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AL TAMIMI & CO.

LAW UPDATE

Latest Legal News and Developments from the MENA Region

A Focus on Family Business & Private Wealth in the Middle East

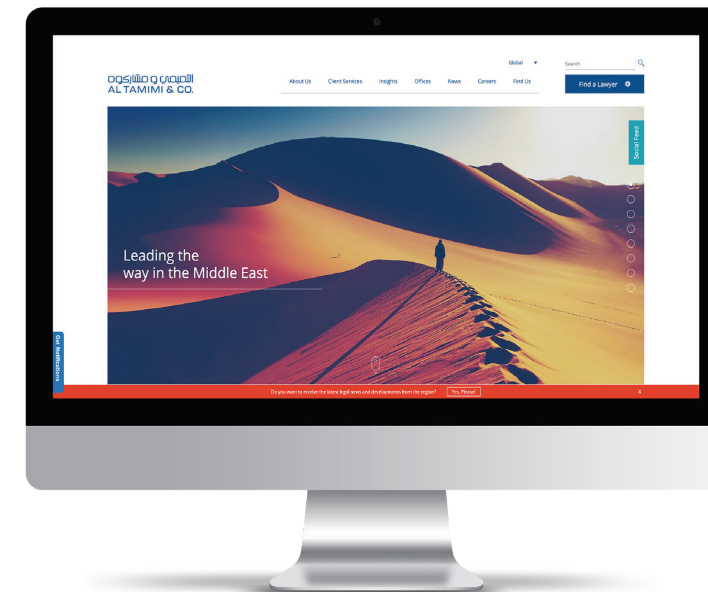
Whistleblower Protection in the UAE: New Developments

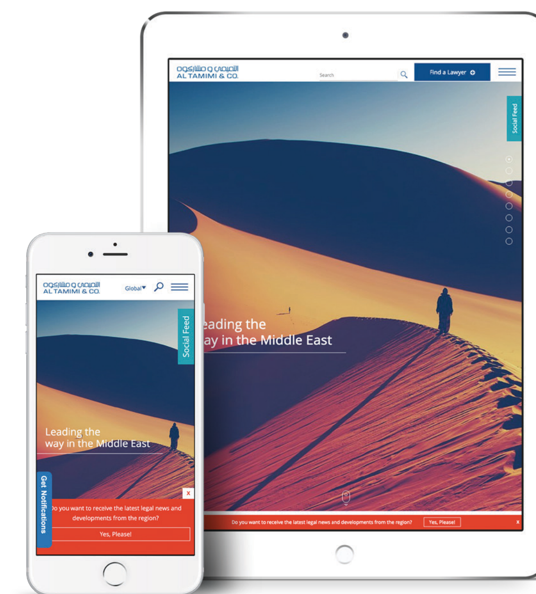
Significant Amendments to the UAE's Criminal Procedures Law

So You Think You Can... Enforce an Arbitral Award in the Kingdom of Saudi Arabia?

Marriage Contracts in the UAE: To Prenup or not to Prenup?

LAW UPDATE *Online*





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Awards

We are delighted to announce that we received an astonishing six awards at The Oath Middle East Legal Awards Ceremony in Dubai, including awards for Employment and Litigation & Dispute Resolution Team of the Year, and Law Firm of the Year for UAE, Qatar and Saudi Arabia.

It was a record-breaking achievement for us and we are especially proud to come away again with the 'Regional Law Firm of the Year' award. This award win in particular gives fantastic recognition to the hard work and dedication of everyone at Al Tamimi & Company.

We also received honourable mentions for Intellectual Property, Real Estate & Construction, and Law Firm of the Year for Oman and Bahrain.

We would like to thank our clients for their continued support and opportunities.

Congratulations to all the winners!

In this Issue

Welcome to the February 2019 of Law Update.

This month's Focus is on Family Businesses and Private Wealth in the Middle East. In their opening statement Richard Catling and Dipali Maldonado highlight the valuable contribution family businesses make to economies in the region and look at the challenges facing those businesses in ensuring continued growth and a successful transition to future generations (page 29).

Our UAE team explores the importance of structuring family real estate assets, offering the view that implementing an appropriate risk and succession structure can be relatively cost effective (page 35).

In 2018 Al Tamimi & Company, working with the Family Business Council – Gulf, conducted research into forms of dispute resolution used by family businesses in the GCC. The full report will be produced this year, but an article on page 47 explains how the report was constructed and examines why family disputes may arise as well as suggests ways in which the intensity of potential disputes may be reduced.

A common theme running through many of this month's articles is the importance of ensuring one has robust documentation in which the various rights and obligations of the respective parties to a contract or members of a family business are clearly set out. Whilst many parties might be reluctant to invest time, energy and money in preparing and negotiating such documentation at the outset, those who do have the comfort of knowing the responsibilities of the individual parties are clear and mechanisms for resolving any disputes have been agreed upon. Being prepared can ultimately avoid excessive litigation costs, paralysis of decision making in the day-to-day operations of family businesses or, in the case of construction projects, delays. This combined with increasing regulation across many practice areas can only encourage further transparency in business operations and financial dealings which, in turn, continues to shore up the region's reputation as a business-friendly environment.

In Dubai our Employment & Incentives experts look at the growing acceptance of 'whistleblowers' in the region as well as the importance of protecting them as companies in the UAE face increasing pressure to ensure transparency in their operations, especially in relation to their financial dealings (page 23).

Our Corporate Commercial team explores the impact of a new Insolvency law in Bahrain which our team believes is expected to boost transparency and efficiency in the insolvency process thereby improving the ease of doing business in Bahrain (page 69).

The importance of a construction contract in residential construction is analysed by our Dubai Construction team (page 59). Their analysis concludes that a domestic building contract does not have to be complicated but the consequences of not having a robust contract with a builder can be.

Our Litigation experts delve into significant amendments to the UAE's Criminal Procedures Law as well as the addition of new provisions, one of which is Penal Reconciliation, a concept which aims to end a dispute in a criminal matter in an amicable and diplomatic manner (page 25).

Our UAE Arbitration team address some confusion regarding the ADGM's arbitral jurisdiction, clarifying the extent of the ADGM's jurisdiction to enforce foreign awards and judgments (page 15).

Our Sharjah advisors analyse a recent decision handed down by the Union Supreme Court that confirmed the Commercial Agencies Committee as the competent body to look into disputes related to a registered commercial agency (page 11).

A further court decision by the RAK Court of Cassation clarified the court's power to interpret parties' intentions, confirming the court can look at the actions of directors of a company, and if it is satisfied that they have acted with gross negligence they will be held personally liable for the company's debts (page 9).

I hope you enjoy this month's issue and find the content interesting and informative.

Should you have any questions about this month's topics, please feel free to reach out for further information.

Best wishes,

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RAK Court of Cassation Clarifies the Court's Power to Interpret the Parties' Intentions

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

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Introduction

When a limited liability company goes into liquidation, its creditors are faced with considerable uncertainty, not least over their rights to securities on loans made to the defaulter. In such cases, a number of questions arise, including the following:

- will the loan amount be repaid when repayment of a debt is triggered by a condition that can never materialise?
- will a creditor be entitled to recover the debt amount with immediate effect if a debtor provides securities for the debt that becomes defective?
- will the directors of a limited liability company become personally liable for the company's debts where such debts are due to their wrongdoing or gross negligence?
- does the court have the power to interpret contract terms in order to explore the parties' intentions, when such terms are clear on the face of the agreement?

A recent decision of the Ras Al Khaimah Court of Cassation has provided clarity on these issues.

Background

The Claimant entered into a loan agreement with, inter alia, the First Defendant (a limited liability company), wherein the Claimant agreed to lend the First Defendant AED 12,000,000 ('**Loan Amount**'). The First Defendant undertook to repay the Loan Amount within seven years starting from June 2016, on the condition that the First Defendant would not start making the payment until the company made profits ('**Payment Condition**'). The First Defendant provided the Claimant with various forms of security.

A few months after entering into the said agreement the First Defendant became insolvent and failed to meet its financial obligations. One of its shareholders commenced civil proceedings in the Ras Al Khaimah Court of First Instance seeking the appointment of a liquidator as a matter of urgency. As the First Defendant was in a critical financial situation, the court accepted that claim and appointed a receiver to manage the company pending a determination of the liquidation claim.

The Claimant realised the First Defendant had not acted in good faith. It alleged that the First Defendant's directors ('**Second Defendants**') must have acted with gross negligence whilst managing the firm, as at the time of the loan agreement the First Defendant was in good standing but within a couple of months had incurred substantial and unexplained losses.

The Claimant filed a case against both the First and Second Defendants (together the '**Defendants**') (the Second Defendants in their personal capacity) for the recovery of the monies owed to the Claimant. Al Tamimi & Company represented the Claimant in his claim seeking recovery of the Loan Amount from Defendants jointly.

Courts Findings

Ras Al Khaimah Court of First Instance Ruling

The Court of First Instance dismissed the case, saying that the claim was premature. The Court found that the case was filed prior to the fulfillment of the agreed Payment Condition, i.e. repayment of the Loan Amount was not due under the Payment Condition until such time as the company started to make profits. The Court did not make a decision on the claim against the Second Defendants because of the dismissal of the claim against the First Defendant, on which it rested.

Ras Al Khaimah Court of Appeal Ruling

The Claimant lodged an appeal application to set aside the judgment of the Court of First Instance. However, the Court of Appeal did not give permission to appeal. It upheld the judgment by the Court of First Instance without detailing its reasoning.

Ras Al Khaimah Cassation Court Ruling

The Claimant lodged an appeal application before the Cassation Court to set aside the Appeal Court's decision. To substantiate its application, the Claimant argued that the Court of Appeal did not understand the merits of the case properly and had misinterpreted the law.

The Claimant also argued that the First Defendant no longer had the securities of the debt and that it was impossible to satisfy the Payment Condition as the First Defendant had become insolvent. The Claimant submitted that the debt should be repaid immediately. The Claimant relied on Article 431 of the UAE Civil Code No. 5 of 1985 and its amendments which provides:

> *[T]he right of an obligor to defer shall lapse in the following circumstances... (3) if the obligations in rem for the obligations become defective by his act or through a cause in which he has played no part, unless he takes steps to supplement them.*

Alternatively, the Claimant argued that the Second Defendants acted in bad faith, committed gross negligence and mismanaged the First Defendant in ways that caused the First Defendant to become insolvent. Additionally, it maintained that the First Defendant could never have sustained such losses without the fraudulent acts of the Second Defendants. The Claimant relied on Article 84 of UAE Commercial Companies Law No. 5 of 2015 and its amendments which states:

> *Every manager in a Limited Liability Company shall be liable vis-à-vis the Company, the partners and third parties for any fraudulent acts by such manager and shall also be liable for any losses or expenses incurred due to improper exercise of power or contravention of the provisions of any law in force, the memorandum of association of the Company or the contract appointing the manager or for any gross error by the manager. Any provision in the memorandum of association or the contract appointing the manager in conflict with the provisions of this Clause shall be void.*

The Cassation Court held that the Court of First Instance should investigate the merits of the claim thoroughly and should examine its power to interpret the contract terms in order to arrive at the parties' real intention, pursuant to Article 246 of the Civil Code, which states:

(1) The contract must be performed in accordance with its contents, and in a manner consistent with the requirements of good faith.

(2) The contract shall not be restricted to an obligation upon the contracting party to do that which is (expressly) contained in it, but shall also embrace that which is appurtenant to it by virtue of the law, custom, and the nature of the transaction.

Additionally, the Cassation Court found the Appeal Court did not address the merits of the case diligently as it did not investigate the claims in relation to the loss of the debt securities and that it did not contemplate the impossibility of fulfilling the Payment Condition, as the First Defendant was insolvent.

The Cassation Court ruled that the creditor is entitled to claim the immediate payment of the deferred payments once the creditor lost its securities. Although the Claimant raised such factual arguments before the Courts of First Instance and Appeal, those courts did not consider them thoroughly, according to the Cassation Court.

The Cassation Court further found that the Appeal Court did not apply the law properly, thus its judgment was defective and should be set aside. More particularly, the Appeal court did not apply the provisions of the said Article No. 431 of the Civil Code. Moreover, it did not apply its inherited power to interpret contracts to reach to the parties' real intention (court should look at the substance rather the form).

Consequently, the Cassation Court referred the case back to the Appeal Court (formed by a different panel) to rule on the merits of the case.

The Appeal Court focused on the direction of the Cassation Court. It investigated the financial position of the First Defendant to reach a decision on whether or not the Payment Condition would be satisfied. Further, it considered the fraudulent acts of the Second Defendants in further detail. The Appeal Court then arrived at the conclusion that the Second Defendants had cheated the Claimant and that due to their gross negligence the First Defendant's business had collapsed. It issued its judgment by holding the First Defendant and the Second Defendants jointly liable to repay the Loan Amount to the Claimant.

Conclusion

There is no doubt that this case looks into key legal principles of UAE commercial and civil law and the Cassation Court judgment is a remarkable precedent in the UAE national courts. The three key principles are as follows:

1. *The Personal Liability of the Company's Directors*

The threshold of evidence for holding a the directors of a limited liability company accountable for the insolvency of a company is very high, as holding directors personally responsible clearly contradicts the corporate veil principle, i.e. that the company bears its liabilities and its directors do not. However, in certain circumstances, the court can look into the actions of the directors and, if it is satisfied that they have acted with gross negligence, they will be held personally liable for the company's debts.

2. *The Court has the Power to Interpret the Terms of Agreement in a Manner that Reflects their Real Intent*

The courts usually do not look into the intention of the parties if the terms of the agreement are clear. It is difficult to convince the court to examine the parties' real intentions that, on their face, may not be consistent with their express agreement. However, as in this case the Claimant successfully convinced the Court of Cassation to apply its discretion and explore the parties' intentions in accordance with the provisions of the Civil Code.

3. *If the Debtor Loses his Securities for the Debt, the Creditor is Entitled to Claim the Payment of the Debt Immediately, even if the Parties Agreed on a Deferred (Re)Payment Plan*

In this case the Payment Condition was clear, however the Claimant relied on the relevant provisions of law that preserved the creditor's interests and caused the Appeal Court to rule on the ineffectiveness or impossibility of performing the parties' agreement (more particularly, the Payment Conditions) due to the dramatic change of the financial position of the debtor.

Al Tamimi & Company's Litigation team regularly advises on civil and contractual liability in connection with commercial and civil transactions. For further information, please contact Mohamed Abdelsabour (M.abdelsabour@tamimi.com).

Union Supreme Court Cancelling a Supreme Court Judgment and Confirming the Capacity of the Commercial Agencies Committee

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Introduction

The capacity of the Commercial Agencies Committee is defined in Article 28 of the Commercial Agency Law (Federal Law No. 18 of 1981) as:

"The Committee shall be competent to hear any dispute arising from the commercial agency registered with the Ministry. Parties may not bring the claim before the court until after the issue is referred to the Committee of Commercial Agencies. The Committee shall hear the dispute within sixty (60) days from the date of the request for hearing the dispute (in the event that the request meets required formalities) or from the date on which the required documents are duly completed. The Committee may seek the help of any person it deems fit in order to fulfill the duties assigned thereto.

The Committee's decision may be challenged before the competent court within thirty (30) days from the date on which the Committee's decision is notified; otherwise the Committee's decision shall be final and not subject to further challenge."

However, the extent of the scope of such capacity is not completely understood, as proven by conflicting judgments issued by the Dubai and Abu Dhabi Courts. A Dubai Court judgment found that the Commercial Agencies Committee must look into any dispute related to commercial agencies prior to proceeding to the Courts. An Abu Dhabi Court judgment revoked a decision by the Commercial Agencies Committee due to it not having capacity to hear a compensation claim.

Background

A Commercial Agent filed a compensation claim before the Dubai Court against parties who infringed its commercial agency. However, the Dubai Court of First Instance issued a judgment rejecting the case due to the Commercial Agent not following the correct legal process. The judgment stated the matter should have been referred to the Ministry of Economy ('**Commercial Agencies Committee**') that specialises in matters of Commercial Agency prior to proceeding to the Courts, in accordance with Article 28 of the Commercial Agency Law. This Judgment was upheld before the Dubai Court of Appeal and the Cassation Court.

Subsequently, the Commercial Agent filed a complaint before the Commercial Agencies Committee, whereby the same appointed an expert panel to investigate the said infringing parties. After its investigation the expert panel issued a report confirming the infringement of the commercial agency which entitled the Commercial Agent to recover AED 44,577,125 as compensation from the infringing parties.

The infringing parties filed a case before the Abu Dhabi Court challenging the decision of the Commercial Agencies Committee stating the same is not competent to hear a compensation complaint, as the Commercial Agencies Committee can only hear matters between the agent and the principal. The Abu Dhabi Court of First Instance issued its judgment and rejected the cases and upheld the decision of the Commercial Agencies Committee which was subsequently upheld by the Abu Dhabi Court of Appeal.

However, the Abu Dhabi Supreme Court issued a judgment revoking the judgment issued by the Court of Appeal as well as the decision of the Commercial Agencies Committee, stating the Commercial Agencies Committee does not have the capacity to hear a compensation claim as Article 28 states that the reason for the dispute should be "*arising from the commercial agency*". The Abu Dhabi Supreme Court found that the law specifies the capacity of the Commercial Agencies Committee to look into disputes related to organising, changing, amending or cancelling a commercial agency and does not extend to disputes related to assessing the compensation for the damages caused by a commercial agency.

Union Supreme Court

The Commercial Agent filed a conflict of jurisdiction case before the Union Supreme Court in Case No. 5/2018 ('**Conflict of Jurisdiction**'), claiming that there is a contradiction between the judgments issued by the Dubai Court and that of the Abu Dhabi Court. Although the Dubai Court instructed the Commercial Agent to proceed to the Commercial Agencies Committee, the Abu Dhabi Court stated the Commercial Agencies Committee does not have the capacity to look into compensation cases. In accordance with Article 99 of the UAE Constitution and Article 33 (10) of Federal Law No. 10 of 1973 establishing the Supreme Federal Court, the Supreme Court has the capacity to look into and decide on any conflict of judgments:

> *"The Supreme Court only shall have the jurisdiction to adjudicate the following matters:*
>
> *10 - The jurisdiction dispute between a judicial authority in an emirate and a judicial authority in another emirate or among the judicial authorities in one emirate."*

The Union Supreme Court issued a judgment wherein the court specified the Commercial Agencies Committee in the Ministry of Economy has capacity to hear the dispute between the parties. The court found the Commercial Agencies Committee has the capacity to look into *any dispute* arising from a commercial agency, whether or not the parties to the dispute are parties to a commercial agency. As this case relates to the infringement of a commercial agency, the Commercial Agencies Committee has the capacity to look into this matter. Additionally, such parties may not file a case before the courts prior to presenting the same to the Commercial Agencies Committee.

Thus, the court annulled the judgment issued by the Abu Dhabi Supreme Court, because of the lack of capacity of the Commercial Agencies Committee to hear the dispute, and remitted the case back to the Abu Dhabi Supreme Court to determine the matter in light of this judgment.

Conclusion

The judgment issued by the Union Supreme Court in Case No. 5/2018 (Conflict of Jurisdiction) conclusively confirms the capacity of the Commercial Agencies Committee as the competent body to look into *any dispute* related to a registered commercial agency, irrespective of the parties to such dispute. Moreover, the parties to the dispute may not proceed to the Courts in any case related to commercial agencies prior to presenting such dispute to the Commercial Agencies Committee.

Al Tamimi & Company's Litigation team regularly advises on disputes related to commercial agencies. For further information, please contact Zafer Sheikh Oghli (z.oghli@tamimi.com), Nasser Yahia (ny.yahia@tamimi.com) or Sara Omer Ali (s.omerali@tamimi.com).

> **"The Union Supreme Court conclusively confirms the capacity of the Commercial Agencies Committee to be the competent body to look into any dispute related to a registered commercial agency.**

The Arbitral Jurisdiction of the Abu Dhabi Global Market

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Introduction

On 17 October 2018, the Abu Dhabi Global Market ('**ADGM**') launched its arbitration centre. The ADGM arbitration centre is fully operational and equipped with hearing facilities that are made available to parties resolving their disputes through mediation or arbitration. The launch of the ADGM arbitration centre further enhances the ADGM's attractiveness as an arbitral seat, in addition to the establishment by the International Chamber of Commerce ('**ICC Court**') of its Middle East representative office in ADGM. The arbitration centre facilities are not exclusive for arbitrations administered by the ICC nor to parties with a nexus to the ADGM. Parties, without any connection with the ADGM, may hold their arbitration or meditation hearings in the arbitration centre.

The ADGM is a financial free zone located in the capital of the United Arab Emirates. It is the first financial free zone in Abu Dhabi, and the second financial free zone in the UAE (in addition to the Dubai International Finance Centre ('**DIFC**')). Foreign parties are attracted to the ADGM for a number of reasons, including the ability to use the English language to conduct proceedings in the ADGM Courts (as opposed to Arabic used in the courts onshore), the direct application of English common law, and its adoption of the UNCITRAL Model Law on Arbitration.

Notwithstanding that the ADGM commenced operations four years ago (pursuant to Federal Decree No. 15 of 2013 and Abu Dhabi Law No. 4 of 2013), some confusion still exists concerning its arbitral jurisdiction. This article is intended to address any such misunderstandings. This article will discuss the ADGM judicial jurisdiction and arbitral jurisdiction, and its jurisdiction to enforce foreign awards and judgments.

The ADGM's Judicial Jurisdiction

Before analysing the ADGM's scope of arbitral jurisdiction, it is useful to review the scope of its judicial jurisdiction.

The ADGM Courts are one of three authorities in the ADGM, with the ADGM Courts broadly modelled on the English judicial system. The ADGM Courts comprise a Court of First Instance and a Court of Appeal. The ADGM Court of First Instance, which consists of three divisions, is the court designated to hear all arbitration-related matters in the ADGM.

Abu Dhabi Law No. 4 of 2013 ('**Founding Law**') defines, in part, the scope of the ADGM Court's jurisdiction. Article 13(6) of the Founding Law states that the ADGM Court of First Instance will solely consider and decide on matters concerning ADGM-related activities. In particular, the ADGM Court of First Instance has jurisdiction to decide on:

a. civil or commercial disputes involving the ADGM or any of the ADGM Authorities or establishments;

b. civil or commercial disputes arising out of or in connection to a contract or a transaction conducted in whole or in part in the ADGM;

c. appeals against decisions or procedures issued by ADGM authorities; and

d. requests, in which the ADGM Courts have the jurisdiction to consider.

