifically, when could a UWO apply?

A UK high court judge can give notice of a UWO if the judge is satisfied that it is likely that a foreign PEP (as defined above) is the owner of suspicious wealth in the UK beyond their means, and if all of the following provisions are met:

1. The respondent’s known income is insufficient to obtain the asset; and
2. The value of the asset is greater than £50,000 (approx. AED 260,000).

This legislation does not only target Foreign PEPs, but also where there are reasonable grounds to suspect any individual has been involved in serious crime.

Applications for UWOs may be made without notice. This means that there is no requirement on the UK investigative authority to notify the target of a UWO that they, or their assets, have been made subject of a UWO.

What assets would this apply to?

A UWO can be made against assets whose value is greater than £50,000. There is no need for the PEP to be the sole owner of the property whose value is over £50,000, nor is it of relevance if the property was purchased prior to the introduction of the UK legislation.
What is the effect?

Following the making of an order by the High Court, the Court may order an individual’s property to be frozen, which would preclude the subject of the order from dealing with the property. As these freezing orders may be made without notice, this means that an individual’s assets may be frozen prior to their knowledge of any order being made against them.

The UWO will mandate the individual to explain, at a minimum:

1. The nature and extent of their interest in a particular property; and
2. Explain how the property was obtained.

An explanation will be requested by the UK authorities where ‘there are reasonable grounds to suspect that the respondent’s known lawfully obtained income would be insufficient to allow the respondent to obtain the property’.

Failing to Comply?

Should the target of a UWO fail to comply with an order, or provide inaccurate or misleading information, then they will likely be subject to criminal sanction in the UK and may face a period of imprisonment and a financial penalty.

Within the legislation, it is stated that a UWO could lead to criminal liability for a target if that individual fails, without reasonable excuse, to comply with the requirements imposed by the Court against that individual. There is no definition of what a reasonable excuse would be in the legislation, and is a subjective requirement that would be decided in Court during the course of litigation.

A View from the East: Stuck between a Rock and a Hard Place?

These orders, whilst designed to tackle money laundering on a global scale, and limit the use of the UK jurisdiction for those who seek to gain from their ill-gotten earnings, may cause legal difficulties for individuals based in foreign jurisdictions who are subject to UWOs – such as the UAE and the wider GCC – due to a conflict of laws between this UK legislation and that of other countries. This conflict could lead to an individual’s adherence to UK legislation meaning that the individual would be liable to prosecution in other jurisdictions.

Taking the UAE as a representative example of the Middle East’s approach to confidential or private information, the UAE’s jurisdiction imposes very strict obligations on an individual’s use and disclosure of confidential information. It is a criminal offence, pursuant to the UAE’s Federal Law No. 3 of 1987, as amended by Federal Decree No. 7 of 2016 (UAE Penal Code) to disclose secret information. Secret information is afforded an expansive definition in the UAE Penal Code and it is commonly viewed any information that is confidential, i.e. not in the public domain, and that an individual possesses due to their employment or individual nature.

Furthermore, due to the extraterritorial nature of the UAE Penal Code, should an individual commit a crime that is wholly or partly committed within the UAE, then that individual would be bound by the provisions of the Penal Code, and would be bound by provisions such as the disclosure of secret information. Specifically, should an individual be requested to provide secret information, such as the source of funds from a business entity, to the UK authorities, and that information relates to a UAE business or UAE based individual, then if the material or information is disclosed following a UWO in the UK, then in the UAE...
“Whilst the UK legislation will no doubt serve as an effective deterrent and useful tool in minimising global money laundering, and limiting the attraction of the UK for criminals, it may have unintended consequences for foreign nationals holding legitimate assets in the UK.”

the individual may be subject to criminal prosecution for disclosing that exact information.

There is no exception afforded under UAE domestic legislation that would permit an individual to disclose confidential information to a foreign investigative authority (such as the UK’s Serious Fraud Office, Financial Conduct Authority, or National Security Agency). Should that individual disclose such information to the UK’s, or any other foreign State’s, investigative authority, then that individual may be liable to prosecution in the UAE in the same manner as though the disclosure had been made to a private individual or entity.

Prosecution for disclosing confidential information is a serious offence in the UAE, and one that may carry a mandatory minimum period of imprisonment. Accordingly, the stakes are very high when one is subject to an international request for judicial assistance, in any form, and it is for that reason and in order to assist with international criminal investigations that the UAE has entered into number multilateral and bilateral treaties aimed at assisting mutual judicial assistance requests. As with most international requests from law enforcement agencies, such requests should follow the usual diplomatic channels through the deployment of letters rogatory.

The difficulties for UAE individuals would not stop simply at the threat of criminal sanction, but also according to the UAE’s Labour Law, should an individual disclose the secrets of their employer, then the worker may be dismissed without notice and forfeit their entire severance pay.

Accordingly, the receipt of a UWO in the UK demanding that an individual provide information to the UAE authorities may conflict with the statutory protection relating to confidential information (or other laws) in a foreign jurisdiction, such as the UAE. This would lead to the precarious situation where an individual may face prosecution in the UK if he doesn’t comply with the UWO, but criminal prosecution in the UAE if he does comply.

Conclusion

The above example and review provides a very high-level overview of the competing laws that the UK’s UWOs may catch. Whilst the UK legislation will no doubt serve as an effective deterrent and useful tool in minimising global money laundering, and limiting the attraction of the UK for criminals, it may have unintended consequences for foreign nationals holding legitimate assets in the UK. Prior to making any response to a request for assistance, it is imperative that the recipient apprise themselves of all legal considerations to ensure that they are not jumping out of the frying pan, but straight into the fire.
Arabian Nights or Northern Lights: Observing Global Anti-Corruption Practices in Full Daylight

Combating corruption is a hot topic across the globe. Scoring on top of international rankings, the Nordic countries (being Denmark, Norway, Sweden, Finland and Iceland) have traditionally been regarded as the global frontrunners when it comes to anti-corruption. In the Middle East, governments are working hard to decrease bribery and increase transparency in society, which ultimately complements the general promotion of civil rights. Research indicates that free speech, independent media, political dissent and an open and engaged civil society, access to information and the non-existence of censorship are the core elements preventing corruption.

The author previously practised law in Finland, advising Finnish and Scandinavian clients, before locating to the UAE. In this article I seek to provide comparative insights on the topic of anti-corruption practices between the Middle East and the Nordic countries, in light of current developments.

From global harmonisation of laws to local enforcement

Combating corruption on a global level is subject to several international treaties, the provisions of which are then transposed to national laws, harmonising the content thereof. The most important international treaties in this regard are the United Nations Convention Against Corruption of 2003 and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 1997. In Europe, an intergovernmental body called the Group of States against Corruption (GRECO) was established in 1999 by the Council of Europe to monitor its Member States’ compliance with the organisation’s anti-corruption standards.

The intention of international treaties is to establish common worldwide legislative standards for anti-corruption laws through imposing obligations on the Member States to bring their legislation in line with the obligations of the treaties. As a result, the laws of different Member States should include similar provisions criminalising the different forms of bribery, which provisions are locally enforced by national authorities. Despite these developments, it goes without saying that the national anti-corruption laws are far from being harmonised and different geographic regions face different corruption related challenges.

Corruption Perceptions

Transparency International is a non-governmental watchdog promoting anti-corruption in the world. It publishes an annual Corruption Perception Index, ranking 180 countries and territories by their perceived levels of public sector corruption, predicated on information provided by experts and businesspeople.

The Middle East consists of a variety of jurisdictions, many of which are far from homogenous. While some of the countries are still subject to weaker public institutions due to, e.g.; internal conflict, a number of countries in the Middle East, such as
Jordan and Lebanon, are taking positive steps towards fighting corruption and increasing transparency and integrity in their societies. The hard work conducted by local governments in the Middle East is gradually attracting the attention of the rest of the world.

This year, the United Arab Emirates ("UAE") ranked higher on the index than ever before. The UAE reached the 21st position in the ranking being the frontrunner of the Middle East. According to Transparency International, this may be due to good and efficient management of public finances, improved public procurement and better access to public services and infrastructure in the UAE. In 2016, the UAE carried out a significant reform of its criminal laws, which may be reflected in the Index as well.

Nordic countries usually score highest in international anti-corruption rankings. According to the latest Corruption Perceptions Index, Denmark was ranked the 2nd least corrupt country in the world, after New Zealand. Finland and Norway shared 3rd spot and Sweden ranked 6th. Iceland, holding 13th position, appears to be an outlier among Nordic countries.

Considering the rankings, one may ask whether Nordic countries are perhaps a safe-harbour from corruption. Despite the apparently excellent reputation, do corruption related risks still exist for businesses in the Nordics? Are the Nordic Countries the complete opposite to the Middle East?

Finland: There is a snake in paradise

Despite direct bribery being relatively rare in Finland and the rest of the Nordic jurisdictions, the existence of conflicts of interest have turned out to be a common feature of the Nordic countries. This may be difficult to detect considering it is an inherently subjective evaluation. I suggest corruption does exist in Nordic countries, but that it has taken forms that are relatively difficult to detect by researchers.

In the aftermath of its evaluation round in September 2017, GRECO issued recommendations to Finland aimed at improving its anti-corruption regime, such recommendations being published in March 2018. Six of the recommendations issued by GRECO concerned senior government officials and ministers, and eight of them law enforcement authorities. Regarding law enforcement agencies, GRECO recommends that the Police and the Border Guard develop a dedicated anti-corruption strategy or policy, compile a code of conduct and specify their guidelines for secondary employment, organise training on the prevention and combating of corruption, and reinforce ethical practices in their career-related processes. In addition, it is recommended that the police enhance their risk management, internal oversight, and procedures to be followed by their officials when taking up secondary employment.

When it comes to whistleblower protection, GRECO recommends that the Police and the Border Guard be obliged to report suspicions of corruption and that protection of the whistleblowers be enhanced. At the moment, Finnish law does not include all-encompassing provisions protecting whistleblowers, applicable across different industries and, as a result, whistleblowers are practically protected only by the provisions in the Employment Act regulating grounds for dismissal. When it comes to the GRECO anti-corruption recommendations with regards to judges, public prosecutors and Members of Parliament, the

“The anti-bribery laws in the Middle East do not usually include exceptions when it comes to gifts of only nominal value”
Financial Crime

Finnish Ministry of Justice announced in May 2018 that it has duly implemented all the recommendations. Also, the current Minister of Labour is strongly promoting enhancing whistleblower protection in Finland according to his political agenda.

Sweden: a recent extraterritoriality exercise in the telecommunications sector

Finland is not the only Nordic jurisdiction that has recently encountered serious corruption allegations. In Sweden, a local leading telecommunications company and its Uzbek subsidiary admitted paying (on multiple occasions between 2007 and 2010) more than USD 331 million in bribes to an Uzbek government official, who was a close relative of a high-ranking government official and had influence over the Uzbek governmental body that regulated the telecommunications industry. The telecommunications operator, which used to be a listed company in New York, used US bank accounts to move the bribery related assets, which triggered the involvement of the US authorities.

In 2017, the company reached a settlement involving the anti-corruption authorities of the United States, the Netherlands and Sweden. In the United States, the company entered a deferred prosecution agreement agreeing to pay the fine, implement rigorous internal controls and cooperate fully with the Department’s ongoing investigation, including its investigation of individuals. The U.S. authorities agreed to credit any disgorged profits paid to the Swedish and Dutch authorities as a result of related national proceedings in Sweden and in the Netherlands.

In addition to the criminal proceedings faced by the company, the individual directors involved are now being prosecuted in Sweden for bribery. According to the prosecutor, the company paid the authorities to make a preferred decision when considering its operational licenses in Uzbekistan and the prosecuted directors in question were aware of the bribery or even took initiative in the matter.

The loopholes relating to gifts and hospitality in the Middle East

In Europe and in the United States, there is a common trend of companies becoming extremely cautious when it comes to hospitality and gifts, including business to business relationships. Public officials aside, one of the most common corruption related issues that businesses often struggle with is to understand where to draw the line between illegitimate and legitimate, or sometimes even expected, provision of business gifts and hospitality in the Middle East.

There are different legislative approaches to private sector bribery in the Middle East. For example, the UAE has explicitly criminalised bribery in business in Article 236 bis of the Federal Law No. 3 of 1987 as amended by the Federal Decree Law No. 7 of 2016 (“UAE Penal Code”). Another example can be found in Qatar where passive bribery i.e. accepting illegitimate benefits in the private sector has been criminalised in Article 146 of the Law Number 11 of 2004 (“Qatar Penal Code”).

In light of the above, and importantly for companies doing business in the Middle East, it is highly recommended to adopt restrictive hospitality policies in order to avoid bribery risks in relation to both the public and the private sector. It should be noted that the anti-bribery laws in the Middle East do not usually include exceptions when it comes to gifts of only nominal value, if the corrupt intent can be proven. Also, the definition of a public official tends to be relatively broad resulting e.g. employees of many companies subject to (partial) government ownership being regarded as public officials.

Key take home for global businesses: global vigilance

The above examples indicate that regardless of the jurisdiction - whether the Middle East, the high
ranking Nordic countries or elsewhere in the world, no business is entirely safe from corruption related risks. International rankings aside, businesses should pay attention to corruption risks and implement strict compliance policies. As demonstrated above, there is no safe-harbour when it comes to corruption risk management.

Adopting an anti-bribery policy is always advisable irrespective of whether the law so obliges. The policy should be embedded in the business procedures of the company, accompanied by quality training of the personnel at regular intervals to identify and avoid compliance risks.

Similarly to compliance policies, legislators have adopted different approaches to whistleblowing regulations. Businesses should not hesitate to go beyond the statutory requirements and implement independent whistleblowing channels to help foster a compliance culture in their organisations.

It is important to note that bribery is only one aspect of corruption. As demonstrated above, corruption can take many forms. Detecting and avoiding conflicts of interest in business operations can work against presuming corrupt intent, due to which businesses are advised to include relevant provisions on excluding conflicted employees from decision making in order to manage corruption risks. Even though the examples set out above include significant intentional bribery, in many jurisdictions bribery offences are criminalised even if the offence is not intentionally committed.

In addition to local laws and local law enforcement, the extraterritorial effect of certain foreign anti-corruption laws should be observed. For example, US Foreign Corrupt Practices Act (“FCPA”) is widely known to be enforced also in respect of corruption offences taking place outside the United States. Transacting in US Dollars or employing US citizens may trigger the application of the FCPA and enforcement thereof by US authorities irrespective of the location of the business or any potential bribery activity, including in the Middle East. Businesses are recommended to adopt anti-corruption policies and accounting standards that meet the requirements of all the statutes potentially applicable to their operations.

It seems that the Nordics can no longer take their high ranking in the Transparency International Corruption Perceptions Index for granted. This is partly due not only to international watchdogs, but also legislators and law enforcement authorities realising that the roots of corruption are embedded in conflict of interest which is a prevalent issue in the Nordic countries. At the same time, other countries are also working hard towards efficient enforcement of anti-corruption laws which makes competition at the top level fiercer than ever.

As Transparency International and intergovernmental bodies, such as the United Nations, do not solely consider the content of laws and enforcement statistics, making general changes in improving transparency and integrity in the public sector may also yield a positive effect on anti-corruption. Importantly for businesses, it should be noted that bribery is widely criminalised in the Middle East and bribery laws actively enforced. The efforts made by the governments in the Middle East are gradually being recognised in the international domain.
The introduction of VAT in the UAE at the start of 2018, was a major change for businesses, Shiraz Khan of Al Tamimi & Company looks back on how they should have tackled the implementation phase and what their priorities should be going forward.

The UAE’s VAT system is broadly based on common principles that have been agreed by all GCC countries in the Unified GCC VAT Agreement. These include certain areas which all the individual GCC countries are required to follow. For example, the mandatory and voluntary registration thresholds were set by the GCC VAT Agreement. The standard VAT rate of 5% was also fixed by the GCC VAT Agreement across the GCC. However, individual GCC countries do have some freedom to determine the application of VAT on some matters such as the VAT treatment of certain sectors and industries.

UAE Legislation

UAE VAT legislation is made up of Federal Decree Law No. 8/2017 on VAT (the VAT Law) and Cabinet Decision No. 52/2017 on the Executive Regulations to the VAT Law (VAT Executive Regulations). The Federal Decree-Law No. 8/2017, which was published in August 2017, sets out the UAE VAT rules. The Executive Regulations which were issued in November 2017 deal with the detailed application of the VAT Law’s provisions.

In addition, the Federal Tax Authority (FTA), which was formed under Federal Decree-Law No. 13/2016 on the Establishment of the FTA is responsible for the administration, management, collection and enforcement of VAT and all other current and future Federal taxes. At present VAT and excise tax are the only taxes at the Federal level. Federal Law No. 7/2017 for Tax Procedures and Cabinet Decision No. 36/2017 on the Executive Regulations on Tax Procedures are also relevant in this context as they provide a procedural framework that is applied across all Federal Taxes. This includes details and requirements related to tax registration, filing of tax returns and settlement of taxes, tax audits, appeals and penalties as well as FTA and taxpayers’ rights and obligations.
Implementation Challenges

The introduction of VAT was a major change for businesses operating in the UAE. In order to prepare for it, businesses had to complete a number of steps before VAT came into force. These included analysing the impact of VAT on their operations and across many different functions including Legal, Finance, IT, Human Resources, Procurement, Sales, Marketing and Strategy.

Businesses had to review and determine the VAT treatment of all their sales and purchase transactions and understand their resulting compliance obligations. In addition, they had to assess the capability of their existing IT system or software to produce automatic VAT reporting and consider if an upgrade would be sufficient or they would need a whole new system. It was also important for organisations to make changes to their business processes, including invoicing and record keeping so they were compliant with the new VAT legislation.

From a legal perspective, it was necessary to review existing contracts with customers to check if they needed to renegotiate contracts which had no VAT clause in order to avoid bearing any VAT cost. They also had to check that all new contracts dealt with the application of VAT and set out which party was responsible for bearing the VAT liability.

In order to achieve this objective and manage relationships with customers, communication with customers was required. It was also important to communicate with suppliers to ensure they were going to issue VAT compliant invoices which would facilitate the recovery of VAT. Finally, businesses had to evaluate the cash flow implications and their working capital requirements as a result of now having to pay VAT before they received payments from customers.

All in all, a significant amount of work had to be undertaken by businesses to be ready for VAT. In other jurisdictions such as Malaysia when a similar goods or services tax (known as GST) was implemented, companies there typically needed around six to 18 months to prepare for the change depending on the size and complexity of their operations and transactions.

Preparation Time

Although some of the large multinational groups in the UAE began their preparations in 2016 or in the beginning of 2017, many businesses in the UAE took a reactive approach instead and decided to wait until the publication of the complete VAT legislation in November before taking any action. There was also an expectation or possibly a hope in the UAE business community that the implementation of VAT would be delayed by the UAE Government based on previous experience in the UAE. (Although, this was despite an indication from the FTA in early 2017 that VAT would be implemented on 1 January 2018 and the fact the VAT Law also confirmed that VAT would be implemented by this date when it was published in August 2017.)

In hindsight, once the UAE Government had taken a decision to implement VAT on 1 January 2018 and this fact was confirmed by the VAT law, businesses could have done more and been more proactive with their VAT preparations. VAT is not a new tax and it or a similar tax exists in more than 160 other countries around the globe. In addition, the UAE VAT law is largely based on the EU VAT rules and Malaysian GST system. In addition, the GCC VAT Agreement on which UAE VAT legislation was based was also published in the first half of 2017. So as far as the UAE is concerned, although the final VAT Executive Regulations were not published until November 2017, most of the information in these regulations had already been made available by the FTA earlier in the year as part of an awareness campaign. So, a significant amount of information was already available in the public domain even before the VAT Executive Regulations were published and it was sufficient to enable businesses to begin their preparations. In fact, most of the information in the VAT Executive Regulations was already known before these Regulations were issued. It would have been better for businesses to begin preparation before the VAT Executive Regulations were issued based on the known information at that time and then validate any assumptions or confirm positions after the regulations were issued in November 2017. Unfortunately, in the UAE, many businesses took the wrong approach and instead waited for the regulations before even beginning this work which meant they only had one month to get ready. A few businesses were even taken by surprise by the introduction of VAT despite the fact the FTA, tax advisers and the local and business press had conducted an awareness campaign throughout 2017.

The Role of the Federal Tax Authority

Many businesses operating in the UAE appear to have misunderstood the role of the FTA. The FTA is a new tax authority, the legislation establishing it was published towards the end of 2016 and it only began recruiting staff in the middle of 2017.

As with any tax authority in mature tax jurisdictions, the FTA’s primary role is to administer, collect and enforce Federal taxes and apply procedures which are related
to these taxes. Although it will issue technical guidance to the public on tax matters, like any tax authority, it is not responsible for advising businesses on their tax obligations or on the VAT implications of their transactions. Unfortunately, a number of businesses have not understood what the responsibilities of the FTA are and are currently trying to contact the FTA helpline or meet FTA representatives to obtain tax advice, although this is not part of their role. Like many tax authorities in other countries, the FTA, particularly as it is a new body, has very limited resources. With over 300,000 businesses now registered for VAT in the UAE, clearly it is not possible for the FTA to engage directly with all of them and provide tax advice particularly as this is not a part of their remit. As is the case in all other tax jurisdictions, businesses should seek tax advice from a reputable professional services firm rather than tax authorities.

The FTA have conducted a country-wide campaign to increase awareness, through a series of seminars on VAT introduction in 2017. Given their limited resources, the scale of this campaign has been impressive and is unprecedented even by the standards of more mature tax jurisdictions. Although, some businesses may disagree, it was never realistic to expect a new tax authority like the FTA to personally visit every registered business just to tell them VAT was being introduced. The onus was also on these businesses to speak to advisers and read the many articles which have been published in newspapers and business magazines on the subject.

