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LAW UPDATE

Latest Legal News and Developments from the MENA Region

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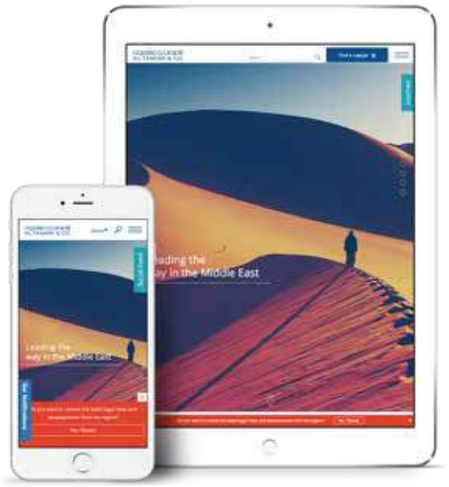
The Middle East Subsea Cable Landscape: Joining the Dots

Construction and the Technological Revolution

Arbitration in the UAE: *Pacta Sunt Servanda*

LAW UPDATE *Online*



@AlTamimiCompany

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Production
Nigel Higgins
n.higgins@tamimi.com

Creative
Noura Haggag
n.haggag@tamimi.com

Shriya Sanjeev
s.sanjeev@tamimi.com

Editor
Siobhan Farrell
s.farrell@tamimi.com

Federal Gazettes
Zane Anani
z.anani@tamimi.com

Translation
Vincent Percival
v.percival@tamimi.com

Illustrations
Studio3

Artwork
Shutterstock

For information on Law Update
info@tamimi.com

www.tamimi.com

In this Issue

Welcome to the April 2019 edition of Law Update.

Before delving into what this month's issue offers, I would like to take a moment to congratulate Dr Hassan Arab who, this month, was unanimously elected as Chairman of the International Chamber of Commerce (ICC) – UAE Commission on Arbitration & ADR for a two-year mandate. In his new role as Chairman, Dr Hassan Arab will lead a Steering Committee (composed of 15 leading arbitration practitioners) the purpose of which is to consider, devise and implement the ICC UAE's strategies and goals. All at Al Tamimi & Company wish him all the best in this prestigious role.

This month's focus is on Technology, Media & Telecommunications ('TMT'). Across the region, our teams analyse the impact, both positive and negative, that technology has on our clients' businesses, how industries are being encouraged to embrace innovation and adapt as well as how regulators are being challenged to keep up with the pace of technological developments.

Our General section examines a number of interesting topics. Our Dubai Construction & Infrastructure experts evaluate the impact of the technological revolution on the construction industry (page 17) while our Dubai Employment team highlights the pension obligations on employers and employees based in the UAE as well as the associated penalties employers risk for non-compliance (page 21).

In our Jurisdiction update our Banking & Finance and Corporate & Commercial teams in Bahrain take a look at the newly issued regulations governing Crypto-Asset Services and highlight the fact that the regulations signify that Bahrain is now open for business to FinTech firms across the world dealing in crypto-assets (page 65). Our Equity Capital Markets team explores the efforts being made by Saudi Arabia to strengthen its capital markets by developing and enhancing its regulatory framework, concluding that such steps will aid the achievement of the Kingdom's Vision 2030 aim of a diversified and effective financial services regime (page 75).

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,

Husam Hourani

h.hourani@tamimi.com

CONTENTS

Judgments

Arbitration in the UAE: *Pacta Sunt Servanda* 9

Articles

Crypto-Asset Exchange at ADGM 13

UAE Pensions: Increased Compliance Scrutiny 21

Construction and the Technological Revolution 17

Jurisdiction Update

Central Bank of Bahrain Issues Regulations governing Crypto-Asset Services 71

The Road to Saudi Vision 2030: A Glimpse into the Saudi Capital Markets 81

The Entrepreneurship Ecosystem in Egypt: Potential and Obstacles 77

UAE Federal Gazette 84

News & Events 88

Firm Profile 94

Focus Technology, Media & Telecommunications

Digitising the Middle East: A Transforming Landscape 25

Congratulations! You're a Winner! New Anti-Spam Regulations in Saudi Arabia 31

Special Delivery: Importation of IT and Telecoms Equipment into Saudi Arabia 39

Advertising By Numbers: What Modern Advertising Contracts Need to Say (But Never Do) 47

PropTech (Part One): Smart Buildings, Co-Working Spaces, Effects on the Retail Sector and Autonomous Vehicles 55

How the UAE's Common Law Courts can Help Creative Industries Resolve their Disputes 67

The Middle East Subsea Cable Landscape: Joining the Dots 27

On Point: The Licensing of Internet Exchange Points in Saudi Arabia 35

Twitching your Antennas: The Role of Small Cells in 5G Deployments 43

Tech Projects Gone Wrong: Effectively Managing Disputes 51

What's Got Hot in the Internet of Things? 61

Arbitration in the UAE: *Pacta Sunt Servanda*

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

John Gaffney
Senior Counsel
Abu Dhabi, UAE
j.gaffney@tamimi.com

Introduction

In Appeal No. 8 of 2018, which concerned a grievance against the recognition and enforcement of an arbitral award, the Dubai Court of Appeal's decision heralded a significant change in approach to arbitration-related matters under, and as a result of, the UAE Federal Arbitration Law (No. 6 of 2018) (the 'Arbitration Law'). This article reviews the Court's judgment dated 16 January 2019, and considers its potential implications for national and international arbitration in the UAE.

Background to the Judgment

The Appellant and the first-named Respondent (the 'Parties') entered into a contract (the 'Contract'), containing an arbitration agreement, the existence of which, as noted later in this article, was not in dispute. (The second-named Respondent was the arbitral tribunal (the 'Arbitral Tribunal')).

The arbitration agreement, which was contained in Clause 67(3) of the Contract, provided for arbitration of "any dispute a) in respect of which the engineer's decision, if any, has neither become final and binding under clause 67(1) and b) nor been amicably settled during the period mentioned in clause 67(2)."

The Court did not cite the entire arbitration agreement in full, but it would appear to have provided for arbitration under the DIFC-LCIA Rules of Arbitration (since the case number would appear to be formatted in line with that adopted by the DIFC-LCIA). The seat of the arbitration is not specified either, but it is assumed that Dubai was the seat, since the matter came before the Dubai Court of Appeal.

One of the parties (the 'Arbitration Claimant') commenced arbitration proceedings (the 'Arbitration') on 26 November 2017 (i.e., before the entry into force of the Arbitration Law). On 17 January 2018, the other party (the 'Arbitration Respondent' (and Appellant)) challenged the jurisdiction of the Arbitral Tribunal (also before the entry into force of the Arbitration Law).

Later that year, after the Arbitration Law had entered into force, the Arbitral Tribunal issued its preliminary award (the 'Award') on jurisdiction on 1 November 2018, dismissing the jurisdictional objection, and finding that the Arbitration Claimant was entitled to commence arbitral proceedings under sub-clause 67(3) of the Contract.

Two weeks later, the Arbitration Respondent/ Appellant challenged the Award before the Dubai Court of Appeal (the 'Grievance') and sought:

a. a summary decision staying the arbitration proceedings pending determination of the Grievance;

b. an order quashing the Award and ruling anew that the Arbitral Tribunal had no jurisdiction due to the alleged failure of the Arbitration Claimant to comply with the Contract and non-compliance with the pre-conditions to arbitration; and

c. an order obliging the Arbitration Claimant to pay the relevant court fees, costs and advocate's fees.

The Judgment

The Court dismissed the Grievance, on the following basis.

1. The effects of Article 19(2) of the Arbitration Law

The Court made two findings pursuant to Article 19(2) of the Arbitration Law, which provides in relevant part:

1. The Arbitral Tribunal shall decide on any plea as to the jurisdiction, including the plea claiming the non-existence or the invalidity of the Arbitration Agreement, or that it does not cover the subject matter of the dispute. The Arbitral Tribunal may decide on the same either in a preliminary award or in the final arbitral award issued on the subject matter of the dispute.

2. If the Arbitral Tribunal decides in a preliminary award that it is competent, any of the parties may, within fifteen (15) days from the date of being aware of that decision, request the court to rule on that matter. The court shall decide on the request within thirty (30) days from the date of its submission to the court, and its decision shall not be subject to appeal by any means. The arbitral proceedings shall be suspended until the court decides on the request unless the Arbitral Tribunal decides to continue with the proceedings at the request of one of the parties.

a. Timeliness of the Grievance

First, the learned Court held that the Appellant filed its Grievance in a timely manner, pursuant to Article 19(2), since it did so within 15 days of the date the Arbitral Tribunal issued the Award.

b. Request for a Stay on the Arbitration

Second, the Court found that "the essence of Article 19 is that arbitral proceedings are stayed by operation of law". Noting that "there is nothing on record to indicate that the Arbitral Tribunal had decided to continue with the proceedings," it held that the Appellant's request for a stay of the Arbitration was unmerited and should be disregarded.

2. The Merits of the Grievance

In considering the merits of the Grievance, the Court referred to:

a. Articles 20(1) of the UAE Arbitration Law, which provides:

   1. The plea as to the jurisdiction of the Arbitral Tribunal shall be filed within the period prescribed for the submission of the defence by the Respondent referred to in Article 30 of this Law. If the plea is concerned with the fact that the Arbitration Agreement does not cover the matters raised by the other party while the dispute is being entertained, the plea must be filed no later than the hearing following the hearing in which the plea is filed; otherwise, the right to file such plea shall lapse. In all cases, the Arbitral Tribunal may accept a late plea if it deems the delay to be justified.

b. Article 59 of the UAE Arbitration Law, which provides:

> The provisions of this Law shall apply to any Arbitration in progress at the time of its entry into force, even if it is based on an earlier Arbitration Agreement, provided that the proceedings carried out in accordance with the provisions of any previous legislation shall remain valid.

c. Articles 1(1) and 1(3) of the Civil Procedure Law, which provide:

1. The laws on procedure shall apply to proceedings in progress, awaiting determination and to proceedings not concluded before such laws took effect.

Exclusions:

3. New time limits applicable to the hearing and forfeiture of proceedings or other procedural time limits shall only apply from the date of coming into force of the introducing law.

a. No Restrictions Pre-Arbitration Law to Challenge Arbitral Jurisdiction

The Court first confirmed that the Arbitration Law entered into force on 16 June 2018. Noting that the jurisdictional challenge was filed before the Arbitral Tribunal before the entry into force of the UAE Arbitration Law, the Court found there were no provisions, at the time, restricting the Appellant's right to file a plea regarding the Arbitral Tribunal's jurisdiction.

b. Contractual Preconditions to Arbitration

Second, turning to the Appellant's assertion that the Arbitral Tribunal lacked jurisdiction on the ground that the Arbitration Claimant did not follow the contractually agreed procedure, the Court observed that:

a. an arbitration agreement must satisfy certain substantive and formal requirements in order to be considered existent, valid and, therefore, a legally binding contract;

b. it is settled that a contract is the law of the contracting parties and must be mutually honoured;

c. a contract must be performed in accordance with its contents, and in a manner consistent with the requirements of good faith; and

d. the contract is not restricted to its express obligations – it includes that which is appurtenant to it by virtue of the law, custom, and nature of the disposition.

Hence, the Court concluded that contractual obligations are to be performed "according to the nature of the disposition and in good faith, as deduced in our discretion as fact finders."

The Court noted that "parties do not dispute the fact that their agreement calls for disputes which arise between them in relation to their contract to be resolved by arbitration nor do they dispute the fact that a dispute has arisen between them", since the Arbitration Claimant had invoked the arbitration clause in related commercial judicial proceedings.

Further, it found that the Appellant had breached the Contract on the basis that it "should give the Arbitration Claimant [...] notice of any change of engineer, which they failed to do in this instance." Therefore, the Court concluded the Appellant's "failure to comply with their agreement with the [Arbitration Claimant] by giving written notice in the engineer's name, the [Appellant's] reliance on the arbitration clause in the property dispute case would entitle the [Arbitration Claimant's] to proceed to arbitration."

Finally, and aside from the above, the Court observed that:

> *"the escalation of the differences between the parties and the [...] request for arbitration confirms a lack of willingness to reach an amicable settlement. To ensure the effective performance of the parties' contract containing the arbitration clause, arbitration should be commenced after the parties invoked the arbitration clause for their dispute. Anything else would unnecessarily protract the proceedings."*

The Court thus concluded that "in taking this approach and ruling that it has jurisdiction to hear the arbitration case, the Arbitral Tribunal got it right on the facts and law, requiring that the grievance be dismissed". It awarded costs against the Complainant pursuant to Articles 133(1) and (2), and 168 of the Civil Procedure Law (as well as advocate's fees).

Commentary

The Court's judgment in this case is notable not only for its strict adherence to the provisions of the Arbitration Law, but also for its willingness to embrace the spirit of the Law.

In the former respect, the Court signalled its intent to strictly apply both the time limits imposed by Article 19 of the Arbitration Law in considering grievances filed thereunder, as well as its detailed provisions in considering the scope of reliefs to be granted in connection with any such applications.

In the latter respect, the Court's preface to its analysis of the merits of the Grievance in this case is especially notable:

> *"...arbitration is the agreement of parties to a specific legal relationship (whether contractual or otherwise) to settle a dispute which has arisen or which may arise between them by referring it to persons selected as arbitrators. The parties would determine the identities of the arbitrators or request the arbitral tribunal or a permanent arbitral institution to administer the arbitral process.*
>
> *As such, arbitration is not an exceptional means of resolving disputes but an alternative means that shall be followed once its conditions are satisfied. Arbitration is a matter of the parties' intent and giving expression to their intent in a written agreement, whether in the form of a separate agreement or as a clause within a contract. In all cases, the law requires that such agreement be evidenced in writing."*

These observations are significant, especially the observation that "arbitration is not an exceptional means of resolving disputes". This differs with the general approach of the UAE courts under the former arbitration provisions of the Civil Procedure (Articles 203 to 218) that regarded arbitration as an exception to their jurisdiction (see e.g., the ruling of the Dubai Cassation Court in Appeal No. 274 of 1993, in which it held that arbitration "being an exception means of dispute resolution", the arbitration clause must be interpreted as clearly as possible"; see also, its judgment in Appeal No. 202 of 2012, and the judgment of the UAE Federal Supreme Court No. 676 of 29 commercial, issued on 18/10/2009).

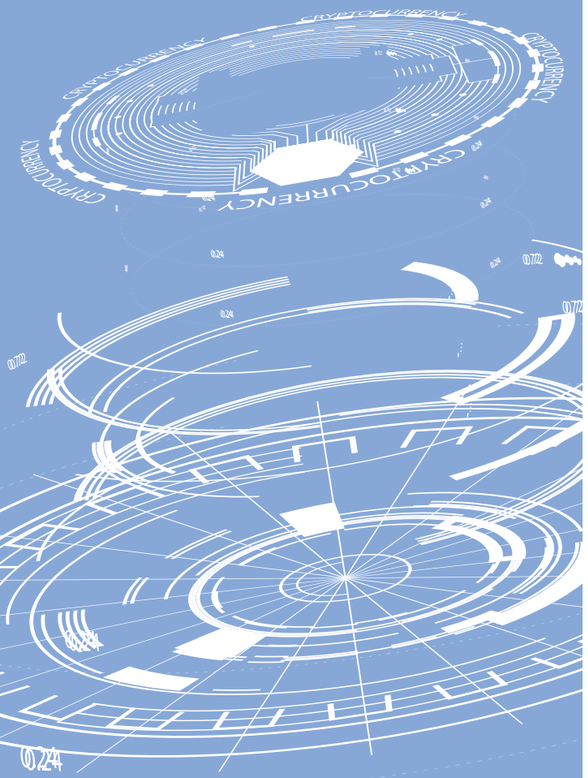
It remains to be seen if the courts in the other Emirates will adopt a similarly enlightened approach to that evinced by the Dubai Court of Appeal in this case. But if followed, such an approach could have dramatic consequences for the way in which the court will construe Article 7 of the Arbitration Law, which sets out the circumstances in which a written arbitration agreement is considered to exist.

"The Court's judgment in this case is notable not only for its strict adherence to the provisions of the Arbitration Law, but also for its willingness to embrace the spirit of the Law.

That being said, issues of capacity to agree to arbitration, which remain unaffected by the introduction of the Arbitration Law, will likely continue to be strictly construed as a result of Article 4(1) of the Arbitration Law, which requires arbitration agreements to be signed by persons with authority to do so.

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

Crypto-Asset Exchange at ADGM



Ashish Banga
Senior Associate
Abu Dhabi, UAE
a.banga@tamimi.com

'Crypto-Assets' / 'Crypto Currencies' have been a point of interest in recent times along with concerns around the risks associated with these. To address the global demand from industry players, the ADGM Financial Services Regulatory Authority ('FSRA') introduced a comprehensive framework last year for the regulation of exchanges, custodians and other intermediaries engaged in crypto-asset activities.

While the framework provides for standard regulation of arranging, advising, dealing, and managing crypto-assets, crypto-asset exchanges are treated similarly to multilateral trading facilities, which require applicants to meet certain additional requirements in addition to those applicable for other crypto-asset activities.

What is a Crypto-Asset Exchange in the ADGM?

A crypto-asset exchange is a multilateral digital system, operated by a person authorised to operate a crypto-asset business in the ADGM or a recognised investment exchange (whose recognition includes a stipulation permitting it to do so). The system brings together multiple third-party buying and selling interests in crypto-assets in accordance with non-discretionary rules, in a way that results in a contract in accordance with Financial Services and Market Regulations 2015 and such other rules in connection thereto ('FSMR').

Who can set up a Crypto-Asset Exchange in the ADGM?

A crypto-asset exchange can be set up by either: (a) a person holding a financial services permission to carry on the regulated activity of '*Operating a Crypto-Asset Business*' ('OCAB'); or (b) a recognised investment exchange holding an OCAB stipulation on its recognition order.

To be authorised to set up a crypto-asset exchange, an applicant must satisfy the FSRA that all applicable requirements of FSMR have been and will continue to be complied with. Upon authorisation, as a holder of financial services permission, an applicant is considered to be authorised to carry out the regulated activity of operating a crypto-asset exchange in and from the ADGM.

What Assets can be Traded on a Crypto-Asset Exchange in the ADGM?

While there is no general restriction on the crypto-assets that can be traded on an exchange, each crypto-asset is required to meet certain criteria in order to be designated an '*Accepted Crypto-Asset*' and thus eligible for trading. This is a measure to prevent higher-risk activities involving or relating to illiquid or 'immature' crypto-assets. Therefore, one should not presume that a financial services permission for operating a crypto currency exchange is a blanket permission to deal with any or all crypto-assets in and from the ADGM.

In determining if a crypto-asset is eligible to be dealt in by duly authorised persons, the FSRA considers:

1. the market capitalisation threshold of the particular crypto-asset. This is usually calculated at the time of an applicant seeking a financial services permission from the FSRA. While there are no prescribed criteria for the calculation of market capitalisation, the FSRA may rely on certain recognised sources, as may be available from time to time;
2. whether the particular crypto-asset is able to withstand, adapt, respond to or improve specific risks and vulnerabilities, including testing, maturity, ability to allow appropriate safeguarding of secure private keys;
3. whether the particular crypto-asset is traceable i.e. source and destination of such crypto-asset;
4. the trading history of such crypto-asset in terms of exchanges where such crypto-assets have been traded in the past, the jurisdiction where such crypto-assets have been traded and the level of regulation in such jurisdiction;
5. the level of demand of the crypto-asset, the proportion of the crypto-asset that is in free float and controls/processes in place to manage the volatility of the particular crypto-asset;
6. the distributed ledger technology involved, if such technology is secured, if it is an existing distributed ledger for network and synergies involved, if at all;
7. the objective purpose of the particular crypto-asset; and
8. the application and functionality of the crypto-asset.

This is merely an indicative list and therefore there may be circumstances where the FSRA could request further information before it recognises a particular crypto-asset as an Accepted Crypto-Asset. Each of the criteria is assessed on a case by case basis and therefore each applicant may be assessed on different criteria.

Upon its review, the FSRA shall provide a list of Accepted Crypto-Assets that can be traded by the prospective applicant along with its financial services permission for operating a crypto-asset exchange.

What are the Considerations for Operating a Crypto-Asset Exchange?

a. **Operational risk management framework** – Similar to other multilateral trading exchanges, a crypto-asset exchange may be prone to risks that the key participants, service providers, utility providers, outsourced personnel or other parties may pose. Therefore, the FSRA expects authorised persons holding a financial services permission to undertake the activity of operating a crypto-asset exchange to have a robust risk management framework with appropriate systems and controls to identify, monitor and manage such risks. The applicants/authorised persons are expected to undertake extensive due diligence and conduct tests to ensure the operational aspects of their crypto-asset exchange are sufficiently robust to monitor and manage operational risks to which its exchange may be prone and provide reports of such due diligence and tests to the FSRA for their review.

b. **Recording of transactions** – The crypto-asset exchanges are expected to have systems in place which would smoothly facilitate

recording and reporting of transactions. This would include having in place a system for reconciliation of transactions between the distributed ledger technology and internal register of the crypto-asset exchange, in the event of any discrepancy.

c. **Access** – Typically crypto-asset exchanges work on an 'access' model i.e. it does not involve client accessing exchanges through members, but rather clients accessing the exchanges directly. It therefore, creates an obligation on the crypto-asset exchange to ensure that it has appropriate systems in place to protect the orderly functioning of the market, its facilities and interests of the investors. In addition to this, under the 'access' model, given there are no intermediaries, to assist with 'know your customer' and customer due diligence requirements of the end clients, such obligations fall directly on the crypto-asset exchanges. Therefore, they need to have systems and controls in place to ensure that they are in compliance with the FSRA's anti money laundering and combating the financing of terrorism requirements.

d. **Internal rules and regulations** – The FSRA would expect crypto-asset exchanges to have mechanisms in place whereby they can draft and amend rules in order to ensure robust internal management and ways of dealing with clients.

> **A crypto-asset exchange is a multilateral digital system, which brings together multiple third-party buying and selling interests in crypto-assets.**

e. **Public disclosures** – Under the relevant rules of the FSMR, a crypto-asset exchange may be required to make certain information public. The FSRA would expect systems to be in place to ensure that any such information or any other information which is made public is reliable, monitored cautiously and is made available to the public on a non-discriminatory basis. While the exchange can choose the format and structure of the information, it should ensure that the format and structure is consistent and in line with market practice.

f. **Settlement and clearing** – Settlement and clearing are the basis of any forms of exchange and therefore, like other multilateral exchanges the FSRA and other regulators, would expect to have a clear process in place for the settlement and clearing of all accepted crypto-asset transactions including the capabilities of such exchange interacting with third parties in relation to movement of accepted crypto-assets.

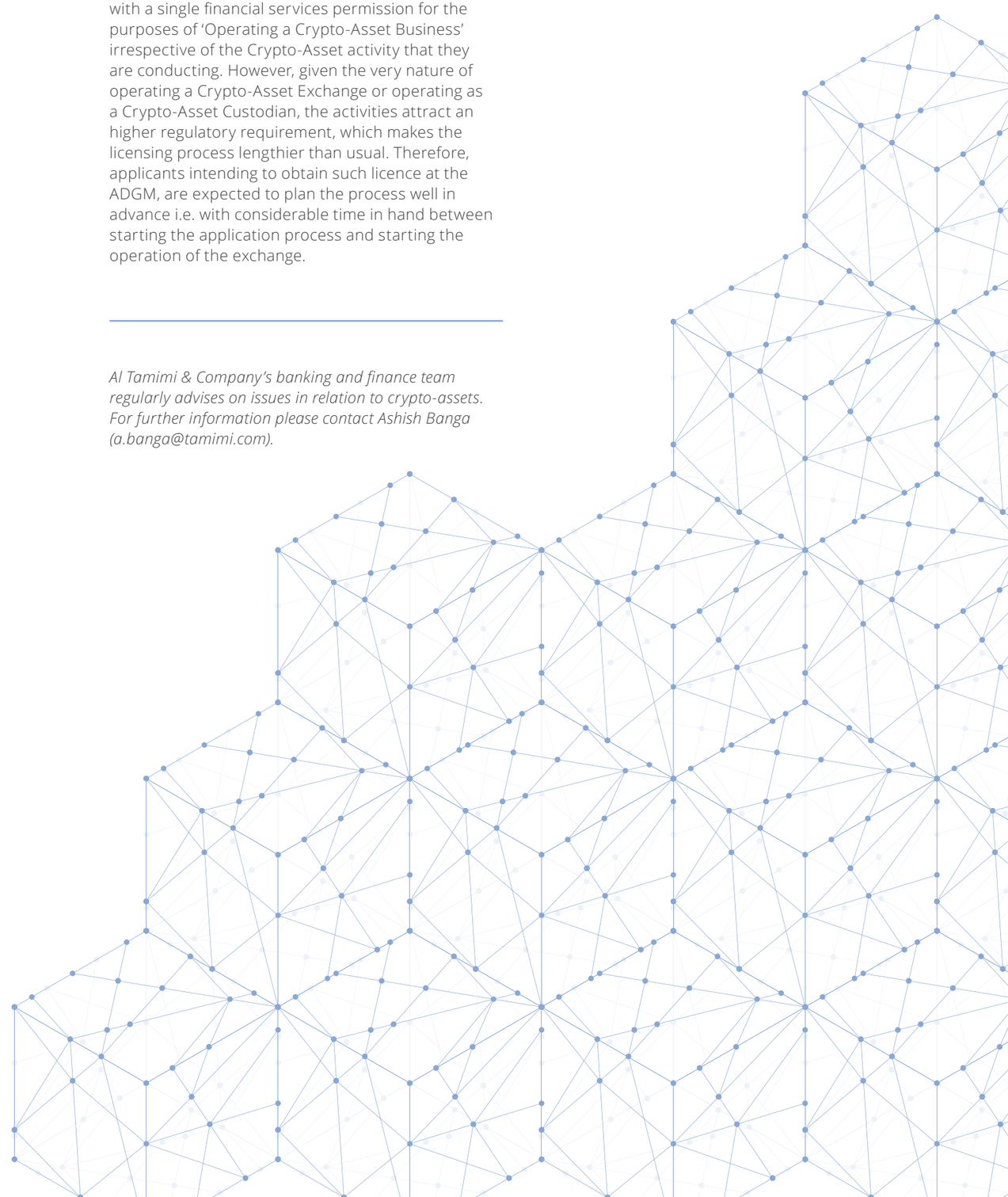
g. **Disclosures** – Given the significant risks that the crypto-assets pose for its clients, all OCAB holders, including a crypto-asset exchange, are required to have processes in place that enable them to disclose all material risks associated with crypto-assets generally and any specific risks that a particular accepted crypto may have. While the law provides for a non-exhaustive list of disclosures that an OCAB holder should make, given the rapid development in the crypto-asset industry, such disclosures will have to be updated from time to time to ensure that clients are fully aware of the risks that they may encounter in a crypto-asset transaction.

