

Issue 319 | May 2019

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AL TAMIMI & CO.

# LAW UPDATE

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**Accommodating  
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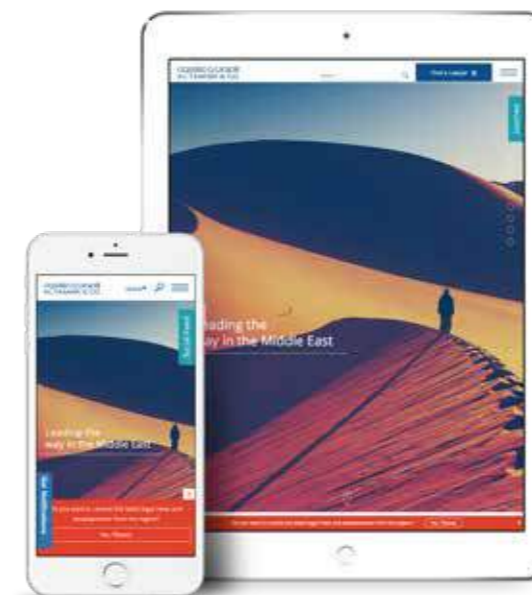
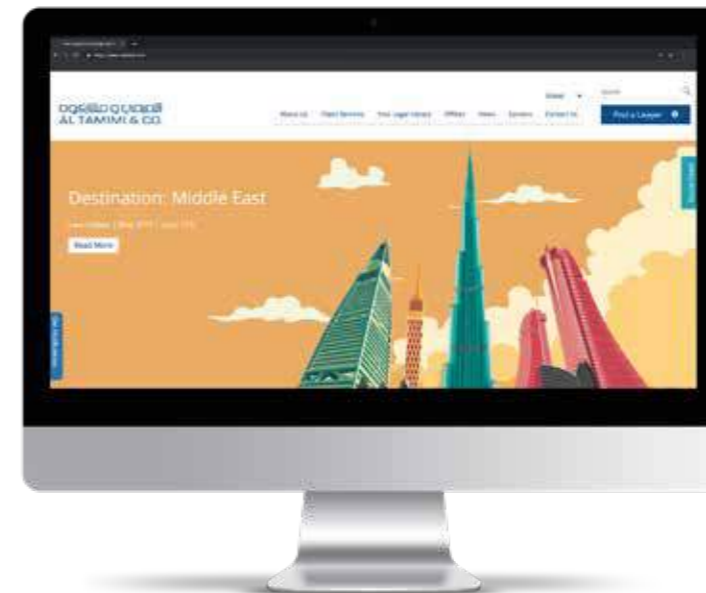
**Property Assets: The  
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# LAW UPDATE

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**Production**  
Nigel Higgins  
n.higgins@tamimi.com

**Creative**  
Noura Haggag  
n.haggag@tamimi.com

Shriya Sanjeev  
s.sanjeev@tamimi.com

**Legal Editor**  
Siobhan Farrell  
s.farrell@tamimi.com

**Federal Gazettes**  
Zane Anani  
z.anani@tamimi.com

**Translation**  
Vincent Percival  
v.percival@tamimi.com

**Cover Illustration**  
Alston Savio Rodrigues  
alston.rodrigues@hotmail.com

**Images**  
Shutterstock

**For information on Law Update**  
info@tamimi.com

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# In this Issue

*Welcome to the May 2019 issue of Law Update.*

Ramadan Kareem! We wish you and your families a blessed and peaceful Holy Month.

This month's edition focuses on Real Estate / Hotels & Leisure across the region.

It is interesting to note the different stages at which different countries find themselves when it comes to zeroing in on the role real estate plays in their respective economies.

For almost two decades Dubai has invested a lot of thought and energy into how best to diversify and broaden its economy so as to reduce its reliance on its diminishing fossil fuel, and thereby create an alternative, sustainable revenue stream. The initial impetus in achieving this objective was to implement Sheikh Mohammed bin Rashid Al Maktoum's vision of 'build and they will come'; build residential, commercial, hotel & leisure facilities.

Following in the successful footsteps of the UAE in attracting unprecedented international investment, other Middle Eastern countries have implemented measures with a view to opening up their economies in order to entice foreign direct investment and boost their economies. Our experts in our Cairo office take a close look at the impressive results yielded by the government's 'urbanisation' policy. By making 'property development' one of the economy's cornerstones, it has signalled to the broader region and international investors that it is now open to doing business on this level (page 57).

In a similar vein, Oman has paved the way, through innovative legislation, for further local, regional and international investment in its tourist industry (page 61), whereas in Bahrain, the establishment of the equivalent of Dubai's Real Estate Regulatory Authority ('RERA') has resulted in defined boundaries being set which offer developers and consumers alike a clear framework in which to do business where all parties involved are aware of their rights and obligations in real estate transactions (page 87).