In addition, Article 13(7) of the Founding Law states that the parties may agree to the jurisdiction of any court other than the ADGM Court of First Instance or agree to refer their disputes to arbitration in relation to (a) and (b) above.

Articles 13(6) and 13(7) of the Founding Law should be read and construed in conjunction with ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 ('**ADGM Court Regulations**'), as amended, which also govern the jurisdiction and procedures of the ADGM. Article 16(2) of the ADGM Court Regulations provide that the ADGM Court of First Instance may exercise jurisdiction conferred on it by:

a. article 13(6) and 13(7) of the ADGM Founding Law;

b. applicable Abu Dhabi Laws;

c. the ADGM Court Regulations;

d. any other ADGM enactment; or

e. *any written request by the parties to have the ADGM Court of First Instance determine their dispute.*

Therefore, it is possible for parties to opt into the jurisdiction of the ADGM Court of First Instance, even where the transaction or dispute in question has no connection with the ADGM. The ADGM Courts may thus determine claims or disputes having no nexus to the ADGM, subject to party agreement.

ADGM's Arbitral Jurisdiction

It has been suggested by one prominent commentator that the ADGM's arbitral jurisdiction is more narrowly drawn than the DIFC (i.e., the underlying dispute must have some nexus to the ADGM). That is not correct. The ADGM enacted the ADGM Arbitration Regulations in 2015 ('**ADGM Arbitration Regulations**'), which are closely modelled on the UNCITRAL Model Law on International Commercial Arbitration. The ADGM Arbitration Regulations govern arbitrations seated in the ADGM, as well as the enforcement of arbitral awards in the ADGM Courts, which act as the supervisory courts in respect of ADGM-seated arbitrations.

The ADGM Arbitration Regulations apply to arbitrations: (a) seated in the ADGM; and/or (b) when the arbitration agreement expressly provides for the application of the ADGM Arbitration Regulations (Article 8 of the ADGM Regulations). The 'seat' is the juridical seat of the arbitration designated: (a) by the parties to the arbitration agreement; or (b) by the arbitral tribunal or any institution or person vested by the parties with powers in that regard (Article 33 of the ADGM Regulations).

Therefore, contrary to what has been suggested, the ADGM Arbitration Regulations establish the ADGM as a seat of arbitration for: (a) disputes with a nexus to the ADGM; or (b) for disputes unconnected to the ADGM, where the parties choose the ADGM as the seat of arbitration. Parties may freely choose the ADGM as the seat of arbitration and the ADGM Arbitration Regulations as the procedural law of the arbitration.

ADGM's Jurisdiction to Enforce Foreign Awards and Judgments

Foreign parties may also find the ADGM Courts an attractive jurisdiction for enforcement of their foreign awards/judgments.

The ADGM Courts have signed two Memoranda of Understanding ('**MoU**') with local and federal governmental bodies relating to cooperation in legal and judicial matters. The ADGM Courts have an MoU with the Abu Dhabi Judicial Department (the government authority for judicial matters

in the Emirate of Abu Dhabi), which facilitates judicial cooperation between the ADGM Courts and the Abu Dhabi Courts, especially in respect of the recognition and enforcement of judgments, decisions, orders and arbitration awards. As a result, the Abu Dhabi Courts have agreed to recognise and enforce ADGM judgments without re-examining the substance of the dispute.

In addition, the ADGM Courts entered into an MoU with the UAE Ministry of Justice titled 'Cooperation in Legal and Judicial Matters'. The MoU requires the parties 'to take all necessary measures that will ensure that enforcement of the ADGM Courts' judgments, and arbitration awards issued by the ADGM may be sought before the federal courts in the UAE'. The UAE's Federal Court system includes all Emirates except Dubai, Ras Al Khaimah and Abu Dhabi (which have their own court systems). Hence, the UAE Federal Courts have also agreed to enforce judgments and arbitral awards issued in the ADGM.

"...the ADGM Arbitration Regulations establish the ADGM as a seat of arbitration for: (a) disputes with a nexus to the ADGM; or (b) for disputes unconnected to the ADGM, where the parties choose the ADGM as the seat of arbitration.

The UAE is party to the New York Convention on the Recognition and Enforcement of Arbitral Awards 1958 ('**New York Convention**'), without any declarations or reservations. The New York Convention also binds the ADGM since it is part of the UAE. The ADGM Courts have also signed a number of international MoUs that provide for reciprocal enforcement of judgments. The ADGM Courts have concluded international MoUs with: (a) the Commercial Court, Queens Bench Division, England and Wales; (b) Supreme Court of New South Wales; (c) Supreme Court of the Republic of Singapore; (d) Federal Court of Australia; and (e) High Court of the Hong Kong Special Administrative Region of the People's Republic of China.

Article 170 of the ADGM Court Regulations provides that, where the UAE entered into an applicable treaty with a foreign country for the mutual recognition and enforcement of judgments, the ADGM Courts must: (a) comply with the terms of such treaty; and (b) recognise and enforce judgments rendered by that foreign country. In the case where no such treaty exists, Article 171.1 of the ADGM Court Regulations provides that the Chief Justice of the ADGM Court may order that the courts of the foreign country be recognised as foreign courts (provided that the Chief Justice is satisfied that substantial reciprocity of treatment will be assured as regards to the recognition and enforcement in that foreign country of the judgments of the Courts). Article 180 of the ADGM Court Regulations extends the application of Articles 170 and 171 to arbitral awards that are enforceable in the same manner as a court judgment in accordance with the applicable laws.

It remains to be seen whether as a result of the foregoing domestic and international memoranda, read in conjunction with the Founding Law and ADGM Court Regulations, parties may effectively utilise the ADGM as a jurisdiction to enforce foreign judgments and awards.

Conclusion

It is unfortunate that there remains some confusion in relation to the scope of the ADGM's arbitral jurisdiction. The ADGM Arbitration Regulations establish the ADGM as a seat of arbitration for: (a) disputes with a nexus to the ADGM; or (b) for disputes unconnected to the ADGM, where the parties choose the ADGM as the seat of arbitration. Parties thus may freely choose the ADGM as the seat of arbitration and the ADGM Arbitration Regulations as the procedural law of the arbitration.

N.B. This article was first published in the ICC Institute Newsletter

Al Tamimi & Company's Arbitration team regularly advises on ADGM-related arbitration matters. For further information, please contact John Gaffney (j.gaffney@tamimi.com).

New Banking Law: Federal Law No 14 of 2018

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After nearly 40 years, the law which underpins the UAE Central Bank (‘**UAECB**’) and the banking industry in the UAE has been amended. Federal Law No 14 of 2018 regarding the Central Bank and Organization of Financial Institutions and Activities (‘**Law**’) has repealed and replaced the 1980 Union Law and is now effective following its publication in the Official Gazette on 30 September 2018.

Scope and Application of the Law

Notwithstanding that the 1980 Union Law has been repealed and replaced by the Law, all current Central Bank regulations and circulars shall remain in full force and effect until replaced with equivalent regulations and circulars under the Law. The issuance of any such new regulations, decision or circulars by the UAECB shall not have any retroactive effect.

The Law does not apply to the financial free zones (i.e. the Dubai International Financial Centre and the Abu Dhabi Global Market) and the financial institutions regulated by the authorities of those free zones (i.e. the Dubai Financial Services Authority and the Financial Services Regulatory Authority).

Key provisions of the Law

We have highlighted below the key provisions of the Law which are relevant to financial institutions in the UAE.

Higher Shari’a Authority

This refers to the establishment of a Higher Shari’a Authority (‘**Authority**’) to replace the authority contemplated by the 2016 Cabinet Resolution. The Authority will, amongst others, impose regulations on Islamic financial institutions and perform a supervisory role over the internal Shari’a’s supervisory committees of such institutions. Islamic financial institutions will be responsible for the costs of the Authority.

Issuance of Securities

Securities issued by the UAECB or the Government shall be subject to rules issued by the UAECB, including issues such as issuance, custody and trading, together with the appointment of primary dealers for such securities including those issued in the public sector.

Currency

Reconfirmation that the UAECB is solely responsible for the issuance of currency in the UAE, which also includes any token.

Undertaking Financial Activities in UAE

The Law expands on previous provisions and confirms that no financial activities may be carried out in or from the UAE without a licence. In this respect, the UAECB has been given new powers to inspect the premises of any person suspected of carrying out financial activities in the UAE, as well as the ability to require any related information from that person. A new addition is that any promotion of financial activities or products may not be carried out in or from the UAE unless it is subject to the Law. The Law clarifies that promotion includes any communication aimed at inviting or offering a transaction or offering to conclude any agreement. The Law indicates that rules and regulations would be issued which will clarify applicability, prohibitions and exemptions. Such provisions arguably change the position of cross-border activities by non-UAE licenced institutions in the UAE, which may need to be reassessed.

Financial Activities

Helpfully, the financial activities subject to the Law and UAECB supervision have been listed, and range from the taking of deposits, provision of credit, currency exchange, payment services and other financial products. Interestingly, financial products includes financial derivatives, bonds, sukuk and equities. The inclusion of digital and virtual banking licences is a positive move, and the arrangement and/or promotion of financial services is now an independent licenced activity.

Licencing

The Law sets out in greater detail the licencing requirements and processes, while granting the UAECB broad discretion to control such licencing. It also states in detail the ability of the UAECB to impose conditions on any new or existing licences, and the circumstances in which licences may be suspended, withdrawn or revoked. While such circumstances are far reaching and contain events that could be seen as minor, the historical approach of the UAECB should give financial institutions comfort that such powers would be exercised fairly and reasonably.

Register

The Law confirms the electronic register for all financial institutions to be maintained by the UAECB (‘**Register**’). Any amendment to the articles of a financial institution shall require the consent of the UAECB, and only take effect once entered into the Register.

Legal Form and Ownership

Banks (excluding branches of foreign banks) must take the form of public joint stock companies, while other financial institutions must take the form of private joint stock companies or limited liability companies (as applicable). The minimum UAE ownership in banks has been increased to 60 percent.

Shari’a compliance

Islamic financial institutions have been addressed in more detail, including:

- continuation of the exception for Islamic financial institutions to trade in goods and own property for their financing purposes;
- confirmation that an internal Shari’a supervisory committee is required, made up of experienced specialists, to be appointed by the general assembly;
- members of the internal Shari’a supervisory committee must be approved by the Authority (previously such members were approved by the UAECB); and
- requirements for internal Shari’a audits and monitoring, together with annual reports to be presented to the general assembly in the form dictated by the Authority. The report is also to be provided to the Authority.

Authorised Individuals

The Law introduces the concept of authorised individuals performing designated functions, and imposing fit and proper conditions on all such individuals. While the UAECB may set rules and conditions in this regard, and must approve all such individuals, the Law confirms that they include chief executive officers, senior managers, executives and anyone else carrying out a designated function (as defined by the UAECB).

Related Parties

Related party transactions are dealt with in the Law, with quarterly reports required by the UAECB of all credit transactions with related parties. The UAECB has wide powers to act on such reports, including requiring provisioning against such facilities or prohibiting further facilities.

Non-banking Activities and Assets

Subject to the exclusion granted to Islamic financial institutions, the prohibition on carrying out non-banking activities continues including in relation to the trading of goods, or owning of property or shares. Exceptions continue to apply where they are received in settlement of a debt, however, interestingly the previous exception of owning property for the bank's operations has been removed. Instead, it appears to have been replaced with a ratio to be stipulated by the UAECB.

Bank Failure

The Law introduces a framework for deposit taking financial institutions to be developed by the UAECB, including triggers signalling financial difficulties of such institutions. Under such a framework, the UAECB will have wide discretion to impose conditions, require additional capital, force or permit mergers, freeze assets, liquidate the institution or, effectively take over management of the institution (whether itself or through a committee).

Lending to the Board

The Law reconfirms the previous clarification which was issued in 2015 by the UAECB, noting that the Commercial Companies Law does not apply, and financial institutions may lend to their board in accordance with directives issued by the UAECB.

“The introduction of the Law is a welcomed legislative development in the UAE as the Law further bolsters the UAE Central Bank's ability to exercise effective regulatory control over the financial sector in line with international best practices and standards.

Change of Control

Controlling interests in any financial institution remain subject to the approval of the UAECB, as does the establishment of any additional branch or subsidiary inside or outside the UAE.

Governance

The UAECB will establish a general framework for governance of financial institutions. In a welcome development, an electronic rulebook is contemplated which will include all regulations, instructions and circulars.

Consumer Protection

There is an increased impetus on consumer protection with several sections of the Law focusing on the protection of depositor interests, and to expand the remit of accessibility of financial services across all strata of society. The UAECB has been mandated to work with the Ministry of Finance to develop a deposit guarantee scheme.

Lawsuits

The UAECB is given the right to intervene in any lawsuit filed involving a financial institution, with the UAECB to be notified of all such cases.

Confidentiality

The Law reconfirms the confidentiality of all customer information, only to be disclosed with the prior written consent of the customer. The issuance of specific banking secrecy regulations is contemplated.

Grievances

An independent Grievances and Appeals Committee is to be established, consisting of judges and experts. Such committee shall be responsible for any appeals against decisions or actions by the UAECB.

Licencing Fees

The UAECB has been newly vested with a discretion to charge for issuing licences and authorisations.

Period to comply

Financial institutions are required, as necessary, to reconcile their positions to comply with the Law within the period stipulated by the UAECB.

Foreign Judgments

One area which has caused issues for a number of financial institutions is the applicability of foreign judgments. In this respect the Law confirms that foreign judgments shall apply in accordance with the applicable legal proceedings of effective laws in the UAE. This would appear to confirm the position commonly held that foreign judgments are not binding on UAE financial institutions until they are recognised in the UAE through the relevant legal process.

Conclusion

The introduction of the Law is a welcomed legislative development in the UAE as the Law further bolsters the UAE Central Bank's ability to exercise effective regulatory control over the financial sector in line with international best practices and standards.

Al Tamimi & Company's Banking & Finance team regularly advises financial institutions operating in the region on regulatory issues, including new legislative development. For further information, please contact Jody Waugh (j.waugh@tamimi.com) or Divya Abrol Gambhir (d.abrol@tamimi.com).

Whistleblower Protection in the UAE: New Developments

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Given the region's concerted emphasis on economic security, the concept of 'whistleblowing' is assuming increasing importance in the laws of the Middle East. The pivotal role played by employees in highlighting wrongdoing is coming into focus, and the view that whistleblower protection may enhance confidence in markets and promote good corporate governance, is gaining increasing acceptance.

What is Whistleblowing?

Whistleblowing is not defined by UAE law. Essentially however, whistleblowing is a disclosure of (often confidential) information that exposes illegal or unethical practices within an organisation. The disclosure is usually made by an employee or an ex-employee of the entity itself, for example via a confidential whistleblowing hotline, or an independent third party, such as a regulatory authority.

Current position

In terms of the obligation to report wrongdoing, the UAE Penal Code contains a requirement that all individuals in the UAE report criminal activity. However, in practice, this requirement is not rigorously enforced and it also fails to address unethical practices or go on to provide protection from retaliation for those who report criminal activity. Until recently, the UAE had not specifically provided for whistleblower protection. Accordingly, whistleblowing has traditionally been a less common practice in the UAE than in other developed jurisdictions, particularly in the US where whistleblowers are not just protected but, in many cases, are incentivised to make disclosures. The legislative landscape in the UAE is changing with the introduction of the following:

Financial Crime Law

The Financial Crime Law (Dubai Law No. 4 of 2016 on Financial Crimes) introduced a degree of whistleblower protection for the first time in the UAE, in cases where the disclosure:

1. is true;
2. relates to activity that may affect the economic security of Dubai; and
3. is made to the Dubai Centre for Economic Security.

Where a disclosure meets the criteria set out, the individual disclosing it will be protected against prosecution and/or disciplinary action. Whilst this goes some way to implementing protection for whistleblowers, it is relatively narrow in scope. Moreover, given its relatively new inception, the law remains to be tested to any significant degree, and is therefore unlikely to instil widespread confidence for would-be whistleblowers, at least at this stage.

DIFC Operating Law

In addition to the Financial Crime Law, further strides have been made by the DIFC Authority in the form of the DIFC Operating Law (DIFC Law No. 7 of 2018) which specifically includes both an obligation to disclose certain conduct and explicit whistleblower protection.

The DIFC Operating Law provides that a 'Registered Person' (in short, being any registered entity in the DIFC) must disclose any matter which involves:

- a contravention of the Operating Law or its regulations or other specific legislation;
- a failure to comply with obligations under certain laws; or
- any other matter which may be set out in regulations.

Failure to disclose where the obligation arises may result in a fine of USD10,000.

In terms of whistleblower protection, the DIFC Operating Law provides that those making good faith disclosures in accordance with the law shall not, as a result of making the disclosure, be:

- subject to any legal or contractual liability;
- subject to any other contractual, civil or other remedy; and/or
- dismissed from employment or otherwise subject to victimisation by the employer or any related person.

Any act in contravention of the above may result in a fine of USD30,000.

Despite the above, the scope of the DIFC Operating Law is relatively narrow in the sense that it relates to disclosures in respect of suspected contraventions of legislation by a Registered Person and would not include, for example, unethical practices by that entity. However, given the obligations imposed on DIFC companies as a result of the DIFC Operating Law, it will likely promote an increased focus on governance with steps such as:

- creating and maintaining proper whistleblowing policies and procedures; and
- including a contractual obligation on employees to report wrongdoing of which they may become aware during employment.

Conclusion

Companies in the UAE (including the DIFC) are increasingly coming under scrutiny to ensure transparency, particularly in relation to financial dealings. The introduction of the Financial Crime Law and the DIFC Operating Law go some way to imposing obligations on Dubai based companies and their staff to disclose wrongdoing. However, there is still significant progress to be made in order to fully protect whistleblowers. It is likely that progress will continue in the coming years and may well result in an extension of whistleblower protection, aligned with that in place in other, more established jurisdictions.

Al Tamimi & Company's Employment & Incentives team regularly advises on all aspects of employment law including whistleblowing For further information, please contact Gordon Barr (g.barr@tamimi.com) or Natalie Jones (n.jones@tamimi.com).

Significant Amendments to the UAE's Criminal Procedures Law

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A new Decree by Federal Decree-Law No. 17/2018 was issued to amend some of the provisions of the Criminal Procedures Law, Federal Law No. 35/1992 ('**CPL**'). There were changes and new additions comprising together around 54 articles in the CPL. This article outlines some examples in order to give an overview of the amendments:

1. Penal order

Definition

In line with Federal Decree-Law No. 17/2018, Article 332 of the CPL now defines the penal order as a judicial order issued by a member of the Public Prosecution who decides on the merits of a criminal case where he does not see a reason for dismissing or referring it to the competent Court, in the case of certain misdemeanours and violations.

Specific crimes

Further to the amendments, Article 333 of the CPL now notes that penal orders shall apply to misdemeanours and violations referred to in the applicable laws in the UAE which provides for the following penalties: (i) a fine; or (ii) imprisonment and/or a fine. The Attorney General is the one to issue a decision identifying the misdemeanours and violations that would be subject to penal orders.

Penal orders will not apply to certain crimes as specified by Article 334 of Federal Law No. 35/1992. This includes crimes affecting state security and its affairs, or crimes that involve mandatory deportation.

Applying a fine

Pursuant to the amendment, Article 335 of the CPL notes that a specific member of the Public Prosecution may issue a penal order against someone who is proven to have committed the crime (if applicable) to compel him/her to pay a fine as prescribed by the law.

Amending and cancelling the Penal Order

According to the new amendment, Article 344 of the CPL provides that the Attorney General has the right to amend or cancel the penal order within 30 days of the date of its issuance, or amend it as of the date of waiving the objection filed by the accused party. The Attorney General may issue the required decisions and instructions to execute the provisions of the section regulating the penal order.

2. Placement Under Electronic Probation

This is a measure applied by the authorities to a party, usually instead of imprisonment, with the aim of confining him/her to a specific place, such as his/her residence (known elsewhere as house arrest).

Definition

Pursuant to Federal Decree-Law No. 17/2018, Article 355 of the CPL defines placement under electronic probation as 'the deprivation of the accused or convicted party from leaving his place of residence or any other specified location, in other times except as allowed to him'. This is specified by an order issued by the Public Prosecution or the competent Court as the case may be. Remote monitoring is carried out using electronic means and the person subject to this will be obligated to carry a built-in electronic transmitter throughout the period of placement under electronic probation.

Factors affecting the location and timings for monitoring

Receiving medical care or pursuing education or other circumstances would be considered when deciding on the timings and location.

Remote controlling

Pursuant to other articles such as Articles 356 and Article 357 of the CPL, the Cabinet, based on a proposal from the Minister of Interior, would specify the means, controls and mechanisms used in executing the electronic probation process. Privacy, dignity and safety of the party being monitored will be considered when deciding on the foregoing electronic means.

Specialised officers

In line with new amendment, Article 358 of the CPL provides that certain officers in the police department shall specialise in monitoring the compliance of the party being monitored, in line with the judicial order or judgment. They may visit the specified location to ensure that the monitored party is abiding by its obligations. A report showing the results of the foregoing should be submitted to the Public Prosecution.

> **"Placement Under Electronic Probation... a measure applied by the authorities to a party, usually instead of imprisonment, with the aim of confining him/her to a specific place, such as his/her residence (known elsewhere as house arrest).**

Temporary Placement Under Electronic Probation

Apart from the above, Article 361 of the CPL provides that the Public Prosecution may issue an order to temporarily place an accused party under electronic monitoring upon his/her approval or based on his/her request instead of temporarily keeping him/her in custody. Likewise, said order will identify the residence or the location in which the accused party needs to be confined as per the times specified in the order.

Restriction on communication

Furthermore, under Article 362 of the CPL, the Public Prosecution may stipulate that the accused party may not contact other criminals, accomplices or the victim, without prejudicing his/her right to contact his/her legal representatives.

Crimes that do not allow for Electronic Monitoring

Article 363 of the CPL notes that it is not allowed to issue an order to temporarily place the accused party under electronic monitoring in relation to crimes which carry a sentence of lifetime imprisonment, execution, crimes affecting the internal or external security of the state or crimes where deportation is mandatory.

The new amendments of the CPL also go on to address specific issues relating to electronic monitoring. In other parts of the CPL, and out of consistency, some articles have been amended to include events where an accused party is the subject of electronic monitoring.