Are there any other Considerations?

The considerations we have set out above are merely an indicative list and an overview of what needs to be considered prior to making an application to the FSRA for undertaking a regulated activity of a crypto-asset exchange. There are other factors such as compliance with anti-money laundering and countering financing of terrorism regulations, technology governance and controls, market abuse, transaction reporting, misleading impression, human resources and general commercial compliance related issues, which must also be considered.

Generally, OCAB licence holders will be issued with a single financial services permission for the purposes of 'Operating a Crypto-Asset Business' irrespective of the Crypto-Asset activity that they are conducting. However, given the very nature of operating a Crypto-Asset Exchange or operating as a Crypto-Asset Custodian, the activities attract an higher regulatory requirement, which makes the licensing process lengthier than usual. Therefore, applicants intending to obtain such licence at the ADGM, are expected to plan the process well in advance i.e. with considerable time in hand between starting the application process and starting the operation of the exchange.

Al Tamimi & Company's banking and finance team regularly advises on issues in relation to crypto-assets. For further information please contact Ashish Banga (a.banga@tamimi.com).



Construction and the Technological Revolution

Leith Al-Ali
Associate
Abu Dhabi, UAE
l.alali@tamimi.com

Technology has over the years increasingly permeated nearly every aspect of our daily lives. It has also become the cornerstone of many industries, including healthcare, education, travel, communication and the environment - just a few of the sectors that have witnessed technology as a potent force for change and growth. Historically however the construction industry has had a relatively poor track record when it comes to embracing such change, lagging behind other sectors. This is why many are somewhat pessimistic as to the extent to which the industry is willing to adapt, capitalise on and benefit from some of the many advancements in technology that have been witnessed in recent years. This is especially surprising considering that there are more than USD 3 trillion in current or planned construction projects in the UAE alone - arguably providing stakeholders with innumerable opportunities to adopt and develop these new technologies in a manner that may ultimately help transform, not just their own projects but in the long term, the industry as a whole.

In this article we will briefly examine some of the notable recent technological developments within the construction industry and consider some of the implications for the sector embracing such innovation.

An Evolving Industry

In a recent report published by the World Economic Forum in cooperation with the Boston Consulting Group entitled "*Shaping the Future of Construction: Future Scenarios and Implications for the Industry*", it was noted that the full scale digitalisation of the construction industry could save up to a staggering USD 1.7 trillion in construction and engineering costs globally over the course of the next ten years. This is in addition to the potential quality enhancements and time savings that stakeholders may benefit from as a result of using methods and practices which are more quality-driven and which require less time and cost to manage. These efficiencies can stem from a variety of different innovations including the utilisation of building information modelling ('BIM') and other similar software, 3D printing and modular construction, the use of block chain and data analytics, the use of robotics and other autonomous equipment as well as the increased prevalence of drones. Here we examine some of these technological advancements in greater detail.

- **BIM:** Building Information Modelling is a collaborative three dimensional model-based software allowing users to replicate various elements of a proposed construction project including elements of a project such as building terrain and utilities, incorporating computer-aided designs and technical specifications to enable stakeholders to visualise in 3D the physical and functional characteristics of a project. It can also enable developers, designers and contractors to evaluate how a building may deplete or wear over time, post-completion.

  There are various potential benefits of utilising BIM, such as reducing the likelihood of having to re-work designs where there is a clash, thereby enabling designers and contractors to foresee any potential issues before they arise. As a result, BIM can enhance communication and co-ordination between project stakeholders which can ultimately help mitigate the risk of misunderstandings and defective works arising which, in turn, can further enhance co-ordination and the prospect of a project being completed and commissioned on time and in accordance with the employer's original requirements. BIM can also have a significant cost impact, with reports suggesting it can help reduce overall project costs by at least 10 percent.

- **3D Printing/Modular Construction:** Although 3D printing is nothing new (having been around since the 1980s), it is only in recent years that the construction industry has 'sat up' and taken note of the various potential benefits utilising 3D printing can have for developers and contractors involved in construction projects. Recently, His Highness Sheikh Mohammed bin Rashid Al Makhtoum, UAE Vice President and Prime Minister, Ruler of Dubai, further re-emphasised the importance of this technology, directing that every new building in Dubai to be 25 percent 3D printed by the year 2025. By reducing the length of the supply chain and streamlining the procurement process, 3D printing can help save up to 50 percent of the overall construction cost. Standardised processes coupled with 3D printing can also be adopted to allow for construction of parts of the project off-site (a process known as modular construction) thereby reducing the lead time required for completion. In one example in Dubai, a 3D office building was reportedly printed in 17 days with assembly and construction completed within only two. With these efficiencies also comes the added potential benefit of being able to reduce the environmental impact construction can have, for example, by reducing the associated carbon dioxide footprint that is left when various parties, their equipment and machinery are involved in the often fragmented manufacture, supply, transportation and installation of materials. 3D printing coupled with modular construction will also allow companies to create visual representations of the proposed project at comparatively less cost and within a shorter time frame than is currently the case, while also enabling them to again more easily identify potential issues and 'pinch points' in the construction of a project, before they arise, thereby further allowing stakeholders the opportunity to potentially foresee and rectify such issues well in advance of the contractor even breaking ground.

- **Blockchain/Data Analytics:** Construction projects often involve vast amounts of data - from design development through to construction and post-completion. Timely reporting and data input can provide project stakeholders with an accurate, real time insight into site operations. Blockchain is one way in which this may be achieved. Blockchain is a special database comprising information including agreements, transactions and other information stored chronologically across a network of computers in the form of 'blocks'. It is usually decentralised and therefore is often not managed by a central entity or authority. Each block is usually dated and time stamped with details of the author included, and once published cannot be changed. It is therefore an immutable and traceable record

of everything that has taken place on a project as it cannot be manipulated or amended. Within the context of a construction project the use of blockchain and data analytics can help transform how we manage, record and interpret the vast amount of information, documentation and other data usually associated with such projects and ensures a transparent record of all interactions on a project can be maintained for stakeholders to refer to. This will enable the delivery of a more streamlined and integrated procurement process, reducing the fragmented manner in which information is often stored, managed and communicated especially on complex construction projects involving multiple parties. The transparent nature of blockchain can also ensure accountability where works or services have not been completed as agreed under the relevant contract. The use of blockchain may also complement the use of BIM by creating a single, robust source of information for stakeholders to utilise, spanning all aspects of a construction project.

> **…it is important that stakeholders in the construction sector devote sufficient time and resources towards evaluating if and how new technologies that are being used and developed in the industry might impact them…**

- **Drone Technology:** The use of drone technology in the construction industry has risen exponentially in recent years. It is arguably one of the most utilised forms of technology, in an industry which is, as discussed earlier, seen to be lagging behind when it comes to the implementation of technological advancements. The ability to view the status of a construction project from an aerial vantage point and collect photographic data and information can provide stakeholders with a valuable, clear, real time view for the purposes of tracking progress. Drones can be equipped with various forms of technology including cameras, infrared and thermal sensors as well as GPS units further enhancing their ability to capture accurate, real time data of the construction site which can then be collated on specific software, analysed and interpreted, thus further strengthening the integrity of the site inspection process and ensuring the project completes in a timely and efficient manner. It should be noted that the use of drones in the UAE is regulated, at a federal level, by Federal Resolution No. 2 of 2015 regarding Light Air Sports Practice Regulations as well as the Civil Aviation Regulation Part VIII Subpart 10 which relates to the Operation of Unmanned Aerial Systems within the UAE. In Dubai for example, Dubai Law No. 7 of 2015 Concerning Airspace Safety and Security in the Emirate of Dubai, will also apply. Each of these laws clarifies the requirements and restrictions that must be adhered to by users and operators of such equipment, before they can be put into use. Drones are generally classified according to weight and the purpose for which they are intended to be used. Therefore, parties intending to use such equipment must ensure they pay close attention to and do not fall foul of the applicable federal and Emirate specific legislation, with the necessary approvals obtained, prior to using such equipment on a construction project.
- **Robotics:** The use of robotics in the construction industry is still very much in its infancy however its potential should not be overlooked. Robots may be utilised to undertake certain, conventionally man-operated tasks, such as brick laying, rebar tying and other manual-intensive labour or tasks of a repetitive nature thereby allowing project and contractor resources to be directed elsewhere if needed. Their real value is yet to be seen. The unpredictable and obstacle riddled nature of a construction site and robots' inability to adapt to real-time variables on a work site to further production and productivity without compromising safety or quality, are just some of the challenges which few robots developed to date, have been able to overcome. With robotics however it is very much a case of 'watch this space'.

Implications for the Future

As technology continues to evolve and the construction industry tries to keep pace with this evolution, stakeholders must ensure they carefully consider the implications from both a legal and commercial perspective.

The use of BIM and blockchain will invariably require the relevant overarching contractual frameworks to be modified and updated to include bespoke provisions with respect to each parties' rights and obligations, for example, regarding the use, management and implementation of BIM technology on a construction project. In the UK, BIM level 3 (which is essentially a more advanced form of BIM whereby data can be accessed by a broader cohort of project stakeholders and shared both within and across different projects in order to improve efficiency and drive collaboration and innovation), poses a number of legal challenges. For example, it is as yet unclear exactly what contractual changes are needed in order to address the potential risks associated with its use, what standard of care must be adopted when preparing elements of the BIM model (an absolute duty or one that is subject to reasonable skill and care), who is liable for mistakes in the BIM model, when would a party's contractual limitation period in respect of information provided in the BIM model actually come to an end, to what extent do contractual insurance requirements need to be amended to ensure insurance coverage extends to and will respond in the event of a claim arising out of the use of BIM and furthermore if the intellectual property and licensing provisions (often included within construction contracts and consultancy services agreements) need to be revisited to allow a BIM model to be used for the purpose for which it was intended, including for example post-completion by the owners and/or users of the property to which it relates.

It should also be recognised that many of the forms of technology identified in this article are in a state of flux, constantly being developed to ensure that they are at the forefront of the industry. Contracts which address parties' obligations with respect to the use of any of these forms of technology should therefore be periodically revisited in order to ensure they accurately reflect and address the current technical, regulatory and legal requirements of the jurisdiction in which they are being implemented and moreover such that any associated risks are apportioned between the contracting parties accordingly.

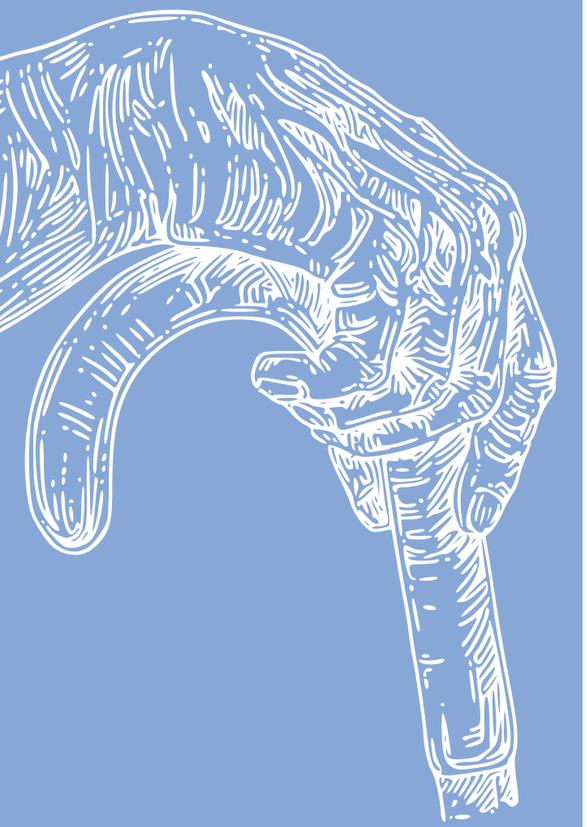
The use of drone technology, for example, may arguably have privacy implications with respect to the rights of adjoining neighbours and properties - an issue which may need to be considered especially if drones are being utilised in heavily populated residential areas where nearby inhabitants may be overlooked.

The gradual increased prevalence of robotics may result in certain labour-intensive roles eventually becoming redundant as contractors seek to save on the cost of employing certain types of labour. At the same time this may present opportunities for individuals and companies to upskill because any such equipment will also need skilled manpower to ensure their continued effective operation and maintenance.

In summary, it is important that stakeholders in the construction sector devote sufficient time and resources towards evaluating if and how new technologies that are being used and developed in the industry might impact them and furthermore how such technology can be best utilised in order to enhance productivity, quality, competitiveness and ultimately profitability, ensuring they are able to keep up with and remain a part of the industry's evolving landscape for many years to come.

Al Tamimi & Company's Construction & Infrastructure team regularly advises on all elements of the construction procurement process. For further information please contact Lyndon Richards (l.richards@tamimi.com) or Leith Al-Ali (l.alali@tamimi.com)

UAE Pensions: Increased Compliance Scrutiny



Yasmin Naja
Associate
Dubai, UAE
y.naja@tamimi.com

There is a quiet effort by the authorities to identify employers who have not registered their eligible employees for the UAE state pension. The potential liabilities faced by these employers do not make for easy reading.

This article sets out the statutory pension obligations on employers and employees based in the UAE and the associated penalties for non-compliance. Different rules apply in the other Gulf Co-operation Council ('GCC') countries (and for UAE national employees working in Abu Dhabi).

Background

In the GCC, governments have implemented state pension schemes for the benefit of their employed citizens. However, not all of those who are entitled to participate in the state pension schemes in their country are registered and therefore not all eligible employees benefit from the scheme. Whilst there are a number of reasons for this, the primary reason appears to be a lack of knowledge about the statutory obligations by individuals and employers alike.

The UAE Federal Pensions and Social Security Law No.7 of 1999 (as amended) ('Pensions Law') governs pension provision for eligible UAE nationals. The Pensions Law was effectively supplemented on 1 January 2007 by the introduction of the GCC Pensions Resolution [Federal Cabinet Resolution 18 of 2007] ('Resolution'), which obliges the registration of all non-UAE GCC nationals ('GCC nationals') employed in the UAE for a pension in accordance with the schemes established in their home countries.

The Pensions Law and Resolution apply equally throughout the UAE to all employers, including the various free zones in the UAE.

As a result of the Pensions Law and Resolution, every qualifying UAE and GCC national working in the UAE must be registered by their employer with the General Pensions and Social Security Authority ('GPSSA'), the federal body responsible for administering UAE state pensions. These employees are not entitled to receive end of service gratuity. In respect of GCC nationals, the GPSSA acts as a conduit for remitting contributions paid by employers and employees to the state pension authority in the employee's home country. The Emirate of Abu Dhabi has a separate pension law (please see below section 'State Pension in Abu Dhabi' for more information).

The Pensions Law and Resolution do not provide a time bar for claims for an employer's non-compliance. Effectively, the result is that an employer's failure to register an employee and pay contributions to the state pension scheme and any pursuant liabilities are not extinguished by lapse of time or any other circumstances. Therefore, where an employer has not registered an eligible employee with the GPSSA, the penalties for non-compliance can be onerous.

Who must be Registered?

Only UAE national employees who hold a 'family book' are required to be enrolled in the GPSSA pension scheme. By contrast, GCC nationals qualify for registration solely based on their nationality and proof thereof – there is no requirement to provide a family book or equivalent.

Importantly, eligible UAE and GCC nationals cannot opt out and registration is a mandatory requirement.

Registration

In order to register employees, an employer must first register with the GPSSA. On doing so, the employer will be provided with a registration number, akin to an account or identification number. At the time of registration employees will also receive an individual registration number upon first registration, which will remain with the employee during their entire working life.

Eligible employees must be registered within one month of the date of commencement of their employment. Accordingly, where employers enter into an employment contract with an UAE or GCC national employee, it is worth the employer giving thought at that stage to the company's registration status. If the employer is not already registered with the GPSSA, perhaps because the employer has not previously employed UAE or GCC nationals, it is useful to begin the registration process as early as possible to avoid delaying the employee's registration and incurring the associated penalties.

"There is a quiet effort by the authorities to identify employers who have not registered their eligible employees for the UAE state pension. The potential liabilities faced by these employers do not make for easy reading.

Penalties

Any eligible employee who was not registered during the course of employment can make a valid claim for contributions either directly or via the GPSSA. The GPSSA itself may also claim for unpaid contributions from the employer.

Late registration may attract penalties in the form of late fees and other fines. Penalties are assessed on a case by case basis by the GPSSA (acting where necessary on behalf of the relevant pension authorities in the other GCC countries). Where the penalties relate to the late registration of a GCC national, the relevant state pension authority will determine the applicable fines and will communicate this to the GPSSA, that, in turn, will seek to recover these from the employer.

Where pension contributions are paid late, the GPSSA may impose fines on the employer which are calculated at the daily rate of 0.1 percent of the contributions payable for each day that the contributions are overdue. Similarly, where an employer has failed to register employees with the GPSSA, the employer can be fined AED 5,000 per employee in addition to its obligation to make the unpaid contributions.

State Pension in Abu Dhabi

Whilst the Pensions Law and Resolution have federal remit, the Emirate of Abu Dhabi has a separate pension law, the Civil Pensions and Benefits in the Emirate of Abu Dhabi Law No. 2 of 2000, and a separate authority, the Abu Dhabi Retirement and Pensions Fund ('ADRPF'), which manages pensions on behalf of Abu Dhabi based and employed UAE nationals. The ADRPF does not manage the pensions on behalf of GCC nationals; this responsibility still lies with the GPSSA.

Similar considerations and obligations to those outlined above continue to apply in Abu Dhabi. However, the main difference is in terms of liability for non-compliance. Essentially, late payment of contributions will attract fines of AED 100 per day and the ADRPF may apply unspecified fines for non-registration or late registration, where the time limit for registration of individuals is 10 days.

Increased scrutiny

The authorities are increasing their efforts to identify employers who are not complying with their applicable pension requirements including, in some cases, physical inspections by the relevant pension authority. We are aware of employers whose failure to register eligible employees has been the subject of significant penalties.

Conclusion

The concerted effort to identify employers who are not complying with the applicable pension regulations is likely to intensify in the future. In light of the potential liabilities on employers for failure to comply, it is recommended that all employers ensure that their eligible employees are registered as soon as possible.

Al Tamimi & Company's Employment & Incentives team regularly advises on regional employment matters, including in relation to pensions and the relevant legal requirements for employers. For further information, please contact Gordon Barr (g.barr@tamimi.com) or Yasmin Naja (y.naja@tamimi.com).

Focus Technology, Media & Telecommunications

Digitising the Middle East: A Transforming Landscape 25

The Middle East Subsea Cable Landscape: Joining the Dots 27

Congratulations! You're a Winner! New Anti-Spam Regulations in Saudi Arabia 31

On Point: The Licensing of Internet Exchange Points in Saudi Arabia 35

Special Delivery: Importation of IT and Telecoms Equipment into Saudi Arabia 39

Twitching your Antennas: The Role of Small Cells in 5G Deployments 43

Advertising By Numbers: What Modern Advertising Contracts Need to Say (But Never Do) 47

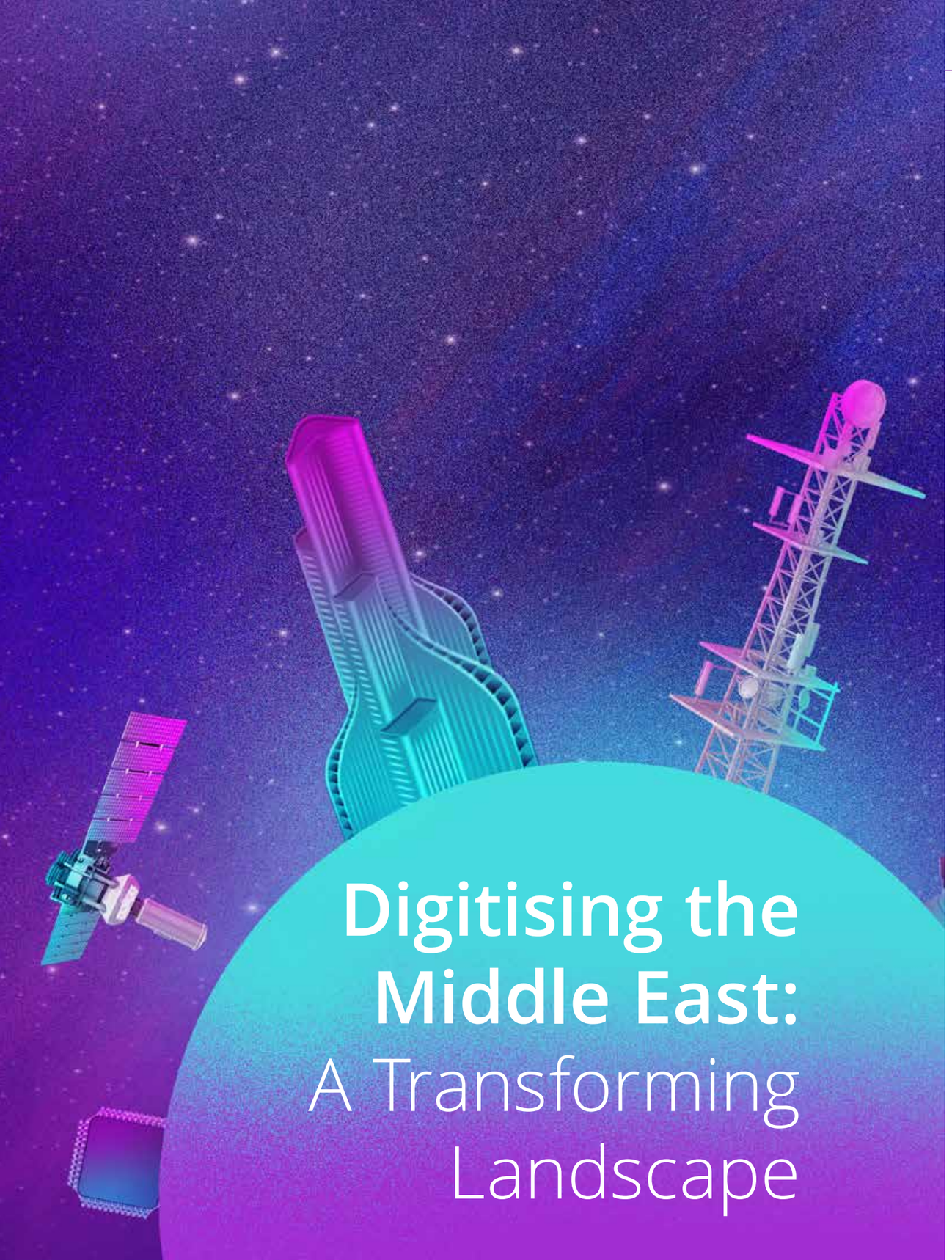
Tech Projects Gone Wrong: Effectively Managing Disputes 51

PropTech (Part One): Smart Buildings, Co-Working Spaces, Effects on the Retail Sector and Autonomous Vehicles 55

What's Got Hot in the Internet of Things? 61

How the UAE's Common Law Courts can Help Creative Industries Resolve their Disputes 67

CON-TENTS



Digitising the Middle East: A Transforming Landscape

Martin Hayward
Head of Technology, Media & Telecommunications
Dubai, UAE
m.hayward@tamimi.com

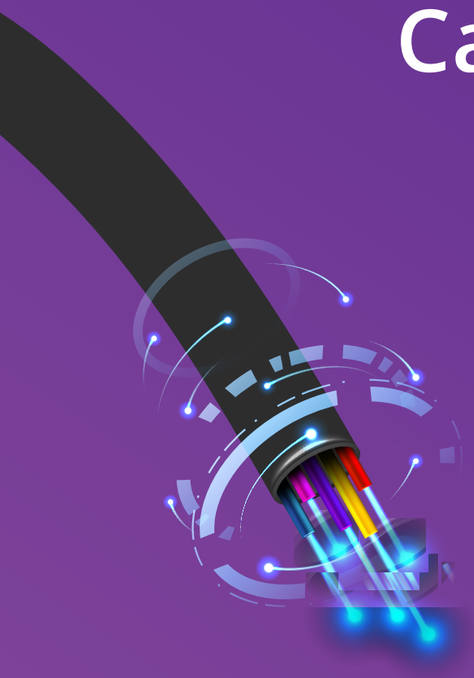
The TMT edition of Law Update focuses on how our clients' businesses are transforming and how technology is enabling that transformation. Our clients across the Middle East, both public and private sector, established and start-up, are placing technology at the core of their organisations as they adopt innovative new business models and practices. Many of these technologies are disrupting traditional industries and challenging such industries to innovate and change. This edition looks at the key technologies supporting digital transformation. It considers the regional Middle East subsea cable landscape that provides connectivity and capacity to manage the increasing data traffic generated by the growth of digital business and focuses on the growth of Middle East internet exchange points where data traffic interconnect and moves between networks. It looks at the Middle East's progression towards 5G mobile networks and some of the key issues relating to widespread Middle East 5G adoption. It delves into the world of Middle East big data with the focus on practical issues around the importation of technology into the Kingdom of Saudi Arabia to support the growth of the Saudi cloud computing market and the wider Saudi technology sector.