Interpretation

It is easy to mistakenly assume that since the VAT legislation has been issued now, its interpretation will be straightforward and the VAT treatment of all transactions will be clear. In many countries where VAT has been in place for some time, guidance tends to be sought from the published practice of the tax authority in the form of public notices and circulars. Case law precedent is also relied on to check how the courts have decided cases with similar facts in the past. In such countries, VAT law continues to evolve and even decades after its implementation uncertainty remains, as such, the tax authorities in these countries continue to be involved in disputes with businesses, new cases on complex VAT issues continue to be heard by the courts and new schemes are introduced to take into account unique circumstances and industry specific issues. Similar developments can be expected in the UAE as the UAE VAT legislation has only been effective for just over three months and there is currently no case law from which guidance can be obtained. It will also take time for the FTA’s practice to develop as they audit businesses’ VAT returns and encounter different situations. In the future, the FTA will no doubt make further guidance available and new schemes may be announced to take account of different industries issues. Any disputes with the FTA will be subject to a three-tier appeal system. Businesses who have a dispute with the FTA, will have the right to ask them to reconsider their decision, and the matter will then be referred to another inspector. An objection against the FTA’s reconsideration decision may then be made to an independent tax disputes resolution committee made up of a judge and two tax experts. Appeals may be made against that committee’s decision to a competent court.

What should businesses do now?

As VAT has been implemented and filing deadlines are approaching, the focus for businesses has shifted from VAT implementation to the preparation of their first VAT return. Companies are currently trying to identify and confirm the VAT treatment of their transactions so they are able to file a complete and correct tax return. The completion of the tax return may seem a simple, straightforward task, but the department (and in some cases the individual) within the organisation who files the return on behalf of the business will be held responsible for the tax positions taken in that return regardless of whether the compliance work was outsourced. The relevant department will usually be the tax department, but it could be the legal or finance department. Given VAT is a new law, there may be uncertainty on many technical positions which could create risk and this has to be taken seriously as penalties for non-compliance, including incorrect tax returns, could be as high as 300% of the tax amount due. Therefore the person responsible for this area must proactively manage this risk by obtaining professional tax advice from a reputable firm if there are uncertainties and should also document this advice for internal risk management. Going forward, it will be a challenge for FTA, tax advisers and businesses to interpret and apply the provisions of the new VAT legislation. Although VAT will involve a compliance cost for businesses, given the potential risks and penalties, it is important when ever there is uncertainty, business-nesses work with a trusted tax adviser and navigate logically through any areas of doubt.

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In this month’s special feature of Law Update we focus on our Sports & Events Management Group, as well as our Expo 2020 practice, and the interesting client issues and sector trends that have been brought into focus over the course of the past year and those which we anticipate will arise in the future.

Particular highlights of this edition include an in-depth look at the on-going privatization of football clubs in KSA; an overview of the role that blockchain and other FinTech will play in the sports and events sector going forwards; a look at the rapidly developing regulatory concerns in the nascent e-Sports market; and a special focus on the ramp-up to the grand spectacle that will be Expo 2020.

It is beyond doubt that the sports and events sector is booming both globally and regionally. Industry reports predict that the global events industry will grow by 44% between 2017-2020. In Dubai alone, which now hosts over 300 regular sporting events attracting over 1 million attendees, annual expenditure relating to sport has grown to over $1.7bn. Such growth is symptomatic of the ever-increasing appetite of governmental and non-governmental entities to embrace the sector.

For governmental bodies, events (both sporting and non-sporting) can act as powerful drivers of economic development, which positively impact upon tourism, public health, national pride, social progression and, ultimately, a country’s international reputation. One need look no further than KSA to see how sport can be utilised as a conduit for social reform, with women being allowed to attend football games for the first time in 2018. For brands too, events offer an irresistible platform to promote products in an increasingly digital age. In particular, they offer an opportunity to capture the elusive attention of ‘Millennials’ in an increasingly crowded marketplace. This key demographic demands authenticity in the brands they choose and events can help create an authentic brand experience and story, as shown by consumer surveys identifying that 87% of consumers purchase products relating to a brand’s event after attending.

The outlook is not necessarily uniform across the GCC, either in terms of sports and events background or commitment to further development of the sector. We expect that KSA and the UAE will continue to take a lead in these areas, particularly in support of their respective long-term economic development and diversification plans; however, there are significant opportunities elsewhere in the region that will bring opportunities for well-positioned clients, particularly in Qatar (in the build-up to the 2022 World Cup) and Bahrain.

With Expo 2020 on the immediate horizon, the time to turn good planning and mindful preparation into active strategies to position participants, suppliers and stakeholders across the spectrum is squarely upon us as stakeholders in the sector. These are also certainly exciting times for the Sports and Events Management industry in the Middle East. With a history of success built in a short period of time over a wide array of events, there is a level of expectation and diversification that suggests the sports and events landscape remains promising. We will continue to closely monitor these developments with our local presence throughout the region whilst engaging with regulators and stakeholders to ensure our clients are best placed to seize the inevitable opportunities that will arise.

We hope you will find this edition interesting and informative. If you have any queries in relation to any of the articles featured or any other aspect of the Sport & Events Management sector, our dedicated team of sector experts across our network of regional offices will be only too happy to assist.

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E-Sports (also known as electronic sports, esports, e-sports, competitive (video) gaming, professional (video) gaming, or pro gaming) are a form of competition using video games. Most commonly, e-Sports take the form of organized, multiplayer video game competitions, particularly between professional players.

The rise and popularity of electronic gaming has been rapid and organic and has been developing almost entirely independent of the usual sporting framework of national, regional and global associations, federations and regulations. Stadia are being filled for events, competitors are pursuing growing pots of prize money, sponsors are gravitating towards the events. In addition, as e-Sports are free from the demands of the pay TV ecosystem, e-Sports are being promoted through social media platforms and OTT offerings which allow for more creative content. Accordingly e-Sports is making us re-think the dynamics of how we define, manage, consume and support sport.

While regulators, advisors and even some potential investors wrangle with these issues, e-Sports forges ahead. E-Sports will feature as several demonstration events at the upcoming 2018 Asian Games in Indonesia and are set to be full medal events at the 2022 Asian Games in China. This will create an interface for at least one facet of the sporting framework as the respective National Olympic Committees (NOCs) of participating countries, will pick the team rosters for e-Sports.
The e-Sports industry in the Middle East: Growth Factors

E-Sports in the Middle East is going through a period of rapid growth but it is still a young market with huge potential. We have seen particular strength in e-Sports at the grassroots level although there is still work to do at the more elite level in terms of regulatory support and infrastructure development. A number of successful events have been held in the region (e.g., Omni Universal Gaming, Dubai, October 2017, MEG Overwatch tournament, Dubai, May 2017, GSA E-Sports Cup, Riyadh, March 2018), yet coordination between the various leagues and event organisers has been elusive.

There are many factors which contribute to making the Middle East a region of growth potential for e-Sports, including a relatively young population, good access to technology, high levels of engagement with social media, connection by a common language, suitability for indoor events and the presence of a solid base of interested and engaged core sponsors. From a growth perspective, the UAE and the Kingdom of Saudi Arabia currently stand out as the markets to watch. Both have hosted e-Sports tournaments. While the UAE has a strong reputation for developing and setting best practices and infrastructure for tournaments of all description, Saudi Arabia has a large population and its government is now also showing interest in e-Sports through the Saudi Arabian Federation for Electronic and Intellectual Sports (SAFEIS).

As noted, the governments of the UAE and Saudi Arabia currently appear to be taking the lead on e-Sports. By way of example, the Dubai Future Foundation has as among its aims, the development of a purpose built X-Stadium dedicated to holding world class e-Sports events as part of its goal of creating a regional and global hub for e-Sports as part of its broader strategy to transform the UAE into a knowledge-based economy. In KSA meanwhile, SAFEIS and the General Sports Authority have committed to creating an all-inclusive ecosystem around e-sports in KSA - including game creators, graphic designers, publishers, broadcasters, tournament organizers, sponsors and professional players.

The Regulatory Environment is Key for e-Sports in the region

The e-Sports regulatory environment in the Middle East is still in its infancy. Currently, at the amateur level, competition organisers and leagues adopt their own regulations which can vary. Encouragingly, the e-Sports Integrity Coalition (ESIC) a body positioning itself to be the recognised guardian of e-Sports integrity, last year signed up e-Sports Middle East (ESME) as a member organisation. Whether or not ESIC is an ideal umbrella organisation, there is an indication that at least some elements of the industry recognize the need for a regulatory component.

While there are many similarities, particularly across the Gulf Cooperation Council (GCC) member states, the Middle East includes a number of countries with distinct legal systems, albeit based primarily on a civil law system. Quite apart from specific sector regulatory issues, we must also be mindful that the laws of the land will apply to the hosting of events and the conduct of participants and stakeholders. Fundamental legal considerations such as compliance with advertising regulations, event safety and security legislation, visa status of players, event licensing and ticketing requirements must be considered in addition to e-Sports specific regulatory concerns regarding governance, anti-doping, match-fixing and other integrity issues.

We take the view that, subject to proper coordination with all stakeholders, it would be beneficial for the growth and development of leagues and competitions (at minimum within
“Quite apart from specific sector regulatory issues, we must also be mindful that the laws of the land will apply to the hosting of events and the conduct of participants and stakeholders.”

Challenges for e-Sports: The Road Ahead

As noted above, regulatory and infrastructure developments will be key drivers in establishing a global base for e-Sports in the region. Over the past several years we have seen purpose built facilities for e-Sports established in multiple cities in the United States, in London and the MLG Gaming Arena on China’s Hengqin Island. There is no credible reason why top class facilities cannot be established in the GCC. With respect to the regulatory angle, the relative absence of regulations compared to more traditional sports can be addressed with the stated support of government, working together with the industry stakeholders and advisors, to establish a framework that promotes rather than restricts development.

Tax is a potential challenge for the development of e-Sports in the region, but by no means a unique issue. VAT is currently being introduced within the GCC countries and consumers may be subject to paying VAT for purchasing online content. Telecommunications are also a potential challenge. Governments around the region are both security conscious and vigilant in protecting public morality from inappropriate content, so review mechanisms should be tailored to minimize inconvenience in the transmission of online content between various jurisdictions. Another challenge is potentially a social issue. Traditionally, the main sport in the region has been football and the recognition of e-Sports as a sport in its own right (potentially with different sub-categories for different competitions), is something that some consumers in the region have perhaps been a little slow to accept.

Structurally, in order to foster appropriate investment opportunities and to establish a basis for mid to long-term sustainability, an appropriate legal framework for the events and related marketing, broadcast, sponsorship and other revenues should be set. For a number of reasons beyond the scope of the present article, the writer would suggest this is more likely to take on a contractual rather than a shareholder or franchise model – at least initially. As the industry matures, more investible opportunities may alter this dynamic, but either way the ability to optimise commercial revenues will be central to long-term viability.

We would suggest that none of these issues create insurmountable challenges. In fact, the recent record of rapid growth and flexibility in other dimensions of sports and events activity in the GCC suggests it could be an ideal location from which to lead global e-Sports growth. The more focus, attention and professionalism that is introduced to e-Sports and the supporting advisory sector, the more likely any obstacles to growth and diversification in e-Sports can be overcome.

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A brief history of stadiums

The origins of stadiums lie in Ancient Greece in the 8th Century BC where a “stadion” (or “stadium” in its translated Latin form) was a unit of measurement approximately 200 metres in length. The name of stadiwm referred to both the elongated U-shaped track of the same length and the sprint race that was run along its distance. The tracks were usually surrounded by rudimentary stands that were sometimes built into hillsides or surrounded by artificial embankments of stone steps in order for spectators to view the race.

The Romans later advanced the development of stadiums with the “circus”, which had a similar, open-ended horseshoe shape to the stadiwm, but which was used for horse and chariot racing. However, the familiar modern day design was really started with the amphitheatre, which could accommodate much larger crowds, was often multi-tiered and wrapped around the often gruesome gladiatorial, venatio (animal hunts) and naumachia (staged naval battles to the death involving condemned prisoners) events put on for mass entertainment in a circle of blood thirsty noise.

With the fall of the Roman Empire, “sports” and their associated facilities also fell into a steep decline during the Middle Ages with the world more pre-occupied with other matters – with jousting being a notable anomaly.
It was not until the late 19th Century, with large scale urbanisation and the huge growth in organised sports such as football, rugby and cricket in the UK and baseball in the United States, that the modern era of the stadium began and which drew upon its ancient roots. Although the sportsmen on the field of play now managed to escape with their lives, football stadiums in the UK, at least, retained much of the "red in tooth and claw" atmosphere of their Roman ancestors right up to as recently as the end of the 1980s.

My own first experience of attending a stadium was as a child with my father in 1987 standing in the Gallowgate End at St James' Park watching Newcastle United inflict a very rare 2-1 victory over Manchester United. The memories of that day remain very vivid - the pitch, the ear-splitting volume of the chants, the soggy meat pies, watching Gazza do his stuff as a young 19 year-old, Gordon Strachan's long range equaliser on the stroke of half time (with the ball remaining ominously lodged in the top right stanchion of the goal in front of me for the whole of the half time interval) and Paul Goddard's 90th minute winner which sent the place ballistic in a primeval frenzy – all of which was simultaneously pretty intoxicating and slightly terrifying for a 10 year old.

As Nick Hornby describes of his first football match in his 1992 novel Fever Pitch, an autobiographical account of his lifelong obsession with Arsenal FC:

"All I saw on the day was a bewildering chain of incomprehensible incidents ... I remember the overwhelming maleness of it all – cigar and pipe smoke, foul language ... I'd been to public entertainments before, of course ... but that was different. The audiences I had hitherto been a part of had paid to have a good time and, though occasionally one might spot a fidgety child or yawning adult, I hadn't ever noticed faces contorted by rage or despair or frustration. Entertainment as pain was an idea entirely new to me".

However, change was afoot. The design of football stadiums and related health and safety legislation in the UK were subject to a massive overhaul following a series of tragedies such as Hillsborough, the Bradford City fire and the Heysel Stadium disaster in the 1980s. Such catastrophes highlighted fatal flaws in stadium design and crowd control at such time. As a result, standing areas were removed from stadiums, which became all-seaters, and an era of much safer, comfortable and more family friendly stadiums was ushered in. The new designs also led to the commercialisation of the stadium with the introduction of hospitality areas and services, acoustics and lighting fit for TV purposes, the hosting of alternative events such as music concerts, and additional commercial facilities such as food and beverage outlets, hotels and conference rooms – all of which increased the frequency and diversity of stadium use.

A view from pitch side

Talking of Manchester United, I spoke with Dan Schofield, Head of Venue Operations at Old Trafford and self-confessed stadium geek on the current state of play. Dan provided me with the following insights:

"Stadium development is such a hot topic at the moment in the football industry with clubs jostling and jockeying for position in bringing the newest and best developments in the quest for commercial gain, footballing excellence and fan experience. The big challenge for us all is to find the right balance of each of those elements and different clubs have taken differing approaches. Some, such as Liverpool, FC Barcelona and Sheffield United are looking at modernising existing stadiums whilst others, including Tottenham Hotspur, Everton and Chelsea are spending huge amounts on developing completely new stadiums. To justify these huge outlays in capital expenditure clubs are looking to “sweat the asset” and stage as many different events and activities as they can in the stadium. If managed well the non-matchday business can be as lucrative as the matchday business.

If you take a deep-dive in to the new White Hart Lane development, for example, you will see that Spurs have incorporated a skywalk, abseil and a huge Museum experience - all to bolster the non-matchday revenue generating potential of the facility. That is in addition to an average of 27 homes games (across all competitions) and a number of NFL games and concerts which they have contracted to take place. This diversification is always a balancing act between bringing in commercially viable events whilst not impacting on the footballing performance on the pitch. It's been fascinating to follow the development at
Spurs and in particular the retractable pitch they are implementing which will enable them to host NFL games and concerts on an artificial surface whilst the football surface is retracted out of the stadium on a series of mechanical trays, rails and hoists.

I’m very fortunate that my role heading up the venue operations at Manchester United allows me to visit stadiums all over the world and I make a point of trying to learn something from every venue we visit. I’m particularly looking forward to a trip to Michigan at the end of July where we are playing a pre-season tour game at the 107,000 capacity “Big House” stadium. Every stadium you visit is different and having joked about it for years I’ve certainly got enough Stadium based anecdotes to write a book called “Around the World in 80 Stadiums” which one day I may well do... I recently added a new stadium I want to visit to my bucket-list with the Ekaterinburg Arena in Russia in its World Cup guise with its 147 foot high temporary scaffold stands literally outside the stadium with part of the perimeter cut out allowing fans to see the game. You look at photos, scratch your head and question how it’s possible and I’d love to visit and have a proper stomp all over it in person.

I’m blessed with a fantastic facility in the 75,000 capacity Old Trafford and it’s a fantastic time to be involved in the stadium industry with a number of exciting developments happening all over the world and new ones being announced on an almost weekly basis. I’d recommend for anyone interested in the subject to sign-up to a couple of industry newsletters which help keep you abreast of developments and changes in the global stadium industry, I’d particularly recommend www.stadia-magazine.com and www.sportindustry.biz “

E-gaming stadiums

As for the future, stadiums will continue to evolve - becoming safer and more technologically sophisticated, diverse in their uses and sustainable; often built with iconic designs (see Qatar 2022) that provide a focal point for cities that are instantly recognisable internationally. They can also help to rejuvenate the economy and attract business in previously run down areas of a city in which they are anchored.

One example of such evolution in the digital age is with the new phenomena of e-sports stadiums, where professional gamers compete with each other in front of a live audience. Such stadiums are already operational in the United States, China and South Korea and have a huge potential in terms of audience numbers and revenue. With a plethora of international standard stadiums already built and construction of the new Dubai Arena well underway, Dubai, ever at the cutting edge of building design and digital technology and soon to be host of EXPO 2020, has also announced the Dubai X-Stadium, a new e-gaming stadium being developed through a joint initiative between Dubai Media Office and TECOM Group.

The features and design of such e-gaming stadiums diverge from traditional stadiums,
most notably in that all the action is on huge high definition screens rather than the audience focus being on the competitors, who may be squirreled away in separate booths during play. Use of holographic displays and augmented and virtual reality are also likely to play a significant part in the audience’s experience. Fans are also likely to have a much less sedentary, static relationship with the games – with the freedom to circulate within the stadium and experience other zones and outlets catering to the modern tastes of a new generation - soggy meat pies are likely to be thin on the ground.

Some UAE real estate legal considerations

“We don’t want people to leave the stadium until the game finishes”
Jurgen Klopp, manager of Liverpool FC in 2016

In the UAE, there are a number of mixed use, master communities that have a stadium as their focal point or as a prominent feature such as Sports City and Motor City in Dubai, Yas Island in Abu Dhabi and Hazza Bin Zayed Stadium in Al Ain (home of Al Ain F.C).

Developers of such cornerstone plots in such developments will often be granted certain concessions in terms of master community fees in light of the fact that use of such facilities is more intermittent than standard commercial use and that they serve as a key attractor to investors, retailers and third party purchasers of residential property within the master community. Any such concessions should be expressly disclosed to third party purchasers by the master developer prior to the parties entering into a sale and purchase agreement.

In addition, although you would think that any such third party purchasers of residential property or commercial tenants would be well aware of potential infringements upon their use and enjoyment of their properties within such a stadium focussed master community, it would also be prudent of master developers to cover off the risk of any nuisance related claims. This may include express wording contained in the relevant master community declaration (which typically purchasers are bound by through the signing of a declaration of adherence upon purchase) or lease whereby a purchaser/tenant acknowledges and waives any claims relating to such matters as traffic congestion, noise and light pollution.

Another issue for retail tenants in stadium facilities are conflicts that may arise with the landlord/stadium owner’s sponsors – particularly in relation to special, one off events taking place at the stadium. It is therefore not unusual to find provisions in such leases whereby the landlord reserves rights to impose signage and branding blackouts or restrictions on the sale of goods or services during certain times when a conflict arises with sponsors. This can be a tricky issue and needs to be carefully managed and negotiated up front in the lease. Often with leases where tenants that have a particular connection to the type of sport practised at the stadium, the lease itself may be just a part of a wider commercial deal with the stadium and this may assist with negotiations.

Stadiums should also have good standard forms of venue hire agreements and short term kiosk type agreements in place. One issue to be considered is the potential effect of landlord and tenant laws in the UAE on such agreements. Unlike in the UK for example, where the case of Street v Mountford [1985] established that the legal distinction between a lease and an occupational licence is whether or not the tenant enjoys “exclusive possession” of the premises, there is no such distinction under UAE law. A short term occupational licence, even if it is described as such on its face and contains express wording that the parties do not intend to create a lease or a relationship of landlord or tenant, is therefore likely to be considered a lease if the question is brought before judicial authorities. This is significant as this will mean that the so called “licence” will be subject to landlord and tenant legislation which, in onshore Dubai for example, is generally very tenant friendly in terms of the rights of the landlord to terminate, renewal and security of tenure for tenants. Nevertheless, on a case by case basis depending on the circumstances, certain structuring of the relevant agreement can potentially help to mitigate the risk of it being caught by local landlord and tenant laws.

...... and there goes the full time whistle.

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The technology revolution continues to rapidly gather pace on a global scale. Terms such as “FinTech”, “blockchain” and “cryptocurrencies” are becoming everyday terms. But how is the technology revolution relevant to the sports industry? The simple answer is, very. This article touches on various examples where blockchain technology can potentially be of benefit in the sports industry.

Blockchain & Smart Contracts

Many articles have been written about blockchain. Simply put, blockchain can be described as a public decentralized e-ledger of transactions or data enabling a network of computers to create an audit trail through the internet. It is, in essence, an online form of bookkeeping where the books are not owned by one person. For a single transaction for example, there will be different members of a network involved in the process who will act in accordance with the rules or protocol of the network and who all have visibility over the ledger. The record is secure and is virtually irreversible.

Smart contracts are an important element in a blockchain transaction. These are self-executing contracts, the terms of which are written as code into a blockchain. A trigger event can be written into the contract for example, an expiration date or a strike price and once that event is met, the contract executes itself according to its terms.
Blockchain’s best attribute is that it any information that must be securely and verifiably transmitted between entities can benefit from using the technology. As blockchain is intended to make the transaction process transparent and safe, in sectors where payment fraud is a concern, the introduction of blockchain technology can be particularly appealing.