Our experienced Technology, Media and Telecommunications team in Dubai goes on to analyse the growing business of FinTech and provides an update on tokenisation of real estate assets and the use of blockchain in real estate transactions (page 79). Our Dubai experts then take a close look at the influence of 'edge computing' on the location and construction of micro data centres (page 65).

Key to many economies in the region is the value added by the tourist industry. Our Dubai Real Estate Team focuses on how to get it 'right' when it comes to building, owning, operating and refurbishing hotels with a view to minimising disruption to the guest and the owner's bottom line (page 27).

Even though countries in the Middle East are at varying stages of economic development, slowly but surely some recognise the need for change, the need for diversity, if they are to compete on an international platform against a background of diminishing resources. Taking the lead in forging a new economic path, our Dubai and Abu Dhabi teams have experienced the highs and the lows of doing business in local, regional and international markets in the good and the not so good times, and as a result, our UAE teams are well placed to share the benefit of their experience with our regional teams and clients which are now embarking upon similar journeys.

This month our Judgments section covers a number of interesting decisions. Our DIFC Litigation team reports on a decision of the DIFC Court of Appeal which confirmed that companies with no substantial connection with the DIFC (i.e., companies incorporated outside of the DIFC) may be subjected to the DIFC's jurisdiction if the jurisdiction of the DIFC is clearly elected in nominee or side agreements.

A Court of Cassation decision underlined the importance of the freedom of religion and faith when it decided that the right to raise questions about someone's religion or faith belongs solely to the person whose faith or religion is being questioned.

We hope you find this month's Law Update helpful and informative.

Should you require any further information, please do not hesitate to reach out.

Best regards,

*Husam Hourani*

[h.hourani@tamimi.com](mailto:h.hourani@tamimi.com)

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# CON- TENTS



# The DIFC Court of Appeal Confirms the DIFC Courts' 'Necessary or Proper Party' Jurisdiction



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](mailto:info@tamimi.com)



**Peter Wood**  
Senior Counsel  
Dubai, UAE  
[p.wood@tamimi.com](mailto:p.wood@tamimi.com)

## Introduction

In an important and helpful recent decision that provides further certainty and clarity as to the limits of the DIFC Courts' jurisdiction, the DIFC Court of Appeal confirmed that the DIFC Courts do have 'necessary or proper party' jurisdiction.

That is, the Court has jurisdiction to order the joinder of a party to proceedings in circumstances where the claim against that party does not otherwise fall within the parameters of Article 5 of the Judicial Authority Law (Law No 12 of 2004, as amended) ('JAL'). Article 5 of the JAL sets out those circumstances in which the DIFC Court of First Instance will have exclusive jurisdiction to hear and determine a matter.

The Court held that it had such jurisdiction because, inter alia, Rule 20.7 of the Rules of the DIFC Courts ('RDC'), which permits the Court to order that a person be added as a new party to a proceeding, is a DIFC Regulation for the purposes of the JAL and the regulation confers jurisdiction upon the Court which it can exercise as a matter of discretion if the criteria in the RDC are met.

The Court stated that RDC 20.7 "merely provides a logical extension to the provisions of the gateways in enabling the court to assume jurisdiction over parties who are intimately concerned and connected with the parties and disputes which fall within the jurisdictional requirements of Article 5(A)(1) of the JAL."

## Background

This was an appeal from a decision of Justice Giles dated 12 February 2018 in which his Honour held that the Court had no jurisdiction under RDC 20.7(2) to order the joinder of the Second Defendant, Mr

Al Fadl, by the Claimants, where the claim against that defendant did not otherwise fall within the parameters of Article 5(A)(1)(a)-(d) of the JAL and that Article 5(A)(1)(e) of that law "was not brought into play by reason of the terms of that Rule of Court, whether or not it was to be seen as a "DIFC Regulation" for the purposes of that subsection of the Article."

Lebanese Canadian Bank SAL ('LCB') (in liquidation) was a banking business based in Beirut. The Claimants acquired minority shareholdings in LCB during 2006 - 2007. The First Defendant, Deloitte & Touche (ME) ('DTME'), is an accounting firm operating through branches in a number of countries in the Middle East including Dubai and is a registered auditor in the DIFC. Its location within the DIFC gave rise to jurisdiction against it under Article 5(A)(1)(a) of the JAL. Mr El Fadl was a partner in DTME and also the Managing Partner of Deloitte & Touche ('DTL') a company registered in Lebanon.