We also look at some of the industries being disrupted by new technology: from the financial services sector to real estate and assess contracting in the rapidly changing Middle East digital advertising (AdTech) space.

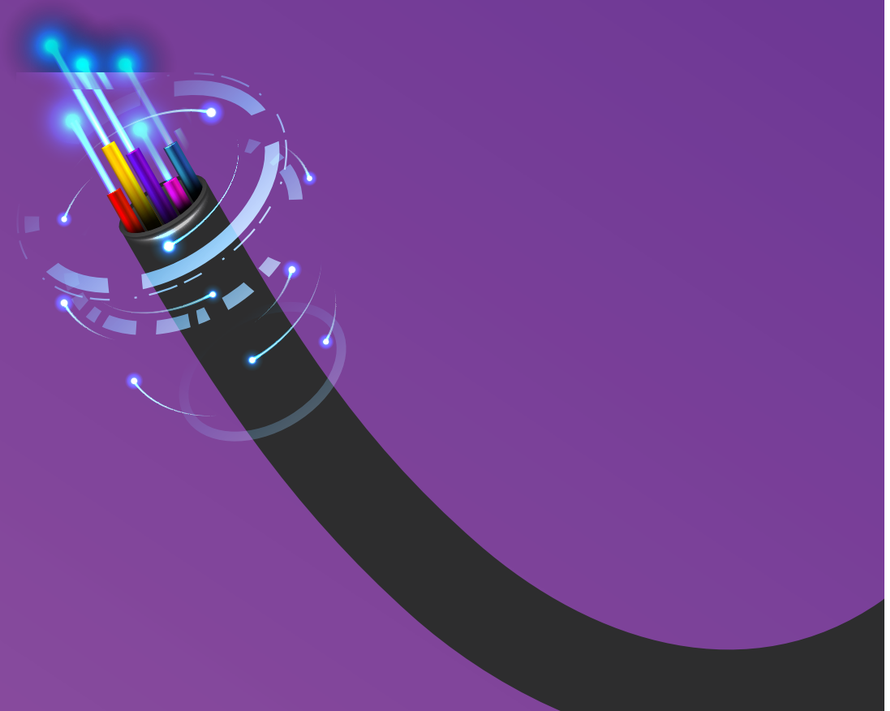
With technological change comes regulation. The key to effectively managing technological change is understanding and navigating the regulatory landscape. As technology moves quickly, so can regulation. The Middle East region is no exception. We focus in this TMT edition on some key areas of new regulation: anti-spam regulations in the Kingdom of Saudi Arabia and the new UAE Internet of Things ('IoT') policy. The UAE is not the only Middle East country to be focusing on regulating the IoT space, with similar initiatives progressing in Oman and the Kingdom of Saudi Arabia. As the proliferation of smart devices (physical devices connected to the internet) continues, whether as part of smart city or smart home developments, in connected cars or otherwise, the management of these devices and the data they generate becomes increasingly important and government plays a key role in balancing the pace of innovation with the need for regulatory oversight.

Lastly, we focus on managing technology disputes. Technology can be rapidly adopted, procured and installed. It is expensive and critical to business success. Effectively managing issues relating to technology is central to ensuring business continuity and protecting investments. We look at the key strategies for managing such risk.

The Middle East Subsea Cable Landscape: Joining the Dots



Martin Hayward
Head of Technology, Media & Telecommunications
Dubai, UAE
m.hayward@tamimi.com



Introduction

Submarine (subsea) cables snake around the Gulf, from southern Iraq, heading to India and onto Asia and around Oman, into the Red Sea and out across Egypt into the Mediterranean and to Europe and beyond, carrying voice and data traffic. A web of subsea cables cross back and forth across the Indian Ocean and link east Africa to the Gulf. These fibre optic routes form the Internet's backbone. Over 95 percent of the world's internet traffic runs over subsea cables and as internet traffic continues to expand, these cable systems will become greater in number and increasingly critical for the global (and regional Middle East) economy. Much of today's growth is being driven by the infrastructure needs of the Over-The-Top ('OTT') providers; both the internet powerhouses like Google and Facebook and the giant cloud computing providers like Microsoft and Amazon. As technology develops, these cable systems will be able to carry more and more capacity.

Where cable systems land, regional technology industries grow and flourish. Landing stations need to be built to land the subsea cable systems and interconnect them with terrestrial cable systems. Landing stations are often located in data centres and local data centre industries emerge, offering internet exchange and cross-connect services. Around data centres grow technology hubs and clusters. As Middle East countries seek to diversify their economies, these new technology industries are increasingly being prioritised and Middle East countries are competing to grow this sector, attracting international technology companies and building regional technology businesses.

Different Structures

Subsea cable systems are expensive to build, maintain and expand. They come in a number of forms. Traditionally, due to the expense and criticality of these systems, they have been (and still are) built by a consortium of companies, usually consisting of telecommunications operators, allowing each operator to defray the risk. Many consortium cable systems span the Gulf, the consortium members including Middle East, Indian and global telecommunications operators. They have names like: AAE-1, FLAG, FALCON,EIG, SEAMEWE-5. Increasingly, they can be built by individual operators, whether telecommunications operators or cable system providers and sometimes even development banks and investment funds.

Cable systems are long term projects. They are built to operate for years (and must do so to pay back the capital expenditure in building them). The initial build – laying the subsea cable and installing the equipment that runs the cable systems - is a challenging and expensive undertaking. It involves long tender processes and negotiation before it even gets to delivery and installation.

As capacity demands increase, and as technology changes, there are multiple upgrades to the equipment that run the cable systems over time, usually every few years. These are also expensive projects and usually (but not always) involve tender processes (and more negotiation). Increasingly, as telecommunications networks that used to be largely hardware based become software based (with the introduction of network function virtualisation software and software defined networking), software changes are as important as hardware developments.

Consortium cable systems are run in different ways and take on different forms. Some consortium cable systems create operating companies to run the cable systems, formed from the consortium members. They manage the procurement process, delivery and installation of the cable system and the day-to-day management of the cable system, once installed. There are complex governance structures sitting behind the operating companies with purchasing, technical and management committees overseeing various aspects of the cable system.

Single operator cable systems are often managed in separate companies or separate (wholesale or international) divisions.

One of the reasons we are seeing a growth in individual operator owned cable systems is to enable greater speed to market. Consortiums, by their nature, take more time to make decisions. This reduces agility in a highly competitive space where customer demand for connectivity and bandwidth continues to multiply rapidly.

Contracting for Cable Systems

For the reasons set out above, contracting for cable systems is not a quick and easy business. Cable systems reflect a huge investment, whether for a consortium or for a single operator, and are critical to business. As a result, the cable system supply contracts come with a number of key features you may not find in other technology contracts as well as contract terms that are common across commercial contracts but that take on much greater importance due to the criticality of a cable system build or upgrade.

Key Contract Terms

Cable system supply contracts are usually turnkey in nature, whether covering the initial build or any upgrade. A single vendor is identified that can deliver an end-to-end solution. The vendor is responsible for managing the whole process. This is easier said than done. Cable systems cover multiple jurisdictions, often challenging ones in which to do business. Vendors may need to manage multiple sub-contractors to deliver the solution. There is also the added complication of sourcing the permits, licences, etc., necessary to build the cable system in each of the countries where the cable system lands. These permits come in many different forms, covering importation, landing, site access, etc. The parties need to be clear who is responsible for securing the required permits, licences, etc., particularly where there are multiple customers making up large consortiums. The customer will want the vendor to secure all the permits. The vendor will want the customer (or certain consortium customers) to secure specific permits (e.g. landing permits). As a minimum, the vendor will need customer support to secure any such permits, licences, etc.

These contracts include very detailed solution specifications. Vendors want to make sure that they have captured all the elements of the solution within the price offered (with any out of scope elements coming at additional cost). Customers want to ensure that the vendors will deliver the solution, including anything incidental or necessary to the delivery of the solution, without any price increases. Customers do not want to be dragged into multiple change requests and increased cost. This can lead to time consuming negotiation on the solution terms.

Vendors also want to build in the ability to survey the landing stations at which the cable systems will land. Vendors will have done some initial due diligence as part of the tender process and will have priced accordingly. Usually this will have been a desktop exercise. This needs to be validated on the ground. Often vendors will find that some landing stations have not been built. Some may lack power or the right environmental conditions. For the initial builds involving the laying of the cable, marine surveys are required to confirm route positions. This surveying often leads to expensive re-routing where the undersea conditions prevent the original route being followed. Customers want to lock in the vendors to their tender pricing and avoid a re-pricing based on surveys, after awarding the tender. Customers want the vendors to take the risk that their assessment, at tender stage, was inaccurate. This is particularly critical where customers have fixed budgets applied to the project. It becomes particularly complicated in consortium cable systems where consortium members have agreed to contribute a percentage amount of the price. Sometimes, vendors can get customers to agree to price changes based on the surveying, subject to an agreed cap. Key for customers is not to allow any additional surveying to waste too much time.

Time is of the essence. Customers are waiting for the cable systems to be installed to start selling services over the cable systems (or upgraded to start selling the additional services provided). As a result, customers will push the vendor to deliver as quickly as possible and allocate liquidated damages for any delay to incentivise velocity. Vendors will seek to mitigate any such financial risk: lengthening delivery timelines, building in risk premiums or applying multiple exclusions and customer dependencies. The responsibility matrix covering the division of responsibility between customer(s) and vendor can be a key document which the parties will spend a great deal of time building and negotiating.

Due to the technical complexity and business criticality of the cable systems, customers are looking for long warranty periods and even longer guarantees that the cable systems will last for a certain period of time. This is a called the 'design life' and this can sometimes last up to 25 years. Customers want the certainty that their cable system shall continue to function long enough for the customers to reclaim their capital expenditure and to have access to the right technology (including spare parts) for a long time. Vendors will want to make it clear that the cable system, in its entirety, will last for a long period of time but the constituent parts may change over time.

Customers will also want the level of support to be as broad and comprehensive as possible to ensure vendors are required to fix whatever needs fixing for as long a period of time as possible. Vendors, on the other hand, will want to scope the support as tightly and accurately as possible based on how they have costed the support (and for how long).

Customers often have stringent service level agreements to ensure that the cable system is effectively maintained, post-installation, with tough service credits to match. These often mirror the service level agreements that the customers are agreeing to with their end customers who are buying capacity or other telecommunications services from the customers. Vendors need to be careful what they commit to support and will be looking for tightly worded service level agreements and agreed exclusions.

Force majeure provisions will also need to be carefully considered as these act to limit a vendor's risk in certain, clearly stated, circumstances. This is an extremely important provision in a cable system contract. Vendors will want the force majeure provision to cover bad weather that can often affect the initial cable laying. They will want to use it to cover delays with government permits or to manage third party cable cuts that take time to fix. A key discussion between customers and vendors is redundancy and resilience. Customers can build this into the design of a cable system to mitigate down time (particularly if there is a cable cut). This, though, comes with an additional cost and customers will often strip this out to save money. Vendors need to ensure that the service level agreements (and service credits) reflect any customer decision not to build in a level of redundancy or resilience.

In addition to the potential financial exposure to delay liquidated damages and service credits, vendors often face the requirement for large performance guarantees demanded by customers to protect their investments prior to acceptance (and sometimes through the warranty periods). This is particularly common in the Middle East. These guarantees pose a huge financial liability for vendors, both in relation to the cost of issuing and maintaining the guarantees and the financial consequences to the vendor's balance sheet of issuing such a guarantee, which can often be claimed, on an 'on-demand' basis by the customers. Vendors will fight to reduce the size of the guarantee and the length of time they need to stay issued. The guarantee language is, not unsurprisingly, heavily negotiated and vendors move quickly once the conditions for maintaining the guarantee are met to have the guarantee released.

Customers are increasingly looking for flexibility. They do not want to be reliant on a single vendor and that vendor's technology. Vendor lock-in needs to be avoided. It prevents customers moving to a new vendor for particular equipment for price savings and for technological benefits. Previously, 'rip and replace' deals have been favoured where a new vendor replaces the old vendor and swaps out all the old vendor's equipment. This just replaces vendor lock-in with the old vendor with vendor lock-in with the new vendor. As a result, the customers are increasingly requiring 'open systems' allowing customers to swap in and out different technology with minimal impact on warranties, service level agreements, etc. This is particularly important as customers look to introduce software to drive network efficiency and performance.

Last, but certainly not least, customers want to make sure the cable system works before they pay for it. There are detailed acceptance procedures covering the stages of the cable system finishing with the acceptance of the complete cable system, tested end to end. A full cable system build can take a long time, especially if acceptance is delayed. Vendors want to be paid on specific milestones to defray their costs, which based on the cost of the cable system are substantial and are carried over the long build periods. Vendors are often looking for payment for the equipment in advance with the payments for the services needed to install the cable systems backended. This can be a key point for negotiation. If customers are willing to pay for equipment in advance, they will often want vendors to issue payment guarantees covering the initial financial outlay (in addition to the performance guarantees discussed above). These advance payment guarantees can often be sizeable. Once again, this is particularly common in the Middle East. Customers will want to defer certain payments, post-acceptance, for as long as possible to ensure that the cable system is working and delivering what the customers need.

Conclusion

Cable systems will continue to be built to cover key geographical routes and expand capacity on those systems as internet usage continues to grow. More cable systems will be built in geographies that are yet to experience the internet growth other parts of the world have. Africa is a good example and there are already cable systems traversing the west and east coasts of Africa with more to come, such as the new Africa-1 cable system.

Interestingly, the next wave of cable systems may not even be subsea cables. Cable systems already run across Middle East power lines. The next swathe of cable systems may run overland, crossing the Arabian Peninsula or head across Iraq, seeking alternative routes to the Mediterranean – raising a whole new set of challenges to be covered by cable system contracts.

Even more interesting still, as cable systems become more and more critical to the health of the Middle East economy, more of these systems will be designated as critical national infrastructure with a greater focus on cable system security and increased scrutiny of vendors.

Al Tamimi & Company's Technology, Media & Telecommunication team regularly advises customers and suppliers on the delivery of large scale, business critical MEA telecommunications and technology projects. For further information please contact Martin Hayward (m.hayward@tamimi.com).

Congratulations! You're a Winner! New Anti-Spam Regulations in Saudi Arabia

Nick O'Connell
Partner
Riyadh, Saudi Arabia
n.oconnell@tamimi.com

Amy Land-Pejoska
Associate
Riyadh, Saudi Arabia
a.pejoska@tamimi.com

Saudi Arabia has recently updated its regulations relating to electronic messages and unsolicited marketing communications. In this article, we provide a brief summary of the key points.

New Anti-Spam Regulation

The Communications and Information Technology Commission ('CITC') is responsible for regulating the telecoms sector in Saudi Arabia. This includes responsibility for licensing telecommunications service providers, as well as responsibility for issuing rules to ensure compliance with the Telecoms Law (Council of Ministers resolution No. 74, dated 05/03/1422H; 27 May 2001; Royal Decree No. M/12, dated 12/03/1422H; 3 June 2001) and its By-Law (issued by Minister of Post, Telegraph and Telephone Resolution No. (11) dated 15/05/1423H; 27 July 2001).

Article 37 of the Telecoms Law prohibits the misuse of telecommunications services to cause a disturbance. Article 58 of the Telecoms By-Law requires telecommunications service providers to protect the personal information of subscribers/users. With these considerations in mind, the CITC has recently issued new regulations addressing unsolicited marketing communications or 'spam', and certain other message categories.

The new Regulation for the Reduction of SPAM (the 'Regulation'; CITC Decision No. 395/1439 dated 3/11/1439H; 14 August 2018) will go some way to addressing the ambiguity arising out of its now defunct predecessors: the Regulation for Reduction of SPAM (CITC Decision No. 259/1431 dated 12/4/1431H; 28 March 2010), and the Measures to Reduce SPAM (notified to telecoms service providers by CITC on 25/5/1439H; 11 February 2018).

Telecommunications service providers licensed in Saudi Arabia are required to take action to reduce SPAM messages transmitted across their networks, including by implementing prevention and monitoring mechanisms. 'SPAM messages', as per the Regulation, can be broadly understood as certain types of electronic messages sent without any opt-out mechanism. An 'electronic message' means messages sent by means of telecommunications networks to an electronic address such as an email, SMS, MMS, Flash SMS, or fax. Notably, the definition of electronic message specifically excludes voice calls.

Requirements for Telecoms Service Providers

The Regulation requires telecommunications service providers licensed by CITC to include, in contracts with other telecommunications service providers and with senders of electronic messages (e.g. Bulk SMS service providers), clear conditions conforming to the Regulation. These conditions include the need to set out the possible consequences of non-compliance, such as the possibility of the suspension or cancellation of services. In this context, the Regulation appears to apply directly

to telecommunications service providers licensed in Saudi Arabia; and indirectly to their customers/clients by way of the applicable service terms. (This provides some colour to the statement in the Regulation that the Regulation applies to electronic messages sent within the Kingdom.)

Pursuant to the Regulation, senders of electronic messages are required to address a number of conditions aimed at reducing the nuisance value of unsolicited messages. These include the following requirements:

- including a contact electronic address in the electronic message;
- providing a convenient mechanism for recipients to unsubscribe; and
- acting upon unsubscribe requests within less than 24 hours.

Senders are prohibited from sending SPAM messages. Additionally, senders are prohibited from sending 'Flash SMS' messages, which appear directly on a recipient's screen without any interaction. Senders are also prohibited from sending electronic messages using electronic addresses gathered by automated means – address harvesting and dictionary attack type methods.

"SPAM messages', as per the Regulation, can be broadly understood as certain types of electronic messages sent without any opt-out mechanism.

Classification of Message Types

The Regulation is somewhat prescriptive in terms of the steps that must be taken in respect of promotional messages, and other types of messages. Telecoms service providers must ensure that electronic messages are classified using the following classifications:

- Awareness messages: electronic messages with awareness or guidance content sent to all users (or specific categories of users) by entities such as government agencies, banks, hospitals, universities, schools, associations and others.
- Personal messages: electronic messages from a specified user number to another specified user number.
- Promotional messages: electronic messages of a commercial or marketing nature for products or services or in respect of donations.
- Service messages: electronic messages with service content, sent to a specific user for the purpose of providing a contracted service, or to provide information on operational aspects of that service, its features and options. (This would include electronic messages relating to appointments, or for identity authentication, or to provide access to sites or software, at the request or with the consent of the user.)
- Warning messages: Urgent electronic messages sent by responsible government authorities to warn of an imminent event or to alert users to an event that has already occurred.

Telecommunications service providers are required to filter promotional messages, but not awareness messages, personal messages, service messages or warning messages. Awareness messages, personal messages, service messages and warning messages should not contain any commercial or marketing content, including in respect of donations.

For the purposes of managing electronic messages, message service providers are required to maintain a list of names of senders, to be approved by the telecommunications service provider with whom they contract. All awareness messages, promotional messages, service messages and warning messages should be sent in the names of approved senders. Telecommunications service providers are required to maintain records of such senders, including information on responsible contact people, and to make such information available to the CITC upon request.

Promotional messages must be sent through their own unique short codes (although not all promotional messages will be in SMS format), and need to be marked to indicate that they are promotional in nature. Telecommunications service providers are required to provide users with filtering functionality that will enable them to avoid receiving promotional messages in general, or from specific senders.

So What?

For telecommunications service providers, the Regulation clearly sets out the mechanisms that need to be implemented in order to ensure compliance. For consumers, the Regulation makes clear what they should expect in terms of the ability to opt out of marketing communications, partially or entirely. For corporate entities wishing to send promotional messages, care needs to be taken to ensure that such messages fall within the regulatory framework.

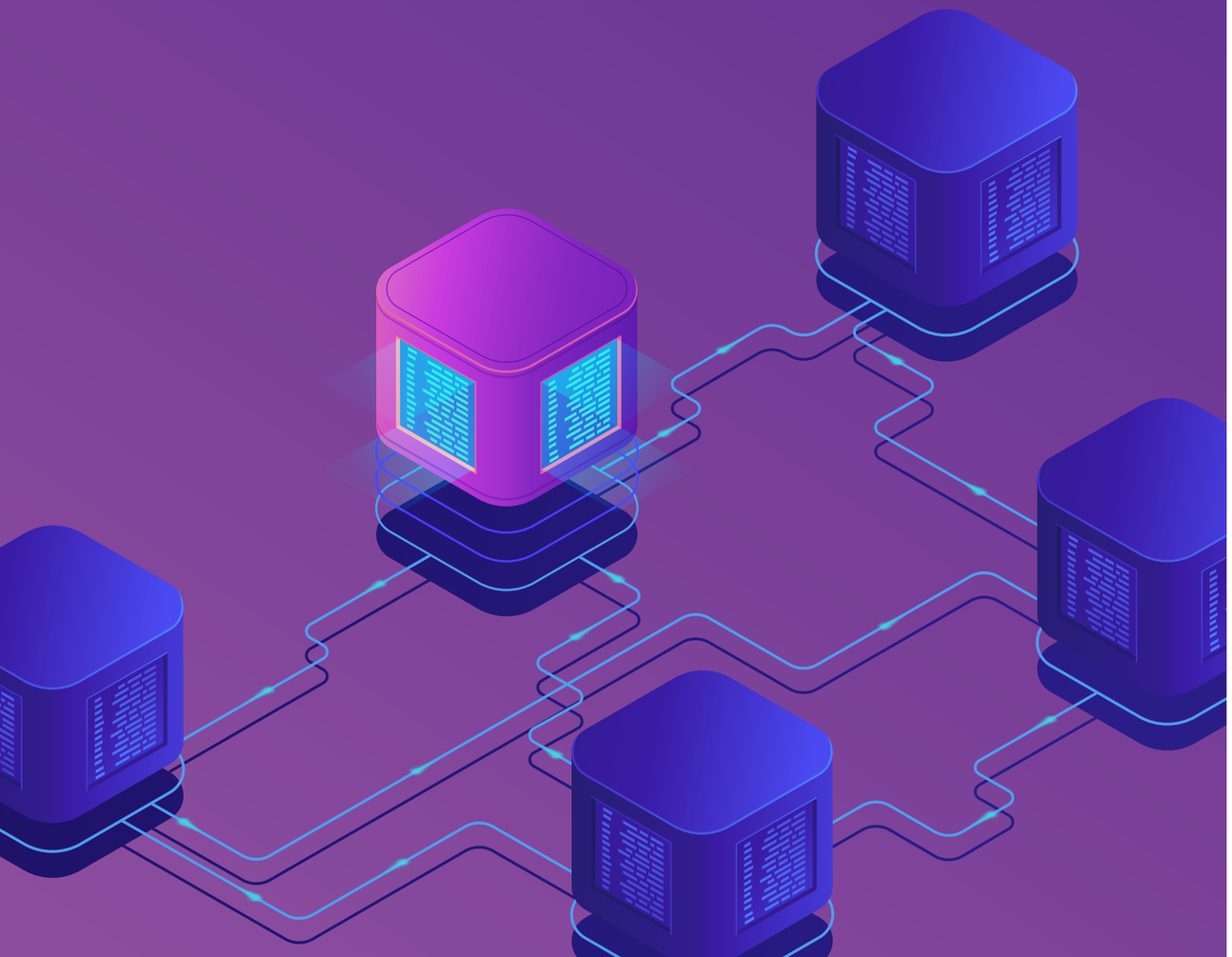
Al Tamimi & Company's Technology, Media & Telecommunications team regularly advises on telecommunications licensing and regulatory matters, including matters relating to unsolicited marketing communications. For further information please contact Nick O'Connell (n.oconnell@tamimi.com) or Amy Land-Pejoska (a.pejoska@tamimi.com).