Although blockchain first gained widespread public attention as the technology underpinning the Bitcoin cryptocurrency, blockchain is now recognised as having the potential to significantly impact many other sectors in the digital age, including the sports industry. Indeed, a blockchain-based sports microfinancing platform, SportyCo recently organized the World Sports Blockchain Summit, which was described as one of the largest live online events, targeting crypto investors, athletes and sports enthusiasts.

**Sports Industry**

eSports, which can be defined as competitive multiplayer gaming, is a sector that is relatively unregulated but gaining worldwide popularity. There are often security concerns in relation to financial transactions regarding eSports - such as how entrance fees are paid and recorded or prize money distributed.

In the eSports environment, various terms could be written as code into a blockchain creating a ‘smart contract’ which can define terms and obligations relating to a transaction. These smart contracts could allow gamers to register for a competition and pay entrance fees. It could also allow gamers to receive prizes as soon as games are won. Prizes could be cash or could take the form of tokens which could potentially be used to pay for items in a virtual environment.

**Wearable Technology**

Blockchain can also be used to aid and benefit more traditional sports. It is possible and increasingly common to track an athlete’s performance by the use of wearable technology. Most elite sports teams now use such technology on a daily basis so that they can track its user’s activities, heart rate, diet and performance. Such data is then used by the clubs to see how a player’s performance can be improved. Such information can be very sensitive and by using blockchain technology, the data can be securely stored, verified and transferred.

**Anti-Doping**

Doping scandals are a huge issue in certain sports and can seriously undermine the integrity of a sport and damage an athlete’s career. Often where a doping scandal exists, sponsors “run for the hills” and governing bodies will investigate an issue and sanction an athlete or a team if foul play is found. Access to accurate and credible medical records of a suspected athlete are key to any investigation. Blockchain technology can be used to better manage the security...
of medical records. Such records could include information on the test results of an athlete and drugs that they have taken. The authenticity of the information is according to the computer network system as in a traditional blockchain transaction before being added to the blockchain and suitably encrypted. Such a system could therefore provide a credible and reliable source of information relating to the testing of drugs.

Broadcast Data and Interaction

Broadcasters can also benefit from the use of a blockchain network. As consumers’ viewing habits continue to change, broadcasters are also becoming accustomed to delivering content by way of different means. Where such content is being delivered by way of on-demand services, for example, a smart contract can be used to facilitate payment. Blockchain technology can also potentially be used by sports clubs to further engage with its fans. Potentially, blockchain can be used to create a safe and credible ticket exchange between fans wishing to sell genuine tickets. The clubs could also have a stake in the system and which could potentially combat illegal ticket resales.

Potential Developments

Some commentators have suggested that in the future, blockchain could make it possible for sports clubs to introduce their own cryptocurrency. This could be used to purchase tickets, merchandising and provide other benefits which could even include purchasing hot dogs at matches. Sponsors could even get in on the act as there could be potential for them to engage and transact with fans by accepting such cryptocurrencies. There may be some way to go to achieve all of this, as it would be subject to such cryptocurrencies being subject to a proper regulatory framework within their jurisdictions of operation.

An interesting development in the sports industry is the use of Blockchain technology in relation to owning part of an athlete’s IP rights. Subject to third party ownership restrictions, various blockchain startups are engaging with athletes to promote them and offer investors the opportunity to own part of their IP rights. The Jetcoin Institute is one such start up which has introduced a cryptocurrency named Jetcoin. Athletes (as well as entertainers and musicians) can enter into an arrangement with the Jetcoin Institute giving part of their image rights to the Institute. The Institute then offers such rights to be purchased by the Jetcoin holders through the Jetcoin platform. The idea is that as the athlete progresses in their career, revenue is generated in relation to their image rights which is distributed to the Jetcoin holders.

Globaltalent has a similar concept. It describes itself as a blockchain decentralization platform where clubs and athletes can seek funding by selling future revenue rights to fans worldwide. Investment is by way of a tokenized system through smart contracts. The tokens can also be traded on a secondary market. Again, as mentioned in the context of cryptocurrencies for sports clubs, there may be regulatory issues to deal with in relation to this platform.

Middle East Market

How does all of this apply to the Middle East? It is no secret that the Middle East
region is rapidly adopting and developing blockchain based applications, including but not limited to FinTech. It is also no secret that the Middle East has an insatiable appetite for sports. An increasing number of sports events are held in the region, which already hosts two F1 Grand Prix (Bahrain and Abu Dhabi), cycling races, cricket matches and tennis tournaments. In addition, Qatar will be hosting the FIFA World Cup. The introduction of blockchain can be adapted to sports industry in the region. These could, for example, prove to be beneficial in developing players and teams in the region especially where wearable technology is used, promote sports events in the region when considering fan interaction, as discussed above, and promote or monetizing a home-grown player, in the form of selling IP rights.

In terms of FinTech generally, the government of Bahrain is actively promoting the technology. Bahrain used to be the main financial hub in the region and has been looking at ways to increase its competitiveness in this field. Fintech appears to have presented this opportunity. As has been widely reported, Bahrain has opened Fintech Bay, described by the Economic Development Board (“EDB”) as the largest Fintech hub in the Middle East. In addition, the Central Bank of Bahrain has launched a “regulatory sandbox”, which provides a virtual space for companies looking to test their Fintech solutions.

Blockchain is an important factor in the FinTech area but taking a step back, consideration needs to be given to the legal effect of a blockchain transaction and the validity of smart contracts from a Bahrain law perspective. The Bahrain Civil Code and the Bahrain Law of Commerce allows for parties to transact freely and agree terms between them subject to public policy issues. The elements of creating a contract in Bahrain includes, offer, acceptance and consideration. So as long as these elements can be evidenced and verified in a blockchain transaction through use of smart contracts, Bahrain law is likely to recognise such transactions. Bahrain also has in place an Electronics Transactions Law which states that any other matter that is material to the formation of a contract (including any amendments, revocation or acceptance of the offer) may be undertaken in whole or in part electronically. Whilst the Electronic Transactions Law does not specifically deal with smart contracts and blockchain technology, the foundations are in place in Bahrain law to allow for the development of blockchain technology and FinTech generally.

Bahrain wants to become a pioneer in the burgeoning FinTech space and according to the EDB’s Chief Executive, H.E. Mr. Al-Rumaihi, national adoption of blockchain technology will be a key enabler of this. The sports industry could therefore be a sector where Bahrain is well placed to apply blockchain technology in the region.

**Conclusion**

Whilst the use of Blockchain technology was initially focused within the financial industry, the Middle East and especially Bahrain could prove to be fertile ground to develop blockchain based solutions within the region for the sports industry. There will undoubtedly be issues that are unique from a cultural and local law perspective that will need to be considered in the use of blockchain relating to sports in the region, but the potential for development and utilisation is significant, considering the fact that countries in the region share a common language, a passion for sports and a relatively young population, which is quick to embrace new technologies.

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The suspension of an athlete or nation from participating in the Olympic Games is commonly considered to be the ultimate sporting sanction. Whilst the suspension of Russia from PyeongChang 2018 (and its reinstatement immediately afterwards) grabbed headlines, Kuwait remains subject to a ban imposed by the International Olympic Committee (“IOC”) in 2015.

Kuwait’s National Olympic Committee (“NOC”) is no stranger to Olympic exile, having been suspended by the IOC in 1986. More recently, Kuwait was warned by the IOC in 2007 that its sports legislation permitted governmental interference in the internal functioning of its NOC and other sporting federations, in violation of the Olympic Charter. When Kuwait did not address this issue by the IOC’s deadline of 31 December 2009, its NOC was suspended. This ban was lifted shortly before London 2012.

Further sports legislation was enacted in early 2015, however, that conferred upon the Kuwaiti Sports Ministry the power to assume control of national sporting bodies, as well as the ability to control financial matters. Consequently, Kuwait’s NOC was disbanded by the Kuwaiti Sport Ministry, purportedly due to financial irregularities, as were nine other national federations. Interim committees were established to take over their administration, headed by figures widely reported to be loyal to the Kuwaiti Sports Ministry. The IOC took the view that Kuwait had failed to ameliorate the position by the IOC’s deadline of 27 October 2015; and, its NOC was suspended again. This came shortly after FIFA had imposed its own suspension on Kuwait’s football association (“KFA”), having failed to meet FIFA’s 15 October 2015 deadline for corrective action. Sixteen further international sports federations subsequently followed suit.

**Subsequent Developments**

In response to its censure by the international sporting community, Kuwait went on the offensive. In June 2016, the Kuwait government appealed the IOC suspension in the Swiss Civil Courts and claimed $1 billion compensation for losses flowing from the alleged unjust imposition of a suspension in the absence of an appropriate investigation. The appeal and compensation claim were
dismissed in August 2016 and Kuwait was ordered to pay $11,500 towards the IOC’s legal costs. Also in June 2016, the Court of Arbitration for Sport (“CAS”) rejected an appeal brought by a number of Kuwaiti football clubs (including the Kuwaiti Premier League champions, Kuwait Sporting Club) against the FIFA suspension.

In addition to legal proceedings, Kuwait has made frequent unsuccessful appeals to the IOC (and FIFA) for its suspension to be lifted. Numerous meetings have also taken place between Kuwaiti officials and the IOC, most notably that mediated by the United Nations in January 2016, at which the parties appeared to have reached an agreement in principle that Kuwait reportedly reneged upon at a later date.

On 12 December 2016, Kuwait’s newly-elected parliament voted by a majority of over two thirds to amend the relevant sports legislation to facilitate re-admission to international sport. This vote unfortunately came too late for Kuwait to take part in the AFC Asian Cup Qualification final round, given that the deadline imposed by the Asian Football Conference (“AFC”) for the KFA to be readmitted to FIFA membership was 18 December 2016.

In early 2017 the IOC are reported to have sent a letter to the Kuwaiti Sports Ministry setting three conditions for Kuwait’s re-acceptance into the Olympic Movement:

1. all relevant sport legislation must be amended in order to comply with the Olympic Charter;
2. all board member changes imposed upon Kuwait’s NOC and other sporting bodies must be revoked; and
3. all ongoing domestic and international cases against the IOC and other international sporting bodies must be dropped.

On 4 December 2017, Kuwait finally bowed to mounting domestic and international pressure by enacting new sports legislation purporting to replace all previous such laws and thus prevent governmental interference with Kuwaiti sporting bodies.

FIFA lifted its ban on 6 December 2017. However, despite subsequent meetings taking place between Kuwaiti officials and the IOC, the Olympic ban remains in place.

“The fact that the IOC has not yet followed FIFA’s lead in lifting its ban on Kuwait is an intriguing epilogue to this rather messy affair.”

The wider context of governmental interference

Sporting bodies are hard-wired to protect their autonomy to govern and regulate their sport, as enshrined in the Olympic Charter. A distinct body of law, lex sportiva, has developed over time to underpin the doctrine that sporting bodies are best placed to understand the unique circumstances of sport and manage them in a way that maximises wider societal benefits. The Olympic Charter promotes collaboration between sporting bodies and government, but prohibits interference. This begs the question as to where the line is between benign and undue governmental influence. Reasonable conditions attached to the receipt of public funds by sporting bodies for grassroots investment is an obvious example of the former, whereas a government retaining unfettered power to disband national sporting federations is an obvious example of the latter. However, there are a myriad of circumstances falling in between.

Kuwait is not alone in finding itself on the wrong side of the IOC due to governmental interference in sport:

- In July 2007, Panama was suspended by the IOC for governmental interference in the running of its NOC. The ban was lifted in April 2008 in time for the nation to compete at Beijing 2008. It was threatened with a further suspension in January 2011 when the Panamanian President demanded the resignation of NOC committee members, but this was averted when the issue was resolved to the IOC’s satisfaction.
In January 2011, Ghana’s NOC was suspended by the IOC for failing to amend its sports law to prevent the Ghanaian government from making presidential appointments to its NOC and numerous national sporting federations. The ban was lifted in October 2011 when a new sports law was enacted to prevent political interference, allowing the nation to compete at London 2012.

In June 2011, the IOC warned the Indian Sports Ministry that compelling national sporting federations to adopt mandatory eligibility requirements for officials constituted undue governmental interference. When the Indian government ignored this warning and the Olympic Association separately elected officials accused of corruption, the Indian NOC was suspended by the IOC for non-compliance with the Olympic Charter in December 2012. Somewhat uniquely, the IOC lifted this ban lifted four days into Sochi 2014 when new officials were elected, causing the Indian flag to be belatedly raised in the Olympic Village.

In 2015, Sri Lanka was warned by the IOC that it faced suspension if it did not revise proposed sports legislation that barred high-ranking officials from standing for re-election by the end of that year. This governmental interference was cited as a major reason for Sri Lanka being stripped of its hosting rights of the 2017 Asian Youth Games.

In August 2016, Kenya’s Sports Ministry disbanded its NOC and transferred its duties to Sports Kenya, in response to alleged mismanagement of Team Kenya at Rio 2016 by senior NOC officials. In March 2017, the IOC cut funding and threatened suspension of the newly-formed NOC when it refused to accept IOC-requested governance reforms.

Recent reports suggest that Saudi Arabia is coming under increased scrutiny from the IOC and FIFA in connection with a growing trend of appointments for government-backed appointees to the Kingdom’s national sports federations. A suspension from international sport would impact the Kingdom’s successful national and club football teams and may also affect its progressive economic reforms, of which sport - and in particular the privatisation of its top-tier football clubs - is a central component, owing to sport’s increasingly valuable geopolitical status in the GCC region.

The IOC is, therefore, not afraid to adopt a robust approach if it considers that the Olympic Charter is being undermined by undue governmental interference. One particular area it has sought to control is the fall-out when relations between national governments and NOCs breakdown. In this regard the IOC has a number of weapons at its disposal, including proactive engagement with the parties, interim funding cuts, the threat of a suspension, and ultimately the imposition of a suspension. The political unpopularity of presiding over a nation suspended from the Olympics more often than not prompts governments to take the necessary remedial action.
Commentary

The fact that the IOC has not yet followed FIFA’s lead in lifting its ban on Kuwait is an intriguing epilogue to this rather messy affair. The reasons for this are not clear, however it may be because Kuwait has not yet complied with the pre-conditions for re-acceptance (outlined above) to the IOC’s satisfaction. It may also be symptomatic of the deterioration in the relationship between Kuwait and the IOC. A string of previous broken promises and the instigation of a $1 billion lawsuit may have eroded the IOC’s trust in Kuwait delivering meaningful and lasting change this time around.

What is certain is that the impact on Kuwaiti sport has been marked. Kuwaiti athletes were unable to represent their country at the 2010 Summer Youth Olympics, Rio 2016, and PyeongChang 2018; having to compete instead as neutral athletes under the Olympic flag. Indeed, Kuwait was denied its first ever Olympic gold medal when Kuwaiti shooter Fehaid Al-Deehani claimed the dubious honour at Rio 2016 of becoming the first athlete to win a gold medal as an Independent Olympic Athlete. Similarly, Kuwaiti football teams and clubs have been barred from international competitions (including the World Cup 2018 qualifiers and the AFC Asian Cup 2019) and the national team’s FIFA ranking has plummeted to 160 (having been as high as 24 in 1998). To add insult to injury, all IOC and FIFA financial development assistance has been stopped during the periods of suspension, which has severely affected the finances of Kuwaiti sport. Even more tragic is the impact on Kuwait’s grassroots participants and youth, who have cruelly been denied sporting heroes to aspire to and sporting goals to aim for, as well as their training programmes and facilities being starved of cash from the IOC and FIFA. Many talk of Kuwait’s ‘lost generation’ of talent and feel that lasting damage has been done.

It is difficult not to draw comparisons with Russia’s 85 day IOC suspension for systemic manipulation of anti-doping rules which the IOC President Thomas Bach described as “an unprecedented attack on the integrity of the Olympic games and sport”. There is little doubting that a Russian team appeared at PyeongChang 2018 in all but name (and arguably in name, being ‘Olympic Athletes from Russia’, as compared to Kuwait’s ‘Independent Olympic Athletes’), with its 168 athletes (only 64 less than at Sochi 2014) being cheered on by fans wearing Russian kit, waving Russian flags and singing the Russian anthem. Kuwait’s continuing IOC suspension, which in contrast to the Russian suspension does not implicate any individual athletes, does seem to disproportionately punish Kuwaiti athletes for what has been termed a power struggle between Kuwait’s ruling elite.

Now that certain roadblocks to reinstatement have been removed (as outlined above), it seems likely that the IOC ban will be lifted; however it remains to be seen when this will be and what further steps Kuwait will need to take to achieve it.

NB: Please note a version of this article was first published on lawinsport.com on 15 June 2018 (https://www.lawinsport.com/topics/articles/item/governmental-interference-in-global-sport-why-kuwait-is-still-in-the-olympic-wilderness).

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The 2022 FIFA World Cup™ is shaping up to be a momentous event. It will be the first to be held in the Middle East and the first to be hosted by an Arab country. It is well-known that the FIFA obligations imposed on a host country in relation to the tournament involve substantial changes to its laws in order to accommodate FIFA’s commercial, licensing and tax requirements, among other issues.

This is not to say FIFA can simply impose its will and insist on complete changes to Qatar’s legal system. Qatar is a relatively conservative Arab country with traditional and established legal concepts and customs. While by necessity, and by virtue of similar situations at previous World Cups, changes will need to be made to certain local laws to meet FIFA requirements, such changes will need to be through agreements between the host country and FIFA.

Getting this balance right will result in mutual benefits for Qatar and FIFA to create a successful tournament as well developing an ongoing legacy for the host country in conjunction with the Qatar National Vision 2030. Some of these changes in law are still to be agreed while others may have already set in motion positive developments, as further shown below.

**Legal challenges**

FIFA has strict requirements in respect of all aspects relating to a World Cup, from stadium construction, accommodation and transport to publicity and marketing matters related to the event. Changes to local laws are generally needed in order to allow for, among other things, FIFA to obtain all required Qatar government guarantees in respect of the World Cup, FIFA-designated goods and merchandise to be imported into Qatar free of customs duties, FIFA's intellectual property (‘IP’) and authorised sponsors and licensees to be protected against unlawful third party actions such as sale of counterfeit goods and ambush marketing (see more below). FIFA also requires that it is exempted from taxation or otherwise favourably treated in respect of World Cup-related income.

While there will be changes made to comply with such FIFA requirements it will generally still be necessary for persons doing business in Qatar to comply with existing Qatar laws, for example in respect of IP protection, events, customs and consumer protection, to the extent there is no conflict between the two.
Specific changes to laws and/or the enactment of enabling laws in respect of government guarantees, customs requirements and taxation have not yet been implemented. It is expected these will be agreed between Qatar and FIFA within an appropriate time period prior to the 2022 tournament, although the basis and extent of these new laws is not yet clear. It seems, however, that in respect of licensing and merchandising matters, such as in respect of ambush marketing and fake/counterfeit merchandise, the legal approach and position will be similar to that taken at previous World Cups.

**Sponsorship and Merchandising**

Ambush marketing is essentially the unauthorised association by an entity of its products and/or services in respect of an event where it has no sponsorship or licensing rights. The entity is often a competitor of a duly authorised event sponsor/licensee. The aim, via clever marketing and the pushing of legal boundaries, is to create the perception (and obtain the related commercial value) of the ambushing entity being associated with the event in question, to the detriment and loss of the authorised event sponsor or licensee who has paid a substantial amount for such privilege.

Fake/counterfeit merchandising involves the sale to the public of event-themed and event-linked goods where the sellers are not authorised to do so and/or where the actual goods being sold have been not produced under authorised licence.

As with previous World Cup tournaments, the intention of the Qatar authorities and FIFA is not to take a heavy-handed approach but at the same time ensure that action is taken quickly and decisively against any infringing persons. Special investigative units and courts specifically to deal with cases of ambush marketing and counterfeit merchandise will be created. This will involve enabling legislation being introduced to allow authorised officials to monitor and stop infringements by conducting local investigations and court hearings and issuing immediate fines to perpetrators. The plan is not to provide for any jail sentences but in all cases the infringing goods would be confiscated.

These additional legal provisions will be supplementary to existing Qatari copyright and trademark laws which protect IP and related licensing rights in accordance with international standards. FIFA has also published an exhaustive and extremely strict code of what it considers to be unacceptable marketing practices surrounding its World Cup tournament.

**Customs and Consumer Protection**

Irrespective of specific agreements reached with FIFA, any goods coming into Qatar in connection with the World Cup will need to comply with the existing Customs Law, whereby the General Authority of Customs have the right not to permit any goods to clear
 customs and enter Qatar unless such goods have been approved by the relevant authority. Incoming goods will also need to comply with the existing Consumer Protection Law. This gives consumers in Qatar the right, amongst others, to return defective products, to the repair or replacement of any defective products and the right to receive accurate information about the products. The Consumer Protection Law prohibits the sale or marketing of defective or expired goods, with goods considered defective if they do not comply with specific standards, are unfit for purpose or have expired.

The Electronic Commerce Law also addresses certain consumer rights by stating that its provisions are applicable to the provisions of the Consumer Protection Law. This ensures that both physical and online sales and marketing transactions are covered in relation to counterfeit goods.

Tourism and Events Management

The provisions of the Tourism Licensing Law, which govern business activities in the tourism sector within Qatar, are applicable to the hotel and other industries within the tourism sector. They will impact related World Cup activities and ventures. The law regulates ‘tourism establishments’, defined as places operating mainly to accommodate tourists, such as entertainment establishments and specialised clubs, and other places allocated to provide services for tourists, such as tourism offices, offices offering tourist transport, tourist guide offices and time-sharing places, and any other establishment deemed to be a tourist establishment in accordance with a decision of the Minister of Economy and Commerce or the proposal of the President of the Qatar Tourism Authority. It also covers ‘tourism activities’: any activity of the transport of tourists including the transport of tourists on trips onshore or offshore, the activities of tour guides, time-sharing and any other activity deemed to be a tourist activity in accordance with a decision of the Minister of Economy and Commerce or the proposal of the President of the Qatar Tourism Authority.