The claims in the proceedings were for alleged breaches of duties as auditor in relation to the audits of the financial statements of LCB for the financial years ending 31 December 2006, 2007, 2008 and 2009. The audits were performed by DTL pursuant to letters of engagement with LCB, for which it was alleged that DTME were responsible. Mr Fadl was the senior individual responsible for the audit.

It was alleged that audit opinions given by DTME were dishonestly given for the years 2007 - 2010 with a view to supporting the Board of Directors, the majority shareholders and the Management of LCB when faced with the Claimants' demands for proper governance and controls to eliminate Anti-Money Laundering/Counter-Terrorism Funding risks and other risks relating to unsecured loans to a subsidiary of LCB and related party transactions. It was said on behalf of the Claimants that properly undertaken audits would have revealed the mismanagement which took place in the relevant years but, instead, DTME gave "partisan audit opinions" which acquitted LCB's management of any wrongdoing.

It was further alleged that Mr El Fadl was responsible for the audits of LCB, which were conducted by DTME, through DTL and that at all material times Mr El Fadl acted as the agent of DTME. The Claimants alleged that Mr El Fadl (and DTME) knew that LCB's management would rely on its audits to defeat the Claimants' allegations of mismanagement and they "wrongly verified LCB's AML/CTF compliance with Lebanese Law 318, failed to consolidate Tabadul's accounts (which DTME audited) with those of LCB and failed to identify Tabadul's unlawful trading and the true extent of its debt."

## Decision at First Instance

In his judgment of 12 February 2018, Justice Giles described the Claimant's position: "the Claimant said that there was an issue involving the new party, Mr Fadl, which was connected to the matters in dispute in the proceedings, being the claims against DTME: and that the desirability lay in having all claims determined together, and in avoiding what they alleged were, for them, impediments to a just resolution in the Lebanese Courts."

The Judge considered how RDC 20.7(2) could assist the Claimants when seeking to add Mr El Fadl as a party in circumstances where the claim against him could not otherwise constitute a claim falling within one of the jurisdictional gateways. Justice Giles did not accept that the wording of RDC 20.7(2) could give rise to a freestanding "gateway of jurisdiction" because he viewed the Rules of Court as procedural only and as not providing for jurisdiction above and beyond the JAL. Referring to the definition in Article 2 of the JAL which states that the Rules are "rules regulating litigation procedure before the Courts" and the provision in Article 4(II)(b) of the JAL that the Chief Justice has power to "approve and issue the Rules of Court and the DIFC Regulations falling within the Courts' jurisdiction", the Judge concluded that the Rules operated within the jurisdictional limits in the JAL and that RDC 20.7(2) could not, of its own force, enlarge the court's jurisdiction beyond that set out in Article 5 (A)(1) of the JAL.

Article 5(A)(1)(e) of the JAL provides that the Court shall have exclusive jurisdiction to hear and determine "any claim or action over which the Courts have jurisdiction in accordance with DIFC Laws and DIFC Regulations". In this context, the Judge went on to consider whether or not the RDC constitute DIFC Regulations for this purpose. In his Honour's view, when subparagraph (e) referred to jurisdiction "in accordance with DIFC Laws and DIFC Regulations" there must be found a clear conferral of jurisdiction by the relevant Law or Regulation and that RDC 20.7 could not be seen as having that effect. Accordingly, he concluded that the Rule did not enable the joinder of a party where the issue involving that party and an existing party was a claim which the court did not otherwise have jurisdiction to hear and determine under one of the other gateways or under some other statutory or regulatory provision falling within subparagraph Article 5 (A)(1)(e) of the JAL.

# The DIFC Court of Appeal has confirmed that the DIFC Courts do have ‘Necessary and Proper Party’ jurisdiction to order the joinder of a party to proceedings in circumstances where the claim against that party does not otherwise fall within the parameters of Article 5 of the Judicial Authority Law.

## Court of Appeal

The Court of Appeal considered that the principal issues for determination were: (i) whether RDC 20.7 is a ‘DIFC Regulation’; and (ii) if so, whether it confers jurisdiction on the Court for the purpose of Article 5 (A)(1)(e) of the JAL. Taking each issue in turn:

First, in all the circumstances and having regard to the proper interpretation of the relevant rules and legislation, the Court held that the RDC do constitute DIFC Regulations. The Court’s analysis by which it reached this conclusion is set out at paragraph 40 of the judgment.

Second, as to RDC 20.7 which provides that “the court may order a person to be added as a party”, the Court considered whether this gave it a power to assume jurisdiction over a party where the criteria in the Rule is met, notwithstanding the Article 5(A) (1)(a)-(d) jurisdictional gateways. The Court found that whilst the Rule does not expressly confer jurisdiction, “it clearly sets out a criterion for the joinder of a party, in the same way as RDC 21 does in respect of the joinder of additional parties to counterclaims or for the purposes of seeking indemnity or contribution.”