Bulk SMS Services

The CITC has a specific Type B Class Licence for the provision of Short Message Services, or 'Bulk SMS Services'. This Type B Class Licence applies to message service providers who want to send short text, audio or video messages, for promotional or informational purposes. The special terms and conditions associated with the licence set out a number of requirements for Bulk SMS service providers, including the following:

- message service providers must comply with the Regulation for the Reduction of SPAM;
- message service providers must use message centres and telecommunications licensed in the Kingdom, and servers and data must be located in the Kingdom;
- pricing must be clear, so that users are aware of any changes before they use a service and incur costs. The service cannot be used as a means of collecting fees associated with other services;
- only licensed message service providers are permitted to provide the services, and they are not permitted to subcontract the services, nor are they (or their clients) permitted to resell messages to others;
- message service providers must coordinate with licensed telecommunications service providers before sending SMS messages to recipients located outside Saudi Arabia, and be prepared to bear the consequences of any resulting breach of obligations vis-a-vis international requirements; and
- message service providers may only send messages on behalf of clients engaged in regulated professions where such clients are licensed in Saudi Arabia and the relevant authorities have approved the sending of such messages.

On Point:
The Licensing of Internet Exchange Points in Saudi Arabia



Nick O'Connell
Partner
Riyadh, Saudi Arabia
n.oconnell@tamimi.com

Zil Ur Rehman
Associate
Riyadh, Saudi Arabia
z.rehman@tamimi.com

The term 'Internet Exchange Point' or 'IXP' refers to physical infrastructure that allows networks to interconnect directly. Internet infrastructure and network providers, such as Internet Service Providers and Content Delivery Networks, can connect their networks and exchange traffic (i.e. data transmitted and received over the internet). IXPs allow for high speed data transfer, reduced latency, fault tolerance, improved bandwidth and routing efficiency. The costs associated with operating IXPs are usually shared between the participating infrastructure and network providers. IXPs often use a 'peering' arrangement, which permits exchange of internet traffic for free. Some large networks, with greater market share, may charge smaller networks for peering services.

In this article, we look at the status of IXPs in Saudi Arabia, and a recent proposal to regulate.

Proposed Regulation of IXPs in Saudi Arabia

Currently, there is no legal framework specifically regulating IXPs in Saudi Arabia. In 2018, the Communication and Information Technology Commission ('CITC') issued a public consultation document on a draft IXP Framework, indicating its intention to regulate the operations of IXPs in Saudi Arabia.

The proposed IXP Framework covers topics such as IXP ownership, registration, participation, operations, international cable landing point access and the CITC's powers. In its draft form, it is intended to apply to any and all IXP services provided within Saudi Arabia. Additionally, any entity engaged, in whole or in part, as an IXP service provider in Saudi Arabia is required to apply for registration with the CITC.

Notably, the draft IXP Framework provides for:

- **Ownership:** Foreign ownership of IXPs operating in Saudi Arabia will be allowed in line with the Kingdom's WTO commitment in respect of foreign ownership in the telecoms sector. Foreign entities will be allowed to form joint ventures and consortia for the ownership of IXPs in Saudi Arabia. The ownership stakes of each participant in such ventures/consortia may be determined at their sole discretion. If CITC designates an IXP as the Designated National IXP, CITC may impose restrictions on ownership. With respect to international cable landing points, the IXP Framework also contemplates rights of ownership and colocation obligations for IXP service providers;
- **Participation:** Every IXP provider shall be required to publish a membership policy and make it publicly available. Peering policies, pricing policies and tariff mechanisms will also need to be publicly available. An IXP service provider may reject a membership

application, but the CITC has the discretion to direct IXPs to accept members. If CITC designates an IXP as the Designated National IXP, CITC may impose additional requirements at its sole discretion; and

- **Operations:** IXP service providers can offer associated services, such as supporting network operations centres for monitoring and fault detection, guaranteed service levels, internet security services, Ethernet switches for peering or transit among participants, and other appropriate services. IXP service providers will not be permitted to provide any service that requires a licence or authorisation from CITC. Infrastructure and personnel of IXPs licensed in Saudi Arabia will need to be located in the KSA. More generally, the IXP service provider will need to cooperate with CITC and other local authorities.

The draft IXP Framework contemplates empowering CITC to penalise IXP service providers for violations, and issue guidelines and standard contracts and clauses to help streamline the industry.

"In 2018, the CITC issued a public consultation document on a draft IXP Framework, indicating its intention to regulate the operations of IXPs in Saudi Arabia.

Content Liability

An IXP's function is to exchange traffic rather than serving end users. As such, content is the responsibility of the IXP members and not the IXP itself. The draft IXP Framework states that IXP members are responsible for complying with local content and filtering requirements in Saudi Arabia, and that an IXP service provider will not incur any administrative or criminal liability based solely on the fact that unlawful content or infringing content has been uploaded, processed or stored on the IXP service provider's network.

No legal obligation would be placed upon an IXP service provider to monitor its network, actively and constantly, for unlawful or infringing content. However, the draft IXP Framework contemplates IXP service providers promptly notifying CITC or any other appropriate authority if they become aware of any content or information on any IXP member's network that may constitute a violation of any of the various content-related considerations set out in Saudi Arabia's Anti-Cyber Crime Law (Royal Decree No. M/17; 8 Rabi 1 1428 / 26 March 2007).

Additionally, IXP service providers would be obligated to forward to the relevant authorities any complaints they receive from third parties about unlawful or infringing content on any IXP member's network. IXP service providers would need to fully cooperate with the local authorities on such matters. If CITC designates an IXP as the Designated National IXP, CITC may impose additional requirements with regard to such matters.

Under the laws establishing the CITC, the CITC is empowered to impose penalties. Such penalties are without prejudice to such other penalties that may be imposed under any other applicable law in the Kingdom (such as the Anti-Cyber Crime Law).

Other Considerations

One aspect of the draft IXP Framework that may be problematic is the requirement that all IXP related personnel be located within Saudi Arabia. We do not rule out the possibility that the final version of the IXP Framework may elaborate on this point.

A further aspect that may benefit from elaboration is the application of the IXP Framework to IXPs that are already in operation. At the very least we would expect that such IXPs will be given sufficient extra time in order to ensure compliance with the new requirements.

"IXP service providers will not be obligated to actively monitor their networks for unlawful or infringing content, but they are required to promptly notify CITC if they become aware of such content.

What Now?

To reiterate, the IXP Framework is, at the time of writing, just a draft under consideration by local and international stakeholders. The timeline for completion of the consultation process and (if applicable) entry into force of the IXP Framework is not yet public.

Industry participants and potential investors would be well advised to watch this space. If the IXP Framework comes into effect, it would be appropriate to approach the CITC for clarification of any material concerns.

Al Tamimi & Company's Technology, Media & Telecommunication team regularly advises on telecoms sector licensing issues. For further information please contact Nick O'Connell (n.oconnell@tamimi.com) or Zil Ur Rehman (z.rehman@tamimi.com).

Special Delivery: Importation of IT and Telecoms Equipment into Saudi Arabia

Nick O'Connell
Partner
Riyadh, Saudi Arabia
n.oconnell@tamimi.com

Othman AlTamimi
Associate
Riyadh, Saudi Arabia
o.altamimi@tamimi.com

Zil Ur Rehman
Associate
Riyadh, Saudi Arabia
z.rehman@tamimi.com

One key focus of Saudi Vision 2030 is the development of the technology sector in the Kingdom. In combination with the general move towards cloud computing, and concerns with security and data sovereignty issues, this focus is resulting in a variety of local and global players becoming increasingly interested in the development of data centres in Saudi Arabia.

This has a wide variety of implications, ranging from the regulation of cloud computing to issues around real estate investment aspects of data centre construction and operations. In this article we focus on one specific aspect: the regulatory requirements and processes for the importation of IT and telecommunications related equipment into the Kingdom.

Outline

In May 2018 the CITC issued the IT & Telecom Equipment Importation Regulations (the 'Regulations'), which set out the importation procedures and related considerations for equipment of this nature. Broadly, the Regulations require all persons manufacturing, importing, distributing, leasing or selling telecommunications equipment in the Kingdom to get such equipment type approved by the CITC. The CITC is empowered to prescribe technical standards in respect of such equipment, issue procedures and regulations applicable to the approval process, and address all other matters relevant to the equipment licence.

Compliance with the Regulations is mandatory, regardless of whether the equipment is imported for self-use or for commercial sale. Pursuant to the Regulations, only companies incorporated in Saudi Arabia or entities registered in the Saudi Commercial Register qualify as importers. The Regulations stipulate the steps involved in the importation of IT and telecommunications equipment. Once all the required steps are completed, the equipment is considered licensed for use (and sale) within the Kingdom.

The steps comprise:

- obtaining type approval for the equipment from the CITC;
- obtaining a conformity certificate;
- obtaining customs clearance (in case of restricted equipment); and
- registering end users of restricted equipment.

Obtaining Type Approval of the Equipment

The 'equipment approval' or 'type approval' procedure determines a product's conformity with the technical standards issued by the CITC. The various technical standards can generally be found on the CITC website, although these standards are continuously updated and specific standards may change from time to time. A product may be subject

to the Regulations at the discretion of the CITC, even when no prior standards exist for such product. In addition to equipment-specific standards, all products must: comply with certain general technical standards issued by the CITC; be safe; and not adversely affect or interfere with other equipment.

The Regulations require an application for equipment approval to be filed online via the CITC's equipment licensing portal. Along with the application, the following documentation needs to be provided:

- detailed technical information from the manufacturer, including: data sheet; equipment description' information on functioning mechanism and accessories; intended applications; data related to interface characteristics and interoperability with the public networks; and photos of the equipment;
- a copy of a Declaration of Conformity from the manufacturer to the effect that the equipment conforms to the CITC's technical specifications; and
- test reports outlining the details of tests conducted on the equipment, including the name and address of the testing facilities, date of testing, and the test results.

The CITC is responsible for the designation of approved domestic and foreign equipment testing facilities. Equipment checked and approved by such facilities is deemed to be acceptable for use in the Kingdom (subject to compliance with all other requirements). The applicant must bear the costs for the requisite compliance testing, and the CITC may request a sample of the equipment to verify compliance. Equipment that has successfully completed the approval process must display a label reflecting the receipt of type approval from the CITC.

Certificate of Conformity

Upon successful completion of type approval, the CITC issues a Certificate of Conformity, declaring the equipment compliant with the applicable technical standards. This is usually issued immediately following the completion of the type approval process outlined above, and can be requested via the CITC's portal by registering and submitting an application for the same. If the equipment has already been type approved before applying, an electronic copy of the certificate will be issued immediately via the CITC's portal. The CITC is clear that similar conformity certificates from other countries cannot be used.

The Certificate of Conformity may provide for additional requirements to be fulfilled before importation or usage of the equipment in the Kingdom. If an importer fails to comply with the additional requirements, the equipment will not be licensed for use or sale in the Kingdom. Such additional requirements may include considerations on equipment labelling, user manuals and prohibitions on the use of hazardous substances.

Customs Clearance and User Registration for Restricted Equipment

For certain types of IT and telecommunications equipment listed as 'restricted' by Saudi Customs, it is necessary to obtain Customs Clearance Permission from the CITC. Once Customs Clearance Permission has been obtained, it is necessary for the user of the equipment to register with CITC before the subject restricted equipment is released.

Once the Customs Clearance is approved by the CITC after applying via the portal, the CITC will issue a CITC Releasing Letter Number to the importer which is to be presented to customs officials on shipment clearance. The Customs Clearance has to be obtained for restricted equipment each time such equipment is imported into the Kingdom. The Regulations set out certain conditions for obtaining the Customs Clearance which include the following:

- the equipment must be on the list of restricted goods that needs permission from the CITC;
- the equipment must comply with the technical specifications issued by the CITC;
- if the equipment is imported on behalf of another party, the importer shall attach a letter from the owner declaring its ownership of the equipment, its nature of use, and detailing the Airwaybill number, equipment models and quantities;
- if examination of the equipment is required, the importer shall take all necessary measures to make the shipment available and enable the CITC to perform the examination on the specified date;

> **"The 'equipment approval' or 'type approval' procedure determines a product's conformity with the technical standards issued by the CITC..**

- if the shipment contains wireless equipment that requires a radio licence for the use of frequencies, then the importer shall ensure that the equipment is tuned to frequencies that correspond to the frequencies licensed to the owner;
- payment of technical examination fees shall be made by the importer for any examination of the equipment, if required; and
- if the imported equipment requires separate licences such as a service providing licence, the importer shall obtain such licences or registration, prior to Customs Clearance.

End user registration with the CITC subsequent to obtaining Customs Clearance is required in order to verify the end user identity and to ensure the end user has a valid licence for the use of the equipment or use of the concerned radio frequencies, if required. Registration is completed via the CITC's online portal and the importer is required to provide the end user of such equipment with any documents confirming registration – required to be produced to the CITC upon request.

Other Considerations

CITC's approval must be obtained if any subsequent alterations are to be made to the approved equipment before importation.

Generally, each applicable step of the importation process would take up to two weeks for completion – assuming all the supporting documentation and information is available and in order. Each step should be fulfilled prior to importation in order to avoid any unnecessary delays.

The importation of certain types of IT and telecommunications equipment may be the subject of a blanket prohibition. Equipment with clandestine eavesdropping functionality and equipment used to intercept or damage public communications networks are examples. Additionally, there is a general requirement to disclose details of encryption systems contained in equipment being imported.

Depending on the equipment, there may be additional requirements, such as restrictions on products made from, or containing, certain materials, and specific requirements relating to product labelling and disclosure requirements. The type approval aspect is a significant consideration, but not the only consideration, when importing IT and telecommunications into Saudi Arabia.

Al Tamimi & Company regularly advises data centre builders and operators on matters relating to data centres, equipment importation and materials restrictions in Saudi Arabia and elsewhere in the Middle East. For further information please contact Nick O'Connell (n.oconnell@tamimi.com), Andrea Tithecott (a.tithecott@tamimi.com) or Zil Ur Rehman (z.rehman@tamimi.com).

Twitching your Antennas: The Role of Small Cells in 5G Deployments

Andrew Fawcett
Senior Counsel
Abu Dhabi, UAE
a.fawcett@tamimi.com

This year we will start to see the transition to the fifth generation wireless networks - known as 5G. For example, Etisalat, the UAE's biggest telecom operator, is already upgrading its network and infrastructure to be ready to provide the service as soon as the 5G mobile handsets are available in UAE.

5G is expected to deliver data upload and download speeds that are ten times faster than the current 4G (LTE - Long-Term Evolution) networks.

This big technology shift is not just about faster mobile. 5G will be important in facilitating the 'Internet of Things' - the network that will link not just our phones and computers but all manner of consumer products and infrastructure in our smart homes and smart cities.

A key factor in enabling 5G will likely be the use of low-power antennas known as 'small cells' and DAS (distributed antenna systems).

Such antenna have a very short range. Consequently, to reach the full potential of 5G technology, wireless providers will need to deploy thousands of small cells in communities across the countries in which they operate.

Etisalat has publically announced it is setting up some 600 small cell sites this year alone.

While wireless providers will likely engage with municipalities to locate small cells on lampposts, and traffic lights in public areas, in large private property developments and in high rise buildings the wireless providers will need agreements with the property owners to deploy small cells/DAS.

What are the Advantages of 5G?

5G will provide further benefits to consumers in three key ways:

- 5G will be very fast. This will be particularly noticeable in higher quality streaming video. Downloading a typical length movie, which can take six minutes using 4G, could take less than 20 seconds with 5G;
- 5G has low latency, or a low lag in time between a request and a response. 5G can cut response times down to one to two milliseconds (0.0001 or 0.0002 seconds). 4G's average response time is 50ms (0.05 seconds). If have an autonomous car, you do not want latency times to be too long; and
- 5G will offer connection density up to 100 times greater than 4G. That means people will be able to communicate at the same time without crowding out others.

The Importance of Small Cells and DAS

5G technology will, at least in part, utilise the part of the radio frequency spectrum between microwaves and infrared waves, which while providing a stronger connection, only supports service over short distances. Generally high-band radio spectrum is only useful for covering about 200 metres, (roughly a city block)

High band spectrum is less crowded than lower frequencies used by mobile phones, but there are disadvantages. At higher frequencies, signals are not as strong and experience interference from obstacles such as walls and trees.

Small cells and DAS will play key roles in boosting 5G network density – as the solution is to set up smaller antennas everywhere – on utility poles, rooftops, and throughout the interiors of buildings.

'Small cells' is a generic term for several types of low-power antennas (including femtocells, picocells and microcells) that are typically dedicated to a single wireless provider.

DAS systems have additional management functions that allow them to support more than one service provider.

Small cell units are generally connected to a fibre optic network. Once connected, a single unit can provide service for around 30 access points in high-density areas, and can extend service to access points anywhere from 10 metres to over a kilometre away. Small cell units are the size of a suitcase.

DAS comprises cabling, small remote units, and antennas that are distributed throughout a building and linked to a central distribution hub, which connects to the radio frequency source used by the wireless provider. Through DAS, a provider's wireless signal is distributed to all parts of the building.

At present small cells/DAS are commonly used indoors, to provide adequate cell coverage to crowds at stadiums and conference facilities.

Cost Burdens

Deploying all these new antennas on mass will not be cheap, and, at least initially, commerciality and economics will influence where additional small cells and DAS are deployed.

Office buildings present a potential challenge with respect to who will bear the cost of 5G deployments. The quality of internet connectivity can be a key differentiator for landlords. When a tenant pays rent, they see wireless connectivity as a utility and do not want to pay extra.

All three parties (landlord, tenant, wireless provider) may have to be prepared to have to come up with creative ways to benefit from early deployment of the 5G network infrastructure in office buildings. Potentially, cost sharing may be one workable approach.

Location Agreements

Private agreements for locating small cells and DAS will not be ostensibly different from existing licensing and co-location agreements for telecommunications network infrastructure. Broadly, DAS/small cell licence agreements should cover:

- **Description of the work. Installation.** Location of DAS/small cell (and changes to location). Maps. Work standards. Removal on termination and restoration of site.
- **Permit, Limitations and Restrictions.** Limits of the authorisation. Requirement for the provider to obtain all necessary consents and permits. No real property interest created in any land. Whether the rights are non-exclusive. No grant or approval of co-location rights to third parties.
- **Limitations and Indemnification.** Limitation of liability of property owner. Obligation of the provider to indemnify the property owner. No interference.
- **Insurance; Fees; Termination and Compliance with laws**

Property owners need to be aware that the small cells/DSA will form part of the wireless provider's public telecommunication and may be subject to laws requiring sharing of facilities or sites.

First Phase

The new 5G network, which is a once in a decade upgrade, has the potential to radically change lives as a facilitator of the Internet of Things and smart cities.

We are currently in the first phase of the 5G launch, where the infrastructure for fixed wireless services and mobile services will be provided in selected locations. Some of these locations will depend on private property owners agreeing with the wireless providers as to where they can locate the low-power antennas needed for 5G to function.

"In large private property developments and in high rise buildings the wireless providers will need agreements with the property owners to deploy small cells and DAS.

"A key factor in enabling 5G will likely be the use of low-power antennas known as 'small cells' and DAS (distributed antenna systems).

Al Tamimi & Company's Technology, Media & Telecommunications team regularly advises on legal issues concerning the telecommunications sector. For further information please contact Martin Hayward (m.hayward@tamimi.com) or Andrew Fawcett (a.fawcett@tamimi.com).

Advertising By Numbers: What Modern Advertising Contracts Need to Say (But Never Do)

Fiona Robertson
Senior Associate
Dubai, UAE
f.robertson@tamimi.com

Getting Your Advertising Technology (AdTech) Game on!

Advertising has long been a game of two players – the creative team develop the messaging and the campaign. Edgy wordsmiths liaise with visual geniuses and graphic masters to stimulate the interest of the consumer (or at the very least, the CMO). Then the media buyer takes over, planning the places where the campaign will be the most effective. Media analysts and hard-nosed planners make sure that eyeballs are attracted, that consumers are intrigued and that numbers are delivered.

But advertising technology has arrived and with it, new expecswtations from brands. Brands need more from their creative, more from their media buy and, more importantly, they need both to be wrapped up in a layer of flexibility and provided with a side of meaningful data. As a client, how do you ensure that you get these deliverables from your agencies? When the agency rolls out the same tired old contract, what changes do you need to add to ensure your CMO and their team get everything they need from a 2019 campaign brief, and more?

First Step: Understanding What it is... and What it Can Be

Simply put, AdTech is the generic term for software and related systems that target, deliver, and analyse the digital advertising that is being used by a brand within a campaign. AdTech comes in various guises, providing different solutions for various aspects of digital marketing.

Understanding the technology that is being used by your agency is a vital key to having the correct terms contained within your agency contract. For example, if an agency is using programmatic advertising (the tool that buys target audiences rather than buying particular media) to deliver a campaign for you brand, then the contract should include the specific demographic that is to be targeted. It seems logical, yet many standard form agency contracts in the Middle East do not include this term.

To add complexity, it will be very likely that the agency will be utilising multiple methods to communicate with consumers. Programmatic may be used but is unlikely to be the only method of distribution. Each AdTech method should be

understood and analysed to ensure that the contract reflects the deliverables that the brand expects to get from the campaign, and from the relationship. AdTech may be designed to allow brands to use their advertising budgets in a more efficient manner, but there can be no certainty that this will happen if there are no clear targets or outcomes.

Data: Sharing is Caring

Even back in the days of telemarketing, clients demanded reports on the activities of the supplier and (as much as possible) feedback from the targeted consumers. Data sharing is a vital part of the agency remit and this is more important now than ever before. A brand must be able to assess the performance of the campaign, as quickly as possible, so that they can react and correct as needed. Their competitors are doing this – they need to as well. Yet standard agency agreements often come with minimal data sharing obligations – we still regularly see agency agreements with no data sharing obligation at all. There remains a gap between what the AdTech can potentially deliver and what the client is receiving. For example, if the agency is using a data analytics platform, the client should have visibility as to the range of data it is analysing and what reports or recommendations it is producing. These programmes measure so much more than just 'clicks', and the depth of available data is valuable to clients as it tells them about the engagement which, in the end, is the very thing that brands are seeking. Fundamentally, the agency must supply all available data to the client in a form that is digestible and succinct without losing any of the underlying value of the data. The contract should note the way in which that will be done (reports are great, but what about 24/7 dashboard access?). Brands need to ask questions before they sign contracts – what data can the agency potentially supply within the boundaries of its chosen technology?

It is also important to assess the needs of other parties to the relationship. Does anyone else need to see this data from the client side (parent companies, distributors perhaps)? An important associated issue – what levels of security and privacy can the brand impose on the agency in relation to this data? The major platforms all collect their own data – this cannot be avoided. But perhaps it is possible to restrict further data collection or at least ensure it is anonymised if, by the nature of the system in place, it must be collected or shared with a third party?

KPIs, Verification and Fraud

Brands are (rightly) concerned about their key performance indicators ('KPIs'). The data received by the brand will be comprehensively analysed to see if those KPIs are met. Some brands may choose to add certain KPIs to a contract so that they can also take action if they are not met. Naturally this puts additional pressure on the agencies to reach those KPIs.

Notwithstanding the contract terms, the veracity of the data is incredibly important to a brand. It pays to be aware of the media where there is a tendency towards fraudulent behaviour; currently the highest rate of fraudulent activity in advertising is in App advertising. The data needs to be reviewed frequently. Any unexplained or exponential leap in the usual metrics should be raised between the parties immediately. It may be that the campaign has just been enormously successful, but it may also be that the campaign has an issue with fraudulent clicks, or is encountering increased bot traffic. Contractually it is possible to ensure that the agency employs a tech stack that includes solutions for detecting fraudulent activity. Naturally, the agency should be required to work positively with the brand to identify and minimise fraudulent activity. However, some things need to be managed outside of the contract itself. Practically, the best way to minimise fraudulent activity is to work closely with the agency in a proactive manner so the issue can be managed quickly and effectively – both parties need to report and react.