Under the Tourism Licensing Law, a licence is required to establish or manage a hotel or tourist establishment or to practise any tourist activity. Applications for such a licence is made to the Qatar Tourism Authority and all hotel and/or tour operators wishing to conduct such activities in relation to the 2022 World Cup will need to be aware of such requirement.

Gambling

As with all major sporting events, the World Cup will generate substantial gambling activities. Gambling is prohibited in Qatar in all forms, whether land-based or online, as well as the advertising of gambling activities. Accordingly it is unlikely that any gambling will be tolerated and any offenders would face prosecution. The risk of enforcement against an online gambling operator outside of Qatar is lower but the offending website could be blocked by the authorities pursuant to provisions under the Cybercrime Law, which also provide for the confiscation of all devices, software or equipment used in the commission of the offence and the confiscation of any funds obtained from such offence.

Worker’s Rights and Laws

Due to the extensive construction and infrastructure projects associated with the 2022 World Cup in terms of stadiums, accommodation and transport, a lot of attention has been focused on the rights and welfare of the many workers who will be engaged on these projects. Certain rights and protections are granted to workers in Qatar under the Labour Law and these have
been further supplemented pursuant to the adoption in 2013 of specific workers’ charters by the Supreme Committee for Delivery and Legacy (the ‘SC 2022’) and Qatar Foundation for Science, Education and Community Development (the ‘Qatar Foundation’).

The Labour Law provides workers with certain rights and protections in respect of the provision of necessary equipment, the nature of work to be performed, remuneration, working hours and holidays, annual and sick leave, other forms of leave, occupational health and safety, compensation for accidents and death, end-of-service gratuity and repatriation obligation upon termination. Non-Qatari workers are not permitted to form worker committees, unions or similar collective organisations.

The SC 2022’s Workers’ Welfare Standards charter, which covers all workers engaged in the World Cup stadium construction and infrastructure projects overseen by the SC 2022, says additional protections are provided to such workers requiring all its contractors and subcontractors for stadium-related projects to comply with such charter. These protections include, without limitation, ethical recruitment and fair treatment, employment offer minimum requirements, responsibility for relocation costs to Qatar, no retention of worker passports or other personal documents, dignified and ethical employment conditions, the provision of medical insurance, accommodation and food standards, reporting requirements for employers, the creation of workers’ welfare forums, transportation and site requirements and access to information in an appropriate language.

The Qatar Foundation Mandatory Standards of Migrant Workers’ Welfare document provides similar additional rights and protections for workers involved in all Qatar Foundation projects, which includes one of the World Cup 2022 stadiums and related facilities. The Qatar Foundation charter sets out certain minimum standards with regards to the recruitment, living and working conditions of workers engaged in construction and other projects at the Qatar Foundation. These standards are applicable to, and compliance is required from, all contractors and subcontractors of Qatar Foundation. The required standards include, without limitation, preparation of a welfare adherence plan and related audit, workers being informed as to all entitlements, a safe and healthy work environment, a clean, safe and healthy living environment, equal and humane treatment, equal pay for equal work, regulated working hours, medical insurance and skills training.

Accessibility Requirements

Accessibility to stadiums for disabled persons and/or persons in wheelchairs is a mandatory requirement of FIFA for all stadiums constructed for a World Cup tournament. In this respect, the SC 2022 is ensuring that all World Cup 2022 venues will be accessible to persons with disabilities so as to make the event inclusive for all. Pursuant to this requirement, accessibility is incorporated into all areas of stadium and venue design such as seating, entry and exit.
points, parking and toilet facilities. The SC 2022 has advised that the amount of seating for disabled persons (including for disabled media representatives) will be based on the size of each stadium and will include places for people with autism as well.

From a local perspective there is no substantial legal provision in respect of accessibility requirements for persons with disabilities. In terms of the Qatari Law in respect of People with Special Needs, there is a general requirement to provide people with special needs with, inter alia, the means for assisted transport and equipment, accommodation for safe and secure movement as well as special facilities in public places. The Ministry of Municipality and Environment covers some of these aspects in terms of its requirements for building works, along with various other ministries and local authorities in relation to building matters, but these requirements do not extend as far as those of FIFA in terms of accessibility. However, the overall scope of the World Cup 2022 requirements would seem to imply accessibility requirements for disabled persons will inevitably need to be extended to other World Cup-related areas such as hotels and accommodation, airport and transport facilities and fan zones in order to be compatible with those at the stadium venues.

Summary

FIFA has strict benchmarks to meet when it comes to the stadiums, facilities, logistics and publicity for World Cup events while Qatar has strict legislation that cannot be easily or quickly changed. The attaining of a mutually beneficial solution will take time but can be achieved after undertaking detailed research and analysis to understand the laws that may need to be enacted or changed to host the tournament.

There are plenty of precedents for this. South Africa for instance enacted a law to enable speedy trials in special courts in respect of crimes by fans, Brazil enacted legislation to accommodate FIFA requirements and Russia, the 2018 hosts, have also made changes to their laws in connection with the World Cup.

The process of analysis is well under way in Qatar and changes to laws and standards in connection with World Cup 2022 have been and continue to be considered. The prospects seem to be in place for finding a solution that satisfies external and internal stakeholders, ensures a successful tournament for FIFA and the host nation as well leaving a meaningful legacy of progressive standards and legal considerations.

NB: A version of this article was first published during the week of 18 June 2018 on Lawinsport.com.
The Privatisation of Saudi Arabia’s Football Clubs: An Update

Progress towards privatising the top 14 professional football clubs in the Kingdom of Saudi Arabia (“KSA”) continues apace in light of a string of recent developments.

Background

Presently KSA sporting clubs, including clubs competing in the Saudi Professional League (“SPL”), are government-owned. This status quo stems from an historic objective to centralise the growth and development of socially-desirable sporting initiatives across KSA sports, including those which may not enjoy the commercial appeal and sustainability of football.

The push towards privatisation of SPL clubs started in earnest in April 2016 with the unveiling of the Saudi Vision 2030 plan (“Vision 2030”), which aims to diversify KSAs economy and reduce its dependence on oil revenues. Vision 2030 crystallised the government’s long-standing position, advanced most recently by His Royal Highness Prince Mohammad bin Salman that the privatisation of certain state-owned assets can and should play a significant role in economic and social development. The plan expressly promotes social goals including increasing physical and sporting activities, as...
well as the creation of new public-private partnerships ("PPPs") to establish dedicated sporting facilities and programmes, a general reduction in costs and increased efficiency.

The unveiling of Vision 2030 prompted a number of developments. In May 2016, the General Presidency of Youth Welfare was rebranded as the General Authority for Sports ("GAS") and given greater responsibilities for developing sports clubs and facilities. This was followed in June 2016 by the launch of the National Transformation Program 2020, a framework for the implementation of Vision 2030. Shortly thereafter in July 2016, the GAS and the Ministry of Commerce and Investment launched a campaign to increase awareness amongst KSA football clubs and other interested parties regarding, inter alia, the need to register trademarks and otherwise protect their IP.

In November 2016, the Council of Ministers approved the Council for Economic Development Affairs’ ("CEDA") recommendations to:

i. privatise SPL clubs as new corporate entities;
ii. give the GAS responsibility for granting licences to such entities;
iii. create a Sports Development Fund to finance new stadiums and facilities for clubs; and
iv. create a supervisory committee (headed by the Chairman of the GAS and with representatives of the SPL and Saudi Arabian Football Federation ("SAFF")) to oversee the transfer of operational and financial control from government hands to the private sector.

Specific goals for the privatisation process were also set, including elevating the quality and status of the SPL and positioning it to diversify revenues and make a greater contribution to the national economy. All of these steps indicate that a serious review of factors relevant to the privatisation process has been undertaken, underlining the KSA government’s commitment to the project.

Recent Developments

A number of recent developments impact, either directly or indirectly, upon the plans to privatise SPL clubs and the potential of a privatised KSA football industry:

a. In February 2017, Jadwa Investment, one of KSA’s largest privately-owned investment banks, was appointed to advise on the privatisation of up to five SPL clubs, following a competitive tender exercise;

b. In January 2018, the KSA government lifted the ban on women attending football games and in doing so opened up a large and hitherto un-tapped commercial market for the SPL;

c. In February 2018, SAFF announced a new 10 year broadcasting deal with Saudi Telecommunications Company ("STC", which is 70% owned by the KSA Public Investment Fund) from season 2018/19 worth $1.76 billion. This deal is reportedly an increase of 61% from the previous deal with MBC and ensures that all SPL games are free-to-air across the MENA region; and

d. In April 2018, CEDA approved a ‘Privatisation Program’ for the creation of, inter alia, the legal and regulatory basis for the privatisation process. The Privatisation Program document confirms that the privatisation of SPL clubs is a core component of the initial tranche of projects due to be finalised by 2020.

These recent developments demonstrate a number of important points. Firstly, that the KSA government remains committed to keeping up the momentum towards the privatisation of SPL clubs. Secondly, that the privatisation of SPL clubs has become a bellwether project to showcase KSA’s progressive economic and social reforms, with the expectation that the SPL will become a powerful marketing tool for KSA to attract international brands and investors. And thirdly, that the KSA government is committed to grow and develop the KSA football industry in general.

The Structural Potential of KSA Football

Football is the preeminent sport in Saudi Arabia. The national team is one of the most successful in Asia, winning the AFC Asian Cup three times (and reaching the
final on three further occasions) since 1984, as well as qualifying for the FIFA World Cup on five occasions, including Russia 2018. Domestically, Al-Hilal FC and Al-Nassr FC are considered to be the amongst the leading football clubs in Asia, having won numerous Asian Club Championship, AFC Champions League and Arab Club Championship titles.

KSA football clubs tend to rely on a combination of traditional revenue streams (broadcast, commercial and match-day) and contributions from wealthy groups and individuals affiliated, formally or informally, with clubs. The hope is that privatisation will significantly increase traditional revenue streams without impacting investment from wealthy groups and individuals. As touched upon further below, this may require some delicate handling to ensure that the best aspects of modern corporate governance and management structures do not alienate existing financial backers.

Football is the largest spectator sport in KSA and the SPL boasts an impressive average stadium capacity of 33,273 (falling just short of the English Premier League’s 37,644). Given that the average SPL attendance in the 2017/18 season was only 5,726, there is spare capacity into which the SPL fan base can grow. As alluded to above, fan engagement with SPL and attendances are expected to receive a significant boost from the progressive societal reforms taking place in KSA generally.

Fan engagement is also expected to receive a boost due to the new broadcast deal with STC, which ensures that all SPL games will be free-to-air across the MENA region. International broadcast penetration of the SPL has also hitherto been limited, with only about 5% of MBC Pro Sports (the outgoing SPL broadcast rights-holder) subscriptions coming from outside Saudi Arabia. The new rights deal should ensure that SPL viewership increases many-fold.

In addition, KSA has one of the most digitally engaged populations in the world. Mobile phone penetration is extremely
high (estimated at 180 subscriptions per 100 residents), it has the highest per capita rate of YouTube use of any country in the world (according to a 2015 BBC study) and its residents use social media for an average of five hours per day (according to a 2016 YouGov study). Potential football fans are therefore increasingly accessible and SPL clubs are increasingly looking to engage with their already very large digital fan-bases.

Potential Challenges

After positive reports in early 2017, specific details about the procedural steps for transforming clubs into corporate entities and subsequently formalising the process of private investment, including timelines, applicable regulations and execution documentation have still not been confirmed as of the date of this article’s publication. For example, it is not yet known whether a specific corporate entity will be required to hold the assets, or what form and scope a designated long-term regulator may take and what its part in the privatisation process will be. Anecdotal reports suggest that for the purposes of investment, every club will have two components: assets and real estate; and that a given privatisation need not necessarily include an obligation to purchase the club’s real estate. This would provide some welcome flexibility to investors in considering various business plans and strategies to optimise growth and development in years to come.

Comment

Subject to effective implementation and the absence of significant market distortion factors, the privatisation of sports clubs can be beneficial in terms of providing both access to capital for short-term investment in stadia, training facilities and playing squads, and also in establishing the necessary business framework to nurture talent and encourage the best practices in club management. Indeed the prospect of attracting owners who are incentivised to bring the best and brightest management teams to drive commercial success could bode well in terms of growing match-day revenues with stadium development and an increased ability to compete for domestic and foreign players.

Given the issues outlined above, the 2020 target date for all SPL clubs to be privatised does seem ambitious, as some commentators have noted; however the KSA government is clearly committed to the project. Indeed, it has become a central pillar in the delivery plan for Vision 2030 and the political capital staked on the project being a success should help drive it forward.

As touched upon in this article, a number of unknowns remain. For example, the size of the Sports Development Fund earmarked for assisting with this process and the precise details of planned allocations are not officially available at present but the establishment of the fund does suggest an understanding and appreciation that there will be certain costs involved in helping even the top clubs achieve immediate sustainability.

Further afield, the privatisation of SPL clubs has prompted reports that Saudi investors are considering investment into British clubs in order to link them with newly privatised SPL clubs. Ironically, and subject to particular investment dynamics, this could mean that the sovereign wealth fund created by the wider KSA privatisation program may indirectly lead to Saudi investment in European clubs, which we are already starting to see (e.g., Sheffield United), in much the same way that middle-eastern investors have acquired Premier League and Ligue 1 clubs.

It is likely that the SPL would benefit significantly from such tie-ups, as they would bring to the table a wealth of on-field and off-field technical expertise, as well as opportunities to share playing talent and synchronise commercial objectives. In addition to the ancillary benefits of such direct foreign investment, Saudi interests have also been linked with proposals to reconceive the Club World Cup. With greater influence in top leagues and competitions abroad and a roadmap to stabilize and grow the domestic league, the future for the KSA football industry has never looked brighter.

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Football is hugely popular across the Middle East. Its popularity has led some to invest in football clubs. When one considers the wide range of agreements between clubs, players, coaches and sponsors, the potential for disputes is clear. Satisfactory resolution of such disputes is not always easily attainable, considering the specialist nature of sports law and general scarcity of specialist in the field.

Bespoke judicial bodies and arbitration centres have recently been established in response. In 2015, the Saudi Arabian Olympic Committee (SAOC) approved the establishment the Saudi Sport Arbitration Centre (SSAC). Specifically, the Generally Assembly of the SAOC approved its Board of Directors’ decision to authorize the SAOC President to take all necessary actions.
to establish the SSAC. The SSAC aims to contribute to the general development of the sports sector and the resolution of sport related disputes. As a result, sports law in the Kingdom of Saudi Arabia, and the resolution of sports related disputes, has seen significant development. There is no doubt that SSAC has contributed to the preservation of the rights of parties, and the broader development of the sports sector in the Kingdom of Saudi Arabia.

This article considers two significant regulatory regimes in the field of sports law in the Kingdom of Saudi Arabia - the Statute of the Saudi Sport Arbitration Centre (SSAC Statute) and the Rules and Procedures of the Centre of Arbitration for Sport (Rules & Procedures). Further, the author considers various divisions of sports arbitration with both the ordinary and the appeal arbitration procedures of the SSAC.

**Saudi Sport Arbitration Centre**

Established in 2016, the SSAC is located in Riyadh, the nation's capital. The SSAC is the highest judicial body for sports-related disputes in the Kingdom of Saudi Arabia, specialising in the hearing of any sports-related dispute by arbitration or mediation.

The legal basis of the SSAC is the SSAC Statute, its procedural rules, and any resolution issued by the SSAC’s Board of Directors. Further, the SSAC was established in line with the Olympic Charter, the statutes of International Federations, the Code of the Court of Arbitration for Sports, and the Arbitration Law of the Kingdom of Saudi Arabia. This has led to a strong, and familiar, legal basis for its effective operation.

The SSAC is composed of five members: one appointed by the SAOC, that individual is the President of the SSAC; one appointed by the Athletes’ Committee of the SAOC; one appointed by the Saudi Arabia Football Federation (SAFF); and two appointed by the General Assembly of the SAOC.

The SSAC does not deal with appeals arising from violations of laws of the game, criminal cases arising from sports disputes, or sports disputes that have not exhausted the internal roads via the competent judicial bodies. Final decisions may be appealed to the SSAC within 21 days of notification.

**SSAC Procedures**

The SSAC Statute and the Rules & Procedures are a set of procedural rules that govern SSAC procedures. The SSAC provides for three types of procedure:

- **Ordinary Arbitration** - in which the parties have agreed to refer a sports dispute to the SSAC in accordance with an arbitration clause in a contract, or in cases where both parties agree to refer the dispute to arbitration after the dispute has arisen.
- **Appeal Arbitration** - in which a party has filed an appeal against a decision issued by a national association such as SAFF, or a judicial body related to sport, where the statutes or regulations provide an appeal before the SSAC.
- **Mediation** - in which each party has agreed to refer a dispute that has arisen, or a potential dispute that may arise, to an SSAC mediator.

**SSAC Jurisdiction**

The SSAC has jurisdiction to hear any dispute related to sport. Many types of disputes can be referred to the SSAC, including; disputes arising between the SAOC, associations, clubs, members of the boards, members of the general assembly, players, referees, coaches, intermediaries, registered media representatives, organizers of sports events, sponsoring companies, TV transmission channels, disputes relating to sports doping, contractual disputes (provided the arbitration clause refers the dispute to the SSAC), and any international sports dispute (such as may occur in connection with a foreign player or coach) in which the parties have agreed to resort to the SSAC. The SSAC accordingly enjoys wide jurisdiction to hear any dispute related to sports in the Kingdom of Saudi Arabia. This stands to generally contribute to the development of sports law in the Kingdom of Saudi Arabia.

**Arbitration Divisions**

According to Article 24 of the SSAC Statute, the SSAC shall conduct the arbitration in
sports-related disputes through the following arbitration divisions:

- **Ordinary Arbitration Division**, which shall carry out its tasks in accordance with the following powers: to resolve sports-related disputes that may arise out of contracts containing an arbitration clause that refers any dispute to the SSAC, or out of any subsequent agreement allowing the referral of disputes to the SSAC and to resolve sports disputes that may arise between the parties to any sports matter (athletes, players, intermediaries, sponsors, administrative staff, technical staff, medical staff, sports clubs, sports federations and Olympic committees), provided that such disputes are not subject to appeal before the SSAC.

- **Appeals Arbitration Division**, which shall carry out its tasks in accordance with the following powers: to decide on all appeals against final decisions issued by the sports bodies after exhausting all internal legal procedures, except for football decisions, to decide on objections filed against internal decisions issued by the sports bodies, which do not have protest proceedings provided for in their statutes or regulations.

- **Football Dispute Arbitration Division**, which has the competence to decide on all appeals against the decisions issued by the SAFF and its committees after exhausting all its internal legal procedures, in accordance with the SAFF Rules and Regulations.

- **Special Dispute Division**, that may be established by the SSAC to resolve all sports-related disputes referred by the General Sport Authority (GSA).

- **Mediation Division**, which has the competence to mediate between and assist the concerned parties to reach settlement agreements in contractual disputes.

By comparison, the SSAC’s divisions exceed the number of divisions of the Foundation of Qatar Sports Arbitration (FQSA), another regional sports arbitration body. The FQSA is composed of three divisions, which are

the ordinary arbitration division, the appeals arbitration division and the mediation division. The SSAC is composed of the five divisions described above plus newly created divisions, which are the Special Dispute Division and the Football Dispute Arbitration Division. It is to be inferred that the SSAC created a new division for the sport of football because it is the most popular sport in the Kingdom of Saudi Arabia and it is accordingly anticipated that most disputes will football related.

**Applicable law and Arbitration Language**

In the ordinary, appeals or football arbitration divisions, the arbitration panel must follow all of the regulations and rules of the sports body whose decision is appealed against as a means of fulfilling the principles of justice, equity and the Olympic Charter. In the event that no relevant provision is stated in those regulations, then reference may be made to the statutes or regulations of the respective International Federations (IFs) according to each individual case, however, the parties may, in the ordinary arbitration, choose the law applicable to the dispute. It can be seen that the SSAC shall apply national laws and regulations, although the international regulations can also be applied in cases where there is no relevant provision to be found in the national laws and regulations. This situation helps the arbitrators to issue decisions in line with decisions at the international level.

The Arabic language shall prevail as the language before the SSAC. However, English, or any other language, may be used before SSAC with a certified Arabic translation, upon the approval by the Arbitration Panel.

**Arbitration Expenses and Fees**

The Party requesting arbitration will be liable to pay the arbitration fees upon submitting the case to the SSAC. In case the Claimant requests an expedited procedure, then that party shall pay the applicable fees for an expedited procedure as prescribed. All fees are non-refundable. Furthermore, the party requesting arbitration shall pay the tribunal’s administrative expenses, while the losing party bears all such expenses unless
an arbitral award states that the parties shall cover the expenses equally. One important rule is that the final arbitral award shall be delivered to the parties only after all the arbitrators’ costs and fees have been paid in full. Evidently, the SSAC has strong conditions in relation to fees and protects the rights of its arbitrators.

**Notifications and Communications**

All notifications, reports and communications shall be made through and by the SSAC General Secretariat. In addition, all correspondence must be made in PDF format and sent to an SSAC approved e-mail address which shall be the only legal way for the SSAC to send/receive correspondence. Moreover, notifications, correspondence and communications served to the parties to the arbitration or their representatives must be made through the e-mail address previously specified by them or any other address determined in writing at a later stage or through an online filing platform. In case the notifications and communications cannot be delivered by email then they can be delivered by mail or by facsimile. Notifications and correspondence served on the parties to the arbitration shall be considered legally received if they are sent to the addressees at their SSAC-approved e-mail addresses.

**Legal Nature of SSAC Awards**

Arbitration awards issued by the SSAC are final and may not be appealed before any other tribunal, whether inside or outside the Kingdom of Saudi Arabia, unless otherwise stated in the SSAC Statute. In sports disputes in which a foreigner is a party, awards may be appealed before the International Sports Federations (IFs) or the Court of Arbitration for Sport (CAS), if the relevant statute of an IF states that an appeal shall be made before such judicial body. In case the contract states that the arbitration is within the jurisdiction of the SSAC, then the SSAC award shall be final and non-appealable before any other authority.