3. Penal Reconciliation

Pursuant to Federal Decree-Law No. 17/2018, amendments were made to existing articles, and new sections that tackle certain topics were added, one of which is Penal Reconciliation, which aims to end the dispute in a criminal matter in an amicable manner ('**Penal Reconciliation**').

Federal Decree-Law No. 17/2018 introduced a new section ('**Section 2**') encompassing around nine new articles solely addressing Penal Reconciliation.

According to the Federal Decree-Law No. 17/2018 and amongst others, Article 346 has been newly added to the CPL. It provides for an option for the Public Prosecution or the Criminal Court to execute the procedures for Penal Reconciliation pursuant to an agreement between the victim and the accused party. This is in line with the provisions in this new Section 2.

If Penal Reconciliation occurs, the criminal case would be closed or the execution of a judgment would be stayed, whichever the case may be.

Exhaustive list

A new article, namely article 347 the CPL, now refers to specific crimes where Penal Reconciliation would be permitted in relation to misdemeanours and/or violations outlined in certain articles. Some of those crimes, where Penal Reconciliation is permitted, include:

1. physical assault;
2. certain types of threat and blackmail;
3. certain types of defamation;
4. recording conversations without approval;
5. taking pictures of someone without approval;
6. fraud;
7. issuing a bounced cheque;
8. breach of trust; and
9. trespassing.

It should be noted that, apart from the above, the existing law already provides for other events that would allow for Penal Reconciliation.

Deadline for Penal Reconciliation

In line with Article 347 of the CPL, Penal Reconciliation can occur at any stage of the criminal case, even if it is after the issuance of a judgment that becomes conclusive (i.e., with a res judicata effect).

Procedures for Penal Reconciliation

Pursuant to the new amendment, Article 348 of the CPL provides that the accused party (his specific agent, heirs or the specific agent of the heirs) may record a Penal Reconciliation in a document notarised by a competent notary public and signed by the victim or his heirs or their specific agent.

Pursuant to Article 349 of the CPL, when no Penal Reconciliation is initiated by the victim (or his heirs), the Public Prosecutor may offer the option of reconciling prior to referring the accused party to stand trial. The offer may be made to the accused party and the victim for a period of 15 days. This period may be extended by a further period of 15 days. A report should be issued to stipulate the procedures and record the Penal Reconciliation decision.

> **"...amendments were made to existing articles, and new sections that tackle certain topics were added, one of which is Penal Reconciliation, which aims to end the dispute in a criminal matter in an amicable manner.**

In line with Article 350 of the CPL, the criminal case shall proceed in accordance with the provisions of the CPL if the Penal Reconciliation was not made within the specified deadline referred to above. However, if the victim accepts Penal Reconciliation, a report shall be issued to evidence the Penal Reconciliation and the agreement of the parties, to be adopted by the Public Prosecution, after the parties sign it.

Similarly, if the victim reconciles with the accused party before the Criminal Court, the Criminal Court would record the reconciliation in the minutes of the hearing to be signed by the parties, provided that a judgment was not conclusive at that point in time. This is in line with the new Article of the CPL no. 351.

Conclusion

This article aims to provide a general overview on the new amendments to the CPL, which are considerably significant. The changes pursuant to such amendments, aim to introduce a new and specific legal framework in criminal matters with a view to enhancing the application of justice in a more modern, efficient and effective manner. Like all new amendments, these are yet to be tested and, it remains to be seen how these changes will be applied in practice.

N.B. This article was first published on Lexis Middle East Law www.lexismiddleeast.com

Al Tamimi & Company's Litigation team regularly advises on updates in criminal legislations. For further information, please contact Omar Khodeir (o.khodeir@tamimi.com) or Eslam Hassan (e.hassan@tamimi.com).

A Focus on Family Business & Private Wealth in the Middle East

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In this special edition of Law Update we focus on issues relevant to family businesses and private wealth. Research reveals that a substantial 60 to 70 percent of businesses in the region are owned by families, generating around $100bn in annual revenue. Given the prevalence in the UAE and the wider Gulf Cooperation Countries ('**GCC**') for significant businesses to be controlled and operated by families, the challenges and issues facing them are of relevance not just to those families but also to the well-being of the broader economies of the countries that house them.

Many of the issues that families with sizeable business interests face are not new, but as time advances, those businesses grow and the founding stakeholders advance in age, finding solutions to ensure the continued growth and success of family businesses becomes ever more important.

A key component of many family structures involves the use of trust arrangements and Richard Catling considers some of the key benefits that trusts can play in the protection and stewardship of family wealth across generations (page 31).

Often difficulties that successive generations of families can face arise from the manner in which family businesses are structured. Nawal Abdelhadi considers how significant risks may arise from holding structures and how those risks can be mitigated by implementing a well-considered legal structure (page 43).

Inter-family disputes, whether due to generational gaps, miscommunication or otherwise have the capacity to paralyse family businesses and so in advising families the experienced advisor will always have regard to the best means of reducing the likelihood of disputes arising. On page 47 Peter Smith considers the analysis that Al Tamimi & Company has undertaken for the Family Business Council – Gulf on dispute resolution mechanisms for family businesses and considers how best to prevent disputes.

Significant interests of families in the GCC are held in real estate and on page 35 Mohammed Kawasmi and Abdulla Khaled provide an analysis of the legal issues in that sector and how family businesses can best deal with them.

On page 53 Nada Abouelseoud provides an Egypt specific focus on issues facing family businesses in the country.

On page 65 Xavier Solanes considers the tax implications for both family businesses and private individuals and the advantages that tax planning can play when considering asset management and devising the optimal legal structure.

For any founder concerned with protecting their legacy, the retention of wealth within the boundaries of the family is a key concern. When children of wealth marry it is common to give consideration to prenuptial agreements which ensure certainty and transparency from the outset. Al Tamimi & Company is well placed to navigate the sensitivities and realities surrounding this area and on page 39 Dipali Maldonado and Ahmed Zohny analyse the legal status of prenuptial agreements in the UAE.

Al Tamimi & Company's full service offering means that across the board we can assist by providing families, in both their complex business and personal affairs, with tailored advice and solutions to best meet their needs. We understand family businesses in the region, having grown alongside them from the firm's inception, and are acutely sensitive to their challenges, values and goals.

Trusts in Family Business Structures

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Introduction

Given that the very nature of a trust used for the purposes of the protection and preservation of family wealth is one of longevity and permanence, giving effect to a trust in family circumstances should be a unique 'one-off' event. The fact that only until relatively recently has the option of using a family trust become available to families in the UAE, in relation at least to wealthy families' UAE assets, usages of trusts cannot be said to be commonplace.

Yet in many ways the trust represents the panacea to many of the otherwise intractable problems faced by families considering the preservation of family wealth. The ability now for families to draw on the common law to provide for the protective benefits of a trust means that trust arrangements are now starting to be used regularly for enlightened families who appreciate the flexibility and effectiveness that these legal structures can provide.

Consideration of the use of trust structures can often lead to families asking further related and very necessary questions as to how to restructure their businesses. Conglomerations of interests which have grown organically over time may require substantial pruning and reorganisation to ensure longevity and stability. Whilst the optimal family business structure is never a 'one-size fits all' model, more often than not a trust arrangement will be the cornerstone of any reimagined family structure.

For over a decade the UAE has, in the form of the DIFC Trust Law (recently amended and updated in 2018), offered the option of a trust but in recent years, with a better understanding between various Governmental organisations in Dubai and the DIFC, the trust has become the optimal choice for the holding of family business interests. In particular companies incorporated in the Dubai International Financial Centre are now treated as national companies, provided they meet normal requirements under UAE law (namely that they have UAE national shareholders). The DIFC now represents a viable and tested option for incorporating holding structures of 'on-shore' family assets, meaning that a trust established in the DIFC can accommodate even the most complex of family arrangements.

An elegant solution to complex problems

Control and Governance

The transition of family assets across generations results in a number of issues which strike at the heart of the viability of ownership, and central to that is the fragmentation of family interests caused by the application of the inheritance laws applicable in the UAE as elsewhere in the region.

The result of an increased number of stakeholders is primarily one of control. Individual direct ownership by inheritors in any structure, but especially a shareholding arrangement incorporated under the Commercial Companies Law, can render governance and decision making almost impossible given the capacity for disagreement and for shareholder fractions to form. It is not uncommon on a transition, especially in a business unused to a multiplicity of voices, for the result to be paralysis of decision-making and even the hindrance of the running of the business on a day-to-day basis, with potentially disastrous consequences.

At its heart, a trust is a separation of the legal and beneficial ownership of an asset, and this separation of interests allows ownership rights to be shared between trustee and beneficiaries. For family businesses this important characteristic is the key to putting in place an arrangement which can protect the many interests of a widened family ownership whilst at the same time insulating the governance of the business by incorporating a management structure that is distinct from ownership.

Via either a discretionary arrangement or the ownership of fixed interests in the beneficial interest in the trust, family members can hold an entitlement to income and capital from the underlying businesses and assets held within the consolidated ownership structure held in its entirety by the trustee.

Inherent Flexibility

In establishing a trust, families are not constrained by anything other than the fundamental trust principles in law upon which trusts are founded. Without reference to external regulators or the notary, the trust deed can be tailor made to the precise specifications of the family. Governance, limitations to, and the extent of, beneficiaries' individual interests, restrictions on the transfer or securitisation of those interests and policies as to income from those interests can all be provided for.

In addition it is possible to ensure that a trust follows the Sharia inheritance principals or indeed that the settlor's express intention that the interest in the trust remains within either a narrow or wider family grouping, such that the trust will weather the births, marriages or deaths occurring within the so defined family beneficiaries.

Exit Mechanisms

Not only would a trust structure put in place by foresighted families enable a smooth transition of ownership on the passing of the initial generation, but it would also ensure that the arrangement continues in the future given that individual family member's beneficial interest would not grant any particular holder, on their own, any effective means of disrupting business operations or seeking to change any holding structure put in place.

"The use of trusts in family business structures in the UAE serves as a means of addressing many of the problems that families face as ownership transitions across generations and can serve as a means of protecting both the wealth and legacies of such families for the future.

Notwithstanding that the inherent nature of the trust can be used to provide stability from the perspective of the family business, a well-considered structure will also take into account that quite often the interests of individual family members may not always align with those of the family as a group. The flexibility of trust structures means that the prospect of stakeholders having interests which are distinct from the business can be provided for in ways that would not be possible in common company structures available under the Commercial Companies Law.

Issues such as the inability for companies to buy-back interests of stakeholders, lack of liquidity and the requirement for unanimous consent on transfers all combine to stop exits and conversely encourage stakeholder argument. These issues can be circumvented in a trust by enabling either the trustee to have the discretion to, or to be required to, allow exits based upon a cashing out of beneficial interests in a manner which is not possible under normal 'on-shore' company rules without reference to external controls.

Certainty of outcome

Whilst many families are perhaps comfortable with trusts through their holding of assets in other jurisdictions, the imposition of a trust to hold assets in the UAE may still be a leap into the unknown and understandably concerns may be had as to the lack of wider recognition of such arrangements. It is comforting to know, therefore, that it is possible, in a well-structured trust arrangement, to ensure that disputes arising in respect of the trust have reference to the courts of the DIFC, staffed with predominantly common law judges trained and well versed in trust law doctrines and practice, rather than the 'on-shore' local courts which are not so experienced in trust law.

It is also possible, before there is any reference to court, to include mediation or another similar conciliatory option as the means of dispute resolution, the court being the least appropriate forum for the resolution of family disputes. If mediation fails, the last resort can be a compulsory and confidential arbitration process under the rules of the DIFC-LCIA Arbitration Centre.

Whilst a well drafted trust deed produced by expert advisors should provide adequately for the possibility of longevity and therefore most likely outcomes, it is almost impossible to document every possible issue that may arise as the facts and circumstances of the family's arrangements change over the years. However, if unforeseen gaps or circumstances emerge in the operation of family arrangements, trust law doctrines and jurisprudence developed over time make available to the adjudicator the possibility to chart a course and enable the trust to accommodate such issues. Consequently, the settlor of the trust can be assured that their arrangements will be respected by the ultimate arbiter of any dispute.

Confidentiality and Disclosure

Whilst the recent inclusion of the UBO Regulations in 2018 in the DIFC means that a DIFC trust cannot be used to shield from the regulators assets which would otherwise be disclosable in any event 'on-shore' in the UAE, the regulator does recognise that family trust arrangements are private, and as such the documentation can remain confidential with no obligation to disclose to any interested person and no requirement to notify any public body (subject to the UBO Regulations) of day-to-day movements in the trust.

Conclusion

The establishment and administration of a trust is a complex matter but in the DIFC and likewise in ADGM in Abu Dhabi families have the advantage of drawing upon a premier network of expert legal and accounting services to deliver the services families need. The vast majority of businesses in the Middle East are family owned and for those families that wish to retain the significant proportion of their ownership and governance in the UAE, the DIFC and ADGM offer attractive options to operate family trusts from a UAE platform.

Al Tamimi & Company's Family Business practice regularly advises on trust arrangements and other related matters. For further information, please contact Richard Catling (r.catling@tamimi.com) or Nawal Abdelhadi (n.abdelhadi@tamimi.com).

Structuring of Family Real Estate Assets: Legal and Policy Considerations

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In the Middle East, commercial enterprises including dominant/market leading businesses, historically adopted relatively simple legal structures. In fact, the founding individual would often retain ownership of the business and his/her real estate assets in their personal capacity. In doing so, those assets were potentially at risk: (i) in the event of a legal claim against the individual; and/ or (ii) on the death of the owner, in the event of any disputes between the owner's heirs.

As the UAE's (and in particular Dubai's) legal and policy framework has developed, it is now far more common for business operators to structure their business and personal real estate assets in a manner that takes those issues into consideration and minimises potential risks.

Often, the simplest approach is for an individual to ensure that their business-related real estate assets are owned through a corporate entity.

Structuring to mitigate against legal risks

Owning a real estate asset through one or more corporate entities mitigates against the risk that the particular real estate asset would be subject to a claim in respect of the personal liabilities of the individual founder (or similarly, in respect of the liabilities of any of the individual founder's other business ventures).

Structuring to mitigate against succession issues

In general, on the death of an individual in the UAE, that individual's estate will be distributed in accordance with Sharia law and, pursuant to UAE law, dealing with the estate of the deceased is generally restricted until the Court issues its final judgment on the inheritance.

Practically speaking, the time and potential issues involved in inheritance matters can pose a significant risk to the continuity and viability of any business enterprise that is reliant upon or conducted using those real estate assets.

Using a corporate entity to own critical real estate assets goes some way to mitigating against the risk that inheritance issues would impact upon the business itself. In that scenario:

- the death of an individual shareholder would not, of itself, prevent the corporate entity from continuing to deal with the relevant real estate asset in its capacity as owner; and
- Sharia law would determine the distribution of any shares in that company in due course.

Legal basis for "corporate" ownership of real estate in Dubai

Law No. 7 of 2006 Concerning Real Property Registration in the Emirate of Dubai ('**Property Law**') provides that companies that are:

- wholly owned by UAE or GCC nationals may own any real estate in Dubai; and
- owned by foreign nationals may own freehold title, a long lease or a usufruct right up to 99 years in any area in Dubai that has been designated for foreign ownership ('**Designated Areas**').

Notwithstanding the generality of the Property Law, the Dubai Land Department's ('**DLD**') current policy imposes restrictions on foreign companies preventing direct ownership of real estate rights in Dubai but allows foreign companies to own through Dubai free zone companies. However, please note that the current DLD policy does not allow Trusts to own properties in Dubai whether directly or indirectly.

For UAE and GCC nationals, generally using a Limited Liability Company to own the relevant real estate assets would be appropriate.

For foreign nationals, there are several options available, such as a Jebel Ali Free Zone Offshore Company or Dubai Multi Commodities Centre Offshore Company.

Furthermore, the DLD has also signed memoranda of understanding with other regulating authorities (including Abu Dhabi Global Market Authority ('**ADGM**') and the Dubai International Financial Centre ('**DIFC**')) to permit companies incorporated in those jurisdictions to own land in Dubai (subject to the existing restrictions on foreign ownership) and the terms of the signed memoranda of understanding between the regulating authorities.

Practical steps and costs

Importantly, where assets are currently owned by an individual in their personal capacity, implementing an appropriate risk and succession structure can be relatively cost effective.

Ownership of a real estate asset may be transferred from an individual to a corporate entity owned by them (or by their first degree relatives) by way of 'gifting'. Subject to the approval of the DLD, gifting fees for real estate properties are 0.125% of the current market value as determined by the DLD.

The procedure for gifting is a straight forward and predominantly a procedural process.

Registration of wills

Non-Muslim foreign nationals may also register a will in the DIFC (and should, in the near future also be able to register wills with the Dubai Courts). Following the death of the individual, their estate would be administered in accordance with the registered will, rather than pursuant to Sharia principles.

> **Implementing an appropriate risk and succession structure can be relatively cost effective.**

Currently, the DIFC Wills Centre offers the following four types of Wills for non-Muslims: (i) Guardianship Will; (ii) Property Will; (iii) Full Will; or (iv) Free Zone Company Will.

As an additional layer of risk mitigation, we would recommend that such a will be registered and that it clearly delineates how the shares in the real estate holding company are to be dealt with.

Granted land

In the event that ownership of the land was granted by the Ruler of Dubai for residential purposes, it is important to consider that such land is often restricted from any real estate dispositions.

However, in cases of granted lands for commercial or industrial purposes, the owner will be required to convert the ownership of the land from grant to private prior to being able to avail himself or herself of the structuring options discussed above.

In this regard, Article 4 of Decree No. 4 of 2010 Regulating the Ownership of Land Granted for Industrial and Commercial Purposes in the Emirate of Dubai provides that a payment of 30 percent of the current market value of the land to the DLD is required to convert the ownership of the land from grant to private.

Additional considerations

While this article has focused on some key benefits of using corporate entities to own business real estate assets in Dubai, it is important that readers seek professional advice as to their individual circumstances and have regard to their own business and personal objectives when assessing what structuring options are most suitable for them.

Al Tamimi & Company's teams regularly advise family businesses in restructuring their real estate assets. For further information, or legal assistance on this subject please contact Mohammad Kawasmi (m.kawasmi@tamimi.com) or Abdulla Khaled (a.khaled@tamimi.com).

Marriage Contracts in the UAE: To Prenup or not to Prenup?

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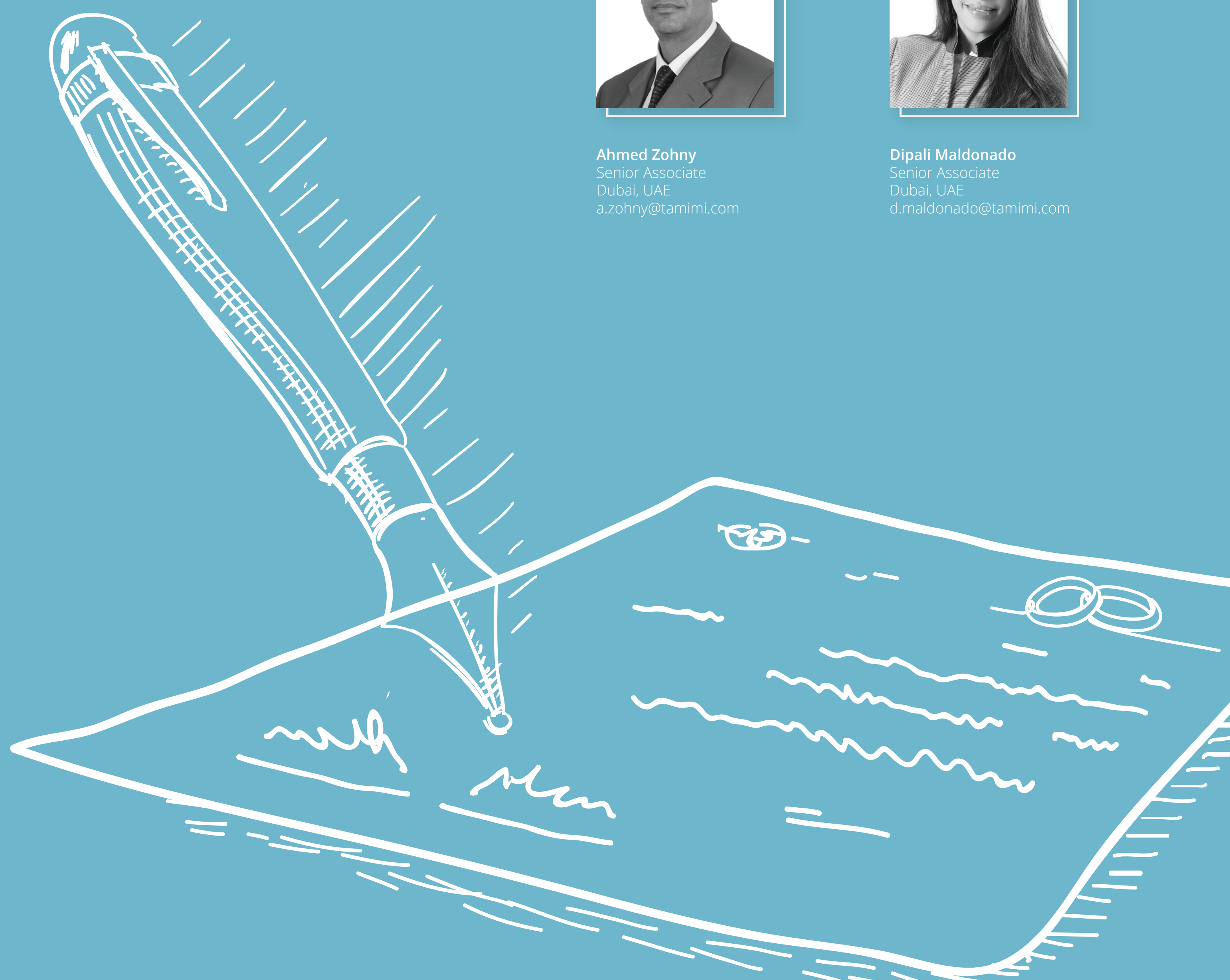


Introduction

Prenuptial agreements or premarital agreements have become common practice as a legal tool to regulate how assets between future spouses should be divided in the event of divorce. Such agreements may include a wide variety of issues, *inter alia*, spousal support, assets including real estate and money or the residence of the family post-divorce.