The central issue for the Court, as a matter of interpretation was put thus:

*“if RDC 20 does not confer jurisdiction, their contribution to the administration of justice is very limited indeed, providing only that a claimant who had begun an action against one defendant alone could later apply to join in that action a person that he could, as of right, have included when issuing the claim form, had he thought of it; or, put another way, the Rule would enable him to apply to have two defendants in one action instead of having to pursue them in separate actions, where there was a sufficiently common link between the two.”*

The Court concluded that the:

*“indisputable fact is that the wording of RDC 20.7 is wide enough to confer jurisdiction upon the court by giving it the power to make the order in question if the criteria are satisfied. The words give the Court the discretionary power to allow joinder in the circumstances outlined. Whilst not expressly conferring jurisdiction, by using that terminology, the Rule makes no reference to a requirement that any of the Article 5 (A) (1) (a)-(d) gateways should apply and for the reasons given above, were it not to confer such jurisdiction, the Rule would be robbed of most of its force.”*

## Conclusion

The Court of Appeal decision provides welcomed clarity on the jurisdiction of the Court to join a third party to a proceeding in circumstances where it would not have jurisdiction in respect of a standalone claim against that party.

As stated by the Court, “[t]here is self-evidently merit in a court having something in the nature of a “necessary or proper party” rule so that matters in dispute can be decided between all the relevant parties, without the risk of inconsistent decisions by different courts at different times with all the inherent additional cost and inconvenience involved.”

(1) Nest Investment Holding Lebanon S.A.L. (2) Jordanian Expatriates Investment Holding Company (3) Qatar General Insurance and Reinsurance Company P.J.S.C. (4) Ghazi Kamel Abdul Rahman Abu Nahl (5) Jamal Kamel Abdul Rahman Abu Nahl (6) Trust Compass Insurance S.A.L (7) International Insurance Company (Cyprus) Limited (8) His Excellency Sheikh Nasser Bin Ali Bin Saud Al Thani (9) Fadi Ghazi Abu Nahl (10) Hamad Ghazi Abu Nahl (11) Kamel Ghazi Abu Nahl vs Deloitte & Touche (M.E.) [2018] DIFC CA 011

Al Tamimi & Company’s DIFC Litigation team regularly advises on all matters in the DIFC Courts. For further information please contact Rita Jaballah ([r.jaballah@tamimi.com](mailto:r.jaballah@tamimi.com)) or Peter Wood ([p.wood@tamimi.com](mailto:p.wood@tamimi.com)).



# Landmark Cassation Precedent: Freedom of Religion and Faith



**Ahmed Zohny**  
Senior Associate  
Dubai, UAE  
a.zohny@tamimi.com



**Ashraf Mostafa**  
Senior Associate  
Dubai, UAE  
a.mostafa@tamimi.com

In accordance with Article 18 of the International Covenant on Civil and Political Rights and Article 18 of the Universal Declaration of Human Rights, freedom of religion and faith is at the core of internationally recognised human rights. It gives every person the right to freely choose and adopt a religion and/or faith of his/her choice.

The UAE permanent constitution has affirmed this human right in Article 32. This freedom is one of the underlying pillars of the UAE community which encompasses a vast diversity of expats with a prevailing spirit of tolerance and acceptance of others.

On 19 March 2019, the Dubai Court of Cassation issued a judgment in Court of Cassation Appeal No. 330/2018 Personal Status that further affirms and safeguards this right to freedom of religion and faith.

## Background

The case relates to the issue of a succession order by the Dubai Personal Status Court ('DPSC') in respect of the distribution of property in Dubai, owned by a Christian expat, following his death. A claim was brought by a Muslim lady (the 'Claimant') who alleged that the deceased had converted from Christianity to Islam, that they had married and that he lived as a Muslim until he died. If this had indeed been the case, then according to Islamic Shari'a rules, the Claimant would be entitled to the deceased's entire inheritance (as his non-Muslim heirs would have no inheritance rights).

The Claimant's claim was rejected by the DPSC at First Instance. However, the Claimant appealed against this judgment and the DPSC Court of Appeal overturned it ruling in favour of the Claimant.

The heirs of the deceased appealed the DPSC Court of Appeal's judgment before the Dubai Court of Cassation which overturned the Appeal Court's decision with the Court of Cassation ruling on the merits of the case.