Retargeting

Once a brand has the data to hand then it is going to react to it. 'Reduce this' it will say to the agency, 'and increase that'. Digital campaigns lend themselves incredibly well to such a pivot, however it is important that the contract terms allow this to happen as quickly as the brand needs it to happen. A series of complex signed change orders might slow down reaction times to such an extent that the pivot becomes a glacial three-point turn.

This is an area where a contract needs to be practical as well as enforceable. Consider the different aspects of the campaign, their deliverables and their relative importance to the campaign and the brand. Some parts will require a signed change order because of, for example, the value of the change, whilst others can and should be moved on email notice from the brand manager.

> **...We regularly have to review contracts for services that do not adequately reflect the way in which industries are actually operating in 2019. We see contracts that require deliverables to be sent on CD-Rom, or notices that have to be made by telex. Unfortunately, advertising services contracts regularly fall into this category.**

On top of this, some AdTech platforms have the capacity to make suggestions as to where the desired demographic might be. Brands need to force the agencies to utilise this function and share this information. Naturally, as with all key decisions, the brand can then decide to follow that suggestion or not, as it chooses.

Don't forget the potential issue of having to reformat or redesign the campaign content as well. Your creative agency might have to re-engage later to alter campaign elements so that a retargeted media strategy can be properly implemented. Sending the same creative to a consumer via a different outlet is often not practical or desirable. This has a cost implication for the brand and might not be an option at all times. It is great to have a contract that allows the brand to pivot; it is not however always going to be possible practically. Brands need to maintain the ability to say 'no' to a change in a media plan, but with that comes the possibility that the agency will require the brand to be responsible for any resulting reduction in consumer engagement.

Conclusion

As lawyers, we regularly have to review contracts for services that do not adequately reflect the way in which industries are actually operating in 2019. We see contracts that require deliverables to be sent on CD-Rom, or notices that have to be made by telex. Unfortunately, advertising services' contracts regularly fall into this category. Request an up—to-date contract that actually reflects the activities that both parties are undertaking, and the deliverables that are expected. Any agency that values its clients should happily supply such a contract, safe in the knowledge that a customised contract lays out a pathway to commercial co-operation and a successful relationship.

Al Tamimi & Company's Technology, Media & Telecommunications team regularly advises on advertising and content matters both on-line and in traditional media, acting for brand, producers, media agencies and publishers. For further information please contact Fiona Robertson (f.robertson@tamimi.com).

Tech Projects Gone Wrong: Effectively Managing Disputes

Haroun Khwaja
Senior Associate
Dubai, UAE
h.khwaja@tamimi.com

Introduction

Effective management of tech contracting disputes can protect your organisation from an array of losses, both financial and reputational, and help to preserve revenues and/or restrain cost blow-outs, whilst minimising damage to the ongoing commercial relationship. As discussed in the November 2018 edition of law update 'Contracting to Avoid Technology Outsourcing and Project Disputes', the best way to manage tech contract disputes is to set out in clear terms and sufficient detail the parties' agreement on not only risk allocation provisions but more importantly the commercial and technical aspects which underpin the deal. Where that fails, the next line of defence is to manage the dispute effectively. This article details steps that can help you, as legal counsel, to contain and effectively manage disputes before they reach the courts or alternative dispute resolution forums, such as arbitration and mediation. The necessary ground work at the first hint of trouble is well worth the effort and it pays countless dividends.

Control Communications

- Ensure the broader team is aware that you are, as the legal counsel, the single point of contact for handling communications to ensure consistent, accurate and internally aligned messaging with the counterparty.
- Vet all future communications to prevent any admissions of fault/liability being made.
- Limit the internal sharing of information in relation to the dispute to 'on a need-to-know basis'.
- Ascertain what communications have taken place with the counterparty and whether any next steps have been proposed to resolve the dispute (for example, are there any meetings planned and, if so, who will be attending?).
- Review correspondence and documents from the counterparty (including after meetings and teleconferences) to ensure it is factually accurate and does not contain biased or self-serving statements.

Perform Factual and Legal Analysis

- Determine the facts and validate the accuracy and truthfulness of the information from multiple sources within your organisation.
- Analyse contractual clauses relevant to the dispute including provisions relating to:
  - commercial/technical aspects (for example, what deliverables or services are to be provided, by whom, by when, for how much and what are the assumptions and dependencies?);

  - allocation of risk (for example, what are the agreed liability limitations and exclusions, what warranties have been given and representations made etc); and
  - processes and timeframes (including in relation to notices and claims) that are to be followed.
- Formulate alternative contractual interpretations and consider how you can leverage ambiguous language to support your claim/defence.
- Challenge assumptions of fault or breach of contract and explore alternative narratives to help reframe such issues.

Analyse Options and Develop Strategy

- Work through the analysis with the broader team and highlight the advantages and disadvantages of the various legal interpretations and settlement options, bearing in mind the broader commercial and strategic objectives of the business and the potential financial and relationship implications.
- Formulate a carefully planned dispute resolution strategy with the business (with input from sales, operations, account management, and technical and subject matter experts as appropriate), having regard to the tactics that may be used by the other side. Present a 'win/win' message to the other side.
- Consider whether it would be advantageous to link the resolution of the dispute with addressing other related/unrelated issues or problems or the closing of any new business engagement, as opposed to resolving the dispute at hand in isolation.
- Monetise concessions which you are prepared to give so that you do not end up overcompensating. Also, ensure that the value of concessions which you are seeking or that are being offered to you is appropriate.

Prepare for Negotiations

- Assist commercial teams to prepare for negotiations, including by providing guidance as to what points are to be raised and what topics they should avoid discussing. Rehearse a script and understand all of the likely scenarios the business team is likely to encounter.
- Consider whether there is significant financial or reputational exposure requiring the engagement of external legal counsel.
- Take note of who is attending meetings/ negotiations from the counterparty and whether any senior management/executives are involved in discussions (even if only in the background).
- Be mindful that discussions led by the business with legal counsel mainly listening would suggest that the outcome is more likely to be amicable whereas attendance by litigation lawyers or external counsel would indicate that a more aggressive stance is being adopted.

Carefully Consider and Vet Settlement Documents

- Build an audit trail throughout the process in support of your position. A written record of notices, minutes, correspondence etc. will facilitate negotiations and a resolution that is more favourable to you.
- Vet settlement and release documents to ensure the appropriateness of the release scope and conditions.
- Be mindful of the interrelationship between the principal contract and the release agreement (for example, which document is to prevail in case of any conflict or inconsistency; and does the release payment reduce the settlor's liability limit under the principal contract – and if so, by how much?).
- Assess the possibility of passing down liability, penalties or service level credits to the subcontractor (if applicable).

Al Tamimi & Company's Technology, Media & Telecommunications team regularly advises on technology related matters, including pre-litigation contractual disputes. For further information please contact Haroun Khwaja (h.khwaja@tamimi.com) or Martin Hayward (m.hayward@tamimi.com).

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PropTech (Part One): Smart Buildings, Co-Working Spaces, Effects on the Retail Sector and Autonomous Vehicles

Ian Arnott
Senior Associate
Dubai, UAE
i.arnott @tamimi.com

The term 'PropTech' is a broad one which encompasses a wide range of new technologies which seek to make the construction and real estate industries more efficient and streamlined. The term is also used in the context of examining the present and future effects of advances in technology on the real estate sector. As illustrated below, PropTech is becoming increasingly prevalent at every stage of a real estate asset's life cycle from financing and construction through to its disposal.

In the first of two articles focussing on PropTech we take a look at some of the effects of new technology on the built environment and its disruptive effects on how real estate assets are being designed, used and operated.

Smart Buildings

A smart building is, essentially, one that uses interconnected technology to share information about the building between its various systems to make it more efficient and to enhance the experience of those using the building.

Core building systems, such as those controlling heating, ventilation, air-conditioning, lighting and security, are usually linked together digitally and inform each other in order to automate various processes. For example, sensors and data gathering devices may be used to provide data on footfall and where occupants are located in the building at any given time so that the interior environment can be regulated accordingly in terms of temperature and light. System failures can also be more quickly and accurately identified and potentially dealt with remotely.

A smart building is also more likely to be designed to be more environmentally friendly and cost efficient in terms of energy wastage.

Unlike a normal building, a smart building is also constantly gathering data on itself. Such raw data may, for example, be used by occupiers to use space in their premises more effectively or to provide landlords with hard evidence in which to promote the advantages of their building to corporate occupiers. However, such data collection needs to be carefully managed in terms of protecting the personal data of a building's occupants and users.

On the downside, end users of smart buildings may feel a disempowering effect with such reduced control over their environment. In addition, as smart buildings start to resemble a giant Internet of Things device, the large attack surface does create cyber security concerns and there have already been some cases of hacks where building systems have been compromised by those with criminal intent.

Nevertheless, smart buildings are a trend that can only evolve and grow in the future and developers of both residential and commercial real estate assets will increasingly make use of smart technology to maintain a competitive edge.

Co-working Spaces

Co-working spaces are a relatively new type of working environment that exist somewhere between the traditional office and working from home. Although similar to the existing serviced offices model, they differ in that there is a much greater emphasis on the different users sharing the space, their knowledge and ideas and equipment to create a more vibrant and collaborative place of work. They have flourished in recent years where cheaper, lightweight wifi enabled laptops and a more mobile, agile workforce has led to more flexibility in the places where we are able to carry out our work.

There are a lot of different formats offerings in the co-working space. However, a typical arrangement for end users would be:

- paying an all-inclusive, fixed daily or monthly rate with the right to terminate the arrangement on relatively short notice;
- a range of options such as private offices or a dedicated/hot desk in a shared, open space;
- inclusive wifi, reception, security and cleaning services;
- option to book meeting rooms for an extra cost (some booking credits may be included in the fixed price);
- 24/7 access;
- invites to exclusive networking and community events; and
- additional benefits such as being able to hot desk at other co-working spaces operated by the same company in other jurisdictions around the world and access to unlimited complimentary beverages.

They are a particularly attractive option for a start-up company, particularly in the more creative industries, where end users can interact, collaborate and socialise with like-minded peers in the same field without being locked into a lease or being subject to other overheads associated with renting office space.

However, established large business are also making use of co-working spaces. This is for a number of reasons, which include:

- getting closer to start ups and entrepreneurs to understand what is happening on the ground, keeping an eye on future industry disruptors and to build relationships;
- a need for more flexible space outside of a traditional lease model;
- using such spaces for its employees in overseas locations where it does not have offices or where it wants quick access to a new market;

> **Co-working spaces have flourished in recent years where cheaper, lightweight wifi enabled laptops and a more mobile, agile workforce has led to more flexibility in the places where we are able to carry out our work.**

- encouraging employee creativity by placing them in an environment with an entrepreneurial mind-set; and
- attracting employees and increasing employee retention by offering such alternative working environments (particularly to those employees that may live outside of big cities).

On the negative side, such co-working spaces may not be for everyone and some may have concerns regarding cyber-security, confidentiality and privacy, potential distractions and the effect on productivity of working in such an environment.

Nevertheless, the recent growth of the sector has been huge, particularly in the US and Europe, and it shows no real signs of slowing down as it continues to expand into other markets such as India, China and South East Asia. Jones Lang La Salle, for example, has predicted, in relation to the US office market, that "*Given industry shifts, flexible workspace and shared amenity spaces are projected to encompass approximately 30% of the office market by 2030*". We are also likely to see other types of real estate assets such as retail and hotels offering co-working products in the future to maximise and monetise use of space and for more niche products targeted at a particular industry or type of customer (e.g. co-working spaces with childcare facilities) to develop.

Retail Sector Changes

The number of closures of brick and mortar retail stores continues unabated in 2019, particularly in the US and Europe. The main and most obvious factor cited is the inexorable rise of e-commerce and online shopping – the 'Amazon Effect'. Whether this amounts to a so called 'retail apocalypse' or merely a Darwinian weeding out of those retailers that fail to adapt to shifting customer preferences and habits remains to be seen. However, what is clear is that those retailers that are boxing clever in the format of their brick and mortar offerings have a much greater chance of weathering the tech storm.

As we have been hearing for years in relation to the Millennial generation – it's now all about 'experience'. Sales per square foot are becoming less important as physical retail space morphs into a place where, of course, customers continue to make purchases (sales from brick and mortar stores still dwarf online sales), but also where retailers now showcase their goods and services and offer fun and interesting activities and interactions with the brand. Such experiential retail can range from a clothing store that offers high tech fitting rooms that make use of virtual and augmented reality; a pet store that provides animal workshops for children or classes on pet nutrition or grooming; to a sporting or outdoor goods store that has a climbing wall or sports simulators.

In what has long been a phenomenon with shopping malls in Dubai, with their indoor ski slopes, aquariums and ice rinks, it is also likely that there will be a rise in 'destination malls' which serve as multi-faceted entertainment hubs offering experiences that cannot be accessed or bought online.

In addition, those retailers that create a strong interaction between their online presence and physical stores are also likely to maintain a competitive advantage. For example, many retailers are starting to introduce so called 'click and collect' whereby goods can be ordered online and collected in the store or allowing unsatisfactory goods purchased online to be returned in person at the store.

However, this shift towards e-commerce has other knock on effects on the real estate industry. Whilst, logistics companies and warehouse operators may

be thriving, it creates obvious concerns for shopping mall owners and landlords which typically employ a turnover rent model with their retail leasing.

There are many variations in how a turnover rent clause in a retail lease may be configured. However, in essence, such leases involve some or all of the rent payable by the retail tenant to be directly linked to the gross sales generated from the leased premises. With the declining number of sales made in-store, this has a negative effect on a landlord's return under a traditional turnover rent lease. The nature of turnover rent is therefore changing. For example, landlords may perhaps seek a different allocation between fixed and turnover rent for those retailers selling products that are more prone to physical showcasing, such as electronics. Additionally, what exactly is captured by the definition of turnover/gross sales in the lease is becoming more contentious in negotiations – for example, landlords may seek to include those online sales that can be linked to the physical premises, such as those goods ordered online and then collected at the physical store or seek to exclude any reductions in turnover caused by having to exchange goods bought online with those held at the store. As the ability to differentiate between goods purchased at, or with a connection to, the physical store and those bought online becomes increasingly fuzzy, turnover rent clauses will need to adapt accordingly in order to maintain a fair allocation of risk between landlord and tenant.

Autonomous Vehicles

Despite all the hype and the rapid progress of recent decades, autonomous vehicle technology is still in its relatively early stages. The Society Automobile (SAE) International published a standard in 2016, which is now widely referred to, which defines six levels of driving automation, with level 0 being no automation and level 5 being full automation, where the need for any kind of human driving in any conditions is completely eliminated.

Levels 1 and 2, which have already been achieved, are driver support technologies that assist with such matters as steering, lane centring, cruise control and assisting with braking and accelerating. At present, car makers are just starting to introduce models with Level 3 ('Conditional Automation') technology which is where a human driver is still required but the vehicle can make informed decisions for itself based upon the environment around it, such as overtaking a slower moving vehicle. However, human intervention is still required when the vehicle is unable to execute the task such as in adverse weather conditions. For obvious safety reasons, it is expected that many car manufacturers will skip Level 3 and head straight to Level 4.

Level 4 automation is full automation. However, it has a more inferior environment detection system than a Level 5 vehicle and there may be certain off road conditions and terrains where it would not be able to function properly without a manual, human override. Such Level 4 technology is therefore likely to be first rolled out in private, carefully maintained and operated environments, such as airports or university campuses, with clear road markings and signage and purposely designed infrastructure in place.

"One of the most obvious effects of autonomous vehicles would be on existing public and private space used as parking facilities, which takes up a surprisingly large proportion of the urban environment.

However, although we may get to Level 4 and Level 5 automation in the next few years, it is likely to take much longer before such vehicles can be used on a mass scale on public roads, outside of pre-defined geographical areas. The development of such public road infrastructure will be largely outside of the control of the car manufacturers and will undoubtedly vary from area to area and country to country, although parts of new 'smart cities' may serve as a good testing ground. Such roll out will also pose a wide range of new and challenging legal and regulatory challenges that will need to be (manually!) navigated, such as the issue of liability for accidents.

Despite uncertainty as to when mass adoption of autonomous vehicles will occur, we can speculate on the potential effects on the real estate industry and urban planning of a future world in which all vehicles are fully automated. One of the most obvious effects would be on existing public and private space used as parking facilities, which takes up a surprisingly large proportion of the urban environment.

It is speculated that in such a world, autonomous vehicles would be able to pick us up and drop us off at our destinations on demand before returning to large, dedicated parking depots serviced by carmakers or operators. The prevalence of car ownership may also decrease with vehicles serving more as self-driving 'robotaxis' owned or operated by companies like Uber and available on demand at the click of an app. However it all pans out, we can be fairly certain that the need for parking space at our homes, workplaces, leisure and retail destinations and other places that we tend to visit by car will be significantly reduced in the future. This will inevitably require a significant amount of re-zoning and architects and developers of residential and commercial property may start to future-proof by considering how parking areas in buildings may be constructed to be more easily retrofitted for other uses.

The location of a real estate asset may also become less of a determining factor on property prices. As the time spent driving can be spent doing other things such as working, watching entertainment or sleeping, the theory, at least, is that we would become less concerned with travel times and less concerned with the location of a property in relation to other things. As a result, suburban sprawl may proliferate as commuting becomes more of a productive, pleasurable process. However, ultimately, the future effect of autonomous vehicles on urban planning and property prices remains uncertain. As stated in a 2018 article on the topic in The Economist, "*Simply put, building cities around cars increases congestion, discourages the use of public transport and encourages sprawl, all of which urban planners generally disapprove of. The odd thing is that AV could either reverse or accelerate each of these trends. They could reduce or increase traffic; make affordable transport more or less accessible; and lead to denser cities or more sprawl. It all depends on the rules for their use, and in particular the pricing*".

In the second of our articles focussing on PropTech, we will explore the growing real estate FinTech sector and take a look at whether blockchain is living up to its hype in terms of its application to the real estate industry.

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

What's Got Hot in the Internet of Things?

Krishna Jhala
Senior Associate
Abu Dhabi, UAE
k.jhala@tamimi.com

Introduction

As Professor Klaus Schwab (Founder and Executive Chairman of the World Economic Forum) said we are at the beginning of *The Fourth Industrial Revolution*, a revolution which is fundamentally changing the way we live, work and relate to one another. This revolution, through a fusion of technologies (including Artificial Intelligence, Blockchain, and Internet of Things ('IoT')), is blurring the lines between physical, digital and biological spheres. While it may seem disruptive in nature, it brings with it new unforeseen challenges. Globally, various authorities are grappling with these issues and this has resulted in a spurt of policy and guidance documents, notably in the realm of cyber security, data protection, cloud computing regulatory framework and IoT.

Simply put, IoT is a system of physical things embedded with sensors, software, electronics and connectivity that creates a network in which physical objects can exchange data internally or with other connected machines. Thus, any physical object can be transformed into an IoT device if it can be connected to the internet and controlled accordingly. In the UAE, the IoT market is (on a conservative basis) expected to double over the next five years.

To regulate and foster this growth, the UAE government issued its IoT Policy on 22 March 2018 ('IoT Policy'). However, the Telecom Regulatory Authority ('TRA') is yet to issue the regulations/ procedures necessary to operationalise the implementation of the IoT Policy.

Objectives of the IoT Policy

The IoT Policy aims to regulate IoT within the UAE and has been issued by the TRA with the intention of making the UAE a leading country in developing IoT services.

TRA developed the IoT Policy based on certain specific considerations which include:

i. to provide a secure IoT Service;

ii. to meet all reasonable demands for IoT Service;

iii. to support ongoing innovation;

iv. to manage scarce resources efficiently;

v. to protect the rights and interests of the user of IoT; and

vi. to provide clarity for IoT market development.

The TRA may also issue further regulations, directives, and/or guidelines to provide incentives and support in developing the IoT environment in the UAE. If it is required, ministries and regulators for particular industries may develop their own additional IoT-specific guidelines through coordination and consultation with the IoT Advisory Committee (which was established for IoT related matters within the UAE and has representatives from various identified ministries, regulators, public sector entities and experts and is chaired by the TRA) .

Key Definitions under the IoT Policy

As with most technology related matters, there is a bit of jargon. To understand the IoT Policy, you need to understand the key definitions:

IoT is defined as "*global infrastructure for information society, enabling advanced services by interconnecting (physical and virtual) things based on existing and evolving interoperable information and communication technologies*";

IoT Service is defined as "*set of functions and facilities offered to a user by IoT Service Provider and it does not encompass IoT specific connectivity*"; (like connected home appliances, connected cars, Bluetooth enabled pagers in restaurants, driverless vehicles);

IoT Service Provider means "*any person that provides an IoT Service to users including individuals, businesses, and the government that will comprise the provision of IoT related service/solutions*". (like car manufacturers, telecom service providers);

IoT-specific Connectivity means "*connectivity that is transmitting, broadcasting, switching or receiving IoT related data by means of a Telecommunications Network covering a wide area*";

Mission Critical IoT Service means "*an IoT Service which upon failure may result in adverse effects on the health of individual(s), public convenience or safety, and/ or national security*". (like driverless cars, drones, medical devices).

The IoT Policy is applicable to all those concerned with IoT within the UAE including but not limited to licensees (like Etisalat and Du), IoT Service Providers and IoT Service users (i.e. individuals, businesses, and the government).

Relevant Provisions under the IoT Policy:

1. An IoT Service Provider has to register with the TRA and obtain an IoT Service Provider Registration Certificate in order to provide IoT Services. Providers of Mission Critical IoT Services have additional requirements which include maintaining subscriber information such as the subscriber's name, address and ID, the device's model and registration number, and any other information that the TRA may stipulate from time to time.
2. It is a pre-requisite for an IoT Service Provider to have a local presence (on either the mainland or a free zone). In the absence of a local presence, an official representative who is locally present may be appointed. The official representative shall be responsible for all communications with the TRA and UAE law enforcement agencies.
3. The IoT Policy sets out the additional requirements for Radio and Telecommunications Terminal Equipment ('RTTE') that provide IoT Services. In addition to the existing type approval requirements for RTTE, in case the RTTE has the potential to collect data/information and/or provide the IoT Service, it will have to: (i) indicate the features and functions of the device that collects data, sensory inputs such as cameras, location identifiers, and microphones; (ii) indicate the impact on the device's features or use in case of unavailability of connection; (iii) the device shall be capable of being reset to its original settings; and (iv) that 'Security by Design' be an incorporated feature to combat unauthorised usage.
4. Any person who wishes to provide IoT specific Connectivity should directly approach the TRA and the TRA will conduct a case-by-case assessment on whether a licence for deployment and operation of an IoT specific Connectivity network within the UAE is necessary. There are currently no set procedures for providing IoT specific connectivity.
5. A subscriber identification module (SIM) is an integrated circuit that securely stores the international mobile subscriber's identity. The IoT Policy specifically permits the use of physical SIMs and eSIMs, however, soft SIMs (essentially a virtual SIM where there is no SIM hardware and the SIM functionality is delivered onto the device virtually, or over the air ('OTA'), once the user switches it on) shall require TRA's prior approval, which indicates a separate licence requirement for soft SIMs.
6. As per the IoT Policy, IoT Service Providers have to follow specific principles of data storage:
   - **Purpose limitation:** Data must be collected for specified, explicit and legitimate purposes only and shall not be further processed in a manner that is incompatible with those purposes;
   - **Data minimisation:** Data must be adequate, relevant and limited to what is necessary for the purposes for which it is processed; and
   - **Storage limitation:** Data must be kept in a format that permits identification of data subjects for no longer than is necessary for the purposes for which it is processed.
7. Data is classified into four categories based on the potential adverse impact caused in the case of a breach of confidentiality or unauthorised disclosure of the data. Such categories include:
   - "Open", i.e., can be used freely or subject to a minimum limit;
   - "Confidential", i.e., may cause limited damage;
   - "Sensitive", i.e., may cause significant damage; and
   - "Secret", i.e., may cause significant damage to supreme interests of the country and very serious damage to individual, businesses and the government.
   - There are data localisation requirements which state that Secret, Sensitive and Confidential data for individuals and businesses are to be stored primarily in the UAE. However, such data may be stored outside of the UAE if the destination country has data security and user protection polices which are at least of the same level as those followed in the UAE. Further, Secret, Sensitive and Confidential data of the government must remain in the UAE under all circumstances. Open data for data for individuals, businesses and the government may be stored within the UAE and/or outside the UAE. With regards to the IoT Policy, the TRA deems Personal Data (which refers to information relating to identifiable Natural Person as defined under GDPR) to be Secret data for individuals. (This may be problematic in practice as not all personal data such as your name, email address needs to be a 'secret' in every circumstance).
8. The IoT Service Providers must use an encryption standard that fulfils the requirements of the competent UAE authorities. Where a higher encryption standard is required by the IoT Service Provider, TRA approval shall be sought, and will be reviewed on a case-by-case basis.