In addition, there are postnuptial agreements that are primarily the same as prenuptial agreements but entered into upon conclusion of the marriage.

This article seeks to answer the question regarding the status, applicability and enforceability of prenuptial agreements under UAE Federal law No. 28 of 2005 regarding Personal Status ('**Personal Status Law**') or within the broader UAE legal framework. To answer this question, it is necessary to make a distinction between non-Muslims, Muslim expats and UAE nationals and examine the legal remedies available to each of them.

Non-Muslims

In general, prenuptial and postnuptial agreements would be permissible particularly if the national laws of the contracting parties provide for matrimonial distribution upon dissolution of the marriage and/or permits enforceability of these types of agreements.

However, it is important to make a distinction between assets located in the UAE and those abroad. With respect to UAE assets, Article 1(2) of the Personal Status Law states that

> *"The provisions of this law shall apply to the citizens of the United Arab Emirates unless the non-Muslims of them are subject to special provisions applicable to their sect and denomination, its provisions shall also apply to foreigners as long as none of them insists on applying his law."*

Further, Article 5 states that "The state courts shall be competent to try personal status actions initiated against citizens or foreigners having a domicile, residence or workplace in the state."

In view of the above, pre/post-nuptial agreements between foreigners which satisfy the criteria set out in Article 5 shall be enforceable in accordance with the governing law set out therein, even with respect to UAE assets.

With respect to assets located outside the UAE, the enforceability of the agreements shall be subject to the law that prevails where those properties are situated.

Muslim Expats

It is necessary to distinguish between an expat of Muslim faith seeking to enforce a prenuptial Agreement: (a) within the context of divorce proceedings taking place within the UAE; and (b) once the divorce has been finalised outside of the UAE.

For divorce proceedings initiated within the UAE, the Personal Status Law shall apply and the prenuptial agreement shall be treated in the same manner as for UAE nationals (for further information on this point we refer you to the section below) In the event the prenuptial agreement is being enforced post conclusion of the divorce outside of the UAE, it will be regarded as a case of enforcing a contractual agreement and thus subject to UAE Law No. 5 of 1985 regarding Civil Transactions.

UAE Nationals

Islamic Shari'a does not recognise the principle of matrimonial property but rather the autonomous financial status of the spouses. Therefore, all properties established or acquired by either of the spouses during the marriage is and remains the sole property of that spouse with no rights or claim to ownership by the other spouse.

Having said this, Shari'a does permit entry into agreements relating to marriage between spouses in order to govern their rights and obligations provided that they do not contradict Islamic Shari'a. This principle has been codified in Article 20 of the Personal Status Law,which provides for the inclusion of written conditions in the official marriage certificate without limitation as to the scope of the conditions.

The explanatory memorandum issued with the Personal Status Law has stated in reference to Article 20 that contracts to codify parties' best interests and a marriage contract is no different from any other form of contract. Hence, the inclusion of certain conditions is permissible. However, there is a difference of opinion between Shari'a scholars as to the scope of the conditions; some widen the scope and others limit it, albeit all agree on the overarching principle that the conditions should not contradict Islamic Shari'a.

The explanatory memorandum further provides that the draftsmen of the Personal Status Law have adopted the views of the Islamic scholar, 'Ahmed Ibn Hanbal' which embrace a very wide scope in order to strike the right balance between public and private interests. Such a trend would accommodate the contemporary developments in modern society and recognises the need for parties to protect their interests keeping in mind their respective personal circumstances. In this way, marriage contracts can assist in providing greater clarity and transparency, saving time and money in the event of divorce and setting out exactly how assets are to be dealt with, thereby avoiding future potential differences at the outset of a marriage.

> **This article seeks to answer the question regarding the status, applicability and enforceability of prenuptial agreements and marriage contracts under UAE law.**

The above explanation opens the door for the inclusion of any conditions, even those that aim to regulate property rights between the spouses, provided that they do not contradict the overarching conditions set out in Article 20 para. 1/2/3 of the Personal Status Law.

There is limited case law regarding marriage contract conditions related to property but one important precedent is Dubai's Court of Cassation Case No. 2 of 2010, where a wife sought a divorce on the grounds of harm and pleaded that the continuation of the marriage was impossible. She further sought to enforce a postnuptial agreement pursuant to which her husband had promised her a house in the UAE registered in her name. The court in its decision dated 28 September 2010 granted her the divorce, but as to the postnuptial agreement it held that since the pledge/condition to buy her a house was not written into the marriage certificate, it fell outside the scope of Article 20 of the Personal Status Law. Accordingly the court would need to interpret the written agreement in accordance with the Civil Transactions Law. It is worth noting that the court turned down the wife's request not because it was written in a separate agreement after the marriage took place but because the wording of the agreement did not meet the requirements specified by the Civil Transactions Law, namely that the basic tenet of a contract, i.e. offer and acceptance, was not present in the agreement.

This judgment indicates that if the condition had been set out in the marriage certificate or if the terms had fulfilled the requirements of the Civil Transactions Law, the court would have enforced the contract.

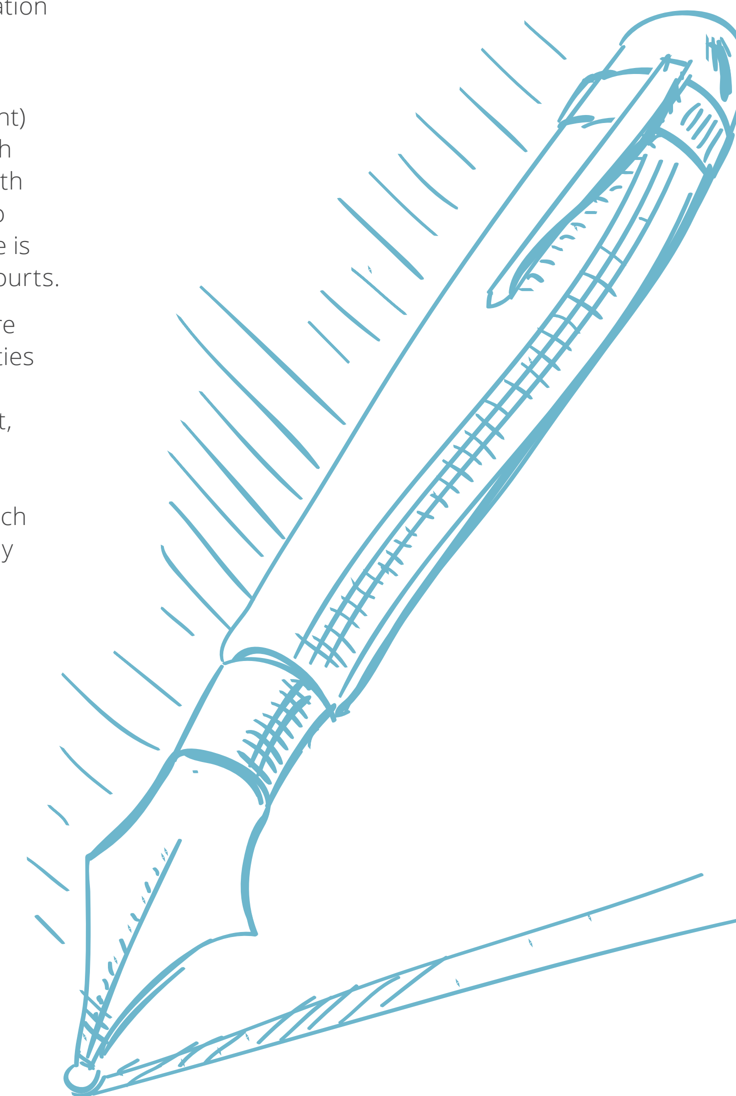
The advantage of having the property conditions spelled out in the official marriage contract rather than a separate agreement is that the terms can be said to have been agreed upon and accepted by both parties to the marriage without the need for any further legalities to be fulfilled. In the case of a postnuptial agreement, as in the case referred to above, one must abide by the Civil Transactions Law in order to ensure all of the requisite formalities and legal requirements are met. Another factor to bear in mind is that personal status courts' proceedings tend to be faster than civil court proceedings, particularly when one considers that in personal status cases, the court of cassation must rule directly in cases before it whereas in civil court process, the court of cassation can refer the case back to the court of appeal.

In view of the above, one can conclude that a marriage contract (akin to a prenuptial agreement) entered into between spouses pursuant to which matrimonial assets or money/alimony is dealt with or alternatively where one spouse undertakes to transfer certain assets to the other upon divorce is very likely to be upheld by the personal status courts.

Furthermore, pre/post-nuptial agreements are of particular relevance when it comes to properties based outside the UAE and in countries that acknowledge and enforce this kind of agreement, provided that basic conditions, such as financial disclosure and separate legal counselling, are satisfied. Having an agreement that regulates such properties is of the utmost importance especially where the wife is a foreign national. In many cases, if the wife in question is a foreign national she would be in a position to undertake proceedings against these properties in the event of a divorce.

In conclusion, regulating and safeguarding rights vis-à-vis matrimonial assets and/or other conditions are important for any marriage and even more so in the event of a divorce in order to ensure a smooth and fair transition and conclusion for the parties involved.

Al Tamimi & Company's Private Client Services team regularly advises on Family Law matters. For further information, please contact Dipali Maldonado (d.maldonado@tamimi.com).



Legal Structuring for Families in Business

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Legal Structuring for Families in Business

Family-owned businesses contribute significantly to the economies in the Arabian Gulf and wider Middle East. Family-owned businesses are important to the economy of the United Arab Emirates and are the backbone of the UAE business community. They vary in size from small and mid-sized enterprises ('**SMEs**') to international corporations. Whatever their size they have their own unique attributes and challenges. These affect not only the families operating the business but also third parties dealing with such businesses.

Succession planning and governance is the key to maintaining and growing successful family businesses. Recently, founders in the region have become more aware of the importance of succession planning and the risks associated with transition from one generation to another if the binding arrangements governing the family and its business are not in place.

An essential pre-condition to effective succession planning is corporatisation of the family business. In order to corporatise the family business, an appropriate corporate structure must be put together. There is no one-size-fits-all structure. Each family is unique in its own way. The dynamics of the family and its business differ from one family to another depending on several factors.

Selection of the optimal corporate structure usually depends on several factors that are different from one family to another and from one business to another. Such factors include: the nature and type of assets and business activities; its geographic location; the complexity of the family arrangements; and many others.

In some cases, the optimal corporate structure may be impossible to achieve due to certain limitations such as restructuring constraints in light of certain regulated activities that impose certain requirements or local ownership restrictions. However, even under severe regulatory restraints there is usually considerable scope for improvement in the equity holding and governance arrangements affecting the family.

A Prevalence of Poor Legal Structures

The most common family ownership structures entail an array of businesses and assets owned by one person i.e. the founder. Founders often own the businesses in their personal capacities with full management control and authority. Insufficient heed is paid to the risks arising out of the assets and businesses, the consequences of forced heirship under Sharia Laws and the contingencies of managing businesses and assets in the event the founder suffers a disability or passes away.

In other scenarios, ownership of family assets is not restricted to the founder but is distributed amongst the family stakeholders under which all assets are owned by the family stakeholders directly according to their respective proportions under Sharia or otherwise as agreed.

Branches and sole establishments are very common in the Middle East because they are easy and cheap to establish in comparison to other structures. However, they provide no limitation of liability for any owner of an establishment or to the parent company of the branch.

Problems Associated with Poor Legal Structures

What happens if the founder passes away? Inheritance rules will apply and this usually results in fragmentation of ownership and control, and too often shareholder fractionalisation. These problems can be exacerbated in the case of large families. Added complications occur where there are minors amongst the heirs and the inheritance courts become involved. Business and decision-making ability is frozen until the inheritance procedures are completed and can be impacted and slowed until minors attain full legal age.

Risks are not limited to after the death of a founder i.e. at transition. There are also dangers that can arise during the lifetime of the founder.

Where a founder owns businesses through sole establishments that are engaged in high-risk businesses, all liabilities of the business are the personal liabilities of the founder being the owner and the manager of the sole establishment.

Buildings registered in the personal name of a founder can give rise to civil or even criminal liability (e.g. fires).

There is no one-size-fits-all structure.

Poor legal structure models also intermingle passive assets that are risk free assets with operating risks in particular types of business (e.g. oilfield services). Furthermore, poor structures are prone to lack of proper governance, management and/or reporting lines. Such models do not offer an attractive structure for future sell-downs, joint ventures, introduction of a strategic investor or even a public offering. Significant preparation would be required which may be costly and time consuming.

A further disadvantage when there is no proper structure in place is that financing cannot be obtained on a stand-alone basis meaning significant dependence on personal guarantees from the founder or individual family stakeholders might be required.

A Well Designed Structure

What is a Good Legal Structure?

Ideally, a business structure should have a holding company in the form of a limited liability company (regardless of the jurisdiction of the holding company) which consolidates the collective family assets and business under a holding structure which facilitates management, accountability and reporting. Such a structure should limit the liability of the founder and/or family stakeholders against any business or financial risks.

Further, subsidiaries should be separated into focused business units also in the form of limited liability companies.

Ideally, the structure should minimise the use of branches or sole establishments except in exceptional cases (e.g. fast food outlets).

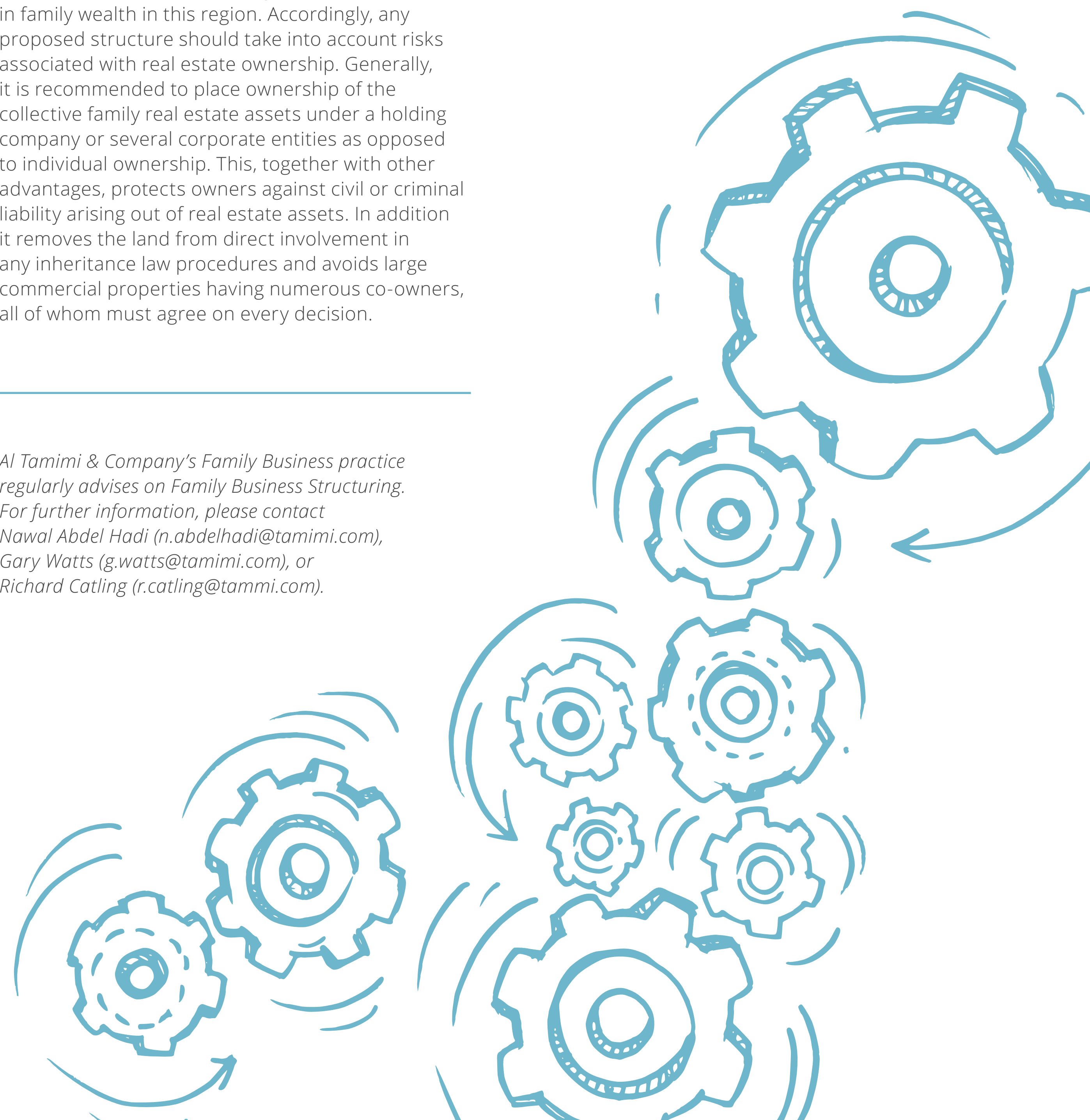
A well designed structure would limit the liability of the holding company i.e. against any possible business and financial risks resulting from any of the businesses downstream i.e. corporate guarantees. Such a structure would also separate and insulate core fixed assets from operating risks and liabilities within the businesses on an ongoing basis as well as facilitate financing on a 'stand-alone' basis.

A structure comprised of a holding company consolidates the management of a business and other assets of the family under one group umbrella and provides the flexibility to facilitate sell-downs of, or disposals of equity.

Even under severe regulatory restraints there is usually considerable scope for improvement in the equity holding and governance arrangements affecting the family.

Real Estate constitutes a significant stake in family wealth in this region. Accordingly, any proposed structure should take into account risks associated with real estate ownership. Generally, it is recommended to place ownership of the collective family real estate assets under a holding company or several corporate entities as opposed to individual ownership. This, together with other advantages, protects owners against civil or criminal liability arising out of real estate assets. In addition it removes the land from direct involvement in any inheritance law procedures and avoids large commercial properties having numerous co-owners, all of whom must agree on every decision.

Al Tamimi & Company's Family Business practice regularly advises on Family Business Structuring. For further information, please contact Nawal Abdel Hadi (n.abdelhadi@tamimi.com), Gary Watts (g.watts@tamimi.com), or Richard Catling (r.catling@tammi.com).



Family Business Disputes in the GCC: A Snapshot

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Family businesses are the most important contributors to economies in the Gulf Co-operation Council ('**GCC**') outside of state-run enterprises. In 2016, PWC's Middle East Family Business Survey found that family-owned businesses – where shareholders, linked by blood ties, own all or the majority of shares in a company often bearing the family name – accounted for around 60 percent of the region's gross domestic product and employed over 80 percent of the workforce.

Yet family businesses suffer from a perverse tension. On the one hand, family-run businesses are more likely to survive because family members make sacrifices and co-operate in ways that strangers embarking in a collective enterprise may not. On the other, families mix business with pleasure, and the same intimate relations that encourage teamwork may turn sour. When they occur, family disputes can become more personal and acrimonious than disputes between stakeholders in other forms of corporation. Although family businesses can be worth millions or even billions of dollars, employ thousands of people and span many countries, disputes between family members are often not about money or control, but about pride, prestige and status.

Through 2018, Al Tamimi & Co has been working with the Family Business Council – Gulf ('**FBCG**') to conduct research into forms of dispute resolution used by families in the GCC. The FBCG is the regional chapter of a global family business organisation, the Family Business Network. It promotes the successful development of family businesses, including advising on improvements to their governance and promoting better succession transitions for handing the business down through family generations.

The fruits of that research will be published in 2019. In this article we explain in brief how the report was constructed and focus on two areas: three major reasons for family disputes crystallising; and three measures that can be taken to reduce the intensity of disputes before they break out.

Research methodology

The first stage of our research was based on interviews with key stakeholders from selected GCC jurisdictions. Our focus was predominantly on the UAE, as we reasoned that many of the headline problems faced by families in resolving disputes are common across the Gulf countries. Our Emirati interviewees included senior personnel from: the Dubai Chamber of Commerce and Industry; the Dubai Courts, the Dubai International Financial Centre ('**DIFC**') and Abu Dhabi Global Market ('**ADGM**') Courts; arbitral institutions including the DIFC-LCIA and DIAC arbitration centres and the Dubai Courts' Centre for the Amicable Settlement of Disputes; the Federal Ministry of Economy; and the Dubai Economic Department. In Bahrain we met with experts from the Bahrain Chamber for Dispute Resolution, the GCC Arbitration Centre, and local law firms.

> **"Our approach has been to recognise family disputes as their own, separate category, overlapping with conventional company problems but recognising: (a) the emotional charge of families who own businesses, often built up over many years, over the colder attitude of third party shareholders who seek only a profit; and (b) the informality of family management.**

The interviews were structured around an agreed list of questions that were sent to the interviewee in advance, to give him or her time to consider the issues to be discussed. Those questions covered: the state of family business disputes; factors allowing effective and successful family business dispute resolution; the availability of dispute resolution processes; procedures for alternative dispute resolution ('**ADR**'); awareness of ADR; and collaboration between providers of ADR. Interviews were conducted in Arabic or English (and sometimes both).

Why do family business disputes arise?

We have identified a number of triggers of family disputes. Here, we focus on three which we have found to be commonplace in the GCC.

Disputes over succession and the assignment of management and control rights

In a typical situation, a founding father may have applied his discretion throughout his lifetime in the division of profits. When he dies, the new controller of the family business may split profits in a different way. The new controller may be appointed by a constitutional document like a memorandum of association, or may be appointed after a vote of family members, or may simply slide into the role without much thought or challenge. Aside from changing the distribution of profits, the new controller may change any number of features in the family business, from its corporate structure, the location of its offices and the numbers of employees, through to the business focus, marketing and branding strategies it employs. Any of these changes can give rise to a dispute, as can decisions and actions taken during the interregnum or transition phase between one controller and another.

Family dynamics and competition across the family

Our respondents identified disputes arising where personal animosities spill over and are imported into the family business context. Purely personal disputes are hard to identify; there is a feedback loop between personal disagreement causing dispute in a business setting, and aggravated family business discord descending to personal acrimony. In many ways, personal fallings-out are the hardest to deal with too, as they may rest in emotion rather than reason, and they are the most Pyrrhic, as family members look out for their own self-interests at the expense of their family business.

Furthermore, to an extent, all disputes, whether within family businesses or not, are about power and authority. Disputes may ostensibly be about control but really be about the lack of trust between family members who were held in check by the founding father during his lifetime, or because of embedded, emotional conflicts between family members that come to the surface at difficult times. Such personal animosities or dislikes can mask themselves as disputes about control or money when, in fact, they are about personal rivalries or competition amongst family members.