## Court of Cassation Judgment

The Court of Cassation stated that the crux of this case hinged on the determination of two crucial issues, being:

i. **whether the deceased had married the Claimant:**

On this issue, the court found that the evidence presented by the Claimant regarding the occurrence of the marriage was insufficient. Not only was she unable to provide sufficient evidence to prove that they lived as a married couple for a period of six years as she had claimed, she was also unable to produce a valid marriage certificate. The authority which she claimed had issued the marriage certificate confirmed that there was no record of the marriage certificate that she produced to the Court, so it was deemed to be a false certificate. In addition, the testimonies from her witnesses contained many irreconcilable discrepancies.

ii. **whether the deceased had converted to Islam:**

Regarding the issue of the determination of the deceased's religion at the time of his death, the court set forth a very important principle. The court stated that *"every person enjoys the freedom of religion and faith. This freedom rests primarily on the intent and will of that person, which falls within the ambit of that person's relation with his deity and it is not permissible to question this relationship as such questioning will lead to an inquiry into a person's will and intent. Such inquiry, by virtue of its nature, is impossible after that person dies. Where the belief or faith of a person may result in religious and legal ramifications that will affect the rights of others, then the only way to prove such belief or faith is by producing official documents issued by the relevant competent authorities that are sufficient to establish the belief or faith of the deceased person beyond any doubt"*.

The Court of Cassation ultimately determined that the right to raise matters related to religion or faith only belongs to the person whose religion or faith is in question. Therefore, after a person dies it

**Every person enjoys the freedom of religion and faith.**

is not possible to challenge his/her religion or faith, unless the party challenging it is able to produce the necessary official written documents to support their case. Thus, in this case, as the Claimant was not able to provide any official written documents to demonstrate the deceased's conversion to Islam, the Court held that any further inquiry into the religion of the deceased was irrelevant to the case.

## Conclusion

This landmark precedent has strengthened the protection of freedom of religion and faith by ensuring that:

- i. in the absence of official documentation issued by the relevant, competent authority, a deceased person's religion may not be doubted or open to interpretation for the sake of benefiting another person's religious or legal rights; and
- ii. the stability of the succession among the legal heirs of a deceased person is protected.

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



# DIFC Courts Recognise Side Agreements in Injunction Proceedings for the First Time



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

## Introduction

Al Tamimi & Company has successfully acted on behalf of three claimants to obtain interim injunctive relief from the DIFC Court of First Instance against a defendant based in the Emirate of Ajman, in a dispute arising from breaches of various agreements ('the Side Agreement', 'the Shareholders' Agreement' and the 'Lease Agreement') governing the operation of a school in the Emirate.

The DIFC Courts found it had jurisdiction to hear the application for relief in accordance with clauses in the Side Agreement and Shareholder's Agreement that opted into the DIFC's jurisdiction and amended the explicit terms of the memorandum of association ('MOA') which created the third claimant under the UAE Commercial Companies Law (Federal Law no.8 of 1984 as amended by Federal Law no.2 of 2015; the 'Commercial Companies Law').

## Background

The first claimant was a businessman who owned the second claimant, a company registered in the Emirate of Ajman. The defendant was the sponsor and a nominee shareholder of the third claimant, another company registered in Ajman, which owned a school there. Under the relevant agreement, the defendant owned 51 percent of the third claimant's shareholding but held it on trust for the second claimant, and through a multi-year lease, he leased to the claimants the land and buildings on which the school was established.

The claimants complained that the defendant was interfering unjustly in the operation of the school which the parties had opened on the defendant's land. The defendant had granted the first claimant powers to manage the third claimant and the school under a power of attorney ('POA') made in accordance with the Side Agreement.

The defendant revoked the POA with the effect of freezing the third claimant's bank accounts and assets. The claimants sought urgent injunctive relief from the DIFC Courts, requesting remedies that would allow them to continue to operate the school.

## The DIFC Court Injunction and Return Date

The Court granted an interim injunction on an ex-parte basis. Amongst other interim remedies ordered pending trial of the dispute, the DIFC Courts ordered the defendant to reinstate the POA, so the third claimant and the school could continue their operations, as well as to return a number of post-dated cheques that the defendant held as payment for the school's future rent of its property from him.

At the return date hearing for the injunction, the defendant argued that the interim injunction order should be set aside because the DIFC Courts did not have jurisdiction to hear the underlying claim brought by the claimants.

The defendant submitted that the MOA was a constitutional document of the third claimant which took precedence over the Side Agreement and Shareholder Agreement which, he said, had not been, and were not capable of being, validly notarised, attested and registered in accordance with the Commercial Companies Law. The dispute was, therefore, outside the jurisdiction of the DIFC Courts because the standard dispute resolution clause in the MOA meant that disputes should be decided under the jurisdiction of the Ajman Courts.

The defendant also said that the substance of the dispute related to alleged breaches of the lease agreement which was governed by the laws of the Emirate of Ajman and was subject to the exclusive jurisdiction of the Courts of Ajman. He argued that other facts of the case pointed to the Ajman Courts being the appropriate forum for the dispute: the defendant was a UAE national domiciled in Ajman; the claim related to a school located in Ajman; the material agreements were concluded, notarised and registered (where applicable) in Ajman; and the second and third claimants were registered as companies in the Emirate of Ajman and the Ajman Free Zone.