**Conclusion**

The SSAC represents a significant development in sports law, not only in the Kingdom of Saudi Arabia but also in the Middle East. Litigants may be represented by any licensed lawyer. To date 24 specialist Saudi and Arab arbitrators have been appointed to the panel of the SSAC. Eight international arbitrators, from the list of the CAS, have been appointed to SSAC arbitral panels, demonstrating international confidence. Its wide jurisdiction, and the range of its specialized divisions, will ensure that sports disputes are resolved with high standards of efficiency and in accordance with the best international sports law dispute resolution standards.

Bandar Alhamidani is a Partner and key member of the Al Tamimi & Company’s Sports Law and Events Management team practice. Bandar has acted as an Arbitrator before CAS and SSAC. For further information, please contact Bandar Alhamidani (b.alhamidani@tamimi.com).
With Expo 2020 fast approaching, it is important that participating countries and corporates understand the key employment and immigration considerations.

This is particularly so given the emphasis by the Expo 2020 leadership on worker welfare including Health and Safety. Indeed, on 19 April 2018, Dubai Municipality and the Ministry of Human Resources and Emiratization held an Expo driven Health, Safety, Quality, and Environment (HSQE) leadership event to ensure that all stakeholders including contractors, sub-contractors, project managers, regulators, and partners were cognisant of their obligations.

Some of these key employment considerations are addressed below:

What employment framework is in place?

Broadly speaking for the purposes of Expo 2020, employees will fall into three main categories: Expo 2020 staff, employees working on the ongoing construction phase and participating countries and companies.

The venue for Expo 2020 is Dubai South (formerly Dubai World Central), a 140 km² area in Jebel Ali near to the new Al Maktoum International airport. In addition to the prevailing UAE Federal employment and immigration laws, the Dubai South Free Zone Regulations outline the applicable employment/immigration regulations that apply to entities licensed within the Dubai South.

For the purposes of Expo, although Dubai South Free Zone Authority shall have a licensing function, a specially formed Expo LLC shall project manage matters. Expo LLC is preparing the structure to regularise the influx of manpower that will be required prior, during and after Expo in order that it can act as a one-stop shop for such matters.

Expo LLC (via each participating country’s assigned Country Manager) will assess the submitted country plans and thereafter will determine a visa quota for each participating country. A similar process will apply for participating companies.

It will only be possible to obtain visas for employees once the participating country/company is appropriately licensed. As noted, ultimately the license is issued by Dubai South but all participant interface will be with Expo LLC.

“With Expo 2020 fast approaching, it is important that participating countries and companies understand key employment and immigration issues.”
What immigration and employment restrictions should be borne in mind?

Upon completion of the licensing formalities (see above), it will be possible to obtain visas for a period of up to 18 months prior to the commencement of Expo with the latest date of expiry being 6 months after the event finishes. Accordingly, the longest period that a visa may be issued for Expo purposes is 30 months (18 months prior to the event, 6-month duration of Expo and 6 months’ post Expo). We anticipate that a streamlined process will be put in place to secure visas and Dubai South ID cards are processed promptly.

If a participating country or company requires an individual(s) to access the Expo site prior to the completion of the licensing formalities, it must apply to Expo LLC for approval. An example would be a visiting engineer attending the site to carry out a pavilion feasibility study. For such approval to be granted it will be necessary to set out information such as the reason(s) for and duration of the visit. Expo LLC will thereafter assess such an application before approving or declining access.

The license granted to a participating country shall cease 6 months after Expo. If there is a desire to retain a presence in the UAE post Expo, including the presence of personnel in the UAE, separate corporate structuring advice will require to be sought.

At present, we do not expect the introduction of additional employment legislation in respect of Expo albeit additional guidelines may be issued to supplant the existing suite of policy guidance.

What arrangements are in place for interns and volunteers?

In respect of interns for the event, they are often based in the UAE with a valid residency visa (eg. via a spouse or family member). In such a cases, the steps involved are limited including the provision of a no objection certificate from the legal sponsor and the requirement to obtain a Dubai South ID card.

Past Expo experience demonstrates that volunteers are a major cornerstone of a successful event. The relevant labour laws in the UAE do not specifically provide for volunteering. Despite that, the UAE government has introduced certain volunteering initiatives earlier this year with the aim of increasing volunteer participation. The government has identified 14 specific areas in which volunteering may take place. We expect that this will adequately cater for the requirements of Expo.

Volunteers must register on a designated volunteer platform online. Express provision has been made for Expo 2020 Dubai volunteers being added to the volunteer platform whereby volunteer opportunities are posted and applicants can apply online to participate.

We will continue to monitor Expo worker welfare developments with interest and will issue a further article in the likely event that further updates materialise in the coming months.

Al Tamimi & Company’s Employment team regularly advises on regional employment matters and provides key support to our Expo 2020 practice group. For further information, please contact expo2020@tamimi.com.
Expo 2020 aims to attract over 180 participating nations’, multi-national as well as small and medium sized corporates, and millions of people into the United Arab Emirates (“UAE”) and the Emirate of Dubai, in order to celebrate human innovation. The logistics of managing the risks associated with vast numbers of visitors has its challenges. In this article, we look at the arrangements in place to ensure health needs are identified and supported, not only while on the Expo site, but while in-country.

The regulator responsible for the delivery of health services to the national population, expatriate residents and visitors in Dubai is the Dubai Health Authority (“DHA”). As most visitors are expected to fly into Dubai and make this Emirate their base during the visit, it is expected that DHA will shoulder much of the burden of ensuring it caters for the delivery of health services.

Expo Health Framework

As part of its advance planning, DHA has developed an Expo 2020 DHA Contribution & Support Framework (“Health Framework”), planning ahead in order to be suitably prepared and resourced to provide the best health and organisational services.

The Health Framework identifies key strategic objectives which are directly linked to the objectives of the Expo:

1. Position Dubai as a global medical destination by introducing a value-based, comprehensive, integrated and high quality service delivery system;
2. Direct resources to ensure healthy and safe environment for Dubai population;
3. Promote public and private collaboration in Healthcare;
4. Foster innovation across the continuum of care;
5. Revamp the governance structure of DHA; and
6. Establish efficient decision support systems by ensuring an integrated data platform.

Unified process for managing the health of Expo visitors

DHA has developed a service charter for the Emirate of Dubai especially for Expo 2020 which caters for the needs of customers, visitors, and investors. Prior to the commencement of Expo 2020, DHA will create and use multiple communications channels to raise awareness of its commitment to providing information regarding the availability of health insurance, healthcare services, medical tourism and highlighting Dubai as a leading healthcare hub.

For participants and visitors requiring a visa (which in-turn requires having a medical
Priority projects and initiatives of DHA that are related to Expo 2020

In line with the key strategic objectives DHA is in the process of rolling-out identified priority projects and initiatives related to Expo 2020.

**Hasana**
The Public Health Surveillance Network that aims to monitor and reduce the spread of infectious diseases, follow up basic vaccinations and manage vaccination campaigns in Dubai.

**Sheryan**
A network of healthcare specialists among the UAE’s health authorities as the only source of approved data for the issuance of temporary medical licenses to some professionals enabling them to take care of the needs of exhibitors and visitors at Expo 2020.

**Dubai Heart Safe City Initiative**
Developing an effective response system to make Dubai the “Heart Safe City” in the world by adopting healthy innovations to combat heart attacks.

**Salama**
The unified electronic medical file that aims to create a unified electronic record for each patient, available in all the centers of DHA. It also provides doctors with accurate data on patients to help them in decision making, to achieve the best medical outcomes.

Strategy for Investment in the Health Care Sector
Strategy for investment in the health care sector and partnership with the private sector, including investment in the Emirate and the service of Expo 2020

**Salem**
An integrated intelligent system designed to improve the customer’s journey, reduce waiting time, and provide all services in one place, with the best methods, electronic systems and smart technologies.

**Dubai Health Experience**
A web site which will include a variety of travel information including how to obtain a UAE visa (if required), in addition to the option of booking the hotel and the round-trip tickets on Emirates Airlines. The site includes more than 17 hospitals, 45 health facilities and more than 600 health packages.

**Health Facilities Performance Assessment System**
A smart system measuring the performance of all health facilities in Dubai including an integrated star rating system that will be available for the public in the emirate.

**DHA Central Call Center**
A central Call Center as DHA’s first line of customer service, responding to customer’s inquires, booking medical appointments and ease the communication of customers with DHA through telephone, website and social media channels.

*Disclosed Source: DHA Expo 2020 DHA Contribution & Support Framework*
fitness examination) DHA will provide medical fitness services in an innovative way to ensure that the experience upon arrival is fast and efficient. This is expected to include processing visitors through an airport clinic upon arrival into the emirate, and a process to link all medical reports with the unified electronic file and the public health control system.

While staying in Dubai, DHA will provide primary healthcare services, emergency services and specialised medical services through it’s integrated hospital network of facilities and clinics. It is also expected to have a clinic on-site at Expo 2020, which again will link all medical reports with the unified electronic file system and the public health control system.

When the visitor then leaves the country DHA will provide all health reports to the visitor through a secure electronic portal called “my chart”.

Medical tourism and innovation

Dubai seeks to establish itself as a global hub for health tourism and innovation. In order to realise these objectives it is critical that the government of Dubai and DHA have a clear vision and strategy which will utilise Expo 2020 as a showcase for its services.

Recent legislative changes should improve the attractiveness of the emirate as a destination for medical tourism and innovation. Developments include new telehealth regulations, and initiatives based around the concept of ‘wellness’, that in turn are aligned with the ‘Emirates Vision 2021’ and emphasise the importance of preventive medicine to combat an increase in the prevalence of lifestyle-related diseases, and to identify and treat cancer, which is the third-leading cause of death in the country, after heart disease and accidents.

Public Private Partnerships

The DHA Investment Strategy 2017- 2020 has created an investment strategy that “Promote[s] Dubai as a viable and competitive hub for Investment in healthcare that address the needs of the Emirate and the future opportunities, and provide the best service for Investors and enable sustainable public-private model[s] in Dubai.” Initiatives range from creating incentives to promote public private partnership (“PPP”) investment, to reviewing and implementing regulatory changes that might encourage investment. A new piece of legislation is expected to be published later this year regarding PPPs in healthcare projects. These new and rapid changes are creating an attractive opportunity for foreign investment.

Conclusion

DHA has adopted a series of initiatives that will create a service delivery network of healthcare services for the Expo 2020 event, but that will also create opportunities for inward investment into the medical tourism and innovation strategy, thus ensuring it’s own Expo legacy.

Al Tamimi & Company’s healthcare team regularly advises on Middle East healthcare strategy, regulatory developments, and commercial matters and provides key support to our Expo 2020 practice group. For further information, please contact expo2020@tamimi.com.

“Dubai seeks to establish itself as a global hub for health tourism and innovation. In order to realise these objectives it is critical that the government of Dubai and DHA have a clear vision and strategy which will utilise Expo 2020 as a showcase for its services.”
With Expo 2020 on the horizon, businesses are marshalling their resources, skills and expertise to ensure that their participation in this universal exposition reaps the benefits sought. Preparations are well underway with entrepreneurs, start-ups, SMEs and conglomerates, from across the globe, working ceaselessly to host and make their events at Expo 2020 a success story. Yet in their haste to join in on all the action, some businesses, big and small, may be overlooking a fundamental cornerstone in their event planning and preparations. The cost of this oversight can undermine a business’s effort, hard work and financial expenditures and compromise key assets of their organisation - even before launch. How can this be?

The Goals, Shortfalls & Missing the IP Point

Like any other activity, businesses want their event to be prosperous, successful and most importantly profitable. Businesses will want their event at Expo 2020 to generate publicity to promote their products, identify new market opportunities and attain/maintain sustainable growth in their sectors. To achieve those goals, businesses will want to host an event that is unique, leading and, hopefully, innovative. This is where intellectual property (IP) comes into context. Whether their event entails—the launch of a new product, a new solution to an existing problem or the introduction of the business itself—the event must stand out. For the event to be all that and more, the business must invest the time and effort in the creation, and more importantly, the protection of the IP that goes into planning, preparing and executing a project. This, in turn, is where some businesses fall short, and end up asking themselves what went wrong and dealing with the consequences.

Businesses sometimes fail to recognise the value of the intellectual effort, creative ideas, concepts, designs, branding and formatting they put into planning and hosting their events. Although indispensable, daily operational concerns should not compromise strategic planning. While sometimes abstract, intangible and therefore difficult to recognise, some elements of
strategic planning are legally protectable in the form of IP. A failure to identify and protect relevant IP created as part of the event can cause adverse consequences, which can be costly to an event.

**IP Comprehension**

To understand the underlying causes for potential mishaps, understanding what constitutes IP is necessary. So, what is IP all about? To help answer this, the following quote from an article, the author wrote for the Dubai Multi-Commodities Centre last year, is useful: “IP represents the value of hard work, of creation and what the future might be. It’s the culmination of a thought and effort based development of something entirely new. It also represents vast fortunes that have been made by other people because clever people failed to protect what they own.” The preceding statement about IP ought to be a universal constant to all businesses. It applies unchangingly to any activity – especially so for event planning and hosting. IP in short can cover every unique aspect of an event, from concept, theme, design, decoration, artwork, animation, branding, whatever products the event intends to launch, to the entire event itself. Therefore, safeguarding relevant IP is vitally important to the success of an event. Without securing that IP, an event will be prone to several risks. In the next paragraphs, we will identify risks an event may face and go over a checklist of some of the most important safeguards.

**Some IP Safeguards**

**Copyright to the Event Concept**

The first building block of the intellectual effort that goes into planning an event, is the idea. Under IP law an idea cannot be protected so long as it remains unexpressed. Arguably, the verbal expression of that idea/concept ought to be subject to IP protection if the idea/concept is novel. However, quite often, proving that an event idea belongs to an individual or entity may be quite difficult. In absence of witnesses, idea theft, especially in the event planning and hosting business, is unfortunately quite common and goes unchecked/unpunished. Idea theft as such is the first pitfall to avoid.

Accordingly, recording an idea/concept in written form in absence of others would be one safeguard to resort to in planning for the event and avoiding idea theft. This recording secures your copyright to claim authorship to the written work, thus preventing others from taking credit for that work. If the idea
is a novel one, then the event plan/concept would be more valuable and the IP in it would require forms of protection, which are stronger than copyright (more on this below).

Maintaining Secrecy

Parallel to the copyright, planning for the development and disclosure of the event plan/concept to others is a key consideration. In this respect, one important safeguard to consider is that relating to secrecy. Try to treat everything about the event, before its launch, as a trade secret. Avoid the pitfalls accompanying premature publicity, press leakage and dissemination on social media channels. These can devalue your event at a very early stage by for example sabotaging planned surprises/novelties which would have best remained a secret. Even if certain aspects may come as no surprise as they are already known or the concept lacks innovation or is not creative enough, maintaining secrecy at this early stage is paramount as very few will know how the event planning may unfold in reality. As innovations may come about at any later stage (concept development, form and formatting, lay outs and designs, etc.), secrecy helps to protect the IP right to the entire process from the onset. Although, the UAE has yet to enact a federal trade secret law, many provisions exist in several UAE laws (the Penal Code, the Civil Code, the Commercial Code, the Patent & Designs Law (specifically the know-how provisions), the Cyber-Crime Law, the Labour Law and the Electronic Transactions Law). If you maintain secrecy, then these laws can help protect your secret from unauthorised forms of disclosure.

So how do you maintain secrecy? One obvious way is to keep the secret safely hidden and use all electronic and physical means available to safeguard it. Next, you must ensure that everyone who needs to know about the event plan/concept signs appropriate non-disclosure agreements (NDAs) before disclosing the event to them. The NDAs should not only require recipients of the information to keep whatever they hear and see a secret but they also require them not to use that secret to their own benefit or the benefit of others. To this end, the NDAs must be suitable for the purposes of the disclosure as well as for what is being disclosed – in this case an event concept/plan. Seeking legal counsel on drafting an appropriate NDA at this point would be quite helpful and prudent. Without having proper NDAs in place, enforcing your rights to a trade secret under UAE law will be quite difficult. As an event planner, you will therefore want to avoid this shortcoming at all costs.
As a further safety measure to maintain secrecy, before disclosing the event plan/concept, by way of a pitch or presentation for example, consider dividing and phasing out the disclosure. If you split up the pitch or presentation into smaller ones (if possible or practical) so that no one audience has, the entire picture of the event, you maintain secrecy and control over the information. For that purpose, you may want to consider dividing your event management into smaller teams and assigning different individual tasks to each of them so that they become part of the process but lack the oversight to the entire process. On this point, from a corporate perspective, the only person with complete oversight and control may be the business executive. As such, to safeguard a company’s interests, that person must also be bound by a robust agreement that requires them to not only acknowledge the company’s right to maintain secrecy but also refrain from using that secret to compete with the company at a later date.

Determining & Clearing Novelty

Another important safeguard to consider is that of novelty. If certain aspects of your event plan/concept seem innovative then seek a patent lawyer’s counsel on filing a patent application before doing anything else – even signing the NDAs in some cases. Under the UAE Patent & Designs Law, disclosing a secret innovation before filing for patent and/or design protection may cause you to lose the claim to the patent or design right in question. If innovations unfold at later stages and the signed NDAs are sufficient for the time being, then consider filing for a provisional patent under the UAE Patent & Designs Law, shortly before or at the very latest, the time of Expo 2020. Here as well, a patent lawyer’s input on such a filing is essential as further discussed below in the IP ownership section. Failing to pay attention to novelty may be a significant drawback to legally protecting your event from an IP perspective and may therefore result in losses.

In tandem with novelty (and even before filing any IP applications), one must also consider prior IP clearance searches. Though the event may appear to be leading and creative/innovative, you can never be certain that none of its components match or are confusingly similar to those of other works belonging to third parties. If the event is not innovative, then all the more reason for the prior IP clearance searches. Again, the involvement of an IP attorney at this stage is crucial. An attorney will be able to advise you what searches are necessary to ascertain if you are infringing anyone else’s existing IP rights to some or all aspects of your event concept. Clearing the IP rights to every component, based on the search results, will minimise the risk of an IP infringement claim that would cripple your event further down the road. Failing to conduct thorough clearance searches has been the shortfall of even large international corporate entities. Nike’s failed ‘LNDR’ ad campaign in the United Kingdom is a case in point. Because the right to the brand LNDR remained unclear, the prior registered owner of the brand successfully prevented Nike from using it. As a result, Nike had to scrap its ad campaign and with it any planned events for launching its new products, incurring substantial costs in the process (estimated at £10 million).

IP Ownership & Registration

If the IP rights are clear then one more very important safeguard is that relating to IP ownership. As the owner of a business that is overseeing and managing the event concept development and planning, you will want to secure all IP rights in favour of your company. This means everyone involved in the event preparations, from brand development to theme and concept creation to planning and executing, must assign their IP rights to the company. Everyone must also provide IP waivers where necessary to the company. Seeking such protections should apply, without exception, to serve the best interests of the company. Vesting all IP rights in the company minimises the risk of having those rights dispersed, unidentified and undervalued, especially so if the event is successful. You will want to avoid having former employees, prior experts, consultants and contractors you hired in the course of the event-planning, claim any IP rights against you because they are retaining ownership of those rights.

Additionally, under UAE IP laws, you will want to register your ownership of the IP before anyone else does. Therefore, consider
“Businesses sometimes fail to recognise the value of the intellectual effort, creative ideas, concepts, designs, branding and formatting they put into planning and hosting their events.”

with your IP counsel, filing to register the IP with the UAE Ministry of Economy immediately after or in tandem with having secured all necessary assignment and waivers and securing any domain name rights online as well. Without such registrations, enforcing your IP rights in respect of the event with the UAE authorities will be extremely difficult. Lastly, if the event is a success after its launch, consider at that point assigning all those registered IP rights again to a separate IP holding company to isolate the IP from any liability claims. Again, here, seek an IP counsel’s advice on the suitable corporate vehicle for that purpose.

Documenting and Recording

One further safeguard relates to document retention. Best practice dictates every major milestone leading up to the event should be documented and recorded (preferably also audio-visually when possible/feasible), from conception to disclosure, to planning/preparation and to event execution/hosting. Having a record of what transpired during the entire process, what was disclosed, what was agreed, how it was planned and executed and what made the event a success, ensures you accurately capture all the facts on which you would claim your IP rights under UAE law. Such a record will come in handy at later stages for various purposes including but not limited to IP due diligence exercises, IP valuations and evidentiary requirements.

Conclusion

The above checklist of safeguards serves only as a general overview and guidance for what to look out for when planning an event. These safeguards are by no means an exhaustive list of all the steps necessary for determining how best to proceed or in what order to follow them. They also surely do not replace proper legal advice and counsel as much depends on the details of each event and all the variables surrounding the project. Nonetheless, the foregoing checklist is a good starting point to consider the various issues at stake going into the event planning and preparations for Expo 2020.

Al Tamimi & Company’s IP team regularly advises on the full spectrum of IP matters and provides key support to our Expo 2020 practice group. For further information, please contact expo2020@tamimi.com).
The 1984 Olympic Games in Los Angeles are notable for several things. US Athlete Carl Lewis picked up an amazing 4 gold medals. The particularly 1980s pastime of windsurfing was included as a sport. It was the first time that organisers limited the number of sponsors that could be attached to the Olympic Games, arranging tiers of high value sponsorship and limiting sponsors to one per product category. Commercially, the Games were funded privately, and remains one of the few games to ever make a profit.

In addition, the 1984 Olympic Games recorded the first acknowledged case of ambush marketing when Kodak, then the world’s most popular film for cameras, lost the right to sponsor the Games to its rival Fuji Film. In retaliation, Kodak sponsored the US broadcast of the Games on NBC, and sponsored the entire US team. The vast majority of viewers of the games believed that Kodak was the sponsor, angering both the IOC and Fuji Film. Since then, organisers of sporting events and large scale commercial events (such as Expo 2020) have been seeking ways to ensure that companies that have no commercial sponsorship rights do not act in a way that leverages off the goodwill of the event in a way that devalues the benefits provided to the actual sponsors of that event.

Types of Ambush Marketing

Since the early days of ambush marketing, marketers have become extremely clever at developing ways for non-sponsoring brands to create false links to major events.