Our approach has been to recognise family disputes as their own, separate category overlapping with conventional company problems but recognising: (a) the emotional charge of families who own businesses, often built up over many years, over the colder attitude of third party shareholders who seek only a profit; and (b) the informality of family management. These factors shape the need for different conflict resolution methods.

Shareholders exit options and share valuation metrics

What happens when one family member wants to "cash in" and sell his or her stake in the company? This can be particularly problematic if those looking for an exit seek to liquidate the company to get a share of its assets as well as sell their equity. Family members may criticise the decisions and actions of others in the family business and seek to sell their shares (possibly to third parties from outside the family) or otherwise leave their interest in the family business. It may be the case that when a family member wants to exit the business, if the other family members cannot pay them off, the business may look to formally issue shareholdings and seek private placement or even public listing of those shares, to create a mechanism for shareholders to grow their holdings and liquidate them.

How can family disputes be prevented?

We asked our interviewees what factors they thought contributed to the quick and effective resolution of conflicts in family businesses. A common perception was that family business dispute resolution can continue on for years without a binding decision being made. Pre-emptive measures can be taken by family businesses in their legal structures and their governance which can smooth the dispute resolution process. In our view, it is much better for a family business to act sooner rather than later.

Draft a thorough constitution for the family business

Family businesses come in many guises. Some may effectively be unincorporated associations where the sole legal identity is the founder who acts as a sole trader, but with his or her family involved in the management and operation of the business. More usually, the business is a limited liability company or private company of some form that is governed by a constitution, articles of association (**'AOA'**), memorandum of association ('**MOA**') or similar agreement. It is important that families consider reflecting in their constitution the protocols they want to use in cases of dispute. They may, for instance, pre-appoint a mediator or arbitrator, or have a process for exiting the family business. However, there are limitations to what the constitution can say, and the personal nature of a family dispute often puts it beyond legal argument.

We would recommend that family businesses take proper legal advice on the form and substance of their constitutional documents, and consider including provisions for the following:

- the flexible allocation of voting rights which permit the family's agreements to be followed and the family governance arrangements to be implemented in the constitutional documents;
- trust law and private interest foundation law structures, if appropriate;
- mechanisms that allow for a swift and smooth exit or cashing out by family members who are no longer interested in the business, including agreements on the processes for valuing the family business and paying the departing family member, and mechanisms for unrestricted buy-back of shareholdings, assets and other interests by the family business;
- processes establishing and operating charitable activities that a family wishes to undertake as part of its contribution to wider society;
- making sure that the constitutional document is enforceable; and
- choosing a dispute resolution mechanism. If this is not done in advance, the dissident family member will choose one which will be most advantageous to him or her, and not necessarily in the interests of the wider family business.

"Family members may not want to pay for detailed or specialist legal advice at the outset of a dispute but, in delaying seeking help, they may not know of the availability of alternative dispute resolution. In ignorance, family members may be unable to deal with their dispute until it deteriorates to the point at which they instruct specialists to recover the situation.

In particular, families should consider succession planning. Succession planning is essential if a family is to avoid conflicts arising when the controller of the business dies. In comparison with common law jurisdictions, generally speaking, GCC onshore laws and regulations are not well adapted for family businesses and are considered to a certain extent to be a rigid environment for succession planning purposes. Family businesses may wish to use trust and private interest foundations arrangements and structures which provide greater flexibility for family succession and governance.

Governing law and jurisdiction

Family businesses should consider carefully whether they wish to incorporate inside or outside a free zone, as not all legal regimes allow the full possibilities for a bespoke constitutional agreement and jurisdictions vary in the help they give parties in family disputes. Many jurisdictions do not recognise side agreements that vary (and necessarily conflict with) the formal AOA or MOA and terms of a company, for example, because they are not documents capable of notarisation. Even within jurisdictions there are different flavours of flexibility: in the UAE, limited liability companies provide more flexibility in governance arrangements and in drafting MOAs, and they are not as heavily regulated as joint stock companies.

Awareness of access to ADR

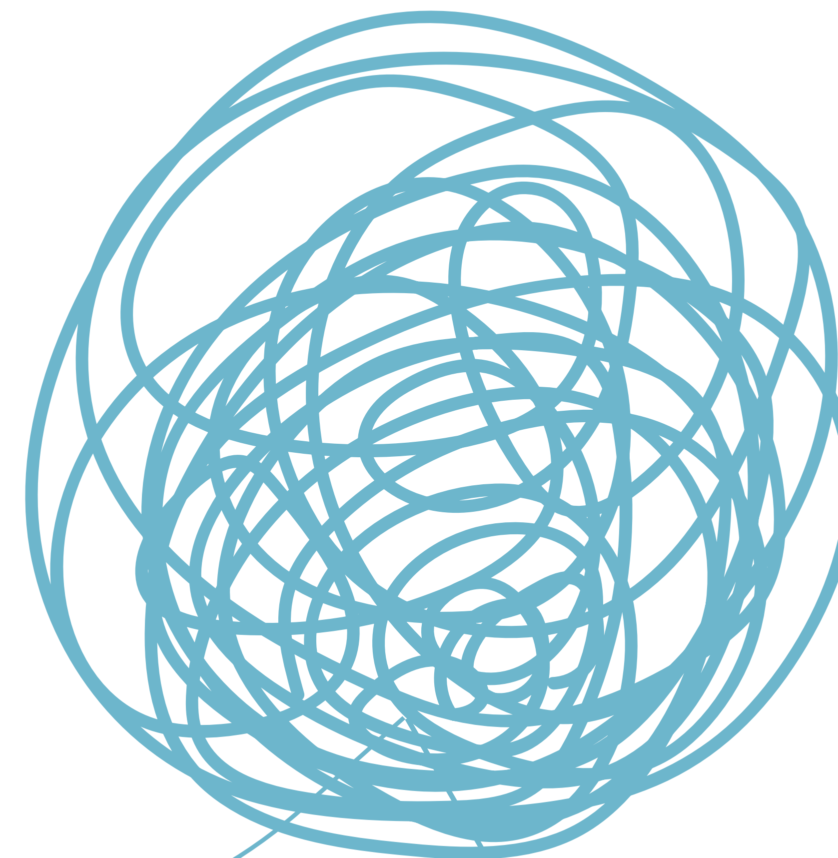
This point builds on both of those above. Parties cannot resolve disputes quickly if they are unaware of channels and processes which can help them to do so. The two main forms of ADR available in the GCC region are mediation and arbitration. Other forms exist, such as adjudication, expert-determination, neutral evaluation and conciliation, but to an extent these are sub-species of arbitration and mediation as generally understood by our respondents. Our respondents identified an awareness of ADR, whether through formal institutions or informally by seeking a mediator or arbitrator for their dispute, as a key factor in effective conflict resolution. Family members may not want to pay for detailed or specialist legal advice at the outset of a dispute but, in delaying seeking help, they may not know of the availability of alternative dispute resolution. In ignorance, family members may be unable to deal with their dispute until it deteriorates to the point at which they instruct specialists to recover the situation.

One useful aspect of ADR is that the parties control the process. As a general proposition, arbitration and mediation both provide swifter, cheaper, more flexible, and more private means to resolve disputes. In the UAE (and particularly in the Emirate of Dubai), the majority of family business disputes – some thought up to 80 percent - are believed to be dealt with by the Ruler's Court, either directly or by an arbitrator or mediator appointed by the Ruler's Court. Some of our respondents thought that the outcome of the conflict resolution process should be binding and final if it is to be effective, and that non-binding dispute resolution was of less or little importance. If the alternative dispute resolution process is not going to lead to a conclusive end, it may be susceptible to being undermined by the losing party unless imposed by a higher authority. In mediation, where the parties arrive at their settlement largely by themselves, a higher degree of ownership and participation is required.

Further research

Our interim report will be released in early 2019, following which it is likely that we will interview more legal practitioners, policy makers and officials in other jurisdictions, to see how local variations influence family dispute resolution. We also hope to issue an online questionnaire to family businesses, to gather their input, before releasing a final report later this year.

Al Tamimi & Company's teams regularly advise family businesses in dispute. For further information, or updates on the report publication timetable, please contact Peter Smith (p.smith@tamimi.com) or Rita Jaballah (r.jaballah@tamimi.com) in DIFC Litigation.



A Review of the Family Business Landscape in Egypt

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According to the Egyptian Centre for Economic Studies ('**ECES**'), at least 50 – 60 percent of Egyptian companies are family owned. These companies contribute around 80 percent to the national income, constitute about 75 percent of the private sector's activity, and employ approximately 70 percent of the labour force. Unfortunately, there is a lack of accurate statistics on family businesses in Egypt, due to the overlapping of the properties of some companies and the acquisition of influential shares in subsidiaries or public shareholding companies, as well as the establishment of some closed companies between businessmen and banks.

During the 1950's and 1960's Egypt witnessed a dramatic decrease in family businesses due to the nationalisation policies of the Nasserist regime. Family businesses were revitalised during the late 1970's following Egypt's adoption of free market policies. However today, family businesses in Egypt are facing a succession problem, whereby only 30 percent of businesses continue after the death of their founders, while only 3 percent of businesses continue until the fourth and fifth generations.

Whilst the emerging generation is highly qualified and ready to accept the challenges facing family businesses (such as internationalisation, innovation and digitisation), and yet, at the same time, they continue to maintain a desire to retain the core family values of the business with a view to respecting the legacy of previous generations. Keeping family values alive, as well as growing the company in a rapidly changing economic and business environment, are the main challenges facing the current generation. The leading family companies, together with the introduction of the Egyptian Company Law, have played an important role in promoting the sustainability of family businesses.

Eng. Hazem Hassan, Chairman of Hazem Hassan KPMG, a leading company in the professional services' sector, affirmed Egypt's family companies' commitment to ensuring the continued development of the management and transfer of leadership to future generations by indicating a willingness to seek professional advice. The practice in Egypt shows that the sustainability and growth of a family business requires a legal framework, capable of regulating all the potential conflicts and setbacks. Christopher Bernard, a French expert specialising in family businesses, is of the view that family businesses that have been handed down to the third and fourth generations are the ones that have succeeded in preserving the family legacy as well as the business. However, this is not the case for all businesses, and hence the early stages of the establishment and constitution of a family business should be clear regarding relations, policies and mechanisms of operation so as to ensure the reduction of tension at all stages of continuity, and transfer of leadership. Some businesses are stymied and unable to survive for future generations, because the transition from the founder of the company to the next generation is often considered one of the most difficult stages

in the history of family businesses. In the main, this is because of the conflicts caused by the overlap between family relationships and the management and ownership of the business. Thus, each business determines its own legal framework itself in line with the nature of its activity, the family conditions, the successive generations and their willingness to manage the activity with their own experience or with external advice.

In the last 30 years, family businesses in Egypt have begun to open up to the markets and have changed from closed companies to public shareholding companies under continuous pressure from economic and social changes. Equally, the advantages provided by the Egyptian Capital Market Law, which gives companies tax advantages when they are registered on the stock exchange once they become public shareholding companies, is one of the reasons family businesses tend to be public shareholding companies.

In light of the importance of family businesses to the continued growth of Egypt's economy, it would be welcome for the government to implement an appropriate strategy to help understand the reasons why family businesses are struggling to continue past the third generation, with a view to identifying ways in which assistance can be offered, including, for instance, the reduction of taxes and participation in the cost of support programmes for the continuation of family businesses. However, for the time being the question is: what types of business structures are available for a family business under current Egyptian Law? There are various options available to family businesses depending on the size of the company, its capital, and its future growth and expansion plans:

Sole Person Companies ('SPC')

A SPC is an appropriate structure for a family business in its early stages. A natural person or a legal entity must be the sole owner of its capital and that person or entity has limited liability to the extent of its capital. A SPC shall have a minimum capital of EGP 50,000 (USD 2,800), which must be paid by the owner upon the company's incorporation. As only one person may own a SPC, it does not have shareholders and it does not have any shares to offer for public subscription. The rules governing distribution of profits are the same as those that apply to LLCs and JSCs, except that profits are required to be distributed to the employees only as and when the capital reaches EGP 250,000 (around USD14,000).

The owner of a SPC is responsible for all of its affairs and the manager of such company must act as a reasonable person would in exercising his/her duties. The manager must not be involved in the management of any other company of the same type or of the same practice as the company. He/She may not contract with the company that he/she manages for himself/herself or for others, or exercise for another company any activity that the company carries out. A SPC will be treated as a LLC with regard to matters which the law did not address. Thus, a SPC shall be subject to corporate income tax at the rate of 22.5 percent of its net profits.

> **"The transition from the founder of the company to the next generation is often considered one of the most difficult stages in the history of family businesses.**

Limited Liability Company ('LLC')

The LLC is the appropriate structure for small-scale projects, not requiring significant financing. It could be the appropriate structure for companies involved in internal trade and the provision of services. A LLC is owned by its quota-holders (as opposed to shareholders) who each have limited liability equivalent to the value of their respective quotas (the equivalent of shares) in the capital of the company. Unlike a JSC, the founders of the LLC are not bound by an initial minimum amount of capital required on incorporation of a LLC, however, the only restriction is that the capital must be fully paid at the time of the incorporation of the entity. The law does not impose a minimum value for quotas in a LLC, however, the law imposes that the quotas in a LLC cannot be offered to the public.

Regarding the quota-holders, they may be natural persons or legal entities. In all cases, a LLC must have a minimum of two quota-holders at all times and may have a maximum of 50 quota-holders.

The management of the LLC could be effected by one or more managers appointed by the quota-holders. There are no legal restrictions on the number of the managers, he only requirement being that one of them must be an Egyptian national. The managers may be appointed for a definite term (which must be specified in the articles of association) or for an indefinite term. If the LLC has more than 10 quota-holders, a supervisory board must be appointed and at least three members of this board must be quota-holders.

Joint Stock Company ('JSC')

In the context of a family business, a JSC is typically a structure that an established LLC, which has been grown by the founders and second generation, may progress towards to help achieve expansion and future growth whilst, at the same time, ensuring stability. Egyptian Law imposes certain requirements that must be met in order to establish a JSC or, more commonly in the context of a family business, to convert another type of company to a JSC. A JSC will have an authorised share capital and must have issued, paid-up share capital. The issued capital may not be less than EGP 250,000 (around USD14,000) for closed companies and EGP 500,000 (around USD 28,000) if the company intends to offer its shares to the public. At least 10 percent of the share capital must be paid-up at the incorporation stage and at least 25 percent must be paid-up within three months following the incorporation. The law imposes that the full payment of the issued share capital must be made within five years of the date of incorporation. In the case of holding companies established for the purposes of stock dealings and investment, the issued capital shall not be less than EGP 5 million (around USD 279,000) of which at least 25 percent must be paid upon incorporation and the remaining amount must be paid-up within five years of the date of incorporation. A JSC is permitted to offer its shares to the public.

A JSC must have a minimum of three founding shareholders at all times but there is no maximum limit on the number of shareholders whether natural persons or legal entities. However, if the number of shareholders reaches 100, the company would be considered as having been offered to the public and the rules for public companies would then apply.

A JSC is managed by a board of directors that consists of at least three members appointed by the general assembly. The board of directors has full authority to represent the company vis-à-vis third parties. The directors shall hold a term of three years, except for initial directors, who are appointed for a term of five years. There are no nationality requirements for board members.

Success stories

There are many examples of leading family businesses in Egypt that have taken advantage of the current structures under Egyptian Law that have evolved over time to successfully transform a small closed family company to a larger LLC or JSC.

Mohammed Farid Khamis, the founder and owner of family business, **Oriental Weavers**, has said that the transformation of a family business is a natural development experienced by family businesses worldwide. When companies expand, they typically require more experienced management that is independent of the family, as the existing family management may no longer be effective on its own. When independent management comes on board, the company will typically implement more effective principles of governance, transparency and accountability. However, the family aspect of the company is maintained by the fact that the founding family continues to hold the largest amount of shares in the company.

There has been a wave of family-owned companies that have launched recently on the Egyptian stock exchange. Al-Ahli Real Estate Development Company, owned by Sabbour Family, is one of the most anticipated companies set to list in 2019 offering a 25 – 30 percent stake. Hussain Sabbour, Chairman of Al Ahli Real Estate Development Company, stressed that the introduction of family companies on the stock exchange is necessary for their continuity. He is quoted as saying ,

> *"The first generation creates the family company, 66% of the second generation develop the business, and the third generation goes bankrupt".*
> He added, *"Before the third generation, family businesses should be transformed into public companies through the stock exchange, which we are currently preparing for."*

> **The introduction of family companies on the stock exchange is necessary for their continuity.**

Once listed on the Egyptian stock exchange, the Sabbour's family company will be subject to Egypt's Capital Market Laws and corporate governance guidelines, which include obligations in respect of financial solvency and evaluation of the company's performance on a continuous basis. It is hoped that the exposure gained form listing on the Egyptian stock exchange will attract foreign investors to invest in the company, and hopefully create international demand.

Examples of Family Businesses in the Egyptian Market

ElSewedy Electric, founded in 1938 by the ElSewedy family. The Company listed 25 percent of its shares to be sold to strategic investors specialising in the same field, in order to obtain funding for its expansion in a number of Arab countries. The company expanded both horizontally and vertically by providing more products and services and exporting products to several countries. Currently, the company has 30 production facilities located in 14 countries and exports its products to more than 110 countries worldwide.

Ghabbour Auto, the largest automobile manufacturer in Egypt, was founded by brothers Sadek and Kamal Ghabbour, and has thrived under the leadership of one of Egypt's most visionary business families. The company, has steadily transformed into what has been described as,

> *"a leading regional automotive producer and distributor guided by world-class executives with proven track records locally, regionally and internationally."*

Mansour Group, founded in 1952 by Loutfy Mansour, is another success story of a family business which started as a cotton company and is now a conglomerate. It was nationalised in 1970 under the socialist regime, but the Mansour family was able to continue its activities when Egypt returned to a market economy. The Mansour Group has dealerships with many international brands, like General Motors, who set up the first General Motors factory in 1985, and has since become the largest General Motors dealer in the world. The Mansour Family has negotiated deals with various international companies over the years, including Caterpillar in 1977, Philip Morris International in 1992 and McDonald's in 1994. In 2000, the company launched the first Egyptian-owned supermarket chain and launched Egypt's first discount store in 2006.

Azza Fahmy jewellery, in recent times, the fashion sector has had a boost with designers turning their 'talent' into a business family which look to have promising futures in terms of expansion. Jewellery designer Azza Fahmy launched her own business in 1969, with the help of her two daughters, Amina and Fatma.

Okhtein, a handbag brand, was founded by two sisters, Aya and Mounaz Abdelraouf, in 2013 and is now distributed on many luxury brand websites worldwide.

Helping Family Business Succeed

The prosperity of family businesses across various sectors shows that the current laws and regulations in Egypt can help to facilitate sustainability, growth and expansion. However, more could be done to assist family businesses with navigating the challenges that they face in so doing.

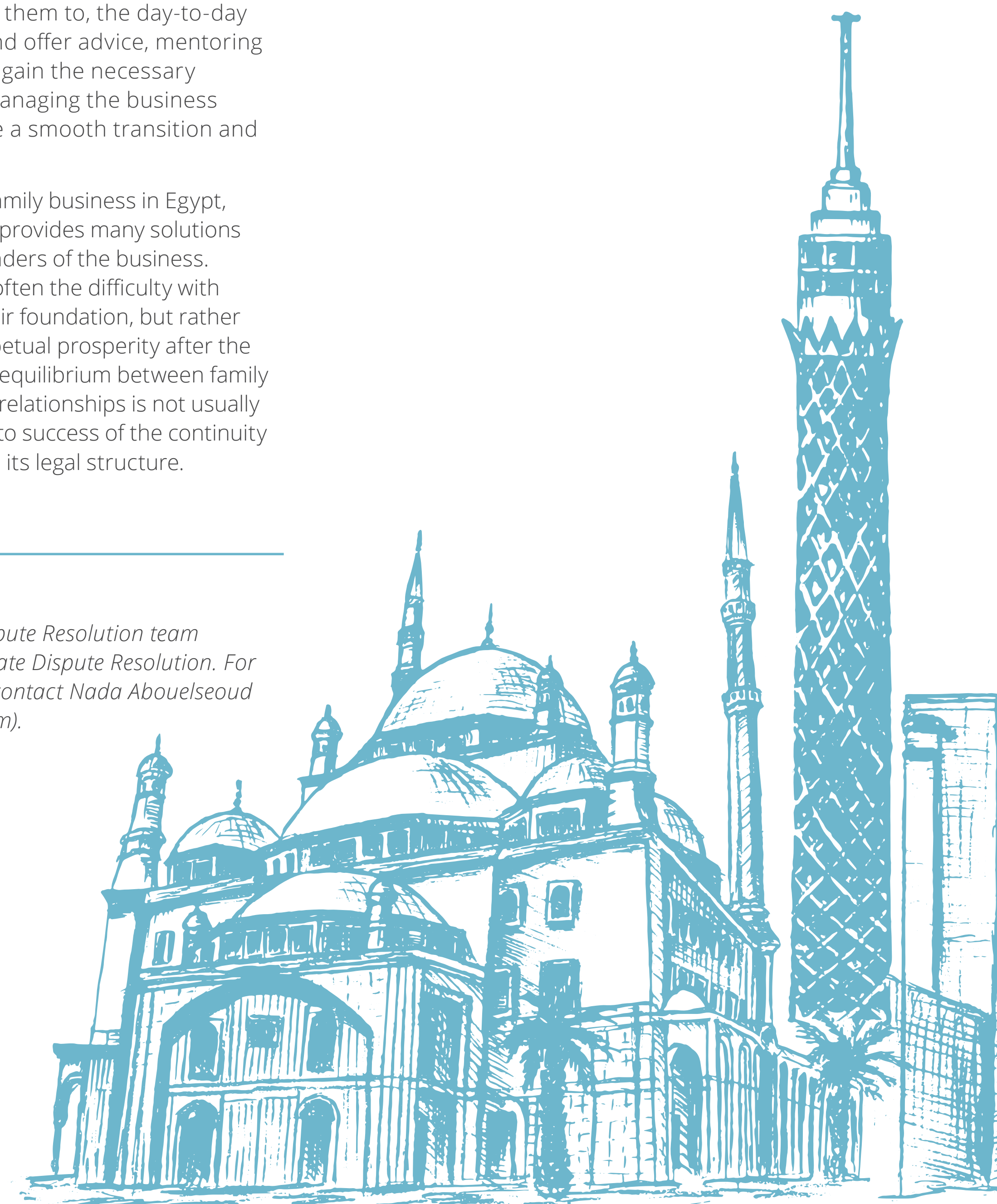
As an example the creation of a family council with a remit of offering guidance to family businesses with progressing their expansion plans, as well as other challenges that they face, could be useful. Family businesses are particularly vulnerable to corruption, illegal practices including fraud and deception, often due to the absence, or lack, of appropriate systems of internal controls and governance. It is, therefore, extremely important that businesses adopt clear and transparent systems of internal controls and governance to protect against such threats. For family businesses that do not yet have any independent shareholders or managers who may assist with this, a family council could be of great benefit in terms of offering an independent view.