The claimants responded, arguing that the Side and Shareholders' agreements expressly gave priority to the terms of those agreements in the case of any conflict with the MOA; the default term in the MOA and Commercial Companies law would necessarily mean that disputes with companies registered in Ajman would have to be heard in Ajman, regardless of jurisdictional clauses in relevant contracts; and in accordance with the DIFC Courts' own findings in cases like *Standard Chartered Bank v IGPL* [2015] CFI 026, the DIFC Courts were courts

of the UAE for the purposes of the MOA and, by implication, the Commercial Companies Law.

The claimants denied that their claim was substantially over the lease agreement: they had pleaded breaches of terms of the Side and Shareholders' agreements too. Finally, they said that the DIFC Courts did not recognise the application of the doctrine of forum non conveniens when other domestic courts of the UAE could have jurisdiction over the dispute (following *Investment Group Private Ltd v Standard Chartered Bank* [2015] DIFC CA 004). Even if the doctrine applied, Article 31(5) of the UAE Civil Procedure Code allows parties to opt out of the Ajman Courts' jurisdiction where gateways into other jurisdictions were available.

In his ex tempore judgment, the Judge, H.E. Justice Omar Al Muhairi, upheld the injunction pending trial of the defendant's jurisdiction application. He considered that the DIFC Courts had jurisdiction to make the injunction, given the structure of the agreements. He also found that the balance of convenience favoured the claimants on the facts.

## Conclusion

The Court has established a helpful precedent for entertaining disputes based on exclusive jurisdiction clauses in favour of the DIFC contained within side or nominee agreements in respect of companies incorporated outside of the DIFC, notwithstanding the express terms of any articles of association. This is particularly important given the DIFC Courts' willingness to make interim orders and grant interim injunctive relief, which provide useful and flexible tools for contracting parties.

The facts that none of the parties in this case had any substantial link to the DIFC and that the defendant was based in Ajman were overridden by the clear and express DIFC jurisdiction clauses in at least two of the agreements, which were given contractual priority by the agreements.

The DIFC Courts have also demonstrated the adaptable rules of contractual interpretation used in reading and interpreting formal company documents together with nominee or side agreements.

(1) *Vinod Sharma* (2) *Avalon Global Education Services Limited* (3) *Avalon Heights World Private School LLC v Sheikh Khaled Saeed Humaid Al Nuaimi* [2018] CFI 022

*Al Tamimi & Company's DIFC Litigation team regularly advises on injunctions in the DIFC Courts. For further information please contact Rita Jaballah (r.jaballah@tamimi.com) or Peter Smith (p.smith@tamimi.com).*

# Accommodating Disabilities in the Workplace



**Anna Marshall**  
Senior Associate  
Dubai, UAE  
a.marshall@tamimi.com

The UAE Federal Cabinet passed a resolution in July 2018 (No 43 of 2018) regarding supporting individuals with a disability in the workplace (the 'Resolution'). The overall purpose of the Resolution is to assist people with a disability to enter and remain in the workforce and to engage in active and productive employment on an equal basis with their colleagues, notwithstanding their disability. The Resolution applies to governmental entities, private sector employers and non-profit organisations.

For the purpose of the Resolution, individuals are considered to be 'people of determination' if they have a permanent or temporary disability or deficiency in their physical, sensory, mental, communicative, educational or psychological abilities which adversely affects their ability to perform their work compared to other people without a disability. For the purpose of this article such individuals are referred to as 'people with a disability'.

## Non-discrimination against People with a Disability

A key underlying principle of the Resolution is that people with a disability should be protected against discrimination. The Resolution defines discrimination as any distinction, exclusion or restriction based on a person's disability with the aim or effect of weakening, impairing or nullifying the equal recognition, enjoyment or exercise of any of the rights granted under UAE legislation.

The protection against discrimination applies from the very outset, even before a candidate joins a new employer. During the recruitment and selection process, employers cannot discriminate against people with a disability and must make reasonable accommodations for them during job interviews

and candidate assessments. When advertising job vacancies, employers must not contain any discriminatory language and must publish the advertisements in multiple forums and mediums to ensure they are widely accessible.

If a person with a disability is successful in the recruitment process and is offered the role, they should not be discriminated against in respect of their salary or benefits and accordingly they should be offered the same salary and employment benefits as a non-disabled person would be offered for the same role with that employer. This reflects an overarching aim of the Resolution to ensure equality (including in terms of salary and employment benefits) for people with a disability compared to their colleagues without a disability.