9. The TRA has implemented a numbering plan for M2M (machine to machine technology) services. For Mission Critical IoT Services, the Licensees should be able to differentiate between assigned numbers. Where a clear distinction between numbers cannot be made, then Licensees may be supported by the TRA with assignment of numbering block(s) within the M2M numbering range.
10. The TRA exercises forbearance on roaming of IoT devices (i.e. devices using SIMs of foreign networks/roaming on Etisalat and Du's network appears permitted).
11. Through the IoT Policy, the TRA aims to encourage the use of the wider adoption of the OTA/remote provisioning of devices for IoT Services and has the power to stipulate mandatory OTA/remote provisioning requirements for specific Mission Critical IoT Service. OTA refers to the ability to remotely change the SIM profile without physically accessing the SIM. Further, transition to IPv6 is encouraged by the TRA.

Items to be Detailed in the IoT Regulatory Procedures:

As mentioned above, TRA has to issue the IoT Regulatory Procedures which will contain detailed procedures on the following:

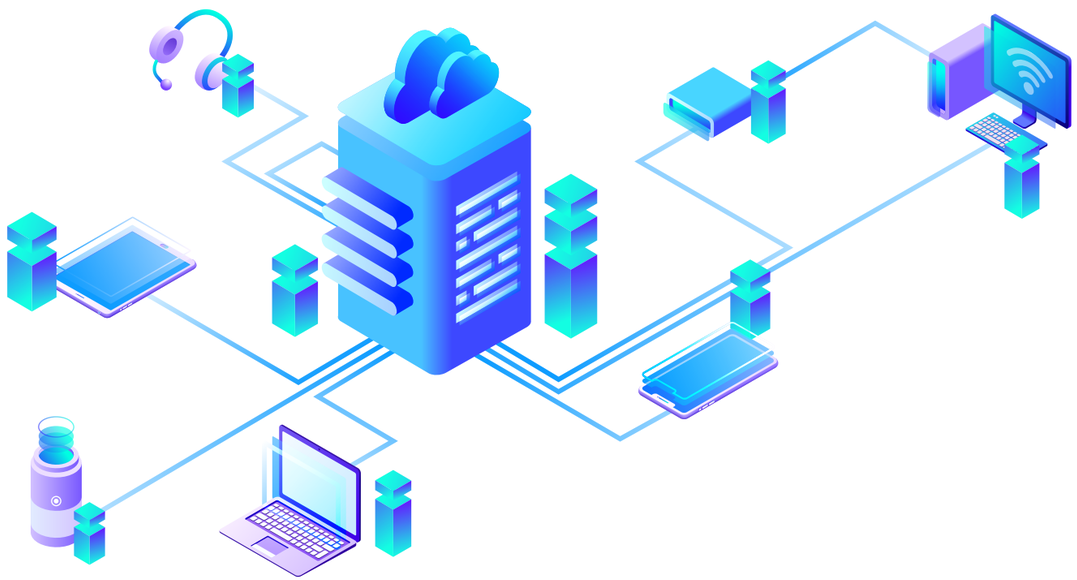
1. IoT Service Provider's registration procedure;
2. detailed procedures for the use of eSIMS;
3. data security and user protection polices/ regulations to be followed in the UAE;
4. regulatory and legal requirements for the monitoring and interception of data by UAE law enforcement agencies; and
5. encryption standards to be used by IoT Service Providers that meet UAE authority requirements.

Breach of IoT Policy

As per the IoT Policy penalties (penal and fiscal) of non-compliance with the IoT Policy and/or the UAE's Telecommunications regulations are defined within the UAE Telecommunications Law, which may include temporary or permanent service suspension. Some examples of breaches include: providing services without a licence; not having up-to date information of subscribers in regard to Mission Critical IoT Services; non-adherence to defined consent requirements for Data Processing; non-adherence to data storage requirements; provision or activation of Soft SIMS without TRA approval; and non-provision of OTA/ remote provisioning services where mandatory. The violations/breach of the IoT Policy will be applicable only when once the it is operational.

Effectiveness

While it was intended that the IoT Policy will be implemented within one year of its issue i.e., by 22 March 2019, there is no further indication from the TRA regarding the issuance of IoT regulations/ procedures and actual operationalisation of this policy. It is not clear whether the IoT Policy, once enforced, will provide a transition period for the existing IoT Services to be registered with the TRA.



Conclusion

In light of the present IoT Policy and until such time as it comes into force, it may be prudent for IoT Service Providers to review their current operating procedures and protocols, in order to determine whether they comply with the IoT Policy, for example focusing on identifying the categories of data (open, confidential, sensitive, secret); identifying the specific storage limitations of data; and considering stipulations for the storage of the different categories of data (within and outside of the UAE).

The UAE is not the only GCC country addressing the IoT. KSA's IoT regulations have been discussed in *An Overview of Telecom Licensing in Saudi Arabia* published in the March 2019 edition of Law Update and Oman recently conducted a public consultation on IoT and M2M.

Al Tamimi & Company's Technology, Media & Telecommunications team regularly advises on telecom, media and technology matters. For further information please contact Krishna Jhala (k.jhala@tamimi.com).

> **The Fourth Industrial Revolution is a revolution which is fundamentally changing the way we live, work and relate to one another.**

How the UAE's Common Law Courts can Help Creative Industries Resolve their Disputes

Peter Smith
Senior Associate
Dubai, UAE
p.smith@tamimi.com

Elsewhere in this magazine, we have suggested ways in which businesses can manage disputes before they reach a forum for resolution. Here, we consider specifically how the Courts of the Dubai International Financial Centre ('DIFC') and the Abu Dhabi Global Market ('ADGM') can assist creative industries with dispute resolution in cases where early settlement does not occur.

The hallmark of a creative industry is one that uses creativity and intellectual capital as key inputs in the creation of goods and services. In the UAE, creative industries such as those in digital media, technology and programming, fashion and design, include self-employed freelancers, small-to medium-sized enterprises, and regional and well-established companies.

The choice of a dispute resolution process is an important one for creative industries, whose business cycle from pitch to completion is invariably short and whose suppliers and creditors come from across the region and beyond. In response to the specific needs of flexibility and nimbleness, the DIFC and ADGM have fast-track small claims processes which allow parties to quickly resolve their disputes in a cost-effective manner, producing judgments and orders that should be portable and easily enforced.

How to Access the DIFC and ADGM Courts

As international financial free zones, the DIFC and ADGM allow for the establishment of several different forms of corporation. Absent any express opt-out from the jurisdiction in a particular agreement, the default position is that the Courts have exclusive jurisdiction to hear disputes relating to those DIFC/ADGM registered entities, whether they are claimant or defendant. Amongst other rules, Article 5 of the DIFC's Judicial Authority Law (Dubai Law no.12 of 2004 as amended) also grants the DIFC Courts jurisdiction over commercial and civil disputes relating to DIFC-registered companies and disputes relating to or arising out of contracts or promised contracts, whether partly or wholly concluded, finalised or performed within the DIFC, or contracts that will be performed or are supposed to be performed within the DIFC pursuant to express or implied terms stipulated in the agreement. Section 16 of the ADGM Courts Regulations read with Article 13 of the ADGM Founding Law (Abu Dhabi Law no.4 of 2013) contains a similar provision in respect of the ADGM Courts' jurisdiction.

What of businesses established elsewhere in the UAE, outside of these two free zones? Some freelancers, for instance, choose to incept their business in free zones such as the Ras Al Khaimah

Economic Zone ('RAKEZ'), which offers visa sponsorship and access to shared working space as well as company formation. As a general rule, no matter where a creative business is established, it can opt into the jurisdiction of the DIFC or ADGM Courts for resolution of its disputes in a broad range of civil and commercial matters. Disputes relating to an invoice or a set of standard terms and conditions may contain an exclusive jurisdiction clause in favour of either (but not both) Courts, providing protection in case the counterparty seeks to challenge the Courts' jurisdiction once the litigation has begun.

Employers and employees should note that it is not possible to opt into the jurisdiction of the ADGM or DIFC Courts for the resolution of disputes relating to employment contracts where, but for the jurisdiction term opting in, the performance of the contract and other aspects of the relationship and the agreement do not bring the contract within the Courts' jurisdiction.

Parties also have freedom to choose the law which will govern their contracts, and which will therefore be the substantive law governing the adjudication of any dispute between those parties. Both the DIFC and ADGM Courts have judges experienced in handling foreign laws (i.e. laws other than DIFC law or English law as applied in the ADGM), although it is very unusual to find small claims litigation in agreements governed other than by DIFC, English or UAE law.

What the DIFC and ADGM Courts can Offer

Both the DIFC and ADGM have a specialist process for claims which are smaller in value, on the presumption that they are simpler to deal with and are more likely to be resolved early. The ADGM's Small Claims Division ('SCD') has a cap of US$100,000 and the DIFC's Small Claims Tribunal ('SCT') a cap of AED 500,000 (unless the parties elect to proceed in the SCT, in which case the cap is AED 1,000,000). The SCT also covers employment claims in the DIFC, whereas the ADGM has a separate division for employment disputes.

Both the SCD and SCT have truncated procedures for the exchange of evidence and the listing of an expedited hearing date. The SCT diverges much more from the DIFC Courts' standard timetable than the SCD does from the ADGM Courts' Court of First Instance ('CFI').

> **Because of their expedited timetables and simpler evidence processes, the SCT and SCD are more user-friendly.**

By way of example, a SCT claim form will be served on the defendant by the SCT Registry once filed. The defendant will have only seven days in which to file a response to the claim (failing which the claimant can re-serve the claim and, if no acknowledgment of service is filed by the defendant, seek a default order). If the defendant responds, the parties appear before the SCT for a consultation hearing where the SCT judge hears both sides' arguments and attempts to settle the dispute. If the dispute does not settle, a further hearing is listed at which the judge conducts a mini-trial. If the claim is successful, a judgment is issued by the tribunal. Appeals lie to the respective CFI in both cases. The whole small claims dispute resolution process should only take a few months, considerably less than a full dispute in the CFI.

Why Creative Industries should Consider Opting into the SCD or SCT Jurisdictions

The first reason is cost. Both mechanisms are cheaper than normal litigation: the court fees are generally less, and because of the expedited processes, the costs of litigating ought to be significantly lower. For money claims, the fees for the SCD are set at 1.5 percent of the value of a money claim, with a minimum of US$250 and a maximum of US$1,500. In the SCT, it is five percent of the value of the claim with a minimum fee of US$100 and no maximum. In the SCT, the default position is that parties cannot be represented by external lawyers unless the tribunal gives permission (companies are usually represented by directors or employees) and that the costs of litigating are not recoverable from the losing party unless it is 'appropriate' for the loser to pay part or all of the SCT's fees, and further costs may be awarded if a party has 'behaved unreasonably'. In the SCD, the costs of legal representatives are capped according to a sliding scale depending on the value of a claim and when it is disposed of. The maximum recoverable costs are, for small claims between US$50,000 and US$100,000, US$5,325 for the winner at trial (whether claimant or defendant), with smaller further sums awardable if the claim has been served by an alternative method, outside the Emirate of Abu Dhabi, or outside the UAE. In both cases, sliding scales provide for rebates of court fees if disputes settle early.

Secondly, both the SCD and SCT produce orders and judgments which are readily enforceable by those courts or by other courts, for instance by compelling banks to transfer funds or ordering bailiffs to seize property for sale. In cases where the losing party under a SCT or SCD order has assets in the appropriate free zone, the courts will take the judgment or order to the relevant authority and request enforcement. If the parties have opted into the SCT's jurisdiction or assets are held outside the DIFC, the DIFC Courts will assist the winning party to enforce in the jurisdiction(s) where those assets are held, including in other Emirates. A judgment creditor may seek the enforcement of a SCD judgment by the Abu Dhabi Judicial Department where the subject of enforcement is situated outside the ADGM. In all cases, enforcement outside the free zone can be done under UAE Federal law either directly or indirectly via the 'deputisation' process, as appropriate. It is unlikely that small claims' judgments would be of sufficient value to make international enforcement a viable alternative, but if parties anticipate that this step may be necessary, they should seek legal advice in advance.

Thirdly, because of their expedited timetables and simpler evidence processes, the SCT and SCD are more user-friendly. Hearings and documents are all in English. The emphasis is on substance over form, with considerably fewer technical issues such as arguments about timetabling, expert evidence or disclosure. The hearings of the SCT are certainly more informal than proceedings before the CFI. They are also speedier: the SCT procedure anticipates that the consecutive steps of: (a) the defendant responding to the claim form following service; (b) the listing of the consultation hearing following the defendant's acknowledgment; and (c) the listing of the mini-trial hearing following the consultation hearing, should each take place within a period of seven days. Both sets of courts are also very flexible in the ways in which parties engage with the dispute resolution process. Hearing rooms have state-of-the-art digital technology, allowing parties to appear remotely by video telephone; documents are filed and served online; and paperless hearing bundles are being implemented. The processes also have varying degrees of confidentiality which are not normally applied in the CFIs. In the SCT, judgments and orders are usually publicly available but published with identifying details removed and the parties' names replaced with pseudonyms. SCD judgments are not published.

Conclusion

For many creative industries, the small claims processes will be the most suitable form of dispute resolution for the reasons set out above. However, litigation is not the only route available. Both the ADGM and the DIFC offer alternative dispute resolution ('ADR'). In the DIFC's case, ADR is built into the SCT process at the mandatory consultation hearing prior to the mini-trial, and a provision for court-ordered ADR including mediation and conciliation exists for proceedings in the DIFC CFI. In 2019, the ADGM Courts plan to introduce a court-annexed mediation service to promote mediation in Abu Dhabi and beyond. Furthermore, parties may wish to have a flexible and confidential dispute resolution process whose final decision is widely enforceable but anticipate that the value of any dispute would be higher than the caps on the small claims' processes. In those cases, they should consider opting for arbitration. The DIFC Courts are the default seat for arbitrations governed by the DIFC-LCIA and DIAC institutional rules, and the ADGM is the default seat for many ICC arbitrations.

In all, the ADGM and DIFC's common law courts have plenty to offer creative industries based across the UAE in planning and preparing in case they fall into dispute.

Al Tamimi & Company's DIFC Litigation team regularly advises on commercial & civil disputes and has given free training to businesses at Dubai Design District (d3) and at In5 Media, Dubai Production City. For further information please contact Rita Jaballah (r.jaballah@tamimi.com) or Peter Smith (p.smith@tamimi.com).

Central Bank of Bahrain Issues Regulations governing Crypto-Asset Services

Siddharth Goud
Trainee Lawyer
Manama, Bahrain
s.goud@tamimi.com

In line with its goal to become the region's leading FinTech hub, the Central Bank of Bahrain ('CBB') has issued comprehensive regulations to govern and license 'Regulated crypto-asset services' in Bahrain. The regulatory framework has been included in Volume 6 of the CBB Rulebook that governs Capital Markets.

The regulations come off the back of the implementation by the CBB of a regulatory sandbox in June 2017. Since the creation of the regulatory sandbox, various crypto-currency related entities have availed of the opportunity and entered the sandbox, thereby working closely with the CBB in testing and refining their technology-based innovative products, services and platforms, in a controlled virtual space without being immediately burdened by the usual regulatory and financial requirements, which would otherwise apply to their activities.

In January this year the CBB invited public consultations and feedback on the draft regulations after which it issued the final regulations ('Regulations') in February. Below we discuss the key features of the Regulations.

About the Regulations

The CBB has issued the Regulations with the aim of minimising the risk of financial crime and illegal use of crypto-assets, as the market for crypto-assets sees an increasing growth and popularity across the globe. The Regulations cover rules for licensing and supervision of 'Regulated crypto-asset services' (defined below); that include trading, dealing, advisory and portfolio management services in 'Accepted crypto-assets' (defined below) either as principal, agent, custodian or as a crypto-asset exchange within or from Bahrain.

Key Definitions

- **Crypto-assets** have been defined as virtual or digital assets ('tokens') operating on a blockchain platform and protected by cryptography. Tokens have been further classified into:
  - payment/exchange tokens (cryptocurrencies);
  - utility tokens (for specific application);
  - asset tokens (debt or equity claims on the issuer); and
  - hybrid tokens (mixed features of above-mentioned tokens).
- **Accepted crypto-asset** has been defined as a payment token (or crypto-currency) permitted by the CBB for the purposes of undertaking a Regulated crypto-asset service by a Crypto-asset service licensee.

- **Regulated crypto-asset services** means the conduct of any of the following activities:
  - Reception and transmission of order; i.e. receiving orders to buy and/or sell Accepted crypto-assets and transmitting such orders to a third party for execution.
  - Execution of order on behalf of clients; i.e. concluding agreements to buy and/or sell one or more Accepted crypto-assets on behalf of a client.
  - Dealing on own account; i.e. trading against proprietary capital to conclude transactions in one or more Accepted crypto-assets.
  - Portfolio management; i.e. managing a client's portfolio of Accepted crypto-assets with a discretion to invest in one or more Accepted crypto-assets on behalf of the client.
  - Crypto-asset custodian; i.e. safeguarding, storing, holding or maintaining custody of Accepted crypto-assets on behalf of a client.
  - Investment advice; i.e. offering tailored and personal recommendation to a client based on the circumstances of the client to buy, sell, exchange or hold Accepted crypto-assets.
  - Crypto-asset exchange; i.e. is a CBB-licensed exchange operating in Bahrain, on which the trading, conversion or exchange of Accepted crypto-assets takes place in accordance with the rules of the crypto-asset exchange.
- **Crypto-asset service licensee** is a person and/or establishment licensed by the CBB under these Regulations to carry out Regulated crypto-asset services in Bahrain.
- **Marketing** includes any promotion, offering, announcement, advertising, broadcast or any other means of communication carried out to induce purchase, exchange or acquisition of financial services in return for a payment or other consideration.
- **Activities** relating to crypto-assets are deemed to be undertaken in or from Bahrain when the person or establishment is incorporated in Bahrain or directly solicits clients within Bahrain.

> **"The introduction of these new Regulations is a sign that Bahrain is now open for business to FinTech firms across the world dealing in crypto-assets and paves the way for the entry of these businesses and startups into the GCC region, which offers a plethora of untapped opportunities in the realm of blockchain technology.**

Licensing Requirements

Anyone who wishes to market or undertake crypto-asset related activities for business within or from Bahrain will need to obtain a license from the CBB. Applicants must seek to be licensed under the following four categories if they wish to undertake one or more Regulated crypto-asset services:

Category 1	Category 2	Category 3	Category 4
Reception and transmission of orders	Trading in Accepted crypto-assets as an agent	Trading in Accepted crypto-assets as an agent	Operate a licensed crypto-asset exchange
Investment advice	Portfolio management	Trading in Accepted crypto-assets as a principal	Crypto-asset custody service
	Crypto-asset custody service	Portfolio management	
	Investment advice	Crypto-asset custody	
		Investment advice	

Applications for a license must be filed in the CBB prescribed form and must include the following information (amongst others):

- a business plan specifying the type of business to be conducted;
- application forms for all shareholders and subsidiaries; and
- application forms for all "controlled functions" (further discussed below in this article).

Applicants can combine two or more Regulated crypto-asset services and obtain a license from the CBB for the same, provided the services fall within the same list of services and there is no conflict of interest.

Apart from the non-refundable application fee of BHD 100, licensees will have to bear an annual license fee equivalent to 0.25% of their operating expenses; that can range between BHD 2,000 - BHD 6,000, depending on the operating scale of the applicant. The Regulations set out a 60-day timeframe for the CBB to decide on applications for licenses.

In order to be licensed as a Crypto-asset service licensee, an applicant must be either:

- incorporated as a Bahraini joint stock company; or
- a branch resident in Bahrain of an overseas company duly incorporated under the laws of its home jurisdiction.

The Regulations also allow those persons and/or establishments dealing in Crypto-assets and incorporated in overseas jurisdictions to obtain a license and operate within Bahrain as 'Overseas crypto-asset service licensees'. An application to set up a branch of an Overseas crypto-asset service licensee will invite the CBB's scrutiny of its shareholders, management structure, financial position, activities and the Regulations (in its home jurisdiction) that govern its crypto-related activities.

A key aspect of the licensing process is the option for applicants to appoint a representative (such as a law firm or professional consultancy) to prepare and submit applications on their behalf.

Capital Requirements

All Crypto-asset service licensees in Bahrain must maintain a minimum capital requirement that varies according to the licensing category (specified above):

Licensing Category	Minimum Capital (BHD)
Category 1	25,000
Category 2	100,000
Category 3	200,000
Category 4	300,000

The CBB may, in its discretion, require a licensee to hold additional capital in an amount and form it specifies if it is deemed necessary to ensure the financial integrity of the licensee's operations.

An Overseas crypto-asset service licensee must also calculate its minimum capital requirements in accordance with those that would apply to it if it were a Bahraini joint stock company.

Approved persons

Persons assuming 'controlled functions' in a CBB regulated Crypto-asset service licensee require the CBB's written approval. 'Controlled functions' include:

- Director;
- Chief executive or General Manager;
- Head of functions;
- Chief Information Security Officer;
- Compliance Officer; and
- Money Laundering Reporting Officer.

For Overseas crypto-asset service licensees, prior approval from the CBB is required for the branch manager (or equivalent) in Bahrain in addition to the same 'controlled functions' described above.

The Overseas crypto-asset service licensee must maintain a local management presence, have its premises in Bahrain and must seek CBB approval if some of its personnel undertaking the 'controlled functions' are not residing in Bahrain.

Accepted crypto-assets

Under the Regulations, the CBB will allow Crypto-asset service licensees (and Overseas crypto-asset service licensees) to undertake services only for Accepted crypto-assets. The CBB will pre-approve crypto-assets by taking into account various factors like:

- technological experience, track record and reputation of the issuer and its development team;
- issuer's anti-money laundering, countering financing of terrorism and cybersecurity systems and controls;
- availability of a reliable multi-signature hardware wallet solution for the asset;
- protocol and the underlying infrastructure of the blockchain technology (i.e. whether it is a separate blockchain with a new architecture system and network or it leverages an existing blockchain for synergies and network effects).

In addition to the above factors, the CBB will also take into consideration factors like the security, traceability/monitoring, resolution mechanisms, geographical distribution, connectivity, market demand/volatility, type of distributed ledger used, the relevant consensus pool of the distributed ledger, innovation and practical applicability/ functionality and whether the crypto-asset has been traded on any Dark-net marketplaces.

Applicants applying for a license must submit the details of each crypto-asset that is proposed to be used for their Regulated crypto-asset service. The use of these crypto-assets must be approved as part of the formal application process.

Eligible investors

Crypto-asset service licensees can undertake transactions with/on behalf of persons/ establishments only after they have been registered as clients. Eligible investors (or prospective clients) must be a legal entity duly incorporated in Bahrain (or in accordance with laws of the home jurisdictions), or a natural person above the age of 21.

Regulated crypto-asset services can be carried out only if the Crypto-asset license and their clients (i.e. the investors) enter into an agreement which stipulates the following (amongst other aspects):

- the name and address of the Crypto-asset service licensee or the parent company (in the case of an Overseas crypto-asset service licensee);
- the regulatory status of the Crypto-asset service licensee;
- the terms of entering into, terminating and amending the client agreement;
- details of fees, costs and other charges and the basis upon which such costs will be imposed;
- details of the services and products to be provided by the Crypto-asset service licensee;
- details of conflict of interests;
- provisions for complaints handling procedures and/or dispute resolution procedures; and
- the crypto-asset risk disclosure (as mandated by the CBB under these Regulations).