> **When independent management comes on board, the company will typically implement more effective principles of governance, transparency and accountability.**

In order for a family business to achieve longevity and be sustainable, it is critical that its founders (and subsequently their successors) involve their successors in, and expose them to, the day-to-day running of the business and offer advice, mentoring and guidance so that they gain the necessary experience required for managing the business early on in order to ensure a smooth transition and successful succession.

It is easy to establish a family business in Egypt, especially now that the law provides many solutions and alternatives to the founders of the business. History has shown us that often the difficulty with family businesses is not their foundation, but rather their continuation and perpetual prosperity after the death of the founders. The equilibrium between family relationships and business relationships is not usually granted, therefore, the key to success of the continuity of a family business rests in its legal structure.

Al Tamimi & Company's Dispute Resolution team regularly advises on Corporate Dispute Resolution. For further information please contact Nada Abouelseoud (n.abouelseoud@tamimi.com).



Residential Construction: The Importance of a Contract

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A domestic building contract does not have to be complicated but the consequences of not having a robust contract with your builder can be.

Picture a villa in a prestigious location, it is in need renovation and an extension would allow the property to keep up with the neighbours. A builder has been found, a price agreed and all involved are hopeful the works will be completed in 18 months. There is just one, seemingly small problem, the contract consists of five pages of outline design drawings and a promise to carry out the works described in the document for an agreed price.

Perhaps not surprisingly, the above project does not complete in 18 months and the price is certainly not as agreed. In fact, the project eventually completes at twice the anticipated price and over a year late using a replacement contractor. In the interim the original contractor is terminated and legal proceedings commenced in relation to the amount due for works completed (or not completed) to date and a series of unapproved variations some of which breached planning and building consents requiring significant remedial works to be undertaken.

It is tempting to say "all of this could have been avoided with a robust contract" but that may be optimistic. What would be realistic would be to say that a robust contract could have:

- clearly defined who was responsible for doing what and at what price;
- provided a clear payment structure and defined contract price;
- provided mechanisms to control changes made during the project and allow the employer to understand the consequences of changes; and
- clearly assigned risk so that, in the event of a dispute, the parties understood their own positions and could look to resolve matters rather than launch into dispute resolution without a clear picture of the parties' respective risks.

A robust contract for residential works need not be extensive or expensive. A contract can be kept proportionate to the value and complexity of the works being undertaken. Use of selectively amended standard form contracts for minor works can keep the cost of putting in place a tried and tested contract, for example the FIDIC suite of contracts. Even where bespoke forms of contract are used, they can be based on drafting and market positions commonly seen with departures only where necessary to meet the needs of both parties.

Below we look at some of the critical issues for residential construction projects and how to avoid the pitfalls.

In any construction project three key objectives are critical:

- time;
- cost; and
- quality.

It is important to identify what the employer requires in respect of each of these categories if the contract is going to meet the needs of the project. The approach to critical areas of the contract will be determined by which of the above concerns takes priority in each case. This is particularly the case in residential contracts where an owner is likely to have very particular priorities with real world consequences. For example, the budget may be fixed or a failure to complete on time may leave intended occupants without accommodation.

Form of Contract

There are two common forms of construction contract:

- 'construct only' with the design done by a separate consultant team; and
- 'design and build' with both the design and building work under one contract.

There are pros and cons to each approach and if the wrong contract is selected this can create problems throughout the project.

A 'construct only' contract can lead to a lower and more certain price. In this model, the contractor knows exactly what it has to construct and so can offer a relatively firm price and, because they do not take responsibility for design development, it can generally offer a more competitive margin than in a 'design and build' contract where the risk is higher.

The construct only approach means that, through a separately engaged design team, the employer can retain control over the design – an important factor for bespoke projects.

However, because design must be completed in advance, the time taken to complete the design before construction begins means the overall timetable for the project will be longer than in a design and build project where design is progressed alongside early stages of construction.

By contrast a design and build project offers two main advantages over the build only approach. Firstly, the works can be commenced before the detailed design is completed. This speeds up the project but it does mean that the contractor takes greater control of the design and later design changes may impact on works already done; this has time and cost implications. Secondly, all risk for the project sits with one contractor meaning, in the event of a dispute, there is no question of who is to blame; the main contractor is responsible for issues in the design and the works.

On the basis of the above it is critical to make sure that the project is structured to meet your needs. If cost is the decisive factor, a build only approach is likely to give the greatest certainty as well as control over the design process. If time is the critical issue, then a design and build approach can reduce the programme but that is likely to have cost consequences.

Scope of Works

It is vital that the scope of works includes everything that is required as part of the work. If items are not included in the scope of works then they are not within the price. In the project referenced above, a failure to ensure there was a proper scope of works led to significant cost increases far beyond the owner's anticipated budget. This is the case both in 'construct only' projects were a detailed set of drawings and specification are needed and in 'design and build' projects where a set of 'employer's requirements' define the parameters that the final design must meet.

> **"A domestic building contract does not have to be complicated but the consequences of not having a robust contract with your builder can be.**

In design and build projects it is particularly important to ensure that any particular design features or technical requirements that the owner wants are captured in the employer's requirements even if this means that some design work is done prior to awarding the design and build contract. In this type of contract, the contractor is required to meet the employer's requirements.

Another issue is to rely on drawings and Bills of Quantities to list out everything the contractor is expected to physically procure and build/install. Whilst this can create an exhaustive list of the physical construction activities, it is easy to forget to deal with issues such as co-ordination of contractors on site, co-ordination of design between the design team, main contractor and specialist sub-contractors, monitoring compliance with building regulations, planning permissions and so on. In the project above the parties each assumed the other was dealing with listed building consent leading to repeated breaches of those consents all of which had to be rectified at significant cost.

When contract and design/specification documents are being produced by multiple contractors/consultants inconsistency can appear in the documents. In those circumstances it is advisable to include drafting in the contract setting out the order of priority of the document and who decides how the conflict will be rectified. Where possible, the risk of additional cost as a result of discrepancies should sit with the contractor; this acts as an incentive to check for and remedy any inconsistency at the earliest possible stage to avoid unforeseen cost.

Variations

In construction it is common for changes to be required after the contract is signed. This can be caused by any number of issues, for example a need to value engineer the project, because a statutory authority requires a change to meet permit conditions or because the client decides that they would prefer a different finish or layout as the build progresses.

Variations can lead to disputes between the parties where there is no clear agreement how much the variation will cost or how much time it will add to the programme. Simply instructing the contractor to 'get on with it' will inevitably lead to such disputes.

The contract should include a clear mechanism for instructing and pricing variations and it should always be followed. Such a mechanism should allow the employer to request a quotation for the proposed variation, receive information of the cost and time required to undertake the variation and then decide to instruct it or to abandon the proposed change. The contract should also hold the contractor to those cost and time quotations in the same way they are held to their lump sum price and time for completion.

Returning to the cautionary tale above, the project is financed by an offshore holding company as part of a complex tax-efficiency structure set up by the ultimate owner. The company holds funds to meet the project budget. Unknown to the directors of the company or the ultimate owner his partner, on a number of occasions, attends the site and authorises significant changes. Because the contract included no mechanism for this the contractor commenced the works without providing any estimate of cost or time consequences and incurred significant liabilities for all concerned and, in some cases, breached listed building consents. As there was no process for the changes to be reviewed by the design team and the contractor was not expressly liable for design or planning issues these variations later had to be reversed at the owner's expense.

Payment

The contract should always specify how much is to be paid and when payment is to be made.

There are numerous ways of pricing the scope of works, for example the price may be a lump sum cost or it may be calculated based on measuring the quantity of work done and applying set prices per metre or per item.

In addition, contracts can provide for payment on a monthly basis based on the amount of work done or they can specify milestones in the project, e.g. completion of foundations, completion of structure etc. at which a percentage of the price is payable.

However payment is managed it is important that the process is clearly set out. A number of key points to consider are:

- if an advance payment is being made by the employer, it should insist on security in the form of a bond or cheque for that payment to ensure the contractor does not get to keep the money without performing the services;
- the employer should ensure that it or someone on its behalf is certifying that the contractor has actually done the work it claims payment for; this may mean engaging an Engineer to oversee the project;
- where milestone payments are used the employer should take care not to provide the contractor with too much cash 'up front' in the event the works are not completed; this places the employer at risk;

- wherever possible the employer should ensure that where it is paying for goods those goods transfer to it, although risk of damage to goods should remain with the contractor until completion; to ensure it is getting something for its money even if the goods are not yet incorporated into the works;
- a retention, typically around 10 percent of the contract price, should be provided for. The retention is held back from each payment and forms a pot of money which the contractor will not get unless it: (a) completes; and (b) rectifies defects.The retention acts as an incentive to finish the job to the correct standard. If the contractor fails to comply with the contract the employer may retain all or part of the retention and use it to fund the completion of the works/remedial works offering some financial protection.

Timing

Construction projects have a tendency to run late. This can be for a variety of reasons: from encountering unexpected ground conditions requiring additional work to employer led variations or adverse weather conditions.

It is important that this is considered at the outset and the risk of delayed completion split between the parties. In certain circumstances, notably where the employer fails to give access or instruct variations, the employer will be expected to accept the delay caused and give an extension of time. Conversely, where the contractor deploys insufficient resources or does not sequence the works efficiently, any failure to meet the planned completion date should be the contractor's risk.

There are also a number of issues, for example unforeseen ground conditions and statutory approvals where either party could accept the risk as part of the terms agreed. In general terms, the more risk the contractor accepts the higher the price will be to offset the risk of damages being levied by the employer in the event of delay.

Contracts should include a mechanism for granting extensions of time to the completion date in defined circumstances. We would recommend requiring the contractor to notify any claim for an extension of time within a set period of time, typically 14-28 days, or else waive its right to claim. This helps give the employer a clear picture of the risks to the project as it progresses.

Depending on the employer's priorities, the level of risk it accepts should vary. If completing on time is paramount then the employer should transfer the risk of delay to the contractor and back that up with delay damages which offer a strong incentive to complete on time however, doing so will increase the cost of the project. Conversely, if the budget is tight the employer may accept more risk in relation to delay in exchange for a lower lump sum price.

Including a mechanism for early warning in the event of delays may allow the employer to mitigate risks to the programme. Additional mechanisms such as the right to instruct the contractor to accelerate the pace of works or to engage third parties at the contractor's cost can also be included to give the employer additional remedies as well as acting as incentives to the contractor not to fall behind.

Where the contractor does not complete on time, the contract should provide a mechanism to compensate the employer for the delay. Typically, the contract will set out a pre-agreed rate at which damages accrue, for every day the contractor is late, the employer may deduct a set sum from what is due to the contractor or recover any excess from the contractor.

Practical Steps

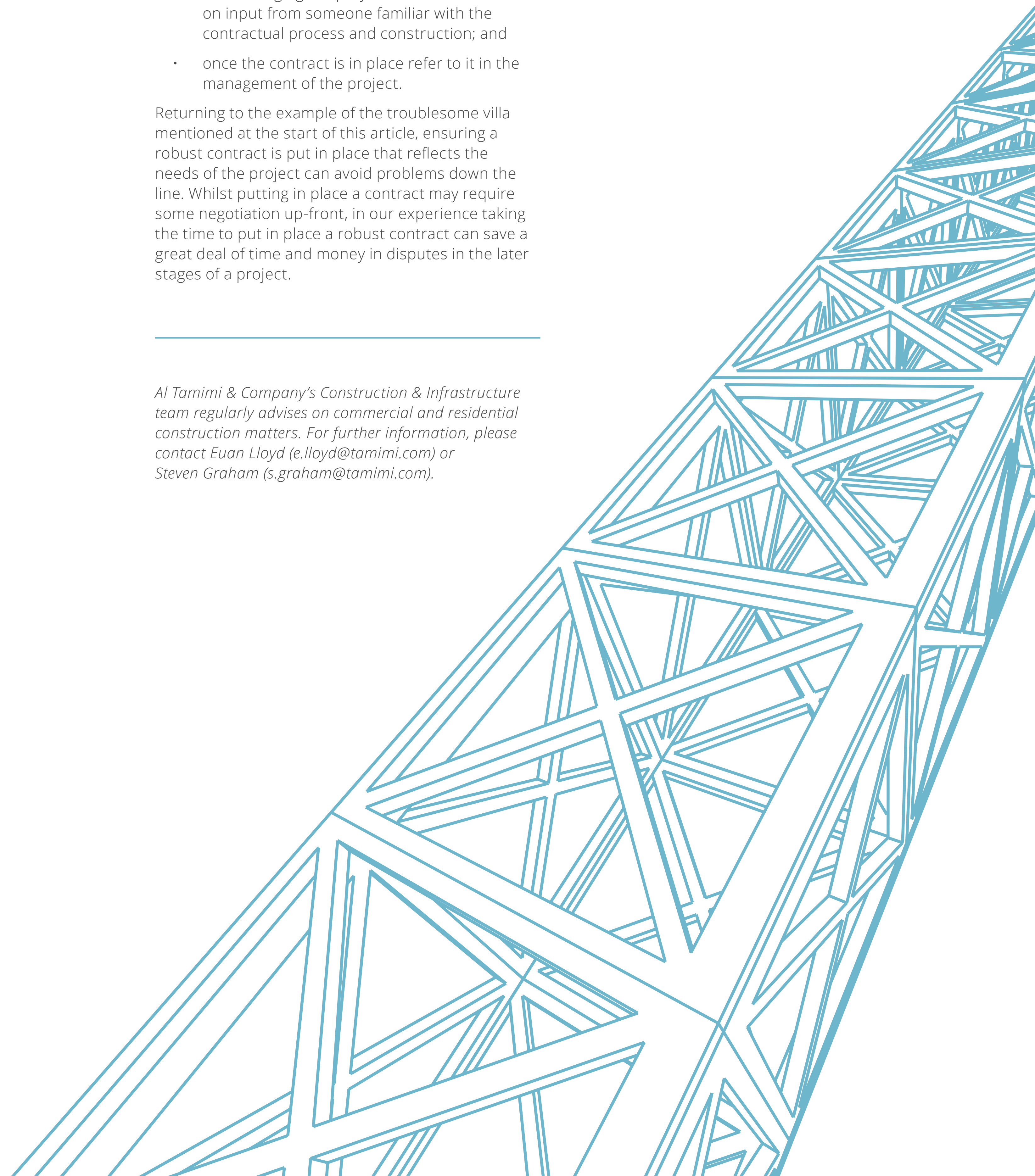
This article has explored some of the key issues to be addressed in a construction contract as well as illustrated the pitfalls of not ensuring a proper contract has been put in place.

As stated at the beginning of this article, putting in place a robust contract need not be complex or expensive. Whatever the contract used, there are a number of practical steps that can be taken to reduce the risk in any job:

- ensure the specification properly sets out what is required and is consistent;
- consider what your priorities are at the outset of the works and ensure the contract matches those priorities;
- vet your contractor and ensure it is reputable and holds all the proper licences and appropriate levels of insurance;
- consider the use of a project manager to manage the contractual processes throughout the build and to review the design documents. Construction projects are not transactional and managing the project will need hands-on input from someone familiar with the contractual process and construction; and
- once the contract is in place refer to it in the management of the project.

Returning to the example of the troublesome villa mentioned at the start of this article, ensuring a robust contract is put in place that reflects the needs of the project can avoid problems down the line. Whilst putting in place a contract may require some negotiation up-front, in our experience taking the time to put in place a robust contract can save a great deal of time and money in disputes in the later stages of a project.

Al Tamimi & Company's Construction & Infrastructure team regularly advises on commercial and residential construction matters. For further information, please contact Euan Lloyd (e.lloyd@tamimi.com) or Steven Graham (s.graham@tamimi.com).



Family Businesses, Private Wealth and Taxes

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As the saying goes, nothing in life is certain but death and taxes. Even though many people believe that there are no taxes imposed in the Middle East, the truth is that there are and family businesses and private wealth owners are no exception.

In this article, we will highlight some of the tax issues that family businesses and wealth owners/ managers may face in their daily operations.

Pinning down the concepts

There is no statutory definition of family businesses or private wealth in the region. Most people tend to use both concepts interchangeably, but there are some differences.

In general, a family business means a joint undertaking – conducted either through a corporate vehicle or an unincorporated form in which two or more family members are involved and the majority of its ownership or control lies within a family.

Conversely, private wealth usually relates to assets owned by private individuals. These assets, which may be jointly owned by family members or not, are not normally used with a view to furthering an economic activity.

Taking into account this division, we will discuss the direct and indirect tax implications of each.

Direct taxes

Concerning direct taxes, even though taxation imposed on natural persons is limited throughout the Gulf Cooperation Council ('**GCC**') countries, in certain cases business income may be taxable. However, personal tax implications are likely to be most relevant when dealing with cross-border matters. For instance, inadequate tax planning may result in withholding taxes or in higher withholding taxes in the foreign country where the income originates. This concern is all the more important after the signing of the OECD's Multilateral Instrument or 'BEPS Package' by Saudi Arabia ('**KSA**'), Kuwait, the United Arab Emirates ('**UAE**') and Qatar. Although not ratified, once in force the BEPS Package will give the tax authorities of foreign countries more ways of taxing the income originating in their territories. The BEPS Package deals with and elaborates on tax concepts such as substance, principal purpose, legitimate tax planning, etc. Therefore, family businesses and private wealth owners and managers in the Middle East are recommended to revisit their existing arrangements (e.g. cross-border nominee arrangements, fiduciary structures, contracts for the granting of IP rights, asset-holding vehicles, etc.) and determine whether they are in line with the upcoming best international standards.

Finally, a highly challenging and interesting matter for tax purposes is the relocation of the tax residence of individuals, either for persons moving into or outside the Middle East. In this regard, it is important to analyse the tax regime to which the individual will be subjected and any special regimes which may be applicable. In this regard, it is critical to know whether: any *exit tax* is triggered; the scope of the double tax treaty network of the new residence country; and the challenges encountered when requesting a tax residence certificate, both on paper and in practice.

With regard to corporate taxes, family businesses may also find themselves incurring income tax liabilities in KSA, Qatar, Oman and Kuwait in respect of their business operations. For instance, it is not uncommon for family businesses to enter into joint ventures on large construction projects, which may give rise to permanent establishment issues in some jurisdictions. Also, family changes, especially succession and marital ones, may result in the family business being subject to tax or more tax than it was before.

When restructuring the family business, special attention must be paid to any taxation arising, for instance as capital gains. It is important to examine whether relief from tax is available, either under domestic intra-group provisions or a double tax treaty. It is not uncommon that these points are not always carefully considered. However, depending on the circumstances and the specific transaction, it may be even more important to determine whether the purchasing entity may be entitled to utilise any tax credits that the target company has accrued in previous years. These factors, which play a key role when agreeing on the transaction price, should be taken into account at the time of negotiation or even earlier.

Special attention should also be paid to transactions between related parties. Whilst it is true that the tax authorities in countries like KSA and Qatar can already assess whether transactions have been carried out on an arm's length basis, the introduction of detailed transfer pricing regulations, first in KSA, but other GCC countries may follow, implies a major step in this field. It will be particularly interesting to see, amongst other matters, how the tax authorities will treat the secondary adjustment in practice, especially in light of the upcoming double tax treaty between KSA and the UAE.

Finally, where any of the members of the family is a GCC national and depending on the country concerned, Zakat considerations should also be borne in mind.

“Taxes are not complicated; they are only a matter of discipline. Whilst taxes in the Middle East are quantitatively and qualitatively limited when compared to other jurisdictions, there are several laws imposing tax obligations on family businesses and private wealth owners and managers that need to be carefully considered.

Indirect tax implications

In relation to indirect taxes, value added tax ('**VAT**') is currently fully rolled out in KSA and in the UAE, but it is in its infancy in Bahrain. The most frequent issue that family businesses face is determining whether they qualify as a taxable person for VAT purposes and are thus required to register for VAT. Even though sorting through the VAT implications under the existing arrangements is not always an easy task, there are multiple cases where the family business, or the family members themselves, meet the mandatory registration requirements. For example, this would be the case where several family members jointly own office buildings and lease them for consideration above the mandatory registration threshold. If proper advice is not sought and protective steps are not taken, the family members may be found not to comply with the VAT laws and consequently be putting themselves at risk of tax audits and penalties.

Other matters that are relevant from a VAT perspective include, for instance, the financing of the family business. In the past, intra-group loans and other financial instruments were not always accurately recorded and little attention was paid to which entity should be providing finance. With the advent of VAT, there is room for VAT optimisation that can and should be explored.

In respect of private wealth, holding companies, foundations, charities and other similar entities are often employed for different purposes, such as asset protection, succession planning, efficient investment structuring or pursuant to privacy considerations. It is a common misunderstanding that these kinds of entities do not fall within the VAT system. The answer, as in most cases when dealing with tax matters, is that it depends on each particular case.

In relation to VAT, the most common challenge lies in determining whether the restructuring gives rise to any VAT implications. It is often the case that the contracting parties expect the transaction not to be subject to VAT, but in certain instances the correct VAT treatment falls foul of the parties' initial thoughts. The most prominent example is the transfer of business assets, which only fall outside the scope of VAT if they qualify as a business transfer under the relevant VAT provisions.

Other elements to consider include reviewing whether the new structure is optimal from a VAT recovery point of view and whether it triggers any cashflow impact or relevant compliance costs.

Finally, while tax-efficiency considerations sometimes carry a significant weight at the time of planning any structure, they are not the only ones. Civil, inheritance, commercial and regulatory implications, to name a few, often play a key role in tailoring the best possible solution. This is why it is critical for clients to be well advised, by a full service law firm, of any overriding legal restriction that may defeat the purpose of the overall transaction.