In terms of the physical work environment, employers are required to adapt and update workplace equipment and devices as required, and to ensure that the premises where the individual works is appropriate including entrances, internal areas and exits from the building (including in emergency situations). For example, an individual in a wheelchair is likely to require ramp access (instead of stairs) and some doorways, corridors or other spaces within the workplace may need to be widened to accommodate a wheelchair. The employer should also provide facilities and assistance to enable people with a disability to attend and participate in conferences, meetings, events and training on an equal basis with their peers. This reflects an underlying aim of the Resolution to ensure equality of opportunities for people with a disability compared to their colleagues.

**The overall purpose of the Resolution is to assist people with a disability to enter and remain in the workforce and to engage in active and productive employment on an equal basis with their colleagues, notwithstanding their disability.**

## Making Adjustments to Accommodate a Person's Disability

Once a person with a disability has joined an organisation, the employer has a continuing obligation to provide a suitable work environment for them and to make any necessary accommodations to ensure they can perform their work efficiently and safely. In considering what constitutes a reasonable workplace accommodation for a person with a disability, various factors are relevant including the size and resources of the employing entity, the nature and circumstances of the work environment, and the nature and degree of the individual's disability.

An employer's responsibility is not limited to adjusting the physical workspace to accommodate a person's disability. Employers must also give due consideration to a person's disability when considering their working hours and what flexibility may be appropriate in this regard, particularly if their disability makes it difficult for them to follow the employer's normal working days and times.

Further, employers must factor in the person's disability when discussing and setting their performance targets and subsequently assessing their performance, including any impact this may have on their eligibility for a promotion, bonus payment or salary increment. Performance



## A key underlying principle of the Resolution is that people with a disability should be protected against discrimination.

assessments should be used as a way to identify and address any difficulties being faced by the person in performing their job to the best of their abilities. Appropriate training, rehabilitation and development programmes should be implemented to help people with a disability to reach their full potential in the workplace.

### Termination of Employment

The Resolution also addresses the termination of employment for people with a disability, and specifically states that such individuals are “entitled to maintain their jobs” even if their disability worsens over time, so long as they are able to perform their work. Further, a person with a disability should not have their employment terminated due to their disability, unless a competent medical committee determines they are no longer able to work, or if they reach retirement age. In cases where the individual's health condition/disability requires them to take time off work, the employer should “preserve” their job and assist them to rejoin the workplace when it is appropriate for them to do so.

### Oversight of the Resolution

The Ministry of Community Development (the ‘Ministry’) is responsible for coordinating with other government departments to ensure that the Resolution is effectively implemented in practice. To this end, employers also have an obligation to cooperate with the Ministry to enable the Ministry to create a record of people with a disability and their training qualification, skills and professional history.

We recommend that employers also keep clear internal records of what adjustments and accommodations it has made to accommodate people with a disability within their organisation, so that this information can be made available to the Ministry or other authorities if required in order to demonstrate compliance with the Resolution.

The Resolution is an important step in ensuring that people with a disability can participate fairly and effectively in the labour market, and all public and private sector employers should comply with the Resolution (and its underlying principles of equity and non-discrimination) at all stages of the employment relationship.

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*Al Tamimi & Company's Employment & Incentives team regularly advises on all types of employment and HR matters. For further information please contact Anna Marshall (a.marshall@tamimi.com).*

## Saudi Arabia Transfer Pricing Bylaws: Key Questions Answered



**Shiraz Khan**  
Head of Taxation  
Dubai, UAE  
s.khan@tamimi.com

*N.B. This article was originally published in Bloomberg Tax on 5 April 2019.*

The transfer pricing regulations now effective in Saudi Arabia are a significant tax development and introduce new compliance requirements related to transfer pricing documentation and Country-by-Country (‘CbC’) reporting.

Following the publication of the draft transfer pricing bylaws for public consultation in December 2018, the General Authority of Zakat and Tax (‘GAZT’) of the Kingdom of Saudi Arabia (‘KSA’) issued the final Transfer Pricing Bylaws (‘TP Bylaws’) in February 2019.

The final TP Bylaws are broadly in line with Organization for Economic Co-operation and Development (‘OECD’) TP Guidelines and do not contain any major surprises. However, there were a few changes to the draft TP bylaws that were published for consultation.

The key changes were additional clarification on areas where there was some uncertainty such as the application of the TP Bylaws to pure zakat paying entities (N.B.: entities which are wholly owned by Saudi or GCC nationals are subject to zakat rather than income tax), an extension of the period for submission of the local file and the introduction of a requirement to obtain an affidavit from a licensed auditor.