They may do this by attempting to create an association with the event itself. A very clever example of this, and one that was successful and remained unchallenged by the organisers...
because of its simplicity, was the association that Beats by Dr Dre headphones made with the 2012 London Games by providing free headphones to the British athletes.

The other method is ambush by intrusion in this case the brand sends its brand into the stadiums of event locations and exposes it to cameras. Early amateur examples of this saw brands paying people to stand behind goals or near interview subjects with cardboard placards bearing the brand logo, although the levels of sophistication have escalated significantly since then.

Brands sometimes ‘coat-tail’ a marketing association. Whilst not event sponsors, they may sponsor a competitor or provide equipment to a key member of the team. Similar to this they may use distractive ambushing – they may set up a smaller event (such as a concert or DJ event) near the main event to gain traction with fans.

The Brazil 2014 World Cup saw the rise of a new and more difficult category of ambush marketing – the social ambush, involving the use of hashtags. Hashtags are often extremely opportunistic – happening within minutes of a notable occurrence at the event. For example, when Suarez bit an opponent in the 2014 World Cup, Snickers response was swift and went viral: “Hey @luis16suarez. Next time you’re hungry just grab a Snickers. #worldcup #luissuarez #EatASNICKERS”. With a staggering 672 million Tweets created for World Cup 2014, and with social media continuing to increase its role in marketing across the board, we can expect this difficult area of ambush marketing to become more prevalent for future events.

Some of these types of ambush marketing are more palatable to event organisers than others. Unfortunately not all are easy to control.

Legal Basis for Ambush Marketing

It has always been difficult for lawyers to find ways to deal with ambush marketing. In some cases, it can be claimed that the marketing campaign is infringing on the IP rights of either the event organiser or possibly even the official sponsor. There may be some assistance from competition laws, where they extend to passing off. Perhaps a little legal relief may be gained from the advertising regulations of the country in question – can

“Plan outcomes early and then develop action plans and template letters to cover all possible types of ambush marketing so that management has approved both the plan and the letters well in advance. Create a Protocol and Action Handbook that all staff from all stakeholders can have on hand so that everyone knows the process, timing, approvals and documents that are to be used. Time cannot be lost in seeking approvals when the event is actually in progress and in addition, a united front will assist all stakeholders to a better (and expected) result.”
it be perhaps argued that the advertising is deceptive in seeking to create a link with the event that does not exist?

Beyond this, the law becomes increasingly unhelpful.

Historically, the strongest way to deal with ambush marketing was to register a suite of trademarks and, then, using the trademarks legislation to bring action for infringement. However, this is increasingly less helpful as non-sponsoring brands become more adept at using subtle ways to imply a link to the event without the use of the trademarks involved. Clever marketing executives work with clever lawyers, and together they navigate a campaign idea though the many legal gaps.

Whilst some countries may be able to rely on their trade practices or competition laws, these will not be as helpful in the UAE. There are no ‘look and feel’ rights associated with an event, and no laws that say that a company cannot act in a way that compromises contractual rights of a third party. It is possible that the event organiser and the event sponsor would find that, legally, they have few (or no) options in a courtroom.

Because of this common gap in the laws, many countries implement event-specific laws to protect both the organisers and the event sponsors from ambush marketing. For example, for the Russian 2018 World Cup, the Russian government passed Federal Law No. FZ-108 in 2013. This follows the pathway set by past governments seeking to protect large events that are held in their countries – enacting laws designed to provide quick solutions to the problems of ambush marketing. Generally speaking, these laws create new offences relating to the creation of any unauthorised association with the event – for example the Russian law is drafted broadly and captures anything that might falsely suggests that the product has the approval, recommendation, certification by, or connection with FIFA or the World Cup. The laws include heavy fines which can be implemented by the government itself, bypassing the need for any civil case to be launched.

Without such laws in place well before the start of the event, the event organiser can expect to have a much more difficult time in preventing ambush marketing activities. But it is wise to remember that, even with such laws, an event organiser may struggle to stop an advertiser from, say, using a football game within its advertising during a World Cup, or referencing a world trade exhibition during an Expo.

Reacting to Ambush Marketing

Any entity with a large event approaching needs to strategise carefully its reaction to ambush marketing. Our suggestions include the following:

1. Very large events, such as Expo 2020 or the Asian Cup 2019, must have as much government support as possible in the form of comprehensive and well-crafted legislation to allow a fine to be levied against undesirable activity.
2. Where press is to be properly authorized for entry to the event, it should be made clear that any form of ambush marketing, even if only carried by that press outlet as advertising, will permit the cancellation of the press badges of all their correspondents.
3. Come to an understanding with key stakeholders about the scope of ambush marketing – what they will and will not allow. Obviously the key element is to consider whether the ambushing brand is trying to deceive consumers into thinking that they are associated with your event. But you should make sure that you consider the fine points of what association means to each of you. If a brand posts “We are proud to be part of #Expo2020 this year” that may be too far from most stakeholders. But what about a post that is less direct and simply reads: “Congratulations to #mydubai on the opening of #Expo2020”? Do stakeholders all agree that this is less direct, aimed at creating a link to the trending hashtags as much as the event. Is this worth chasing? It is important to know the position of all stakeholders in advance.
4. Ensure all key stakeholders are aligned on the actions that will be taken under point 3. For example if the plan for ambush by intrusion is to remove the item that will be creating the ambush inside a venue, it is imperative that all stakeholders are aware of that
planned action, from government to broadcaster, from sponsor to security company.

5. Plan outcomes early and then develop action plans and template letters to cover all possible types of ambush marketing so that management has approved both the plan and the letters well in advance. Create a Protocol and Action Handbook that all staff from all stakeholders can have on hand so that everyone knows the process, timing, approvals and documents that are to be used. Time cannot be lost in seeking approvals when the event is actually in progress and in addition, a united front will assist all stakeholders to a better (and expected) result.

6. And finally, plan your social media tone and voice carefully and ensure adequate trained resources are available to react quickly to any social ambush.

Conclusion

Whilst event sponsors are carefully planning and managing their marketing executions around the next big event, non-sponsor brands are similarly planning strategic and clever ambush marketing campaigns. Event organisers cannot do enough planning to ensure that the reactions taken to such ambush marketing are concise, controlled and consistent – to do anything else could severely compromise the position of their sponsors and affect these important contractual relationships.

Al Tamimi & Company’s TMT team regularly advises on the full spectrum of technology, media and telecommunications matters and provides key support to our Expo 2020 practice group. For further information, please contact expo2020@tamimi.com).
Catching the wave: 
New Data Protection Law in Bahrain

Bahrain's Law on the Protection of Personal Data was published on 19 July 2018, and will come into effect on 1 August 2019. The Law will require a variety of changes to the way businesses process personal data in Bahrain or about residents of Bahrain. Data protection has not been a high priority topic for most businesses in Bahrain, with the limited exception of international entities subject to data protection requirements in other jurisdictions in which they operate. While the publication of the new Law provides a considerable lead-in period within which entities subject to the Law will need to comply, the fact that the Law creates criminal offences means that compliance is all the more important and should be treated as a high priority.

Until now, and with one exception (namely, Qatar), none of the Gulf Cooperation Council member states had a modern, nationally applicable data protection law. Legal issues relating to privacy and data protection are typically analysed in terms of general, and ill-fitting, criminal provisions relating to the unauthorized disclosure of secrets, or – in appropriate circumstances - industry-specific obligations relating to healthcare or credit data, or telecommunications sector subscriber data.

The Law is generally composed of 60 articles divided into three broad sections or ‘titles’. These are:

• Title 1: Processing Provisions – Including definitions and general rules for the legality of processing, controls of data processing and transfer, statements as well as the rights of the data holder.
• Title 2: Data Protection Authority - Including provisions relating to the establishment of the regulator, and its rights and responsibilities.
• Title 3: Accountability of the data manager (data controller) and data processor – Including provisions relating to accountability to the regulator, investigation procedures, civil and criminal liability, and penalties for violation.

In this article, we consider some key areas addressed in the Data Protection Law.

Application

Bahrain's Data Protection Law describes the legal protection of personal privacy as among the main constitutional rights of the person, and notes that it should be protected, particularly in the context of the increasing use of electronic/digital means for processing information.
The Law applies to:

- Every individual residing normally in Bahrain or having a workplace in Bahrain, and every legal person (corporate) having a place of business in the Kingdom of Bahrain; and
- Every individual not residing normally in Bahrain or having a workplace in Bahrain, and every legal person (corporate) not having a place of business in the Kingdom of Bahrain, where such persons are processing data using means available in Bahrain, except where such processing means are solely for the purpose of passing data through Bahrain.

In this latter scenario, the legal person (corporate) is required to appoint an authorized representative in Bahrain, and notify the Authority of such appointment. This provision would appear to affect, for example, corporate customers of cloud service providers, where the customer is based outside Bahrain, and the services being provided to the customer are being provided from data centres located in Bahrain.

Criminal provisions

The Law criminalizes a variety of acts that would, at most, be the subject of administrative penalties in data protection laws elsewhere. Penalties generally comprise up to one year in prison and/or a fine of between BHD1,000 and BHD20,000 (between about USD 2,600 to about USD 53,000) (or a fine only in the case of corporate entities). The following are examples of activities that attract criminal penalties under the Law:

- processing sensitive personal data in violation of the provision specifying requirements for processing sensitive personal data;
- transferring personal data outside Bahrain contrary to the provisions specifying requirements for transfers to jurisdictions that provide an adequate level of data protection, and associated exceptions;
- processing personal data without notifying the Authority in accordance with the provision that sets out the obligation to notify the Authority before commencing any data processing activities (except where certain exceptions apply), or failing to update such notification to the Authority;
• Processing personal data contrary to the provision that requires prior authorization from the Authority before processing personal data in certain circumstances;
• Providing false or misleading information to the Authority or to a data subject, or withholding relevant information from the Authority, or otherwise hindering the Authority’s work; and
• Disclosing any data or information accessed due to work, or using the same for own benefit or for the benefit of others unreasonably and in violation of the provisions of this law.

Security considerations

Generally, the security of processing provisions, and the confidentiality provisions, appear to be fairly standard.

Data controllers are required to apply technical and organizational measures capable of protecting personal data against unintentional or unauthorized destruction, accidental loss, unauthorized alteration, disclosure or access, or any other form of processing. The measures adopted need to be appropriate, bearing in mind the nature of the data in question and the risks associated with processing it. The Law also indicates that ‘state-of-the-art’ technological protection measures should be adopted, but this is tempered by reference to the costs arising from use of such technology.

Additionally, the Law contemplates the issuance of a regulation specifying requirements that technical and organisational measures must satisfy. It also provides scope for specific requirements to be prescribed in such regulations.

Data controllers are required to maintain documentation that reflects the technical and organizational measures adopted. This documentation must be available for viewing by the parties concerned (presumably, including data subjects), as well as the Authority, any data processors, and the data controller itself.

With regard to processing by data processors, the Law requires data controllers to engage only data processors who provide sufficient guarantees regarding the application of technical and organisational measures. Importantly, there is an obligation on data controllers to take steps to verify compliance with such measures, and to enter into a written contract with the data processor requiring that the data processor shall only process data in accordance with the instructions of the data controller, and in accordance with the data controller’s requirements with regard to security and confidentiality.

There does not appear to be any specific obligation to notify the Authority in the event of a data breach incident. It is possible that this level of detail might be addressed in the regulations, or that the Authority is expected to address breaches only in the event that they become aware of them, and the circumstances indicate a breach of the obligation to use suitable technical and organizational security measures.
Data protection supervisor

The Law contemplates a role of ‘Data Protection Supervisor’ (which is not a data protection officer) intended to act as an independent and impartial intermediary between the data controller and the Authority.

The data protection supervisor will help the data controller fulfil its rights and obligations, and coordinate between the data controller and the Authority. It will also be required to verify the data controller’s processing in compliance with the law, alert the data controller to any apparent non-compliance to enable the issue to be addressed, and alert the Authority where such non-compliance has not been addressed within a specified timeframe. The data protection supervisor will also be required to maintain a register of the data controller’s processing operations that the data controller must notify the Authority, and update the Authority of the same on a monthly basis. (If no data protection supervisor is appointed, then the data controller is required to do this itself.)

The qualifications and requirements for registration as a data protection supervisor will be officially issued, and data protection supervisors will need to be registered on a register maintained by the Authority. The requirement to appoint a data protection supervisor is optional, although it may be made compulsory for specific categories of data controllers.

The concept of a data protection supervisor has the potential to result in a whole new industry in the Bahrain market. The regulations setting out the requirements for the registration of data protection supervisors may shed greater light on what is anticipated, in terms of who might be able to fulfil such roles. The most natural development may be for the role to be filled by consulting/audit firms with expertise in data protection related issues.

Conclusion

Bahrain’s new Data Protection Law will require a great deal of attention from businesses operating in Bahrain. Data protection has not been a high priority topic for most businesses in Bahrain, with the limited exception of international entities subject to data protection requirements in other jurisdictions in which they operate. While the publication of the new Law will result in some degree of a lead-in period within which entities subject to the Law will need to comply, the fact that the Law creates criminal offences means that compliance is all the more important and should be treated as a high priority.

Al Tamimi & Company’s Technology, Media & Telecommunications team regularly advises on issues relating to data and data protection, and often works closely with the firm’s Employment specialists in doing so. For further information please contact Nick O’Connell, Partner - Technology, Media & Telecommunications (n.oconnell@tamimi.com) or Zahir Qayum, Senior Associate – Employment (z.qayum@tamimi.com).
Amended Arbitration Legislative Framework in Jordan

On 29 March 2018, His Highness King Abdullah Al Thani Ibn Al Hussein promulgated Law No. (16) for the year 2018, a law amending the Jordanian Arbitration Law No. (31) for the year 2001 (the “Amended Law”).

The Amended Law introduces new and anticipated changes to the procedural framework of arbitrations seated in Jordan, many of which can be traced in the UNCITRAL Model Law as amended in 2006. Further, the Amended Law provides for much needed clarity on some of the ambiguities witnessed under the previous regime.

In this article, we highlight the key features of the Amended Law and discuss some of their practical implications on the conduct of arbitral proceedings in Jordan.

Scope of Application

The Amended Law came into force thirty (30) days after its publication in the Official Gazette No. 5513/2018 dated 2 May 2018. The Amended Law will apply to arbitrations seated in Jordan, as well as arbitrations in which the parties agree to subject such arbitration proceedings to the Amended Law, and irrespective of the nature of the legal relationship giving rise to the dispute.

To this end, the Amended Law defines the “Seat of Arbitration” as "the country agreed upon by the parties to the arbitration to be the seat of the arbitral proceedings, the country whose applicable arbitration law is agreed upon by the parties to apply to the arbitral proceedings or the country selected by the arbitral tribunal as its seat in the absence of an agreement."

The Amended Law further defines the “Competent Judge” as "The head of the Competent Court or any of its judges as authorized by the head of the Competent Court in writing."

It is worth noting that the Amended Law will not have a retroactive effect. As such, it will only apply to arbitral proceedings and/or court cases that have commenced or are currently ongoing and/or being examined before arbitral tribunals and/or courts. For purposes of determining the commencement date of arbitral proceedings, the
Amended Law, under article 26, considers the date of the formal constitution of the arbitral tribunal as the date of commencement of the arbitral proceedings.

**Interpretation**

An important addition reflected in the Amended Law is the explicit reference to legal principles and guidelines of international arbitration, as well as international trade customs, as sources of interpretation of the provisions of the Jordan Arbitration Law.

**The Arbitration Agreement**

The Amended Law has brings changes to the rules governing arbitration agreements. While the Amended Law has reconfirmed the writing requirement for the validity of arbitration agreements, it specified that the writing requirement can be satisfied through any form, including electronic correspondence. A welcome change in the Amended Law lies in the explicit admission of arbitration agreements incorporated by reference. There are indeed instances where an arbitration agreement may be incorporated by reference to an arbitration agreement contained in another document. Under the previous regime, an arbitration agreement incorporated by reference was regarded as valid provided the reference itself clearly considered the arbitration agreement to form part of the main agreement entered into between the parties. The Amended Law eases the conditions of validity of arbitration agreements by removing the requirement for an explicit acknowledgment that the arbitration agreement incorporated by reference forms part of the main agreement. Under the regime of the Amended Law, any reference or indication contained in the main agreement concluded between the parties to another document containing an arbitration agreement is deemed to be analogous to a written arbitration clause under the original agreement. This is particularly useful in instances where parties sign specific terms and conditions which contain a reference to general terms and conditions containing an arbitration agreement.

The Amended Law also stipulates that prior arbitration agreements in employment contracts and consumer contracts concluded on preprinted forms shall be null and void. This amendment, in particular the ban on arbitrating any dispute that may arise out of an employment contract, is in line with the most recent and prevailing decisions of the Jordanian courts.

**The Arbitral Tribunal**

The Amended Law introduces provisions relating to the number of arbitrators, their appointment and the designation of the presiding tribunal member in events where the disputing parties are 3 or more. According to Article (16) of the Amended Law, an agreement on the appointment and number of arbitrators as well as on the mechanism of appointing the presiding member by the disputing parties shall always take precedence and prevail however, in absence of any such agreement: (i) the Competent Judge will appoint the arbitrators if their number was agreed upon between the disputing parties and will also name the presiding tribunal member and; (ii) Where the number of arbitrators and their method of appointment is not agreed upon by the disputing parties, the arbitral tribunal must then be comprised of 3 members appointed by the Competent Judge who will also name the presiding tribunal member and; (iii) if the number of arbitrators and their method of appointment was known, the appointed arbitrators must select the presiding member by a majority decision, if the majority was not achieved, the Competent Judge will name the presiding member pursuant to a request by any of the disputing parties. The Amended Law grants any of the disputing parties the right to resort to the Competent Judge in event of a disagreement as to any of the matters pertaining to the appointment of arbitrators who, in turn, must rule as necessary to resolve such disagreement. Finally in this regard, the Amended Law placed a duty on the Competent Judge, when selecting an arbitrator, (i) to consider the requirements of the law and the parties’ pre-set conditions in this regard and; (ii) to accelerate the process of decision making when selecting an
arbitrator. Under the previous regime, decisions by the Competent Court appointing an arbitrator(s) were not subject to appeal before a higher court and were to be considered final. The Amended Law, in this regard, implicitly allows for an appeal of the Competent Judge's decision by deleting, from the amended relevant article, the previous explicit text on the appeal constraints.

As for the challenge of arbitrators, the Amended Law placed a duty on both the prospective and appointed arbitrators to be impartial and independent. The Amended Law, in line with the UNCITRAL Model Law, places a continuing duty on the arbitrators to remain impartial and independent throughout the arbitral proceedings and imposes a duty on the arbitrators to disclose any such circumstances that may cause their impartiality or independence to be impaired.

Under the Amended Law, the application for the disqualification of an arbitrator by a party must be based on serious grounds. In addition, the procedures for requesting an arbitrator to be recused have been amended. Under the previous law, a request challenging the impartiality and independence of an arbitrator was to be submitted to the court of appeal; however, under the regime, the same request must now be submitted to the arbitral tribunal itself, which, in turn, must refer the request along with the challenged arbitrator's response to the court of appeal if the challenged arbitrator does not recuse himself.

In line with the UNCITRAL Model Law, the Amended Law contains a special provision with regards to placing an obligation on the arbitral tribunal to act fairly and impartially and ensure that parties have an equal opportunity to present their case. The arbitral tribunal must also avoid any unjustified delay or unnecessary expenses in order to resolve the dispute in a timely manner "for the sake of achieving a fair and urgent means for dispute resolution."

In relation to the arbitral tribunal's fees, the Amended Law introduced a new provision regarding the fees of the arbitral tribunal. Pursuant to such a provision, and in absence of an agreement between the disputing parties and the arbitral tribunal on the fees, the arbitral tribunal shall determine its own fees and order the disputing parties to each pay their share equally. A very important, yet lopsided addition under the Amended Law lies in a clause granting the arbitral tribunal the right to order the compliant party to pay the defaulting party's share of the arbitral tribunal fees in events where a disputing party defaults in paying their share of the tribunal fees or any expenses of arbitration. Any decision issued by the arbitral tribunal concerning its fees may now be challenged through an appeal before the court of appeal within (15) days from the date of notification of the parties of the same.

The Arbitral Proceedings

The Amended Law now allows Jordanian lawyers to "engage any non-Jordanian lawyer or any other professional and experienced person, if the contract subject matter of the dispute referred to arbitration is subject to the provisions of a foreign law." Such an addition on the recourse to foreign legal counsel, as well as other relevant professionals to instances where the contract at issue in an arbitration is governed by the provisions of a foreign law, and by a means of assistance to the Jordanian lawyer, is favorable. It is regrettable, however, that the Amended Law did not make any provisions as to permitting non-Jordanian representation in arbitral proceedings where the underlying contract is governed by Jordanian law.

The Amended Law reconfirmed that Arabic shall be the default language applicable to the arbitral proceedings unless the parties agree otherwise. The arbitral tribunal is also entrusted with the power to determine the application of another language.

It is also worth noting that the Amended Law now allows the parties, at any time during the arbitral proceedings, to submit additional evidence to support their claim/defense unless the arbitral tribunal disapproves such submission. This new addition to the Amended Law was not provided for under the previous regime as the parties were only allowed to amend their grounds of defense and their final requests but were not permitted to submit any additional evidence.

The Amended Law also introduces major and welcomed changes to the means through which arbitration hearings and proceedings can now be conducted. Under the Amended Law, the arbitral tribunal is granted greater leeway in holding the hearings in a manner the tribunal sees fit so long as the hearings and the meetings can be documented in writing. The Amended Law introduced various provisions recognizing contemporary means of communication as it now permitted the arbitral tribunal to use any new method of communication to conduct any arbitration procedure, including the use of different telecommunication technological methods, such as videoconferencing for the purpose of hearing witness testimony. Such cost and time effective measures will undoubtedly contribute to the efficiency of the proceedings.
The Amended Law also reiterated the acceptance of affidavits, i.e., sworn statements of testimony, as evidence in arbitral proceedings. However, the Amended Law provided that should the opponent wish to cross examine the witness and the latter fails to appear before the arbitral tribunal, the entire affidavit must be ruled out as evidence.