Other requirements

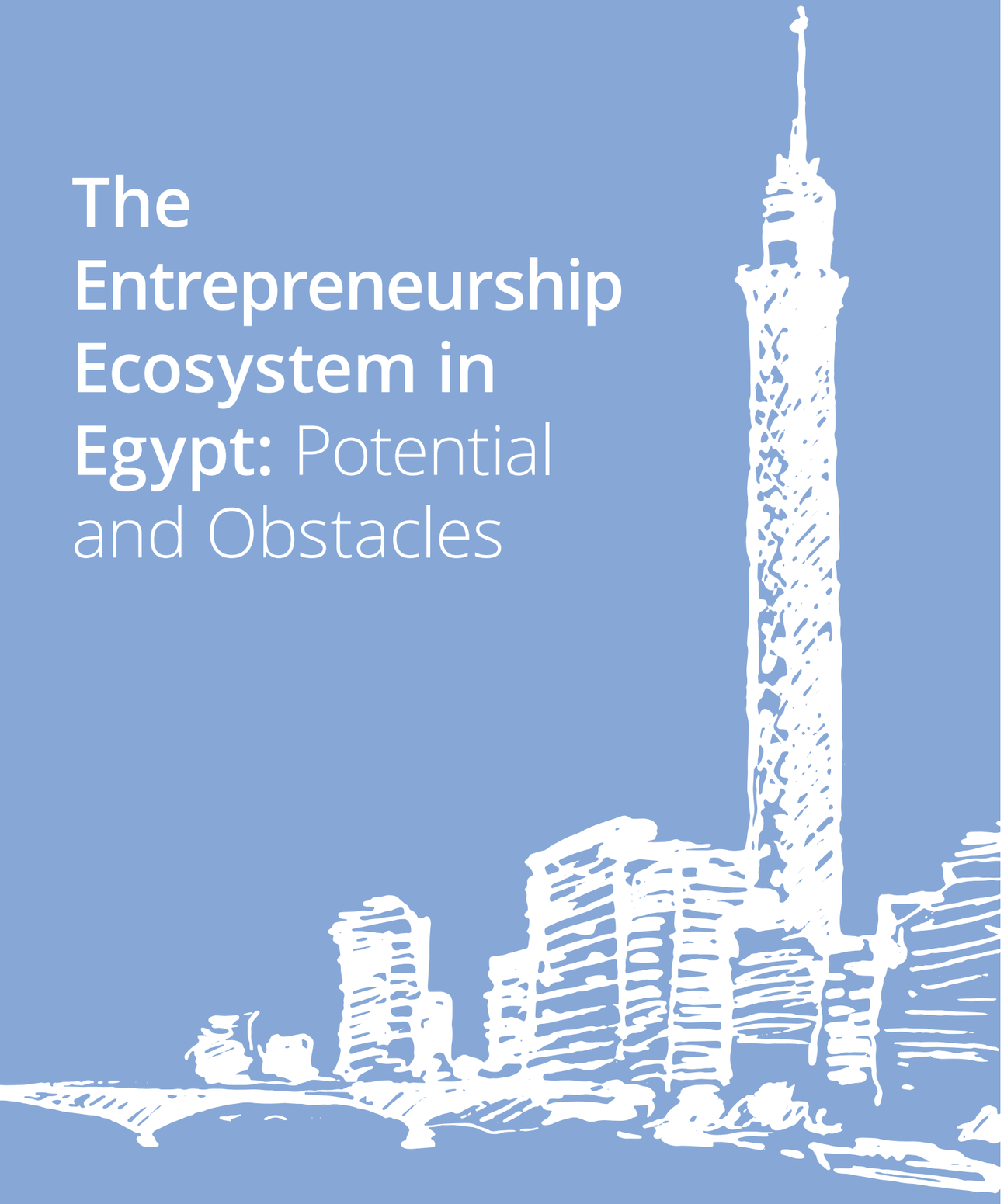
The Regulations also set out provisions relating to professional indemnity coverage, technology standards, cyber security risk requirements, counterparty risk, reporting and notification requirements, etc.

The introduction of these new Regulations is a sign that Bahrain is now open for business to FinTech firms across the world dealing in crypto-assets and paves the way for the entry of these businesses and startups into the GCC region, which offers a plethora of untapped opportunities in the realm of blockchain technology.

Al Tamimi & Company's Banking & Finance team and Corporate Commercial team regularly advise on regulations affecting businesses and startups dealing in blockchain technology and crypto-based assets and services. For more information please contact Rad El Treki (r.eltreki@tamimi.com), Natalia Kumar (n.kumar@tamimi.com) or Siddharth Goud (s.goud@tamimi.com).

> **"The Regulations also allow those persons and/or establishments dealing in Crypto-assets and incorporated in overseas jurisdictions to obtain a license and operate within Bahrain as 'Overseas crypto-asset service licensees'.**

The Entrepreneurship Ecosystem in Egypt: Potential and Obstacles



Youssef Sallam
Paralegal
Cairo, Egypt
y.sallam@tamimi.com

The Egyptian entrepreneurship ecosystem, which has been partially fuelled by the economic revival that has occurred over the last few years, is among the fastest growing in the region. The entrepreneurial nature of the Egyptian economy is also due to the large and educated young population as well as its long entrepreneurial history. In 2016 alone, there were 341 thousand university graduates, with almost 100 thousand graduates from IT, computer science, and engineering programmes.

In the last few years the start-up field has skyrocketed. The UN estimates that between 2012-2013, around 9,000 start-ups were established.

On the other hand, there are still several challenges facing the Egyptian entrepreneur ranging from regulatory bureaucracy to a lack of available funding especially following early stage investments which, in turn, creates a talent retention problem.

Ecosystem Potential

With a population of over 100 million people and a youth population comprising over 20 percent of the total population, the consumer base in Egypt is massive, presenting large growth potential for many foreign companies and investors wishing to penetrate the Egyptian market.

Notable Examples

High growth start-ups, such as Fawry, an e-payment network has over 65 thousand locations and a multitude of channels that serves over 15 million Egyptians. In 2015, the founders sold a majority stake in the company for USD 100 million. This was unheard of in Egypt, especially given that Fawry was founded in 2008. Within seven short years, it reached a level of growth that attracted higher level investments from private equity firms and Development Financial Institutions such as the International Finance Corporation, the investment arm of the World Bank. The Fawry exit has opened the door for both technology start-ups and investors to become optimistic about the state of the ecosystem and its ability to achieve ambitious levels of growth in short time periods.

Other tech start-ups are following suit. Instabug, a service that helps app developers test their application, has raised over USD 2.1 million from high profile international investors such as Accel Partners. Instabug also worked with top apps such as Lyft, Soundcloud, Samsung and Buzzfeed.

Wuzzuf, a recruitment platform, founded by Ameer Sherif, who has achieved rock star status in the Egyptian ecosystem, has employed 250,000 people through its platform and raised over USD 8 million. While Vezeeta, a medical platform, serving 2.5 million patients by connecting them to a network of 10,000 doctors, has raised around USD 25 million.

> **In 2016 alone, there were 341 thousand university graduates, with almost 100 thousand graduates from IT, computer science, and engineering programmes.**

More recently, SWVL, a bus hailing app that has revolutionised public transportation in Egypt, has raised tens of millions of dollars in the last two years.

These companies have shown that Egypt has great potential to be innovative leaders in fields where it has identified service gaps that are waiting to be filled by the private sector.

The upshot of what these companies have achieved has impacted the Egyptian economy in many ways including creating jobs across the community and galvanising the economy in general.

The Ecosystem

These companies would not have been able to succeed without an environment that is conducive to growth or without the availability of funds, talent, and knowledge. In the last few years, the entrepreneurship ecosystem exploded starting from incubators and accelerators to angel investors and venture capital firms to knowledge sharing and mentorship programmes.

Flat6Labs, AUC Venture Lab, and Falak are the most notable examples of accelerators and incubators that help entrepreneurs realise their concepts and turn them into workable businesses, while funds such as Algebra, A15, Endure Capital, and Cairo Angels finance early stage investments. The network of entrepreneurs is also supported by organisations such as Endeavor which provides support to scale-ups (high growth and stable start-ups) by fostering a network of like-minded mentors and providing access to capital and investors.

The Egyptian government has also tried to fill in some of the gaps in the ecosystem by founding Falak Startups and creating Egypt Ventures, an investment fund that finances both start-ups and other investors.

Challenges

Despite the promise of the Egyptian market and the innovation of its entrepreneurs, there are still several challenges ahead which hamper the growth of the ecosystem and the economy as a whole. Such challenges are partially a product of decades of stagnant development that calcified innovation and progress. However, the last few years have proven that such challenges can be overcome.

The first and most important challenge facing entrepreneurs and start-ups are regulatory difficulties. These begin with the bureaucracy of governmental authorities and the steps required to execute a simple process. Dealing with governmental authorities is difficult without assistance. Unfortunately, entrepreneurs usually seek legal services from firms or individuals that do not necessarily understand the complexities of the business model, which can often exacerbate these issues.

From a structuring perspective, incorporating a company in Egypt is still comparatively harder than in other jurisdictions, although it has become significantly easier in recent years with the establishment of the Investor Service Center and the amendments to the Companies Law. Even after incorporation, maintaining a company is also fairly difficult. Not only is it difficult for investors to understand the processes required to keep the company in good standing, but the processes themselves are also not easy to execute. Whilst Egypt's standing in the World Bank's Ease of Doing Business rankings has improved, there is still a long way to go. Other countries in the region such as the UAE and Saudi Arabia fare significantly better on almost every metric.

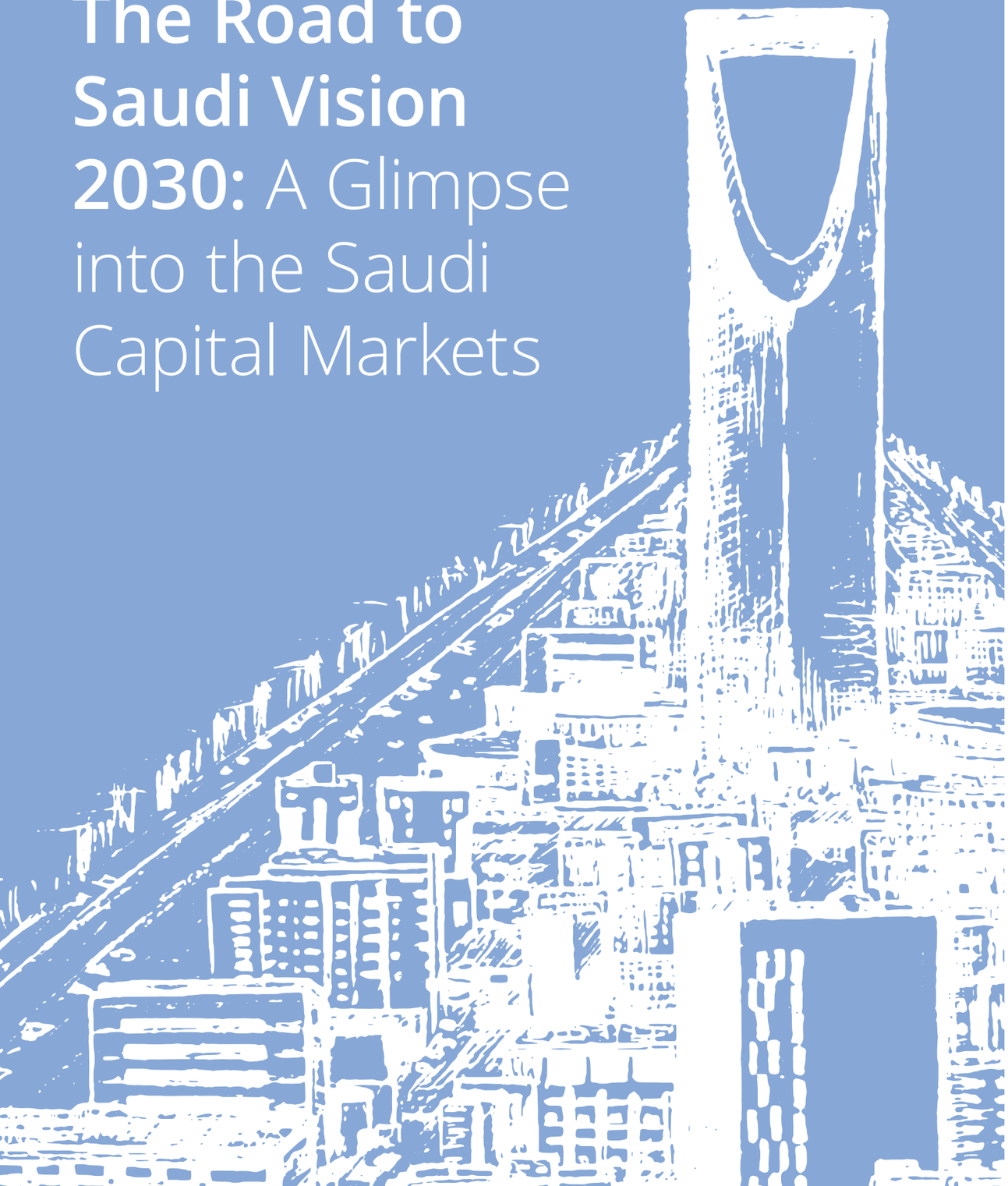
As a result many start-ups and funds incorporate their companies abroad and establish companies in Egypt as subsidiaries. These structures are not only used for tax purposes, but for the ease and clarity in governance mechanisms present in offshore jurisdictions that allow for far more contractual flexibility.

However, it is worth noting that the Egyptian government is attempting to resolve some of the challenges that would make doing business easier by regulating and clarifying business activities and processes. The government has been actively building on the progress that has already been made with more regulations in the pipeline that will hopefully create clarity amongst all stakeholders.

Al Tamimi & Company's Corporate Structuring and TMT teams regularly advise on onshore and offshore technology setups as well as investment instruments and agreements. For further information please contact Ayman Nour (a.nour@tamimi.com), Fiona Robertson (f.robertson@tamimi.com) or Youssef Sallam (y.sallam@tamimi.com)

> **These companies have shown that Egypt has great potential to be innovative leaders in fields where it has identified service gaps that are waiting to be filled by the private sector.**

The Road to Saudi Vision 2030: A Glimpse into the Saudi Capital Markets



Nariman Roushdy
Associate
Dubai, UAE
n.roushdy@tamimi.com

As part of its Vision 2030, the Kingdom of Saudi Arabia ('KSA') has launched its 'Financial Sector Development Program' which seeks to develop the financial sector as a diversified and efficient financial services sector underpinned by three main pillars, one of which is the objective of developing an advanced capital market.

Indeed, whilst the KSA is noted for having the second largest proven oil reserves in the world, Vision 2030 recognises the importance of reducing the country's dependence on the energy sector by encouraging economic diversity and foreign investment.

To support this, the KSA has enthusiastically adopted new laws and regulations in order to attract investors to participate in its capital markets. Such new rules and regulations will assist the Saudi capital markets in general but they will also specifically facilitate the proposed Initial Public Offering ('IPO') of Saudi Aramco, where the anticipated listing of five percent of its shares is estimated to raise $100 billion, which would make it the largest IPO in history in the event that it proceeds.

Although the KSA is well known for its strength in the energy sector globally and its banking activities, the Saudi capital markets are arguably the deepest and most liquid in the Middle East. The Saudi Stock Exchange, the Tadawul, is the largest stock exchange of the Gulf Cooperation Council ('GCC') countries offering trading platforms for equities, Islamic bonds, exchange-traded funds and mutual funds.

The Tadawul is currently the sole stock exchange in the KSA and is under the supervision of the Saudi Capital Markets Authority ('CMA') which reports directly to the Prime Minister.

During the course of the past two years, the CMA and the Tadawul have issued a number of regulations, in order to realise the objectives of Vision 2030 and build on the success of its equity capital markets. This also reflects the requirements of the Transition and Activation of Responsibilities Project which is designed to activate the Tadawul's responsibility for supervising and regulating certain aspects of the Capital Markets Law. The Tadawul is now responsible for supervising and regulating the listing of securities and continuous disclosures (regarding timing, format and the mechanism of disclosure) of issuers and market participants, while the CMA is in charge of regulating offers of securities and continuous obligations.

In this article, we shall briefly shed light on some of the interesting legal and regulatory changes that were introduced to the Saudi legal and regulatory financial services regime as part of realising the Financial Sector Development Program objectives.

The Offering Rules

On 27 December 2017, the CMA issued the new Rules on the Offer of Securities and Continuing Obligations ('Offering Rules'). These Rules address the offering

of securities in the KSA, being: (a) the issuing of securities; (b) inviting the public to subscribe for securities or the direct or indirect marketing of securities; and (c) any statement, announcement or communication that has the effect of selling, issuing or offering securities. In addition, any offer of securities to the public in the KSA must also comply with the Listing Rules issued by the Tadawul.

The focus of the Offering Rules is the promotion of transparency and the assurance that sufficiently detailed and appropriate disclosures are made to the public to enable investors to make an informed decision as to whether or not to invest. For example, when conducting an IPO, the Offering Rules require the inclusion of certain mandatory information about the issuer to be included in the prospectus when submitting an application to register shares, including a directors' statement to assume full responsibility for the accuracy of information set out in the prospectus. This statement gives potential investors the comfort that reasonable diligence has been exercised when extracting/retrieving the required information for the purpose of the prospectus.

Also, in order to promote transparency and a fully informed market, issuers are under an obligation to make certain disclosures on an ongoing basis. For example, an issuer is under an obligation to disclose material developments which: (a) are not known to the public; (b) may affect the assets and liabilities or financial position or the general course of business of the company or any of its subsidiaries; or (c) may affect the price of the listed securities or affect the issuer's ability to meet its commitments with regard to listed debt. Material information would comprise, for example, any losses equal to 20 percent of the issuer's net assets according to the latest financial statements or any disputes where the value involved is equal to or more than five percent of the net assets of the issuer according to the latest financial statements.

Moreover, in order to avoid unexpected leakage of confidential information, an issuer is always under the obligation to take reasonable measures to manage the disclosure of material information and developments before disclosing them to the public.

The Listing Rules

The Tadawul published its revised Listing Rules on 22 October 2018, which follow international standards, for example, on takeovers and delisting. To address market requirements, the Listing Rules include specific provisions relating to reverse takeovers and demergers, including valuations, announcement of takeovers and conditionality.

> **"...Although the KSA is well known for its strength in the energy sector globally and its banking activities, the Saudi capital markets are arguably the deepest and most liquid in the Middle East. The Saudi Stock Exchange, the Tadawul, is the largest stock exchange of the Gulf Cooperation Council ('GCC') countries offering trading platforms for equities, Islamic bonds, exchange-traded funds and mutual funds..."**

To promote liquidity, the Tadawul requires a minimum value of shares to be listed. The expected aggregate market value of all the shares to be listed, at the date of listing, should be at least SR 300 million and a minimum of 30 percent of shares must be publicly available.

The Listing Rules also address the requirements of minority shareholders. The CMA can suspend the trading of securities or cancel their listing, if, amongst other things, the announcement of a reverse takeover contains insufficient information about the transaction. This avoids the situation where a strategic investor or a majority shareholder might have more access to information about the transaction and, hence, are in an advantageous position compared to other individuals that would be dragged into a takeover without having adequate information to be able to participate thereon.

Corporate Governance

One of the key lessons learned from the 2008-2009 global financial crisis was the importance of adopting corporate governance best practices. Regulators are aware that adequate corporate governance rules are required to ensure appropriate reporting, accountability and the management of conflicts of interest by issuers. Such rules need to follow international best practice but to be effective require: (a) proper enforcement of the rules; and (b) a change in the mindset of issuers to ensure that corporate governance is not just a 'tick-box' exercise but a way of organising and running the company (a mindset shift).

The CMA's new corporate governance rules were issued on 13 December 2017 and address shareholders' rights, including matters relating to general assembly meetings, the composition and functions of board committees and their relationship with the board of directors. Also, the corporate governance rules regulate the formation of the board of directors, its responsibilities and competencies, how it undertakes its activities as well as the avoidance of conflicts of interests, given that the board of directors is expected to act in the best interests of the issuer and not itself or shareholders it may represent.

Members of the board are not only under a duty to disclose conflicts of interest but, also, the board must annually evaluate the extent of the board members' independence and ensure that there are no situations or circumstances that may affect his/her independence.

In addition to the above, issuers are under a statutory duty to maintain a conflict of interest policy. In this context, the new corporate governance rules set out minimum standards and information that must be included under such policies, such as the requirement to adopt clear procedures addressing situations when a company transacts with a related party, including notifying the CMA and the public of the related party transaction, in the event the transaction is equal to or exceeds one percent of the company's total revenues in its last annual audited financial statements.

Conclusion

Saudi Arabia has made promising and positive steps towards modernising and strengthening its capital markets through developing its securities laws and regulations. This should assist the prospects of a diversified and effective financial services regime as aspired to in Vision 2030.

Al Tamimi & Company's Equity Capital Markets team regularly advises on day to day and long term strategic advice for capital markets clients, particularly IPOs. We advise on all steps, from structuring the issuer group months in advance, to public offering through to post subscription services and assisting newly listed companies to adapt to new rules and regulations. For further information, please contact Andrew Tarbuck (a.tarbuck@tamimi.com) or Nariman Roushdy (n.roushdy@tamimi.com).

United Arab Emirates
Ministry of Justice

49th Year
Issue No. 648
22 Jumada al-Akhira 1440H
28 February 2019

FEDERAL DECREES

3 of 2019 Establishing a UAE embassy in Benin.

4 of 2019 On the transfer of the UAE Consul-General in Melbourne to the Headquarters of the Ministry of Foreign Affairs and International Cooperation.

5 of 2019 On the transfer of the UAE Consul-General in New York to the Headquarters of the Ministry of Foreign Affairs and International Cooperation.

6 of 2019 Promoting a member of the diplomatic and consular corps.

7 of 2019 On carrying out a special assignment at the Ministry of Foreign Affairs and International Cooperation.

8 of 2019 Appointing a UAE ambassador to the Uganda.

9 of 2019 Appointing a UAE ambassador to the Italy.

10 of 2019 Appointing a UAE ambassador to the Spain.

11 of 2019 Appointing a UAE non-resident ambassador.

12 of 2019 Approving the resignation of the Secretary General of United Arab Emirates University.

13 of 2019 On the transfer of the UAE Ambassador to Iraq to the Headquarters of the Ministry of Foreign Affairs and International Cooperation.

14 of 2019 On the transfer of the UAE Ambassador to Mauritania to the Headquarters of the Ministry of Foreign Affairs and International Cooperation.

15 of 2019 Appointing a UAE Consul-General in Lagos.

17 of 2019 On the retirement of the Deputy Director General of the General Authority for the Security of Ports, Borders and Free Zones.

REGULATORY DECISIONS OF THE CABINET

18 of 2019 On the implementation of UAE mandatory standards.

19 of 2019 On the implementation of UAE mandatory standards.

20 of 2019 Concerning the Regulation on Terrorist Lists and the Implementation of Security Council Resolutions Relating to the Prevention and Suppression of Terrorism and Terrorism Financing and Countering the Proliferation of Weapons and Proliferation Financing and Relevant Resolutions.

21 of 2019 Amending various schedules to Federal Law No. (14) of 1995 on the Countermeasures against Narcotic Drugs and Psychotropic Substances.

MINISTERIAL DECISIONS

- From the Ministry of Justice

27 of 2019 Authorizing certain officials at the Sharjah Electricity & Water Authority to enforce the law as judicial officers.

73 of 2019 Establishing the Federal Emergency Crisis & Disaster Prosecution.

85 of 2019 On the formation of the Tax Dispute Resolution Committee - Sharjah.

109 of 2019 On the formation of the Tax Dispute Resolution Committee - Dubai.

133 of 2019 Amending Ministerial Decision No. (972) of 2017 promulgating the Executive Regulations of Federal Law No. (23) of 1991 Regulating the Legal Profession, as amended.

- From the Ministry of Climate Change

21 of 2019 On recycling construction and demolition waste for road and other similar infrastructure projects.

26 of 2019 On reforming the National Biosecurity Committee.

43 of 2019 Regulating shark fishing and trade.

- From the Ministry of Community Development

27 of 2019 On the promulgation of the Abdul Jalil Al Fahim & Family Charity Foundation.

ADMINISTRATIVE DECISIONS

- From the Emirates Authority for Standardization & Metrology:

2 of 2019 Approving amendments to the Schedule to the UAE Occupational Health, Safety and Personal Protection Supplies, Gear and Equipment Monitoring System.

3 of 2019 Adopting the UAE standard specification "Happiness & Positivity".

4 of 2019 Adopting UAE standard specifications.

5 of 2019 Approving the percentage of soldering material in work pieces and official standards of purity.

6 of 2019 Adopting UAE standard specifications.

7 of 2019 Approving the Work Piece (Jewelry) Hallmarking and Identification Mechanism.

- From the Telecommunications Regulatory Authority

50 of 2018 Chairman of the Board Resolution approving the Regulations for Mobile Communications On-Board Vessels, Version 2.0.

54 of 2018 Chairman of the Board Resolution approving the Regulations for Ultra-Wide Band and Short Range Devices, Version 3.0.

- From the Federal Transport Authority - Land and Maritime:

95 of 2018 Chairman of the Board Resolution amending Chairman of the Board Resolution 1 of 2018 on Compulsory Insurance Requirements Relating to Shipowners' Liability to Seafarers.

- From the Securities & Commodities Authority:

  - Certificate of approval of amendment of the Articles of Association of Emirates Investment Bank PJSC.

United Arab Emirates
Ministry of Justice

49th Year
Issue No. 649
7 Rajab 1440H
14 March 2019

FEDERAL DECREES

69M of 2018	Promoting and Appointing the Director General for Alien and Port Affairs at the Federal Authority for Identity & Citizenship.
22 of 2019	Amending Federal Decree No. (4) of 2018 on the Reconstitution of the Board of Directors of Etihad Rail.
23 of 2019	Ratifying the Multilateral Instrument (MLI).
24 of 2019	Ratifying the Multilateral Competent Authority Agreement on the Exchange of Country-By-Country Reports (MCAA CbCR).
25 of 2019	Ratifying the Agreement on Cultural Cooperation between UAE and France.
26 of 2019	Appointing public prosecutors.
27 of 2019	Appointing judges in the Federal Courts.
28 of 2019	Establishing a UAE embassy in the Comoros.
29 of 2019	On the transfer of the UAE Ambassador to Sweden to the Headquarters of the Ministry of Foreign Affairs and International Cooperation.
30 of 2019	Appointing a UAE Ambassador to Australia.
31 of 2019	On the transfer of the UAE Consul-General in Los Angeles to the Headquarters of the Ministry of Foreign Affairs and International Cooperation.
32 of 2019	On the transfer of the UAE Ambassador to Peru to the Headquarters of the Ministry of Foreign Affairs and International Cooperation.
33 of 2019	Appointing a UAE Ambassador to Sweden.
34 of 2019	Appointing a UAE Consul-General in New York.