Final remarks

Taxes are not complicated; they are only a matter of discipline. Whilst taxes in the Middle East are quantitatively and qualitatively limited when compared to other jurisdictions, there are several laws imposing tax obligations on family businesses that need to be carefully considered.

In addition, setting up and maintaining tax efficient private wealth structures requires both initial analysis and regular health checks, particularly in light of the fast-evolving tax environment in the GCC.

Al Tamimi & Company's Tax team regularly advises on VAT and other tax matters. For further information, please contact Shiraz Khan (s.khan@tamimi.com) or Xavier Solanes (x.solanes@tamimi.com).

Bahrain Introduces New Insolvency Regime

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> **By promoting and prioritising debt restructuring proceedings over liquidation procedures, the New Law aims to prevent the liquidation of businesses with potential and reduce failure rates amongst small and medium-size enterprises.**

In line with Bahrain's Economic Vision 2030, the Kingdom of Bahrain recently introduced Law No. (22) of 2018 promulgating the Restructuring and Insolvency Law ('**New Law**'), as a step towards strengthening the legal framework and business ecosystem in Bahrain. The New Law is expected to boost transparency and efficiency in the insolvency process and improve the ease of doing business in Bahrain.

Published on 30 May 2018, and coming into force on 30 November 2018, the New Law repeals the old Bankruptcy and Composition Law (Law No. (11) of 1987).

The Ministry of Justice and Islamic Affairs ('**Ministry**') will be in charge of matters relating to restructuring and insolvency, and the competent court will be the High Civil Court of Bahrain ('**Court**').

Bolstering Good Practices

This article focuses on the ways in which the New Law will bring in reforms to bolster globally accepted good practices in Bahrain that include:

- promoting reorganisation or liquidation procedures;
- regulating the profession of insolvency administrators;
- strengthening creditors' rights;
- clarifying rules for commencing insolvency proceedings;
- improving provisions applicable to treatment of contracts and voidable transactions; and
- introducing provisions on post-commencement financing.

Application of the New Law

The New Law defines 'debtors' in insolvency proceedings as:

- commercial companies established in Bahrain (including those established by virtue of law or decree); and
- natural person traders who either do business or have their headquarters in Bahrain.

Two noteworthy aspects of the New Law are it:

- does not apply to entities licenced and regulated by the Central Bank of Bahrain ('**CBB**'); and
- provides for cross border insolvency proceedings where a foreign element is involved (elaborated on further below).

Commencing Insolvency Proceedings

An action to commence insolvency proceedings may be instituted by either a debtor or a creditor upon satisfaction of the insolvency test. A debtor satisfies the insolvency test if the:

- debtor is unable to pay its debts on the maturity dates or fails to pay such debts within 30 days of their maturity or from date of the creditors' notice to pay; or
- value of the debtor's financial obligations exceeds the value of its assets.

The Court, before approving an application by either party to commence insolvency proceedings, will verify whether the conditions stipulated above are satisfied and will provide the debtor (where a creditor institutes an action) or a creditor (where a debtor institutes an action) the opportunity to object to such action.

The New Law compels the Court to decide on an application for restructuring before hearing an application for liquidation. The Court is bound to agree to restructuring if:

- by doing so, it achieves a settlement more favourable to the creditors than liquidation; or
- it is economically justifiable for the debtor to continue its business.

By promoting and prioritising debt restructuring proceedings over liquidation procedures, the New Law aims to prevent the liquidation of businesses with potential and reduce failure rates amongst small and medium-size enterprises.

However, in cases where the Court approves the commencement of liquidation proceedings, the debtor is deemed bankrupt and must declare its bankruptcy.

The New Law also provides affected stakeholders with a right to object to the Court's decisions regarding the commencement of proceedings and sets out grounds on which the Court's decisions may be challenged before the Supreme Civil Court of Appeal.

The Insolvency Trustee (alternatively referred to as a Restructuring Trustee or a Liquidator where relevant) is appointed by the Court to perform related duties and tasks in liquidation or restructuring proceedings.

The Court may appoint an Insolvency Trustee based on one of the following:

- the nominations by a creditors' committee (which may be formed to represent unsecured creditors);
- nominations by the creditors that own at least ten percent of total unsecured debts; or
- the Court's own discretion.

The powers of the Insolvency Trustee are regulated by the New Law and include, amongst others:

- the right to submit a request to the Court for a stay of judicial proceedings and procedures;
- abatement of the legal or contractual interests;
- termination of the contracts concluded by the debtor;
- non-enforcement of any dispositions made by the debtor; or
- other requests deemed necessary for the performance of the Insolvency Trustee's duties.

Insolvency assets

The New Law significantly widens the net of assets which may now be subject to insolvency proceedings. These include:

- debtor's movable and immovable properties located in Bahrain and/or abroad;
- properties acquired after commencement;
- debtor's rights in properties owned by third parties;
- funds and proceeds generated by the continuation of the debtor's business operations;
- proceeds from the insolvency assets of all kinds and nature; and
- funds recovered through avoidance proceedings.

Stay of Proceedings and Moratoria

The commencement of insolvency proceedings automatically causes a stay of any other judicial proceedings or execution procedures on the insolvency assets, such as any debt enforcement procedures against the debtor's insolvency assets, any attachment or enforcement on encumbered properties of the debtor, or any acquisition over any 'insolvency asset' (as defined above).

Unless the Court specifies otherwise, the moratorium continues until:

- the scheme of restructuring comes into force;
- the termination of liquidation; or
- upon the sale or exclusion of debtor's properties from the insolvency assets.

> **"The New Law is expected to boost transparency and efficiency in the insolvency process and improve the ease of doing business in Bahrain.**

Set-Off Rights

Set-off rights arising prior to the commencement of insolvency proceedings may be invoked against the insolvency assets if they are effective under the applicable law, but are subject to the stay of proceedings and moratoria, as discussed above.

However, the Court may, at the request of an unsecured creditor, terminate the stay of unsecured claims if both the:

- debt is subject to a right of set-off, and
- set-off effectively enhances the administration of the insolvency assets.

Doing Business

Importantly, commencement of insolvency proceedings does not prevent the debtor from continuing its day-to-day business as well as utilising its properties for necessary transactions, if carried out in the ordinary course of business.

In the case of a restructuring, the Insolvency Trustee may, with due authorisation, manage the debtor's business and execute unperformed contracts concluded by the debtor in the ordinary course of business. Whereas, at a liquidator's request, the Court may approve the operation of the debtor's business for a limited period if doing so maximises the value of the assets.

The Insolvency Trustee may, with the Court's approval:

- assume or assign an unperformed contract to which the debtor is a party to, if the contract is in the best interests of the insolvency assets; and/or
- terminate an unperformed contract if proven that the contract is not in the best interests of the insolvency assets.

The disposal of insolvency assets outside the ordinary course of business may be undertaken with the Court's approval, if such disposal is considered to be in the best interests of the insolvency assets. A disposal of a secured asset may be done free of security only with a creditor's consent, and if:

- the cash proceeds are not less than debt or market value; and
- the asset is disposed of under a scheme of restructuring.

If the asset is disposed of free of security, then security will be granted over the proceeds from the disposal. A secured creditor may also purchase assets and set off the disposal amount against the secured claim.

Voidable transactions

The Insolvency Trustee may, with the Court's approval, invalidate any disposition performed or obligation of the debtor if it:

- were performed with the intent to defraud creditors; or
- involved an unfair consideration that resulted in the debtor's insolvency.

The voidable transaction(s) must have occurred in the six month period prior to commencement (i.e. the clawback period).

Restructuring

The New Law stipulates that the Restructuring Trustee may submit the proposed scheme of restructuring to the Court after consultation with the debtor, the secured and unsecured creditors, and any other stakeholders. Alternatively, creditors (whose claims amount to at least one third of the total claims) may, with the Court's approval, submit the restructuring scheme if the Restructuring Trustee fails to make appropriate progress and the scheme is in the best interests of the debtor's assets.

> **The New Law is a significant step towards dissolving the stigma of insolvency amongst businesses by providing them with efficient exit frameworks whilst allowing lenders in the market to make significant recoveries.**

The scheme of restructuring will be subject to a vote by the creditors whose rights are affected by the scheme and the Court may either ratify or reject the scheme. Ratification of the scheme will discharge the debtor from all financial obligations and rights arising prior to such ratification. The Restructuring Trustee is responsible for making the distributions to all creditors in accordance with the scheme.

Liquidation

The Liquidator is responsible for selling the insolvency assets in accordance with a scheme for such sale and must submit an application to the Court along with a report that determines:

- the properties available for distribution; and
- the proposed amounts to be distributed to creditors and other claimants.

The priority of creditor distributions is set out in the New Law in the following order:

i. secured creditors;

ii. unsecured financing obtained after commencement of insolvency proceedings;

iii. administrative costs and claims of the insolvency proceedings;

iv. employee claims for due wages and financial benefits (not exceeding BHD 3,000 per employee);

v. customer claims for advance payment made to debtor for purchase of goods & services (not exceeding BHD 1,000 per customer);

vi. claims of government agencies for taxes and/or fees (not exceeding BHD 10,000 per agency);

vii. unsecured claims arising prior to the commencement of insolvency proceedings;

viii. unsecured claims arising prior to the commencement of insolvency proceedings not filed within the stipulated time frame but filed in a timely manner to determine right of distribution;

ix. claims of foreign government agencies (if any) for taxes and/or fees;

x. unsecured claims of shareholders as compensation for late payment; and

xi. claims of shareholders for their ownership of shares.

Another key aspect of the New Law is the provision that permits the conversion of the restructuring into a liquidation (and vice versa) if it is in the best interests of the debtor's assets.

Cross-border Insolvency

A feature of the New Law that particularly stands out is the provision of a mechanism for cooperation between courts and competent authorities in foreign countries and Bahrain which are involved in cross-border proceedings.

The cross-border insolvency provisions in the New Law apply to:

- assistance applications submitted by a foreign court or representative in connection with any foreign proceedings;
- assistance applications submitted in a foreign country in connection with insolvency proceedings under the New Law;
- any foreign proceedings initiated against a debtor at the same time as proceedings initiated with respect to the same debtor under the New Law; and
- applications submitted by a creditor or any foreign stakeholder for the initiation of or participation in insolvency proceedings against a debtor under the New Law.

A 'foreign proceeding' is defined as any judicial or administrative proceeding taken in accordance with the foreign country's insolvency law, and in which the debtor's properties and affairs are subject to the supervision of a foreign court. Foreign proceedings are further classified into:

- ***"Foreign Main Proceedings':*** proceedings in a country where the debtor has main interests; and
- ***''Foreign Non-Main Proceedings'***: proceedings initiated in a country where the debtor has a presence.

Foreign creditors are accorded equal rights and treatment as creditors in Bahrain with respect to the commencement and participation in insolvency proceedings under the New Law.

For recognition of foreign proceedings, the foreign representative must apply to the Court, upon which the Court will classify proceedings either as a 'foreign main proceeding' or as a 'foreign non-main proceeding'. The recognition of a foreign proceeding as a 'foreign main proceeding' will result in the stay of judicial or enforcement proceedings against the debtor's assets and is proof of the debtor's insolvency.

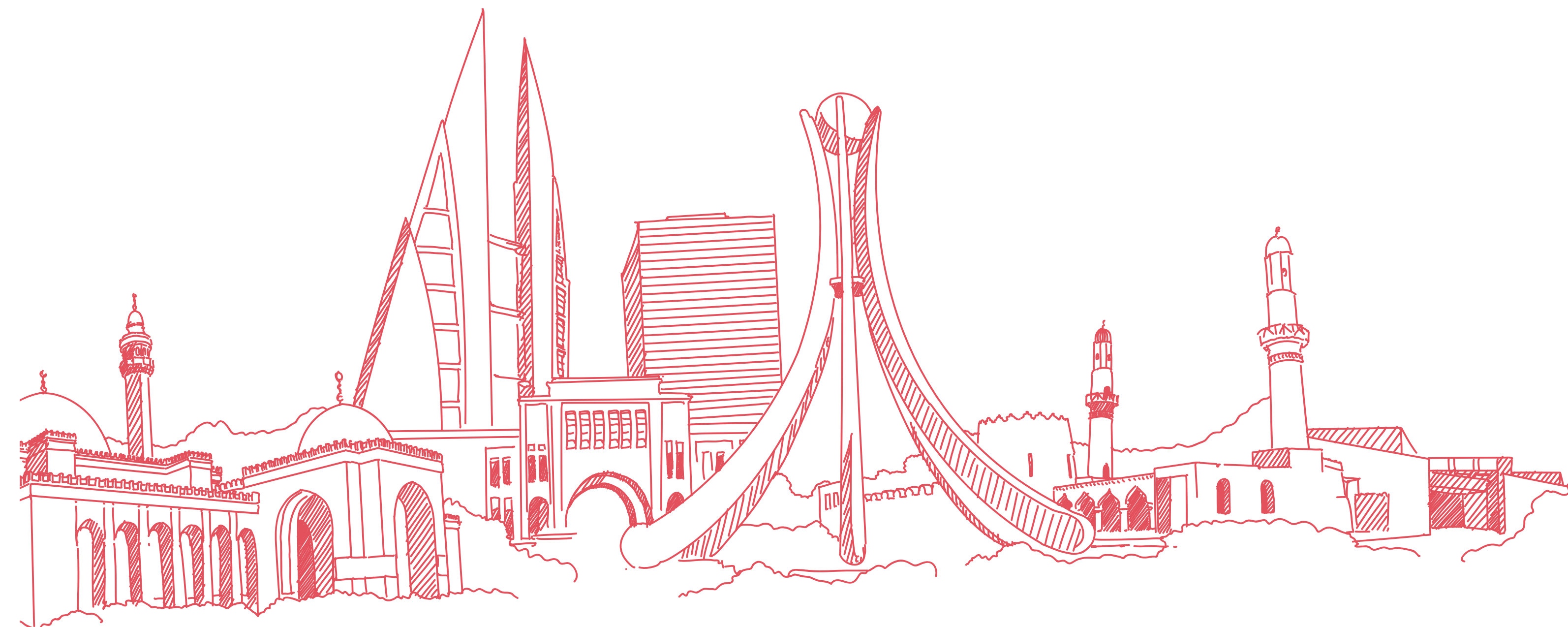
The provisions governing cross-border insolvency will be interpreted in accordance with the guidelines of the UNCITRAL Model Law on Cross-Border Insolvency.

Other Noteworthy Aspects

- ***Insolvency Register:*** the Ministry has established an insolvency register called the Bankruptcy Record, which will reflect all relevant details of every bankruptcy case (such as information on the debtors, relevant parties, the trustee, etc.) and will be available online for public access.
- ***Financial Derivatives Contracts:*** these are exempt from any stay of proceedings or moratoria prescribed by the New Law upon the commencement of insolvency proceedings. The New Law does not delay, stay or limit the exercise of rights of the other contracting party against a debtor arising from a financial derivatives contract.

The New Law is a significant step towards dissolving the stigma of insolvency amongst businesses operating in Bahrain, by providing efficient exit frameworks, whilst allowing lenders in the market to make significant recoveries. An effective insolvency system enables capital and labour reallocation as well as the re-entry of entrepreneurs into the economy when small and medium-sized businesses fail, thus preventing the loss of investments, jobs and viable businesses.

Al Tamimi & Company's Corporate Commercial team regularly advises on all aspects of corporate restructuring and insolvency law. For further information, please contact Foutoun Hajjar (f.hajjar@tamimi.com) or Siddharth Goud (s.goud@tamimi.com).



New Regulations to Govern Ownership of Joint Properties in Bahrain

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Resolution 7 of 2018 Regulating the Owners' Associations and Joint Properties came into force on 26 September 2018 ('**Resolution**').

The Resolution, which has been eagerly awaited follows previous resolutions that underpin Law 27 of 2017 Concerning the Promulgation of Real Estate Sector Regulation Law ('**Law 27 of 2017**'). The Resolution governs the management of buildings that are sub-divided into units such as apartments for separate ownership and common areas being the areas used in common by the unit owners.

Such buildings are also referred to as '**Joint Properties**' or '**Common Properties**' or '**Strata Properties**' The Resolution provides a new legal framework for such buildings and replaces the previous governing procedures under the Civil Code and Directions issued by the Ministry of Justice in 2004. Additional resolutions may apply to more complex arrangements such as master communities or large complex mixed use buildings however, the Resolution will form the basis for the management of most Joint Properties in Bahrain.

Creation of an Owners Association

Under Article 62A of Law 27 of 2017, an owners' association ('**OA**') is established upon the sale and registration of the first unit at the Survey Land and Registration Bureau ('**SLRB**'), replacing the need for a notarised deed of incorporation and registration at the municipality.

An OA is constituted by all the unit owners and will have its own legal personality. Articles 19 to 24 of the Resolution prescribe a wide range of powers to the OA which include amongst others the ability to:

1. enter into contracts;
2. undertake litigation against both third parties and/or owners who are not paying their service charge;
3. obtain insurance;
4. lease common areas with any rent being paid into the OA's operational account; and
5. appoint a Real Estate Regulatory Authority ('**RERA**') licenced OA manager.

Registration Requirements

The Resolution imposes various registration obligations on developers which include:

1. providing the SLRB with a plan identifying the common areas, property boundaries, the units, accessory units and easements affecting the common areas (known as the Property Location Plan);
2. a schedule listing the units, accessory units, their numbers, both the interior and exterior sizes, the entitlement of each unit (i.e. the owner's proportion of the service charge and voting rights);

> **Also, where the sale of the first unit has been registered with the SLRB prior to the date of the Resolution and whether or not an OA has been established, the owners shall call for a general assembly prior to 26 March 2019 and comply with the respective obligations within the Resolution.**

3. the Joint Property By-Law in a form acceptable to RERA;
4. the articles of association of the OA in compliance with Article 7 of the Resolution; and
5. the base plot title deed and the consent of any mortgagor.

Handover/Developer's Requirements

The developer is required to call a general assembly of the OA within three months of its establishment. In cases where the Joint Property is a villa development, the general assembly may be called after the completion of 10 percent of the villas. The developer must also create the common seal/ stamp of the OA and prepare the annual budgets of the OA's operational and reserve accounts. The Resolution prescribes the general assembly requirements such as form of notice and quorum (which is 50 percent of the owners).

The OA may tender for service contracts for a maximum period of two years. The contract may be longer if the Joint Property is regulated by a RERA resolution for special management schemes. The developer is also disqualified from voting on any tenders for goods/services if the developer holds a stake in the service providers.

The developer must present all relevant documents at the OA's first general assembly including (but not limited to) built drawings, list of assets and copies of all construction contracts. The developer is also liable for the annual payment to the OA for units owned by the developer.

An OA is required to establish an operations account and a reserve account. The developer may also collect up to two years of service charges upon the sale of a unit; proceeds of which must be deposited within the OA's operations and reserve accounts.

Other Transitional Requirements

Existing OAs created prior to the Resolution must rectify their status prior to 25 March 2019. Also, where the sale of the first unit has been registered with the SLRB prior to the date of the Resolution and whether or not an OA has been established, the owners shall call for a general assembly prior to 26 March 2019 and comply with the respective obligations within the Resolution. Where a developer is managing a Joint Property at the date of the Resolution, it must comply with its requirements within six months of the Resolution. In cases where it is unclear who is managing the Joint Property RERA may authorise a third party to call the general assembly.

Owners Association Requirements

An OA's articles of association must be in the form provided by RERA and any deviation from the precedent form will require RERA's consent. RERA has provided guidance with respect to the drafting of standard Joint Property by-laws, which include (amongst others) the operational rules of the common areas and any internal dispute resolution process.

After 25 March 2019, the SLRB will not register transfer agreements in Joint Properties where the initial sale and purchase contracts have been entered into after the Resolution coming into force, until it has a certificate from the OA confirming that there are no outstanding service charge amounts. This clearance certificate requirement shall be waived if the OA is inactive or the buyer and seller agree to pay any outstanding amount.

An OA must elect a governing board that must have at least three and a maximum of nine members. Where a Joint Property has less than nine units all the owners shall automatically constitute the OA's board. The Resolution specifies the board's obligations, length of tenure and the requirements of the OA's secretary and treasurer.

RERA Powers

RERA will provide certificates recognising that the OA is active, functioning, and further certificates that list the names of the board members and the OA manager or a transitional certificate for pre-Resolution OAs.

RERA has the ability to appoint an administrator to take control of an OA or where the OA refuses or fails to comply with the Law 27 of 2017 or its affairs are in disarray.

Conclusion

We await further resolutions from RERA in particular for special management schemes; however, Law 27 of 2017 and the Resolution now provide a clear framework for the creation and operation of an OA for Joint Properties, which align with international best practice.

Al Tamimi & Company's Real Estate team regularly assists developers and firms that market properties in Bahrain. For further information, please contact Unkar Chanian (u.chanian@tamimi.com).

A New Age for Jordanian Trademark Office

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Introduction

Despite geopolitical challenges and a finite amount of resources, the Hashemite Kingdom of Jordan continues to be at the forefront of protecting and promoting intellectual property across its country. To this end, the Jordanian Ministry of Industry, Trade and Supply has dedicated an Industrial Property Protection Directorate ('**IPPD**') that is responsible for preparing and implementing policies aimed at developing industrial and intellectual property ('**IP**') within the Kingdom. The IPPD manages and promotes creativity and innovation in terms of trademarks, patents, industrial models and drawings, industrial designs, designs of integrated circuits, and geographical indications. To increase local and international investments in Jordan, and incentivise new launches of commercial projects and activities, the IPPD adopted a pragmatic structure for IP protection by establishing a specialised department for each form of IP. As such, under the umbrella and management of the IPPD a number of departments exist for governing trademarks, patents, industrial models and drawings, industrial designs, designs of integrated circuits, and geographical indications matters.

Moreover, the IPPD seeks to modernise IP protection in Jordan in accordance with international best practices and standards. To this end the IPPD has signed international agreements and modified existing legislation in accordance with such agreements. Furthermore, the IPPD regularly cooperates with international organisations in the field of IP, as well as IP offices in Arab and non-Arab countries. This article examines the latest initiatives, which the IPPD has taken to improve IP prosecution and protection in Jordan.