As for experts, the Amended Law sets new conditions for the admission of expert reports where any of the parties to the arbitration submits such reports with their documentary evidence. For the expert report to be admissible under the Amended Law, the submitting party must disclose the expert appointment letter, the scope of work/assignment of the expert, and the fees that were paid to them. It is mandatory, under the Amended Law, to call the expert for questioning at the request of a party or should the tribunal so decide. As for the appointment of the expert, the Amended Law introduces an option for the appointment of a juristic person (company) as an expert as opposed to solely an individual as was the case under the previous regime.

**Interim and Conservatory Measures**

Where either party wishes to apply for interim or conservatory measures, the Amended Law, like the previous law, allows the arbitrating parties to do so prior to the commencement of arbitral proceedings or during such proceedings in accordance with the relevant articles of the Jordanian Law of Civil Procedures No. (24) for the year 1988.

The Jordanian Law of Civil Procedures No. (24) for the year 1988 provides that a claimant may apply to the judge of summary proceedings for a motion to attach and/or freeze property of the defendant party as a precautionary measure either prior to the filing of the substantive lawsuit or along with it. Where the motion is made prior to filing the substantive lawsuit, the Jordanian Law of Civil Procedures stipulates that the substantive lawsuit must be filed within a period of eight (8) days after procuring the decision to attach/ freeze the properties of the defendant, otherwise any or all (where applicable) attached properties will be released.
For the purpose of upholding the attachment of property after the (8) day period, the Amended Law now considers a notice to appoint an arbitrator served by the claimant upon the respondent along with the appointed arbitrator’s written confirmation of acceptance to be sufficient as a time barring event for the running of the (8) day period mentioned under the Jordanian Law of Civil Procedures. Such a trigger event to the confirmation of the attachment may cause some practical challenges as often the appointment of an arbitrator comes at a later stage in the proceedings, after the request for arbitration. In some urgent cases, the need to sustain the attachment would have to occur prior to the appointment of an arbitrator. Also, in some instances, the power to appoint an arbitrator, and depending on the agreement among the parties, lies outside of the parties, through for example an appointing authority.

The Award

As for the time limit within which the arbitral tribunal must render its final award, the previous regime provides that such time limit shall start to run from the date of the commencement of the arbitral proceedings until the lapse of a twelve (12) month period. The extension provided for was for only another six (6) months. The Amended Law provides for the same period; however, the time limit shall start to run from the date of the constitution of the arbitral tribunal. The arbitral tribunal may in any event extend the time limit for a period of twelve (12) months or as otherwise agreed by the parties.

In relation to the final arbitration award, the Amended Law provides that the final award must be issued unanimously or by a majority decision. In the absence of a majority, the parties may agree that the award be made by the president of the arbitral tribunal alone. If the parties do not agree as to how the award
set aside could be appealed before the cassation court. However, in the event that the court of appeal dismissed the set aside action and decided to uphold the arbitration award, such a decision could not be appealed against. The Amended Law stipulates that the only competent court for the purpose of filing a set aside action is now the cassation court, thereby reducing the stages of appeal to only one in the event that the cassation court rules to set aside the arbitration award. Therefore, should the cassation court rule to set aside the award, neither party further may appeal the decision. This is in contrast to the previous law under which there were two steps to an appeal since a set aside order by the court of appeal was subject to appeal before the cassation court.

Previously, the arbitration law provided that a decision to set aside an arbitration award would consequently render the arbitration agreement nullified as it results in litigation unless both parties agree on further arbitration. The Amended Law however provides that a decision to set aside an arbitration award does not affect the arbitration agreement unless such an agreement was in itself null void. This consequently means that the disputing parties, in the event an arbitration award is set aside, must resort again to arbitration as a method of dispute resolution.

The Amended Law also transferred the role of examining enforcement applications to the sole jurisdiction of the cassation court as opposed to the court of appeal as was the case under the previous law. The Amended Law has withdrawn a party’s right to appeal the court’s decision rejecting enforcement due to incorrect service of summons or due to impossibility of enforcement when the award itself contravenes with public order.

**Conclusion**

As part of Jordan’s efforts to stimulate its economy and attract foreign investments, the Amended Law provides a comprehensive reform to the legislative framework of arbitration in Jordan. It undoubtedly provides a more modern and secure means of dispute resolution through arbitration in line with most internationally recognised arbitration guidelines and practices. With the Amended Law, arbitrating in Jordan is expected to gain new traction.

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Seeking your rights under a commercial mortgage? Do NOT file a case!

Here is your typical scenario: you are a bank and have entered into facility agreements with your clients against which possessory pledges over movable assets have been granted (that is, not a mortgage on land). Your client breaches the agreement and this has triggered your entitlements under the mortgages; You file a civil case before the court to give effect to the mortgage and invoke your rights, correct?

Far from it. You could be in violation of the applicable procedures of enforcing a possessory pledge. A recent judgment revealed that filing a civil case for the enforcement of a possessory pledge is the incorrect way, in terms of procedure, to claim the rights thereunder which may led to the dismissal of the case. The trap is an easy one to fall into.

Case background

The Claimant, a bank, had filed proceedings relying on Article 1128 of Law No.22 of 2004 Promulgating the Civil Code (“the Civil Code”) for the enforcement of its rights under a possessory pledge granted in connection with a facility agreement with the Defendant. Article 1128 defines a possessory pledge as a debt security issued by the debtor to the creditor where the creditor has the right to retain the collateral secured under the pledge until the debt is fully paid. The Article, which does not apply to mortgages on land, states:

“Possessory pledges shall be defined as a contract by which a person undertakes, by providing security for a debt owed by him or by a third party, to deliver to the creditor or to a stakeholder appointed by two contractors, a property which entails a material right to the creditor who is thereby authorized to retain the property until the debt is fully paid, and to have priority over normal creditors and creditors of a lower rank after acquiring his right from the price of this property, no matter under whose control it may be.”

The court dismissed the case, deciding that Article 1128 was inapplicable to the case at hand because it was the incorrect procedure. The correct procedure that the Claimant should have pursued was to apply for an injunction order – which is in itself a fast-track procedure.

The legal framework explained

The decision of the Court is the result of a domino effect of a series of interlocking legal provisions, leading to the following conclusion: a commercial entity, such as a bank, carrying out commercial activities is subject to the provisions of the commercial law. The commercial law on possessory,
movable asset pledges requires that an injunction order is first applied for in order to enforce a commercial mortgage.

The sequence prescribed by law should be observed by any party wishing to enforce a possessory pledge in Qatar and develops as follows:

First and foremost, under Article 1156, the Qatari Civil Code expressly defers itself to any commercial laws where the latter provide for particular provisions regarding possessory pledges. As such, Law No. 27 of 2006 Promulgating the Trading Regulation Law (the “Commercial Law”) does contain provisions particularly addressed at possessory pledges. Article 233 of the Commercial Law defines commercial mortgages-namely:

“Commercial mortgage means transferring property as the debtor’s security for a commercial debt[...]”

When is a possessory pledge considered a commercial mortgage? The answer is where it is related to commercial activities undertaken by commercial entities.

Article 12 of the Commercial Law, states that anyone performing a commercial activity in their own name as their occupation taking on any commercial form is considered as a commercial entity/trader. Applying the same to the above-mentioned case, does a bank fall under the above category? It may be unclear on the face of it, but Article 5(1) of the Commercial Law expressly states that banking transactions fall under the ambit of commercial activities.

Thus, where a possessory pledge is deemed to be a commercial mortgage based on the above, Article 241 of the Commercial Law expressly provides the way that the rights under such mortgages can be enforced, namely, that the creditor shall seek ‘an injunction order to sell all or part of the mortgaged property.’

The above provisions, in light of the Civil Law’s deference to the Commercial Law, together led to the conclusion that the enforcement of possessory pledges, which are considered to be commercial mortgages, shall be sought via an injunction order. Where an injunction order is neglected, the case may be dismissed.

**Conclusion - So, what do you do?**

If you have a possessory pledge over movable assets and you wish to exercise your enforcement rights, make sure you:

1. determine if the pledge is a commercial mortgage or not and, accordingly;
2. identify the correct legal procedures to enforce that pledge.

If the possessory pledge in question is a commercial mortgage, always start by applying for a fast-track injunction order in the Qatari Civil Courts. That is not to say that filing for an injunction order is immune to dismissal or that enforcement is certain, it is at discretion of the Court to grant the injunction. However, at the very least, abiding by the correct claim procedures: (a) eliminates the risk of dismissal based on procedural incorrectness, and/or (b), potentially increases the chances of success when filing a case on the merits. Should an application be correctly brought by way of an injunction order, and be dismissed, a bank can then attempt alternatively to bring a case on the merits arguing that all other “correct” forms of the claim have been exhausted and rejected.
Guiding Charter for Family Owned Businesses in Saudi Arabia

The Saudi Arabian Ministry of Commerce and Investment ("MoCI") issued a Guiding Charter for Family Owned Businesses ("Charter") on 02-08-1439H corresponding to 18-04-2018G.

This article will provide a summary of the key provisions of the Charter and the added benefits it will bring to family owned businesses in Saudi Arabia ("FOBs" or the "Company" as the case may be).

FOBs play an important role in Saudi Arabia’s economy, investment environment and job market. However, despite their various contributions to the economy, FOBs have at times failed to realize their full potential due to various factors some of which include a lack of transparency with respect to the management and operations of the Company, inadequate succession planning and the absence of a well-defined dispute resolution mechanism for addressing conflicts within the Company.

Although the Charter is not binding, the issuance of the Charter is a welcome development as its main aim is to promote the growth of FOBs in Saudi Arabia, and provide them with a set of guiding principles that will allow them to operate in line with international best practices and standards.

To which Companies does the Charter apply?

The Charter is intended for use by FOBs that are incorporated as closed joint stock companies in Saudi Arabia.

FOBs that are listed on the Saudi Arabian stock exchange (the "Tadawul") as open joint stock companies are already subject to the Capital Market Authority’s corporate governance regulations.
However, the vast majority of FOBs operating in Saudi Arabia are not listed on the Tadawul. MoCI therefore recognized a need to fill this gap by establishing protocols for FOBs to follow.

The Saudi Arabian Companies Law issued by Royal Decree no. M/3 dated 28-01-1437H corresponding to 11-11-2015G (as amended) (the “Companies Law”) will take precedence over the provisions of the Charter as the Charter is meant to be complementary to the Companies Law and provide a set of guiding principles for FOBs to implement in conjunction with their existing regulatory obligations.

What are the Charter’s Objectives?

The objectives of the Charter include the following:

- Provide a guiding framework for FOBs to operate in an efficient and growth-oriented manner in conformance with international best practices and standards.
- Provide a common vision for family members with respect to the Company’s values and strategic objectives.
- Enhance accountability and control mechanisms for the shareholders of FOBs.
- Set-up well-defined strategies and protocols that promote transparency and govern the interaction of the family within the Company.
- Achieve a proper and fair balance between the interests of the family members and the interests of the Company.
- Put succession plans into place (for both ownership and management) to ensure their survival and orderly transition.
- Provide a well-defined mechanism for the timely resolution of any family disputes that may occur, and to ensure that such disputes do not impede decision-making within the Company.

Shareholders’ Assemblies

Similar to what is provided in the Companies Law, shareholder meetings are conducted through the Ordinary General Assembly and Extraordinary General Assembly (collectively referred to as the “Shareholders’ Assemblies”).

The Shareholders’ Assemblies are required to hold all of their meetings in accordance with the provisions of the Companies Law and the Company’s articles of association.

“[The Charter will provide a guiding framework for FOBs to operate in an efficient and growth-oriented manner in conformance with international best practices and standards.”

Resolutions passed during any meeting held by the Shareholders’ Assemblies are valid and binding upon all of the family members in the Company, regardless of whether such family members attended the meetings in which the resolutions were issued.

The Family Board is entitled to submit a written request to the Board of Directors to invite the Ordinary General Assembly (or the Extraordinary General Assembly as the case may be) to convene provided the written request contains justifications for convening the Ordinary General Assembly. In the event the Board of Directors fails to respond to the Family Board’s written request, then the Family Board (discussed in further detail below) is entitled to seek the written approval of family members representing at least 5% of the Company’s share capital in order to obligate the Board of Directors to invite the Ordinary General Assembly to convene.

In order to ensure that the Company operates in an institutional manner, family members are prohibited from taking any adverse actions that would prevent the Shareholders’ Assemblies from exercising their functions set out in the Companies Law, the Company’s articles of association and Charter.

Family Board

The Charter prescribes the formation of a Family Board. The Family Board’s competencies include the following:

a. Monitor the overall performance of the Board of Directors and ensure they are compliant with the provisions of the Companies Law and the articles of association of the Company. For this purpose, the Family Board can provide an
opinion on potential candidates for the Board of Directors. They also have the authority to investigate whether any member of the Board of Directors is engaging in an activity that is detrimental to the Company such as whether there is a potential conflict of interest or unauthorized disclosure of the Company’s trade secrets.

b. Resolve any disputes that arise between family members that may affect the Company’s operations (further details on the dispute resolution mechanism will be provided below).

c. Consider recommendations from family members for the investment of the Company’s assets and presenting them to the Board of Directors for their approval.

d. Take any necessary actions to ensure that new generations of family members are trained and prepared to manage the Company in the future.

The competencies of the Family Board cannot be in direct conflict with the competencies of the Shareholders’ Assemblies and Board of Directors under the Companies Law, the articles of association of the Company and the Charter.

It is recommended for a Family Board to be formed when there are more than 12 family members in the Company.

In order to ensure the Family Board exercises its competencies in an effective manner, there should not be more than 6 Family Board members. Members of the Family Board are elected by secret ballot at a special meeting held for this purpose. Members should be elected based on their personal and professional capabilities.

A member of the Family Board is not permitted to be a member of the Board of Directors or the executive team of the Company.

The term of the Family Board members is restricted to 3 years, and a member is not permitted to be on the Family Board for more than 2 consecutive terms.

Elections for Family Board members take place under the direction of an Election Committee consisting of 5 family members or any other members appointed by the Ordinary General Assembly. A member appointed to the Election Committee is prohibited from serving as a Family Board member. The Election Committee is required to hold elections for the Family Board members at least 25 days prior to the end of their term. The Election Committee should ensure that the election process is held transparently and impartially.

The Family Board should have a Chairman and Deputy-Chairman. They are selected by the Family Board members through secret ballot under the supervision of the Election Committee.

The Family Board is required to hold at least 4 meetings each financial year. The Family Board should hold a special meeting prior to any meeting held by the Shareholders’ Assemblies in order to consider the agenda items and to make any recommendations it considers necessary within the scope of its competencies.

The majority of the Family Board members should be present in order for a meeting to be valid. Resolutions issued by the Family Board will need to be approved by a majority of the members present at the meeting. In the event of a deadlock, the Chairman will have the casting vote. The Chairman will invite the Family Board to convene when requested to do so by 2 or more members.

Family Board members are entitled to receive remuneration for attending meetings. Remuneration will be equivalent to what is prescribed to Board of Directors members who attend meetings.

As referenced above, the Charter prescribes a multi-tiered mechanism for the resolution of any disputes that may occur between family members.

Initially, private discussions are held between members of the Family Board to determine the reasons for the dispute and the most optimal way forward to resolving the dispute. The Family Board assigns the Chairman or one of its members who do not have any involvement in the dispute to take the lead in amicably resolving the dispute. The Family Board member assigned to resolve the dispute will then hold discussions with the disputing parties in an effort to resolve the dispute in a manner that is in the best interests of both the family members and the Company.

In the event the dispute cannot be settled amicably, a conciliation body consisting of non-family members will be formed in an attempt to settle the dispute in a fair and impartial manner. The Family Board, in consultation with the disputing members, will determine the scope and composition of the conciliation body.

If the conciliation body referred to in the preceding paragraph cannot be formed or is unable to resolve the dispute, the Family Board will recommend the disputing parties to resolve their dispute through arbitration or a court. The Family Board will need to take necessary measures to ensure that this does not have an adverse effect on the Company’s operations. The Family Board should continue to make an effort to resolve the dispute until a final binding decision.
is issued by the arbitration tribunal or court. When a final binding decision is issued, the Family Board should ensure that this decision is implemented.

**Board of Directors**

Similar to what is provided in the Companies Law, the Board of Directors has wide ranging authority to manage the affairs of the Company and maximize its value. All shareholders are prohibited from interfering with the Board's functions or the executive team of the Company, unless they are members of the Board or the executive team.

Board members of the Company will be elected by the Ordinary General Assembly. The recommended number of Board members should be between 5 and 9.

A Chairman and a Deputy Chairman will need to be elected by the Board of Directors through secret ballot. The Chairman of the Board of Directors is not permitted to hold an executive position within the Company.

When electing Board members, the Ordinary General Assembly should take into consideration each candidate’s personal and professional capabilities such as his or her ability to lead, competence, financial expertise and medical fitness.

The term of the Board of Directors cannot exceed 3 years. Board members may be re-elected for 1 or more terms.

The CEO of the Company is selected through a resolution issued by the Board of Directors. It is not permissible for the CEO to be the Chairman or Deputy Chairman of the Board of Directors.

The Board of Directors has the authority to form an Advisory Board to assist it with its functions. The members of the Advisory Board should have the necessary experience and competence to assist the Board of Directors in developing strategic objectives to ensure the Company’s continuity and growth. The Board of Directors is tasked with establishing the bylaws for the Advisory Board which must then be submitted to the Ordinary General Assembly for approval.

The Board of Directors has the authority to form additional committees as it deems necessary to assist it with its functions.

**Sale of Shares**

Any shareholder who intends to sell all or part of his or her shares in the Company will be required to notify all of the shareholders in writing through the Board of Directors. Each shareholder may exercise their priority right to purchase the shares put up for sale within 30 days from the date of notification. In the event 30 days elapse and no shareholder exercises his or her right to purchase the shares, the shareholder may proceed to sell the shares to a third party. It should be noted that this procedure will not be applicable to any transfer of shares by legal inheritance.

**Company Policy**

A human resources policy should be developed for the Company that contains clear rules for employing a family member, which will address issues such as
qualifications, experience, performance, evaluation and termination.

It is not permissible to create a position for the specific purpose of appointing a family member. Additionally, it is not permissible to terminate, without a valid justification, an employee who is not a family member in order to replace him or her with a family member instead.

The salary of an employee, whether or not a member of the family, should be commensurate with the employee’s position, responsibilities, academic qualifications and level of performance.

The work of a family member employed in the Company should not be subject to the supervision of another family member. In addition, no more than 1 member of the family should work in the same department unless it is in the best interests of the Company.

Additional Provisions

A family member is entitled to submit a proposal to amend the Charter. The Family Board will assess the proposal to amend the Charter and prepare a report on its findings which will be presented to the Ordinary General Assembly for its consideration and approval.

The articles of association of the Company should be amended in order to be commensurate with the provisions of the Charter.

The Charter should be reviewed by shareholders on a regular basis.

It is advisable for the Charter to include the names and signatures of each shareholder of the Company on the final page.

Conclusion

In conclusion, even though the Charter is merely a guide and is not mandatory for FOBs operating in Saudi Arabia, its issuance is nevertheless a positive development as it will raise a general awareness amongst FOBs of the importance of implementing proper governance frameworks and point the way to international best practice and standards and allow them to increase their contribution to the local economy. It may also provide a roadmap for the enactment of future legislation that will be binding on FOBs.
In May 2017, the Saudi Arabian Monetary Authority issued version 1.0 of its Cyber Security Framework. Noting the importance of the need to safeguard sensitive data and transactions to ensure confidence in the Saudi financial sector, the Framework was designed to enable SAMA regulated entities (basically, banks, insurance companies and finance companies) to identify and address cyber security risks. In this article, we summarise key aspects of the Framework.

The Framework is based on SAMA requirements and industry standards (including ISO, BASEL and PCI-DSS). Its stated objectives are to create a common approach for addressing cyber security, to achieve an appropriate maturity level of cyber security controls, and to ensure cyber security risks are properly managed. It supersedes all prior SAMA circulars relating to cyber security.

Entities subject to the Framework include all banks, all insurance and reinsurance companies, all financing companies, all credit bureaus, and the Saudi financial market infrastructure. The Framework also has some degree of application to subsidiaries and the personnel of such entities, as well as to third party contractors and customers.

Cyber security is defined in the Framework as:

the collection of tools, policies, security concepts, security safeguards, guidelines, risk management approaches, actions, training, best practices, assurance, and technologies that can be used to protect the member organization’s information assets against internal and external threats.

The ‘information assets’ to which the Framework relates include electronic information, hardcopies, applications, software, databases, computers and machines such as ATMs, data storage devices, and networks and other technical infrastructure.

The three basic premises upon which the Framework has been developed are confidentiality, integrity and availability. More specifically, confidentiality refers to information assets being accessible only to those who are authorised, and protected from unintended or unauthorised disclosure; integrity refers to information assets being accurate, complete and processed correctly, and protected from unauthorised modification; and availability refers to information assets being resilient and accessible, and protected from unauthorised disruption.

“Entities subject to the Framework include all banks, all insurance and reinsurance companies, all financing companies, all credit bureaus, and the Saudi financial market infrastructure.”
The Framework prescribes key cyber security principles and objectives to be embedded and achieved by each regulated entity. These are broken down in terms of four main cyber security ‘domains’: Leadership & Governance, Risk Management & Compliance, Operations & Technology, and Third Party considerations. The Framework also contemplates regulated entities meeting a minimum level of cyber security maturity (the criteria of which are specified in detail in the Framework), and to subject themselves to periodic self-assessments, reviewed by SAMA.

**Leadership & Governance**

The Framework contemplates the implementation of a board-endorsed, defined cyber security governance structure to lead the overall approach to cyber security within the regulated entity. As well as establishing a cybersecurity committee (with representatives from all relevant departments in the organisation), regulated entities also need to establish a cyber security function, independent of the information technology function, and led by a Chief Information Security Officer who is a Saudi national and sufficiently qualified for the CISO role.