REGULATORY DECISIONS OF THE CABINET

22 of 2019	Promulgating the executive regulations of Federal Law No. (10) of 2017 on Support Service Workers.

MINISTERIAL DECISIONS

- From the Ministry of Climate Change

61 of 2019	Repealing Ministerial Decision No. (18) of 2001 imposing an import ban on live cattle from the EU, Eastern Europe and Scandinavia.
82 of 2019	Imposing a ban on the use of fish traps (garagir) in the fishing waters of Abu Dhabi.

- From the Ministry of Health and Prevention

130 of 2019	On price cuts to some medicines.

ADMINISTRATIVE DECISIONS

- From the Securities & Commodities Authority:

5/R.M of 2019	Amending Chairman of the Board Resolution 9/R.M of 2016 concerning the Regulations as to Mutual Funds.
6/R.M of 2019	Amending Chairman of the Board Resolution 11/R.M of 2016 concerning the Regulations for Issuing and Offering Shares of Public Joint Stock Companies.
8/R.M of 2019	On the Operation of Mutual Funds.

- From the Telecommunications Regulatory Authority

5 of 2019	Chairman of the Board Resolution amending Resolution 37 of 2018 on the Issuance of Type Approvals.

- From the Securities & Commodities Authority:

-	Certificate of approval of amendment of the Articles of Association of Eshraq Properties Company PJSC.

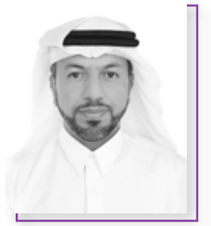
Dr Hassan Arab appointed Chairmanship of ICC UAE Commission

We are pleased to report the unanimous election of Dr Hassan Arab as Chairman of the International Chamber of Commerce (ICC) - UAE Commission on Arbitration & ADR for a 2-year mandate.

In this capacity, Dr Hassan Arab will lead a Steering Committee, composed of 15 leading arbitration practitioners, the purpose of which is to consider, devise and implement the ICC UAE's strategies and goals.

Al Tamimi & Company is honored to bring back the Chairmanship of this important body to the firm after Essam Al Tamimi's prior successful leadership.

Congratulations to Dr Hassan Arab on this great achievement.



Dr Hassan Arab
Deputy Managing Partner
Dubai, UAE
h.arab@tamimi.com

11-12
MAR

Second Saudi Maritime Congress
Four Seasons, Riyadh, Saudi Arabia

Al Tamimi & Company was proud to both sponsor, and participate in, the second Saudi Maritime Congress in Riyadh in March. Under the patronage of Mawani (Saudi Ports Authority) with H.E. Dr Nabel Al Amudi, Minister of Transport (KSA) opening the congress, the two day event featured a number of high level discussions with key industry figures, providing an invaluable picture of the central role the maritime and logistics sector plays in the Vision 2030 programme and the opportunities and challenges that lie ahead.

Transport Partner, Omar Omar, lead a very interesting panel discussion on the subject of Infrastructure, Logistics and Supply Chain Development, with participants from King Abdullah Port, Red Sea Gateway Terminal, SAFEEN (Abu Dhabi Ports) and Kalmar Middle East.

Due to the great success of the event, with over 900 people attending across the two days, a third Saudi Maritime Congress is already being planned for 2020. Al Tamimi looks forward to participating again next year.

19
MAR

GCC Board Directors Institute Networking Event
Capital Club, Manama, Bahrain

Our Bahrain team were delighted to have the opportunity to sponsor the recent GCC Board Directors Institute (GCC BDI) gathering in Bahrain on 19 March 2019, which was opened by Mutlaq Al Morished (Governor, GCC BDI), and followed by a presentation on "Maximizing company value: an overview of the new Ministry of Industry, Commerce & Tourism ("MOICT") Corporate Governance Charter" by Foutoun Hajjar (Partner & Head of Office – Bahrain), Eman Al Isa (Senior Associate, Corporate Structuring – Bahrain) and Ali Al-Alawi (Chief, Corporate Governance – Companies Control Directorate – MOICT).

Launched in 2007, the GCC Board Directors Institute (GCC BDI) is a not-for-profit organisation that guides board directors of organisations, from family-owned businesses to listed companies, to acquire the know-how and the tools to reach and sustain effective governance.Founded by Investcorp, SABIC, Saudi Aramco and Emirates NBD and supported by Allen & Overy, Heidrick & Struggles, McKinsey & Company, and PwC, as well as regional regulatory authorities: the Emirates Security and Commodities Authority, the Capital Market Authorities of both Saudi Arabia and Oman, the Central Bank of Bahrain and the Qatar Financial Centre Regulatory Authority, it has over 1,200 members who benefit from a network of business leaders and a variety of workshops designed for senior directors.

The presentation was followed by a very enjoyable networking evening attended by over 40 senior level guests and we look forward to hosting the GCC BDI again in the near future.

19-21
MAR

British Schools in the Middle East Annual Conference
Abu Dhabi

For the first time, Al Tamimi & Company has become an Associate Member of British Schools Middle East (BSME), the largest dedicated network of British international schools in the region.

As Members we were delighted to have the opportunity to attend and exhibit at the 37th BSME Annual Headteachers Conference held in Abu Dhabi from 19-21 March 2019. Ivor McGettigan (Partner & Head of Education Sector) attended the conference, with other Education Sector Group members including Laya Al Hareeri and Alina Ponomarova.Ivor McGettigan and Anna Marshall (Senior Associate, Employment), also attended the BSME Annual Dinner on the evening of 20 March which provided a great setting to meet with key decision makers and leaders of the member schools.

20
MAR

CSR: Children of Tomorrow

Following the launch of our Children of Tomorrow CSR initiative, our team Ivor McGettigan, Alex Ghazi, Omar Khodeir and Maitha Al Hashimi have been working with the relevant government bodies and education providers to ensure greater awareness is provided regarding existing laws governing the welfare and rights of children within every school in the UAE, both public and private.

On Wednesday, 20th March we had the pleasure of bringing together guest speakers Major Abdulrahman Ahmed Altamimi, Deputy Director of Ministry of Interior, Dima Alloush, Executive Assistant and Child Protection Lead, Taaleem, Sara Hedger, Head of Safeguarding & Child Protection, GEMS Education and Shane O,Brien, Head Teacher, JESS, Dubai to address a number of key topics such as; child abuse reporting mechanisms and bodies empowered to look after such matters, the MOI's role in safeguarding, children's wellbeing and online safety.

The event was a great success and a platform to encourage an open dialogue around best practices in safeguarding, as well as obstacles faced in implementing the Law and internal policies.

27-29
MAR

What will our future cities look like? IBA 11th Annual Real Estate Investments Conference

Fairmont The Palm, Dubai, UAE

For the first time the IBA Annual Real Estate Investments Conference was hosted in Dubai, and the city was the perfect backdrop for such a prominent and truly global event.

The conference was opened by His Excellency Sultan Butti Bin Mejren, the Director General of the Dubai Land Department and throughout the three day event a wide range of timely themes impacting the industry were addressed.

The programme touched on a number of thought-provoking topics covering areas such as cross border issues, globalisation of real estate markets as well as more focussed topics around construction contracts, real estate disputes, REITs and alternative funding structures, and development and planning of the cities of our future. Beyond the insights our Real Estate team Tara Marlow, Jeremy Scott, Mohammed Kawasmi and Andrew Balfe had the opportunity to network with over 150 industry experts from a number of jurisdictions.

Shiraz Khan, Head of Taxation joined other leading experts on an informative panel session that touched on globalisation of real estate markets and current challenges. The session also looked at how foreign direct investment is being attracted in emerging markets amidst the changes across the major global real estate markets affecting corporate and tax structuring.

One of the conference highlights was the desert safari dinner which our Real Estate team hosted. The evening gathered over 100 attendees from all over the world for an authentic Middle Eastern experience at Bab Al Shams, and was extremely well received, particularly by those attendees for whom it was their first visit to the Middle East.

4th March
Bahrain

Data: Digital – Legal Insights for Bahraini Businesses

Capital Club, Bahrain

Speakers:
Martin Hayward
Head of TMT

Foutoun Hajjar
Partner, Head of Office – Bahrain

Rad El Treki
Head of Corporate Structuring – Bahrain

Andrew Fawcett
Senior Counsel, TMT

4th & 5th March
Bahrain

Healthcare Technology Event

Crowne Plaza, Bahrain

Speakers:
Martin Hayward
Head of TMT

Andrea Tithecott
Partner, Head of Healthcare & Regulatory

11th March
Abu Dhabi

Education Investors Workshop

Abu Dhabi office

12th March
Dubai

New DIFC Employment Law: Breakfast Briefing

DIFC Office

Speakers:
Gordon Barr
Partner, Employment

Anna Marshall
Senior Associate, Employment

13th March
Dubai

The Impact of Transfer Pricing in KSA

DIFC Office

Speakers:
Shiraz Khan
Head of Taxation

26th March
Abu Dhabi

What to Do If Your Construction Project Is in Trouble: Possible Approaches and Strategies

Abu Dhabi office

Speakers:
Euan Lloyd
Senior Counsel, Construction & Infrastructure

John Gaffney
Senior Counsel, Arbitration

Ahmad Ghoneim
Senior Counsel, Litigation

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.

17	9	68	350	50
Offices	**Countries**	**Partners**	**Lawyers**	**Nationalities**

Client Services

Practices

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

Sectors

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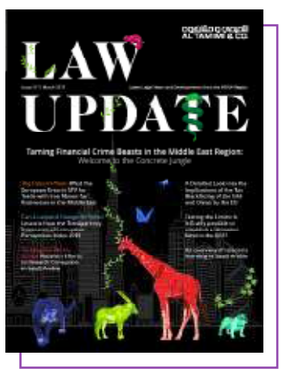
Country Groups

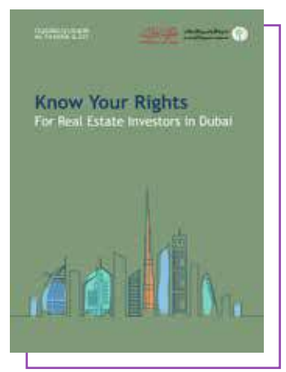
China | India | Korea |

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

Publications

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





Regional Footprint

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

BAHRAIN
Manama

EGYPT
Cairo

IRAQ
Baghdad
Erbil

JORDAN
Amman

KUWAIT
Kuwait City

OMAN
Muscat

QATAR
Doha

SAUDI ARABIA
Al Khobar
Jeddah
Riyadh

Key Contacts

SENIOR PARTNER
Essam Al Tamimi
e.tamimi@tamimi.com

MANAGING PARTNER
Husam Hourani
h.hourani@tamimi.com

DEPUTY MANAGING PARTNER
Hassan Arab
h.arab@tamimi.com

Offices

UAE
ABU DHABI
Alex Ghazi
alex.ghazi@tamimi.com

DUBAI, DIC
Samer Qudah
s.qudah@tamimi.com

DUBAI, DIFC
Husam Hourani
h.hourani@tamimi.com

DUBAI, THE MAZE TOWER
Bassem El Dine
b.dine@tamimi.com

RAS AL KHAIMAH
Ammar Haykal
a.haykal@tamimi.com

SHARJAH
Zafer Oghli
z.oghli@tamimi.com

BAHRAIN
MANAMA
Foutoun Hajjar
f.hajjar@tamimi.com

EGYPT
CAIRO
Ayman Nour
a.nour@tamimi.com

IRAQ
BAGHDAD
Mohammed Norri
m.norri@tamimi.com

ERBIL
Khaled Saqqaf
k.saqqaf@tamimi.com

JORDAN
AMMAN
Khaled Saqqaf
k.saqqaf@tamimi.com

KUWAIT
KUWAIT CITY
Alex Saleh
alex.saleh@tamimi.com

Philip Kotsis
p.kotsis@tamimi.com

OMAN
MUSCAT
Ahmed Al Barwani
a.albarwani@tamimi.com

QATAR
DOHA
Matthew Heaton
m.heaton@tamimi.com

SAUDI ARABIA
HEAD OF KSA
Babul Parikh
b.parikh@tamimi.com

AL KHOBAR
Jonathan Reardon
j.reardon@tamimi.com

JEDDAH
Rakesh Bassi
r.bassi@tamimi.com

RIYADH
Grahame Nelson
g.nelson@tamimi.com

Practices

ARBITRATION
Thomas Snider
t.snider@tamimi.com

BANKING & FINANCE
Jody Waugh
j.waugh@tamimi.com

CAPITAL MARKETS
Mohamed Khodeir
m.khodeir@tamimi.com

Andrew Tarbuck
a.tarbuck@tamimi.com

COMMERCIAL
Willem Steenkamp
w.steenkamp@tamimi.com

COMPETITION
Omar Obeidat
o.obeidat@tamimi.com

CONSTRUCTION & INFRASTRUCTURE
Lyndon Richards
l.richards@tamimi.com

CORPORATE/M&A
Gary Watts
g.watts@tamimi.com

Abdullah Mutawi
a.mutawi@tamimi.com

CORPORATE SERVICES
Izabella Szadkowska
i.szadkowska@tamimi.com

CORPORATE STRUCTURING
Samer Qudah
s.qudah@tamimi.com

EMPLOYMENT & INCENTIVES
Samir Kantaria
s.kantaria@tamimi.com

FAMILY BUSINESS & PRIVATE WEALTH
Gary Watts
g.watts@tamimi.com

FINANCIAL CRIME
Khalid Al Hamrani
k.hamrani@tamimi.com

INSURANCE
Yazan Al Saoudi
y.saoudi@tamimi.com

INTELLECTUAL PROPERTY
Omar Obeidat
o.obeidat@tamimi.com

LEGISLATIVE DRAFTING
Mohamed Al Marzouqi
m.almarzouqi@tamimi.com

LITIGATION
Hussain Eisa Al Shiri
h.shiri@tamimi.com

PRIVATE CLIENT
Essam Al Tamimi
e.tamimi@tamimi.com

PRIVATE EQUITY
Alex Saleh
alex.saleh@tamimi.com

PRIVATE NOTARY
Taiba Al Safar
t.alsafar@tamimi.com

REAL ESTATE
Tara Marlow
t.marlow@tamimi.com

REGULATORY
Andrea Tithecott
a.tithecott@tamimi.com

TAX
Shiraz Khan
s.khan@tamimi.com

TECHNOLOGY, MEDIA & TELECOMMUNICATIONS
Martin Hayward
m.hayward@tamimi.com

Sectors

AUTOMOTIVE
Samir Kantaria
s.kantaria@tamimi.com

AVIATION
Yazan Al Saoudi
y.saoudi@tamimi.com

EDUCATION
Ivor McGettigan
i.mcGettigan@tamimi.com

EXPO 2020
Steve Bainbridge
s.bainbridge@tamimi.com

FMCG
Samer Qudah
s.qudah@tamimi.com

HEALTHCARE
Andrea Tithecott
a.tithecott@tamimi.com

HOTELS & LEISURE
Tara Marlow
t.marlow@tamimi.com

INNOVATION, TECHNOLOGY & ENTREPRENEURSHIP
Ahmad Saleh
ah.saleh@tamimi.com

PROJECTS
Mark Brown
m.brown@tamimi.com

RAIL
Foutoun Hajjar
f.hajjar@tamimi.com

SHIPPING
Omar Omar
o.omar@tamimi.com

SPORTS & EVENTS MANAGEMENT
Steve Bainbridge
s.bainbridge@tamimi.com

TRANSPORT & LOGISTICS
Yazan Al Saoudi
y.saoudi@tamimi.com

Country Groups

CHINA GROUP
Jody Waugh
j.waugh@tamimi.com

INDIA GROUP
Samir Kantaria
s.kantaria@tamimi.com

KOREA GROUP
Omar Omar
o.omar@tamimi.com

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

Chambers Global

Contact Us

UNITED ARAB EMIRATES

Abu Dhabi Al Sila Tower, 26th Floor, Abu Dhabi Global Market Square, Al Maryah Island, PO Box 44046, Abu Dhabi, UAE

T: +971 2 813 0444 / F: +971 2 813 0445
infoabudhabi@tamimi.com

Dubai Internet City DIC Building No. 5, G 08, PO Box 500188, Dubai, UAE

T: +971 4 391 2444 / F: +971 4 391 6864
infodic@tamimi.com

Dubai International Financial Centre 6th Floor, Building 4 East, Dubai International Financial Centre, Sheikh Zayed Road, PO Box 9275, Dubai, UAE

T: +971 4 364 1641 / F: +971 4 3641 777
info@tamimi.com

Dubai Maze Tower Level 15, Sheikh Zayed Road, PO Box 9275, Dubai, UAE

T: +971 4 331 7161 / F: +971 4 331 3089
info@tamimi.com

Ras Al Khaimah Julphar Office Tower, 39th Floor, Al Jissar Street, PO Box 34053, Ras Al Khaimah, UAE

T: +971 7 233 3841 / F: +971 7 233 3845
inforak@tamimi.com

Sharjah Al Khan Corniche Street Near Al Qasba Canal 30th Floor, Al Hind Tower PO Box 5099, Sharjah, UAE

T: +971 6 572 7255 / F: +971 6 572 7258
infosharjah@tamimi.com

BAHRAIN

Manama Bahrain Financial Harbour, West Tower, 13th floor, Suite 1304, Office 13B, Building 1459, Block 346, Manama, Bahrain

T: +973 17 108 919 / F: +973 17 104 776
infobahrain@tamimi.com

EGYPT

Cairo Building No. 5&7 (Star Capital Building), 10th Floor, Geziret El Arab Street, Mohandseen, Giza, Cairo, Egypt

T: +20 2 3368 1000 / F: +20 2 3368 1002
infoegypt@tamimi.com

Al Tamimi & Company is associated with Nour & Partners providing legal services in Egypt.

IRAQ

Baghdad Al Harithiya, Kindi St., Dist. 213 Building 106, First Floor, Baghdad, Iraq

T: +964 780 029 2929 / F: +964 1 542 0598
infoiraq@tamimi.com

Erbil English Village, Gulan Street, Villa no. 130, Erbil, Iraq

T: +964 780 588 7848 / F: +964 750 445 2154
infoiraq@tamimi.com

Basra infoiraq@tamimi.com

JORDAN

Amman 6th Circle, Emmar Towers, 11th Floor, Tower B, PO Box 18055, Zip 11195, Amman, Jordan

T: +962 6 577 7415 / F: +962 6 577 7425
infojordan@tamimi.com

KUWAIT

Kuwait City Khaled Bin Al Waleed Street, Sharq, Al Dhow Tower, 16th Floor, PO Box 29551, Safat 13156, Kuwait City, Kuwait

T: +965 2 246 2253 / F: +965 2 296 6424
infokuwait@tamimi.com

Al Tamimi & Company International Ltd. provides services in Kuwait through a joint venture with Yaqoub Al-Munayae. Yaqoub Al-Munayae is a registered and licensed lawyer under the laws and regulations of Kuwait.

OMAN

Muscat Al Assalah Towers, Building 223, Block 237, Office 409, Street 3701, Ghubrah South, Muscat, Oman

T: +968 2421 8554 / F: +968 2421 8553
infooman@tamimi.com

Al Tamimi, Al Barwani & Co is trading under the registered trade mark of "Al Tamimi & Company".

QATAR

Doha Tornado Tower, 19th Floor Majlis Al Taawon Street, PO Box 23443, West Bay, Doha, Qatar

T: +974 4457 2777 / F: +974 4360 921
infoqatar@tamimi.com

Adv. Mohammed Al-Marri in association with Al Tamimi & Company

SAUDI ARABIA

Al Khobar 9th Floor, Zamil House Prince Turkey Street, Corniche District, PO Box 32348, Al Khobar, Saudi Arabia 31952

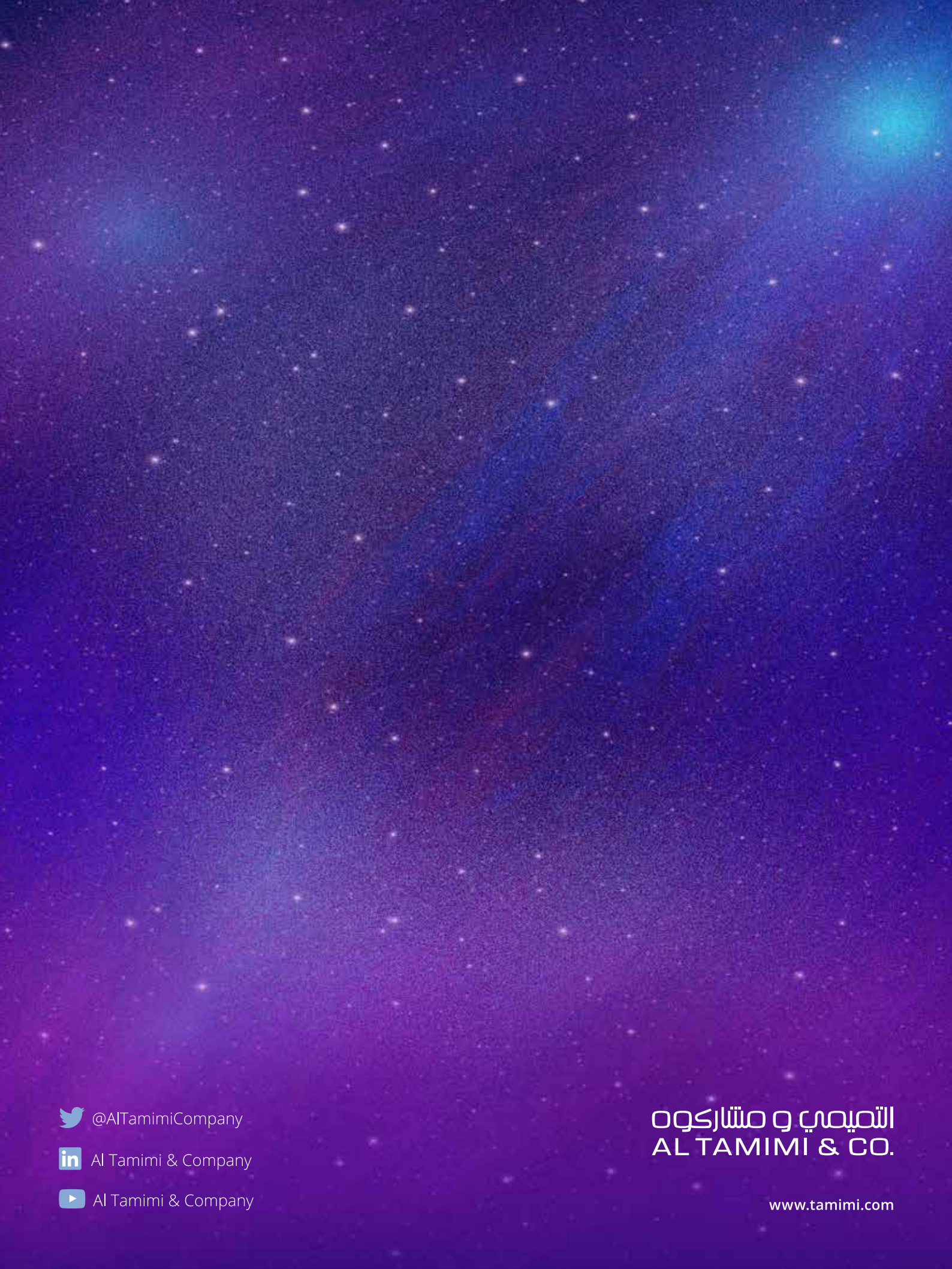
T: +966 13 821 9960 / F: +966 13 821 9966
infoalkhobar@tamimi.com

Jeddah King's Road Tower, 11th Floor, King Abdulaziz Road, Al Shate'a District, PO Box 9337, Jeddah, Saudi Arabia 21333

T: +966 12 263 8900 / F: +966 12 263 8901
infojeddah@tamimi.com

Riyadh Sky Tower (North Tower), 9th Floor, King Fahad Road, Al Olaya District, PO Box 300400, Riyadh, Saudi Arabia 11372

T: +966 11 416 9666 / F: +966 11 416 9555
inforiyadh@tamimi.com


@AlTamimiCompany
Al Tamimi & Company
Al Tamimi & Company
التميمي و مشاركوه
AL TAMIMI & CO.
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