IPPD Development, Training and Awareness

In order to maintain the quality of the services, which each IP specialised department offers, the IPPD introduced a number of enhancements and facilities in the past few years. The IPPD in cooperation with the World Intellectual Property Organization ('**WIPO**'), notably signed a bill for the establishment of Technology and Innovation Support Centres ('**TISC**'). This project aims to establish a centre within each region of Jordan that supports local technology and innovation, provides the public with information and services related to the utilisation of technologies and innovation and the services and information required for the development, management and protection of IP rights. For the purposes of establishing the TISCs, the IPPD also signed cooperation agreements with several innovation related institutions, such as the University of Jordan, The German Jordanian University, Amman Chamber of Industry and Jordanian Inventors' Association. We believe that the establishment of these centres will be a good basis for incubating the innovative efforts of Jordanian entrepreneurs.

Moreover, the IPPD constantly trains its employees on the latest developments in IP through the holding of joint IP workshops with international organisations, especially, the WIPO. Additionally, the IPPD routinely holds a number of workshops, which several sector related entities have attended. Such workshops aim to acquaint people with the IP related services which the IPPD provides, the legal and formal requirements needed for the services, as well as any developments which each specialised department introduces to those services. Furthermore, these workshops have emphasised the importance of registering and protecting creativity and innovation and have encouraged local entities to work on their IP projects as well as to proceed in registering their related IP rights.

In addition, to better spread awareness of the importance of IP protection, the IPPD, last year, held a contest amongst schools, whereby students had to submit a poster that described what trademarks are and which stressed the significance of purchasing original goods and avoiding counterfeits. In late 2017, the IPPD held a ceremony to honour the winners of the contest (those who were recognised as having designed the best poster), under the name of the Ministry of Industry, Trade and Supply and the WIPO.

On the technology front, the IPPD has also been working on updating its systems for the improved streamlining of its IP department's electronic services. To this end, the IPPD introduced a new feature called 'WIPO PUBLISH' on its website. The new feature eases the exchange of published data and documents with IP international organisations. From a service recipient's point of view, this feature also facilitates the public's search for published trademarks through the WIPO's database. Moreover, the IPPD also joined 'TM CLASS', the online service that helps with the classification of goods and services based on the search terms users input and now translates the goods and services to Arabic (with IPPD's joining) that 64 other Trademark Offices use in several countries. This feature allows the public to search for international classifications and translate them, as its content is available in 43 different languages. Furthermore, the IPPD has worked with the WIPO to develop and introduce a new system called 'IPAS'' for the automation and unification of IP management procedures, such as searches, registration and filing. Lastly, the IPPD is paving the way for electronic filing and registration by introducing the aforementioned new and developed technological features, as well as several more features, which are presently in progress.

The IPAS' development of the aforementioned technological features, clearly facilitates, raises the efficiency of and expedites the registration process. It comes as no surprise that the marvellous work, great effort and constant development made by the IPPD, has led the Intellectual Property Technical Committee of the Arab League to elect the General Registrar Ms Zain Al Awamleh to become the Head of the Committee for two years.

Al Tamimi & Company's Intellectual Property team regularly advises on intellectual property matters in Jordan. For further information, please contact Ala'a Al Bataineh (a.albataineh@tamimi.com).

"In order to maintain the quality of the vast services, which each IP specialised department offers, the IPPD introduced a number of enhancements and facilities in the past few years.

So You Think You Can... Enforce an Arbitral Award in the Kingdom of Saudi Arabia?

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> **"Subject to any hearings and under normal circumstances, the Enforcement Judge should issue the execution order within one month of the application and, if necessary, order seizure of assets, freezing of bank accounts and so on within another one-two months depending on the circumstances of the case.**

Introduction

On 8 October 2018, the Ministry of Justice (the 'MoJ') of the Kingdom of Saudi Arabia ('Saudi Arabia') announced that in the last 12 months its enforcement courts received a record-breaking 257 applications for enforcement of judgments and arbitral awards rendered outside Saudi Arabia, which were appraised at SAR 3.6 billion or 'nearly one billion dollars'. The aim of this article is to provide a brief comparative summary of the applicable legal framework and an overview of the recent figures and developments pertaining to the foreign enforcement applications in Saudi Arabia.

Legal Framework

Saudi Arabia acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the '**NY Convention**') in 1994. Unfortunately, the accession did not provide any relief to the level of uncertainty surrounding the recognition and enforcement of arbitral awards. In short, arbitral awards and all relevant documents still had to be translated into Arabic and submitted to the Saudi Board of Grievances (the '**Board**'). The Board would then perform a comprehensive review of the merits of the case to ensure that the award complied with Shari'ah.

The infamous case of Jadawel International (Saudi Arabia) v Emaar Property PJSC (UAE) is a good, or extreme, example of the interventionist approach adopted by the Board when conducting its review of the award. In its 2008 ICC award, the Tribunal dismissed Jadawel's USD 1.2 billion claims and ordered Jadawel to pay Emaar's legal costs. Upon review however, the Board reversed the award and ordered Emaar to pay more than USD 250 million to Jadawel in damages.

In 2012, Saudi Arabia replaced its 1983 Arbitration Law (the '**Old Law**') that did not conform with modern arbitration practice with a new arbitration law, based on the UNCITRAL Model Law, by Royal Decree No. M/34 of 16 April 2012 concerning the approval of the Law of Arbitration, which came into force on 9 July 2012. In the same year, Saudi Arabia enacted a new enforcement law by the New Royal Decree No. M/53 of 30 August 2012 concerning the Execution Law (the '**New Enforcement Law'**), which came into force on 27 February 2013. The New Enforcement Law was also complemented by Executive Regulations issued pursuant to the Minister of Justice Circular No. 13/T/4892 on 28 February 2013.

It is worth noting the following provisions of the New Enforcement Law:

- Article 1 defines an Enforcement Judge as the chief of the execution department and judges, execution department judge and the judge of the court who undertakes the duties of the execution judge, as the case may be;

- Article 2 provides the Enforcement Judge with the authority of forcible execution and supervision assisted by a sufficient number of execution officers pursuant to the provisions of the Law of Procedure before Shari'ah Courts;
- Article 6 states that all decisions taken by the Enforcement Judge shall be final. As a result, there is no appeal from the decision of the Enforcement Judge; and
- Article 11 sets out the requirements for enforcing foreign judgments and arbitral awards. It provides that the Enforcement Judge may not enforce any court judgment or order passed in any foreign country except on the basis of reciprocity and after verifying the following:
  1. Saudi Arabia's courts are not competent to hear the case in respect of which the court judgment/order/arbitral award was passed and that the foreign court/arbitration tribunal which passed is competent in accordance with the international rules of jurisdiction set down in the laws thereof;
  2. the litigants to the case in respect of which the judgment/award was issued were duly summoned, properly represented and were able to legally represent themselves;
  3. the court judgment/arbitral award has become final in accordance with the law of the court/arbitration tribunal that passed it;
  4. the court judgment/arbitral award is in no way inconsistent with any judgment or order previously passed by the Saudi Arabia courts; and
  5. the court judgment/award does not provide for anything which constitutes a violation of Saudi Arabia's public order or ethics.

The New Enforcement Law provides enforcement judges with enough teeth via Articles 46 and 47 to enforce the decisions. If the award debtor fails to pay the sum owed or fails to disclose property sufficient to satisfy the award within five days of notification of the execution order, an Enforcement Judge may impose a variety of sanctions some of which include travel bans, freezing debtor's bank accounts, ordering the disclosure and seizure of assets, and even imprisonment.

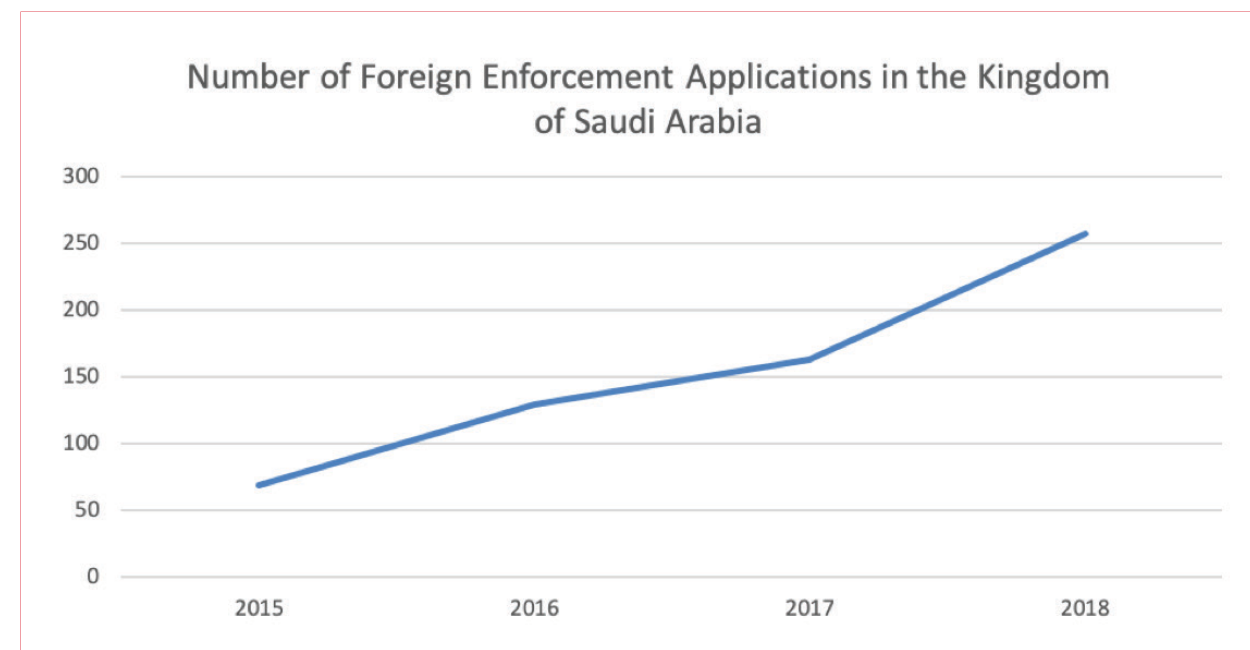
One of the areas, where exercising extreme caution is advisable is with respect to Article 11(5) of the New Enforcement Law requiring the Enforcement Judges to ensure an award does not contradict Saudi public order and Shari'ah. Apart from the obvious issue of the myriad of ways in which Shari'ah may be interpreted, the author would also like to highlight the remaining difficulties in enforcing an arbitral award that, inter alia, grants interest. It remains to be seen in what way an Enforcement Judge would treat such awards.

Arguably, the most important feature is the exceptionally fast processing of the foreign enforcement applications. Subject to any hearings and under normal circumstances, the Enforcement Judge should issue the execution order within one month of the application and, if necessary, order seizure of assets, freezing of bank accounts and so on within another one-two months depending on the circumstances of the case.

> **In the last 12 months Saudi Arabia's enforcement courts received a record-breaking 257 applications for enforcement of foreign judgments and arbitral awards, which were appraised at SAR 3.6 billion or nearly one billion dollars.**

Statistics

As a result of the data available on the MoJ's website on the previous numbers and values of the applications for enforcement of foreign judgments and awards, the increase in the number of foreign enforcement applications becomes apparent:



Time Period	Number of Foreign Enforcement Applications	Value of Foreign Enforcement Applications (USD, approximate)
25/10/2014 – 13/10/2015	69	639,408,000
14/10/2015 – 01/10/2016	129	1,145,606,000
02/10/2016 – 20/09/2017	163	666,050,000
21/09/2017 – 10/09/2018	257	959,112,000
Total	**618**	**3,410,176,000**

In this regard, the author would like to offer three key takeaways with respect to the foreign enforcement applications. First, the growth in applications year-on-year averages 35 percent. Second, the total number of applications has now exceeded 600 with a total value passing the USD 3.4 billion mark. Third, more than 40 percent of the total number of application was made in the last 12 months.

Cases

Considering the absence of any statistics on the success rate of foreign enforcement applications in Saudi Arabia's enforcement courts, the author provides below some anecdotal enforcement examples identified mainly on the MoJ's official website.

ICC Award (UAE subsidiary)

The first reported example of a successful recognition and enforcement of an arbitral award, pursuant to the New Enforcement Law, came from an international law firm, on 31 May 2016.

The Riyadh Enforcement Court (the '**REC**') decided to grant the foreign enforcement application made by a UAE subsidiary of a Greek telecommunications company against a Saudi Arabian data communications service provider. The ICC award in favour of the UAE subsidiary was rendered in London. The subsidiary managed to defend approximately USD 350 million-worth of counterclaims and was awarded approximately USD 18.5 million in its favour.

The arbitral award was obtained in late 2011 and, therefore, enforcement proceedings commenced with the Board. When it became possible, the subsidiary transferred the proceedings to the REC and, three months later, the award was recognised in Saudi Arabia.

US Court Judgment

On 16 May 2018, the MoJ was informed of a successful enforcement of a judgment rendered by a court in the US state of Virginia in favour of a US company against a Saudi Arabian tourism company in the REC. The judgment value was USD 3,758,000. It is not clear how long it took the REC to consider the US company's foreign enforcement application, but the Saudi Arabian company was ordered to pay the applicant within five days of the decision's notification date.

Chinese Award

On 24 May 2018, the MoJ statement produced an example of award enforcement through an order at a court in Jeddah. The court ordered a Saudi Arabian gold mining company to pay in excess of USD 10.1 million to a Chinese company thus enforcing an award issued by a 'Chinese international arbitration tribunal'. Reportedly, the Jeddah court ordered the Saudi Arabian company to pay the award within five days of the decision's notification date or 'face the penalties' under the New Enforcement Law.

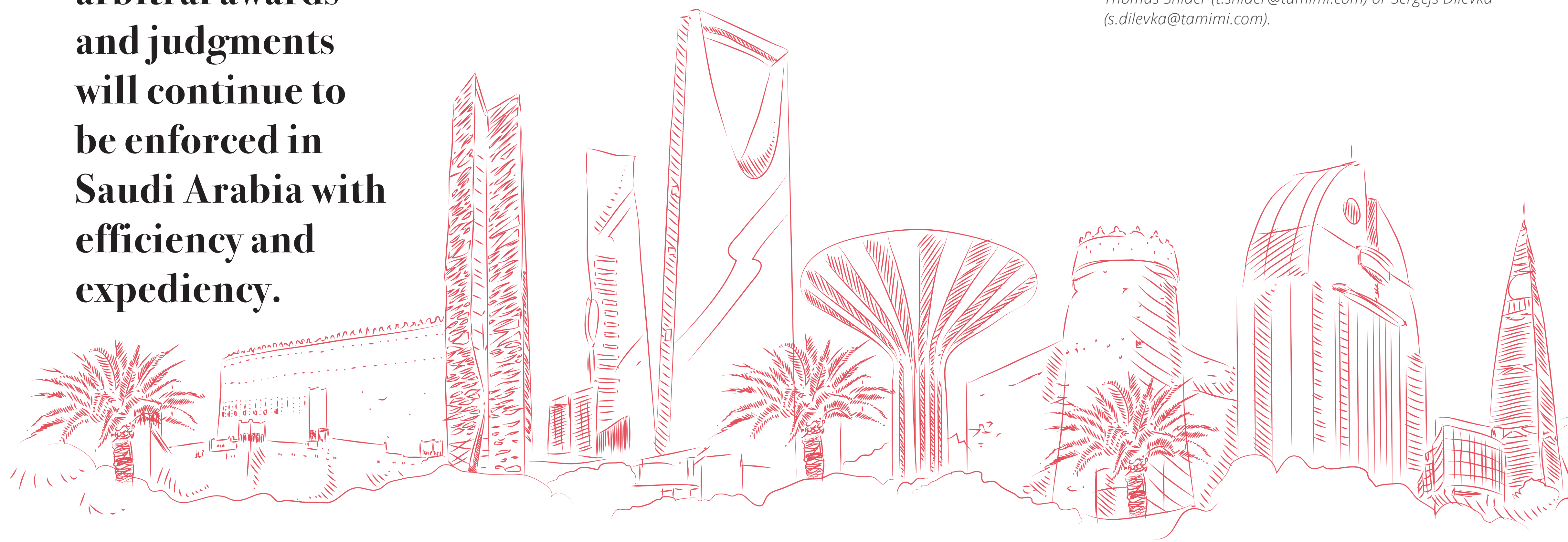
> **"Judging by the provisions of the New Enforcement Law, the substantial growth in the number of the foreign enforcement applications, and the (limited) positive anecdotal evidence, the author is optimistic that foreign arbitral awards and judgments will continue to be enforced in Saudi Arabia with efficiency and expediency.**

ICC Award (Malaysian company)

On 29 May 2018, the MoJ reported a new successful enforcement of the foreign enforcement application at the REC. The REC enforced an ICC award in favour of a Malaysian company against a private Saudi Arabian university, which was ordered to pay the applicant USD 24,684,266, the award value, within five days of the decision's notification date.

Other Examples

The MoJ has also cited enforcement of a foreign award ordering repayment of debts, which was issued in favour of Japanese companies against a Saudi Arabian company. Another article shared an example of enforcement proceedings relating to a foreign enforcement application incluing 'incarcerating the owner of a Saudi Arabian establishment' for refusing to pay approximately USD 636,000 to a Chinese company.



Conclusion

Establishment of the Saudi Center for Commercial Arbitration in 2016 is a prime example of Saudi Arabia's reignited interest in resolving disputes through arbitration, which is a vital element in attracting investments and ensuring that international commerce continues to thrive in Saudi Arabia.

On the other hand, it is no less important for companies and individuals entering into business relationships with the residents and businesses in Saudi Arabia to be confident that a judgment or an arbitral award rendered by a court or a tribunal outside Saudi Arabia will be enforced effectively and expeditiously. Judging by the provisions of the New Enforcement Law, the substantial growth in the number of the foreign enforcement applications, and the (limited) positive anecdotal evidence, the author is optimistic that such confidence continues to grow and cases like Jadawel will remain a thing of the past

N.B. This article was first published on the Kluwer Arbitration Blog on 7 December 2018.

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

United Arab Emirates
Ministry of Justice

48th Year
Issue No. 643 Supplement
8 Rabi ul-Akhir 1440 H
16 December 2018

REGULATORY DECISIONS OF THE CABINET

57 of 2018	Promulgating regulations to Federal Law No. (11) of 1992 on civil procedure.

United Arab Emirates
Ministry of Justice

48th Year
Issue No. 644 Supplement
23 Rabi ul-Akhir 1440 H
31 December 2018

FEDERAL LAWS

7 of 2018	Approving the consolidated final account of the Federation and the final accounts of independent bodies for the financial year ended 31.12.16.
8 of 2018	The Finance Leasing Law.
9 of 2018	The Anti-Begging Law.
10 of 2018	The Product Safety Law.
12 of 2018	The Integrated Waste Management Law.
13 of 2018	The Volunteer Work Law.

United Arab Emirates
Ministry of Justice

49th Year
Issue No. 645
9 Jumada ul-Awwal 1440H
15 January 2019

REGULATORY DECISIONS OF THE CABINET

1 of 2019	Refund of VAT paid on goods and services associated with EXPO 2020 Dubai.
2 of 2019	Amending Cabinet Decision No. (16) of 2016 on the fees for tax jurisdiction certificates and VAT certificates.
3 of 2019	On the adoption of the Internal Audit Methodology Manual of the Federal Government.
4 of 2019	On the Procurement and Warehouse Management Regulations of the Federal Government.
5 of 2019	On UAE mandatory specifications.
6 of 2019	On the adoption of the GCC Technical Regulation for Low Voltage Electrical Equipment and Appliances.
7 of 2019	On the administrative fines of the Insurance Authority.

ADMINISTRATIVE DECISIONS

- From the Securities and Commodities Authority:
  - Certificate of approval of amendment of the Articles of Association of AXA Green Crescent Insurance Company PJSC.
  - Certificate of approval of amendment of the Articles of Association of Ras Al Khaimah Cement Company PSC.

28-31
JAN

Another successful year at Arab Health

Healthcare is a key focus for Al Tamimi reflecting the current growth of the sector in the MENA region. Our Healthcare lawyers, Andrea Tithecott, James MacCallum, Francis Patalong and Christina Sochacki had the opportunity to be part of one of the leading sector events taking place at Dubai World Trade Center - Arab Health!

Arab Heath aims to bridge the gap in medical knowledge, bringing together industry experts from over 51 countries to provide the latest updates and insights into cutting edge developments, techniques and skills. His Highness Sheikh Mohammed bin Rashid Al Maktoum, Vice President and Prime Minister of the UAE, and Ruler of Dubai, visited the exhibition to see the latest developments in the healthcare industry. In particular, he learnt about the programmes of the UAE Ministry of Health and its new initiative, titled, the "Smart Health Gate," which it is implementing in cooperation with the Federal Authority for Identity and Citizenship and the General Directorate of Residency and Foreigners Affairs. He also launched the ministry's "National Organ Donation Programme Initiative."

Al Tamimi also joined the conversation and shared insights on the regional healthcare developments during a joint breakfast briefing with, UK partner firm Bevan Brittan LLP. The session moderated by Steve Gardner, Publishing Director of World Healthcare Journal, focused on the Dubai Health Authorities Health Investment Guide and wider commercial and governance strategy. Our panel of sector experts including external guests speakers Mansoor Ahmed, Colliers International, Ahmed Faiyaz Sait, Dubai Health Department & Michal Perliceuz, HSBC discussed recent regulatory reform, forthcoming projects and different ways of undertaking healthcare projects.

The week of activities ended with a private dinner where industry experts had the opportunity to network and discuss some of the key themes and takeaways from the week.

22ND & 23RD JANUARY
Abu Dhabi and Dubai

Employment Law Essentials Schools
Al Tamimi & Company
Abu Dhabi and Dubai Office

Speakers:
Ivor McGettigan
Partner, Employment

Anna Marshall
Senior Associate, Employment

& NEWS EVENTS

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.

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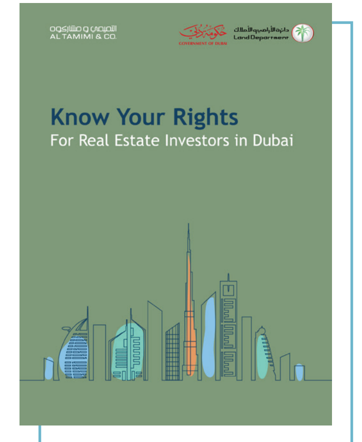
Publications

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



Regional Footprint

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

BAHRAIN
Manama

EGYPT
Cairo

IRAQ
Baghdad
Erbil

JORDAN
Amman

KUWAIT
Kuwait City

OMAN
Muscat

QATAR
Doha

SAUDI ARABIA
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