Each regulated entity needs to define a cyber security strategy aligned with its own strategic objectives and the broader banking sector’s cyber security strategy. It must also develop a cyber security policy to document and communicate its cyber security commitment and objectives. The policy should be considered in the development of other corporate policies (such as HR policies and IT policies), based on best practices, and supported by detailed security standards. The policy also needs to ensure that information is classified appropriate to its importance, and protected in line with the entity’s risk appetite. Owners need to be appointed for all information assets, and all stakeholders need to be made aware of cyber security. The policy also needs to contain requirements that ensure compliance with regulatory and contractual obligations, and provide for reporting of cyber security breaches and suspected weaknesses.

The ultimate responsibility for cyber security lies with the regulated entity’s board of directors. This responsibility ranges from ensuring an appropriate budget is available for cyber security measures, through to endorsing the entity’s cyber security governance, strategy and policy. The entity’s cyber security committee is responsible at a more operational level.

The Framework imposes an obligation on regulated entities to ensure that relevant stakeholders are aware of, and understand, their cyber security responsibilities. It requires the development of an organisational culture of cyber security risk awareness, enabling personnel, third parties and customers to protect the regulated entity’s information assets. Additionally, it requires the implementation of training to ensure that personnel are equipped with the necessary skills and knowledge to protect the entity’s information assets (including by operating the entity’s systems securely) and to meet its cyber security responsibilities. Cyber security needs to be an integrated part of the regulated entity’s project management methodology, enabling the entity to identify and address cyber security risks as part of any project.
Risk Management & Compliance

The Framework describes risk management as the ongoing process of identifying, analyzing, responding to, monitoring and reviewing risks. To manage cyber security risks, the Framework requires regulated entities to undertake cyber security risk identification (identification of their cyber security risks), risk analysis (assessment of the likelihood of occurrence, and the resulting impact), risk response (determining the appropriate response to cyber security risks), and monitoring and review (monitoring the risk treatment and review of the effectiveness of the cyber security control).

In order to ensure cyber security risks are properly managed to protect the confidentiality, integrity and availability of a regulated entity’s information assets, and to ensure alignment of the cyber security risk management process with the entity’s enterprise risk management process, each regulated entity is required to define, approve and implement a cyber security risk management process.

This involves identification (and treatment) of the entity’s cyber security risks and threats, bearing in mind the relevant information assets of the entity, as well as its existing cyber security controls and vulnerabilities, and the likelihood of occurrence of the risks identified and the likely resulting impact. The Framework contemplates this exercise being performed on a rolling basis, so as to ensure its continued effectiveness.

Regulated entities are also required to establish a process whereby they identify, communicate and comply with the cyber security implications of relevant regulations, and adopt mandatory local and international industry standards.

There is an expectation that information assets of regulated entities will be subjected to thorough, independent and regular cyber security audits, in accordance with generally accepted auditing standards and the Framework.

Operations & Technology

The Framework makes it is necessary for regulated entities to ensure that security requirements for their information assets are defined, approved and implemented.

Regulated entities are required to incorporate cyber security requirements into their human resources processes. At a minimum, these should include: cyber security awareness training for personnel at induction and during their employment, personnel agreements setting out cyber security responsibilities and obligations of non-disclosure, post-employment cyber security implications (such as revocation of access rights, and obligations to return access badge, tokens, mobile devices, all electronic and physical information). The Framework also provides for requirements relating to Bring Your Own Device (BYOD) policies, so as to ensure that business and sensitive information is securely handled by personnel when using personal devices.

There is also an obligation to ensure appropriate physical security, by ensuring that all facilities that host information assets are physically protected. These should include: physical entry controls, monitoring and surveillance (e.g., CCTV), protection of data centres and data rooms, environmental protection, and consideration of the physical protection of...
information assets during their lifecycles (such as during transportation and destruction, and by avoiding unauthorized access and data leakage). The secure disposal of information assets is also contemplated, so as to ensure that business, customer and other information, is protected from unintended or unauthorized disclosure when no longer required.

More generally, there is an obligation to ensure that access to information assets is restricted in line with need to know/have principles. This requirement brings with it a need to ensure that identity and access be managed and controlled.

Regulated entities need to know what information assets they have, and where (both physically and logically) they are located, in order to ensure cyber security. The Framework requires regulated entities to maintain an accurate and up-to-date inventory, including location and other relevant details, of all information assets.

Regulated entities are also required to define their cyber security architecture, outlining the cyber security requirements in their enterprise architecture and addressing the design principles for developing cyber security capabilities. They also need to make sure that they follow and review their cyber security architecture. Similarly, regulated entities need to make sure that cyber security controls are formally documented and implemented for all applications, and that the compliance is monitored and effectiveness evaluated on a regular basis.

Cyber security standards for infrastructure components need to be documented, and compliance monitored. This needs to include all instances of infrastructure (e.g., workstations, laptops, tablets, mobile devices, virtual machines, servers, operating systems, firewalls, network devices, wireless networks, email gateways, external connections, databases, file-shares, PBX), and it needs to cover all relevant locations, including data centres, disaster recovery sites and offices.

Regulated entities need to define, approve, implement and monitor cyber security standards for payment systems and electronic banking services in order to safeguard the confidentiality and integrity of shared banking systems and customer information and transactions.

Third party considerations

It is almost certain that regulated entities will need to engage with third party service providers (including the likes of information services providers, outsourcing providers, cloud computing service providers, technology vendors and governmental agencies) in order to deliver their services. If such engagements do not respect the types of cyber security mechanisms that the regulated entities have implemented, then such engagements could bring with them cyber security risks. With this in mind, the Framework introduces expectations with regard to the engagement of third parties. These can be broadly categorised as contract and vendor management considerations, outsourcing considerations and cloud computing considerations. We consider this in more detail in a separate article.

Conclusion

The SAMA Cyber Security Framework, which was developed in coordination with a leading consultancy firm, provides a very clear outline of what SAMA expects, in terms of cyber security, of the entities that it regulates. Just as the types of technology being used in the financial services sector will continue to develop, the volume and nature of cyber security risks to financial services sector business will continue to develop. SAMA’s Cyber Security Framework should go some way to ensuring that businesses operating in the financial services sector are aware of the nature and scope of their information assets and the potential cyber risks to such assets. The processes implemented in compliance with the Framework will also provide a mechanism for future-proofing regulated financial services businesses against new cyber risks as they develop.

Al Tamimi & Company’s Technology, Media & Telecommunications team regularly advises on issues relating to cyber security, including regulatory compliance and breach notification obligations. For further information please contact Nick O’Connell, Partner (n.oconnell@tamimi.com) or Andrew Fawcett, Senior Counsel (a.fawcett@tamimi.com)
Major Saudi Professional Football League Deal Announcements

We are pleased to announce that Partner Bandar Al Hamidani and Al Tamimi’s KSA sports team, including Pedro Castro and Nasser Al Ohaly, represented Al Hilal Saudi FC, a major football club in Saudi Arabia, in its successful negotiations to bring on board one of the world’s top coaches, Jorge Jesus, as their new Head Coach, as well as in relation to the new Assistant Coaches. They also successfully represented the club in the negotiations with Spanish football player Alberto Botía, first signing of Al Hilal Saudi FC for the new season, and Peruvian football player Andre Carrillo, who participated in the 2018 World Cup and joins the club on loan from SL Benfica.

These deals were a great success for both our client, and the firm.

Please see below for some pictures of Bandar and Pedro with the President of Al Hilal Saudi FC, Sami Al Jaber, together with Jorge Jesus, Alberto Botía and Andre Carrillo.
Another successful year at the 6th MENA International Chamber of Commerce Conference

On the 6th – 8th of May Al Tamimi attended and sponsored another successful ICC MENA conference, which brought together industry experts to discuss the most pressing and timely topics.

Arbitrators and legal professionals from across the globe gathered to share insights and views on key developments and the changing arbitration landscape.

Essam Al Tamimi, Founder and Senior Partner, Al Tamimi & Company joined the lively discussion which addressed ‘The 20-20 Debate: arbitrator and counsel ethics’. The session covered the effect of published rules on counsel ethics and whether arbitral institutions should play a policing role.

On the second day of the conference Al Tamimi’s arbitration lawyers Laila El Shentenawi and Sara K. Aranjo participated in a joint breakfast seminar hosted by the ICC, Women in Arbitration (WiAR) and ArbitralWomen. The session covered key points on how female experts and dispute resolution practitioners can advance in their careers and build their international network.

The conference was a great success, throughout the two days the arbitration community had the opportunity to participate in thought provoking discussions and re-connect with their peers.

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Laila El Shentenawi
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The Securities and Commodities Authority: Stimulating Indirect Investment in the UAE

On Tuesday, 15 May our Capital Markets team held an intimate and private seminar with the Securities and Commodities Authority (SCA) which addressed ‘Stimulating Indirect Investment in the UAE’.

With the UAE’s clear role in securing non-oil resources as part of its sustainable growth plan, tapping into the capital markets has been a prime focus. The session allowed SCA to address some interesting questions and created an open dialogue with senior representatives from key investment banks, private equity houses and the UAE financial markets. We were honoured to have H.E. Dr.Obaid Saif Hamad Al Zaabi, Chief Executive Officer, Securities and Commodities Authority and his team in attendance to share some of the latest developments and new initiatives in the pipeline.

The seminar was also a strong reflection of the deep relationship Al Tamimi & Company has with SCA and other UAE regulators to promote investment opportunities in the UAE.

Understanding developments in the law and regulation of and pipeline for health PPP projects in the Middle East

Al Tamimi & Company is proud to continue our relationship with leading UK law firm Bevan Brittan’s in specialist healthcare matters. On 22 May both firms joined together at the Law Society in London to hold an interactive seminar titled Understanding developments in the law and regulation of and pipeline for health PPP projects in the Middle East.

Andrea Tithecott, Partner and Head of Healthcare, joined senior Bevan Brittan partners, and PWC to discuss UK healthcare investment opportunities in the United Arab Emirates and Kingdom of Saudi Arabia.

Saudi Arabia has set ambitious plans to allow foreign investors to fully own companies in the healthcare sector, this new step that will open up a large number investment opportunities over the next five years. The UAE also continues to experience growth within the sector with a key focus on the development of Public Private Partnerships (PPP). With the encouraging healthcare developments in the region, this seminar will be a great opportunity to learn more about the latest healthcare developments, opportunities and PPP projects in the pipeline.

The seminar was a success and attended by Healthcare UK, of UK Trade and Industry along with 30 significant UK hospital operators interested in Middle East healthcare projects.

The event was a great success and provided a platform to gather key stakeholders and decision makers to share insights and address the most pressing topics.

Andrea Tithecott
Partner
Head of Regulatory
Abu Dhabi, UAE
a.tithecott@tamimi.com
1 MAY
Dubai
Client Dinner
Blockchain Roundtable Dinner
Gaucho, DIFC

Speakers:
Foutoun Hajjar
Partner, Head of Office - Bahrain, Al Tamimi & Company
Ahmad Saleh
Partner, Head of Patents & Designs (R&D and Innovations), Al Tamimi & Company

6 MAY
Dubai
Client Seminar
Investment opportunities in the KSA Education Sector
Dubai Office

Speakers:
Ivor McGettigan
Partner, Education, Al Tamimi & Company
Rakesh Bassi
Head of Office - Jeddah, Al Tamimi & Company
Ahmad Saleh
Partner, Head of Patents & Designs (R&D and Innovations), Al Tamimi & Company
Jeremy Scott
Partner, Real Estate, Al Tamimi & Company
Francis Patalong
Senior Associate, Corporate Commercial, Al Tamimi & Company

7 MAY
Dubai
Client Seminar
Dubai Labour Court Litigation
Dubai Office

Speakers:
Rachel Hill
Associate, Employment, Al Tamimi & Company

16 MAY
Dubai
Client Seminar
VAT Compliance Workshop
Dubai Office

Speakers:
Shiraz Khan
Senior Tax Advisor, Al Tamimi & Company
Xavier Solanes
Associate, Corporate Commercial, Al Tamimi & Company
Janet Gooi
Associate, Corporate Commercial, Al Tamimi & Company

23 MAY
Bahrain
Client Suhoor
Bahrain Client Ghabga
Bushido, Seef Area, Bahrain

Speakers:
Foutoun Hajjar
Partner, Head of Office - Bahrain, Al Tamimi & Company
FEDERAL LAWS

5 of 2018  Regarding waqf.
6 of 2018  Regarding arbitration.

FEDERAL DECREES

84 of 2018  Ratifying the Amendment to the Agreement between the UAE and the UN Food and Agriculture Organization (FAO) for the Establishment of FAO’s Subregional Office for the Gulf Cooperation Council States and Yemen.

85 of 2018  Ratifying the Agreement for the Avoidance of Double Taxation with respect to Taxes on Income between the UAE and Croatia.

86 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 Moldova.

87 of 2018  Ratifying the Agreement on the Encouragement and Reciprocal Protection of Investments between the UAE and Moldova.

88 of 2018  Ratifying the Agreement between the UAE and Switzerland on Visa Exemption for Ordinary Passport Holders (Short-Term Stay).

89 of 2018  Ratifying the Agreement between the UAE and Brazil on Mutual Exemption from Pre-Entry Visa for Ordinary Passport Holders.

90 of 2018  Ratifying the Agreement on Cultural Cooperation between the UAE Government and Ukraine’s Cabinet of Ministers.

91 of 2018  Ratifying the Agreement on Economic and Technical Cooperation between the UAE and Lithuania.

92 of 2018  Ratifying the Agreement between the UAE and Bangladesh for Air Services Between and Beyond their Respective Territories.

93 of 2018  Ratifying the Agreement between the UAE and São Tomé and Príncipe for Air Services Between and Beyond their Respective Territories.

94 of 2018  Ratifying the Agreement between the UAE and Guinea-Bissau for Air Services Between and Beyond their Respective Territories.

95 of 2018  Ratifying the Agreement between the UAE and the Democratic Republic of the Congo for Air Services Between and Beyond their Respective Territories.

96 of 2018  Ratifying the Agreement between the UAE and Malawi for Air Services Between and Beyond their Respective Territories.
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- Federal Decree No. (101) of 2018 On Replacing a Member of the Board of Directors of the Telecommunications Regulatory Authority
- Federal Decree No. (102) of 2018 On Ratifying the Amendment of the Organization of the Islamic Conference Charter
- Federal Decree No. (103) of 2018 On Ratifying an Agreement between the Government of the State and the Government of the Russian Federation on Industrial, Technical and Scientific Cooperation between Civil Industries Companies
- Federal Decree No. (104) of 2018 On Ratifying a Mutual Administrative Cooperation Agreement on Customs between the State and the Republic of Tajikistan
- Federal Decree No. (105) of 2018 On Establishing a State Embassy in the Republic of Maldives
- Federal Decree No. (106) of 2018 On Appointing a Minister of Federal Supreme Council
- Federal Decree No. (107) of 2018 On the Chairmanship of the Higher Colleges of Technology
- Federal Decree No. (108) of 2018 On Adjourning the Third Ordinary Session of the Sixteenth Legislative Term of the Federal National Council

## UAE Federal Resolutions

### UAE Cabinet Resolutions

- Cabinet Resolution No. (23) of 2018 On Forming the Tax Disputes Settlement Committees, their Work Systems and Procedures
- Cabinet Resolution No. (25) of 2018 On the Mechanism of Applying Value Added Tax on Gold and Diamonds between Registrants in the State
- Cabinet Resolution No. (26) of 2018 On Refunding the Value Added Tax Paid on Services Provided in Exhibitions and Conferences
- Cabinet Resolution No. (27) of 2018 On the Participation of Non-Nationals in Official Sports Competitions
- Cabinet Resolution No. (29) of 2018 On the Milk and Dairy Products Control UAE Law
- Cabinet Resolution No. (30) of 2018 On the Juices and Beverages Products Control UAE Law

### UAE Ministerial Resolutions

- Minister of Finance Resolution No. (92) of 2018 On the Membership of the Committee of Financial Restructuring
- Minister of Finance Resolution No. (94) of 2018 On Appointing the Secretary of the Committee of Financial Restructuring
- Minister of Community Development Resolution No. (91) of 2018 On Changing the Name of Emirates Strategic Planning Association
### UAE Federal Resolutions UAE Central Bank Resolutions

- Administrative Resolution (UAE Bank) of 2018 On Dormant Account Regulation
- Administrative Resolution (UAE Bank) of 2018 On Finance Companies Regulation

### UAE Ministerial Announcements

- Certificate of 2018 On Announcing the Amendment of the Articles of Association of Noor Takaful General (PJSC)
- Certificate of 2018 On Announcing the Amendment of the Articles of Association of Noor Takaful Family (PJSC)
- Certificate of 2018 On Announcing the Amendment of the Articles of Association of First Abu Dhabi Bank (PJSC)
- Certificate of 2018 On Announcing the Amendment of the Articles of Association of Aldar Properties (PJSC)
- Certificate of 2018 On Announcing the Amendment of the Articles of Association of Mashreq Bank (PJSC)

### UAE Federal Decrees

- Federal Decree No. (109) of 2018 On Ending the Functions of a Non-Resident Ambassador
- Federal Decree No. (110) of 2018 On Appointing a State Ambassador to the Republic of Costa Rica
- Federal Decree No. (111) of 2018 On Appointing a Non-Resident State Ambassador to the Republic of Albania
- Federal Decree No. (112) of 2018 On Assigning a Minister of State to Perform Duties
- Federal Decree No. (114) of 2018 On Appointing the Director General of the General Authority of Islamic Affairs & Endowments
- Federal Decree No. (115) of 2018 On the Retirement of the General Sport Authority of Sports Secretary-General

### UAE Federal Resolutions UAE Cabinet Resolutions

- Cabinet Resolution No. (24) of 2018 On Approving the List of Terrorists and Terrorism Organizations
- Cabinet Resolution No. (31) of 2018 On Community-Supported Agriculture
- Cabinet Resolution No. (32) of 2018 On the Hajj and Umrah Law
- Cabinet Resolution No. (33) of 2018 On Trading Used Oils

### UAE Federal Resolutions UAE Ministerial Resolutions

- Minister of Interior Resolution No. (303) of 2018 On the Rules and Procedures for the Periodic Examination of Narcotic Drugs and Psychotropic Substances Users
- Minister of Justice Resolution No. (311) of 2018 On Issuing the Regulations of the Scientific Advisory Board of the Judicial Training Institute
- Minister of Justice Resolution No. (312) of 2018 On Issuing the List of the Members of the Training Committee of the Judicial Training Institute
- Minister of Justice Resolution No. (313) of 2018 On Issuing the Training Regulations of the Judicial Training Institute

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| Minister of Health and Prevention Resolution No. (142) of 2018 On Specifying the Medical Professions and Associated Professions |
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| Resolution of the Chairman of the Board of Directors of Pensions and Social Security Authority No. (20) of 2018 On Extending an Employee Secondment |
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| Resolution of the Insurance Authority Board Chairman No. (13) of 2018 Instructions on the Regulation of the Marketing of Insurance Policies via Banks |
| Insurance Authority Board of Directors Chairman Resolutions No. (14) of 2018 On Applying the Solvency Requirements provided for in Chapter Two of the Financial Instructions of Insurance Companies and the Financial Instructions of the Takaful Insurance Companies to the Branches of Foreign Insurance Companies Operating in the State |
| Securities and Commodities Authority Board of Directors Chairman Resolution No. (18/raa) of 2018 On the Regulation of Credit Rating Agencies |
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| Securities and Commodities Authority Board of Directors Chairman Resolution No. (20/raa.meem) of 2018 On Launching and Issuing Islamic Securities |
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| Securities and Commodities Authority Board of Directors Chairman Resolution No. (23/raa.meem) of 2018 On Amending the Resolution of the Chairman of the Board of Directors of the Authority No. (4/raa.meem) of 2017 on the Regulation of the Administrative Services Activity of Investment Funds |

### UAE Federal Resolutions UAE Central Bank Resolutions

| Central Bank of the United Arab Emirates Law of 2018 On Country and Transfer Risk Regulation |
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### UAE Ministerial Announcements

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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


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COUNTRY GROUPS

China | India | Iran | Italy | Japan | Korea

We appreciate the diversity of the lawyers’ backgrounds - there’s always someone qualified to answer any query.

Chambers Global

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

Chambers Global
Al Tamimi & Co. is delighted to be a sponsor and speaker at this year’s EAIAC 2018. The conference will take place on Thursday 30th and Friday 31st August 2018 in Addis Ababa, Ethiopia. This year’s theme is ‘Re-focusing regional trade, energy and arbitration’.

There is growing cross-border trade in commodities and energy and in regional energy infrastructure development, including cross-border electricity transmission systems and oil pipelines. What does this mean for African international commercial and investment arbitration? Incredible potential!

Conference Highlights

• Investment in Eastern Africa electricity, oil & gas, mining, infrastructure, and trade.
• Mitigating risks in East Africa’s Energy & Infrastructure sectors.
• Specialist issues in energy and trade arbitration.
• Special panel on China – Africa Arbitration co-operation.
• Guidelines for Contracting and arbitrating with governments – East Africa.
• Enforcement in international investment and commercial arbitration (ICSID, NYC).
• Artificial Intelligence and Arbitration – Calling on Tech Savvy East Africa to innovate for Arbitration.
• Industry hard-talk: Arbitration users perspective.
• A spotlight on the Next generation of Africa Arbitrators.
• Arbitration institutions panel: Exploring synergy to promote Arbitration in Africa.
• Energy Poverty a cause for Energy Disputes – East Africa’s experience.
• Dispute Resolution in the Africa Free Continental Trade Agreement.

Who Attends?

• Legal Practitioners
• Arbitrators
• Magistrates
• International Investors
• Academicians
• Corporate Counsel
• Government Representatives

For delegate registration and queries, email: info@gbsafrica.co.uk or visit: www.eaarbitration.com.

Early Bird Fee: USD 275 for registration by 31st July 2018
Standard Fee: USD 350 after 31st July 2018

NB: The delegate fee DOES NOT include flights, transport and accommodation.

www.tamimi.com
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