### Why Were the Bylaws Introduced?

The OECD initiated a project at the request of the G-20 to prevent base erosion and profit shifting (‘BEPS’), tackle international tax avoidance and increase tax transparency and information exchange. As part of the BEPS project, the OECD developed a 15-point BEPS action plan and established a

BEPS inclusive framework ('BEPS IF') under which signatories committed to implement four minimum standards of the BEPS action plan.

As a signatory to the BEPS IF, the KSA has agreed to implement the four minimum standards. The BEPS minimum standards include the OECD recommendations related to Action 13 of the BEPS Action Plan on transfer pricing documentation and CbC reporting. The KSA introduced TP Bylaws as part of its commitment as a member of the BEPS IF.

The TP Bylaws will also enable the KSA to bring its tax rules in line with international standards and will provide the GAZT with additional tools to protect the KSA's tax base and prevent companies from using related party transactions to artificially shift profits from the KSA to other countries with lower tax rates or no taxes.

## When Do They Apply?

The TP Bylaws apply to the reporting year ending on December 31, 2018 and all subsequent reporting years.

## What is the Impact?

Under the current KSA tax law, companies that are subject to KSA tax are already required to conduct related party transactions on an arm's length basis. In addition, KSA companies are required to maintain documentation to support the tax payable. However, there was no specific requirement to have transfer pricing documentation in place.

Previously, the GAZT relied on the provisions of the tax law to make any transfer pricing adjustments and there was no requirement to separately disclose related party transactions. Going forward, the GAZT will have more tools available to it and will be better able to scrutinise related party transactions.

Companies that are taxable in the KSA will now need to comply with additional requirements in the TP Bylaws, including disclosure obligations and preparation of master file and local file documentation and CbC reporting.

## Scope of the TP Bylaws

The TP Bylaws apply to all taxpayers in the KSA, including:

- companies that are wholly owned by non-Gulf Cooperation Council ('GCC') nationals (member states are the KSA, Kuwait, the United Arab Emirates, Qatar, Bahrain and Oman) and fully subject to income tax;

- companies with both GCC and non-GCC ownership that are subject to both tax and zakat; and
- permanent establishments of non-residents in the KSA.

The TP Bylaws will not apply to entities that are fully subject to zakat except where they will be required to comply with the CbC reporting requirements.

It is important to note that unless exempt by the TP Bylaws all related party transactions where there is a KSA taxpayer are within the scope of the TP Bylaws, regardless of the place of residence, nationality or domicile of the persons.

As such, the TP Bylaws apply to international transactions as well as domestic transactions, including transactions between taxpayers and entities that are fully subject to zakat.

## Main Provisions

### Arm's Length Principle

The 'arm's length' standard is based on the OECD Guidelines and requires transactions between two or more related parties to be conducted on terms that would be applied had the parties been independent.

### Definition of Related Party

The definition of related parties is very wide and potentially captures the relationship between two or more natural persons as well as the relationship between a natural person and a legal person. Two or more legal persons may also be related parties where they are under common control.

The concept of 'effective control' is also introduced, whereby a person can control the business decisions of another person, directly or indirectly, by way of a management agreement, a trust arrangement or control over 50 percent or more of the composition of the board of directors.

The definition of 'effective control' also extends to control exercised via a debt and equity relationship including through the right to receive 50 percent or more of the profits of the other person, the provision of a loan representing 50 percent or more of the debt and capital (excluding retained earnings) of the other person, and the provision of a guarantee to cover 25 percent or more of the other person's total borrowings.

Finally, 'effective control' also applies to control via a business relationship and is deemed to exist where 50 percent or more of the aggregate value of transactions is with a single customer and where there is an exclusive agency or distributorship relationship.

### Arm's Length Range

The TP Bylaws state that the arm's length range is a range of acceptable results such as prices, margins or profit shares produced by applying the most appropriate transfer pricing method. However, there is no guidance in the TP Bylaws on how to determine the arm's length range.

The GAZT have confirmed that where there is a range of results the interquartile range is an acceptable approach to determine an arm's length range.

### Approved Methods

The TP Bylaws set out approved transfer pricing methods to determine an arm's length result which are based on the OECD TP Guidelines. The approved transfer pricing methods are:

- comparable uncontrolled price method;
- resale price method;
- cost plus method;
- transactional net margin method; and
- transactional profit split method.

However, taxpayers may apply another transfer pricing method where they are able to demonstrate that none of these methods provides a reliable measure of an arm's length result.

All taxpayers will have to adopt one of the approved methods or otherwise justify why these methods are not appropriate and another method should be applied.

### Transfer Pricing Adjustments

The taxpayer is required to make an adjustment to the tax base if the transactions are not conducted on an arm's length basis. The GAZT may also require the taxpayer to adjust the tax base or reallocate revenue and expenses and disregard related party transactions in accordance with an arm's length outcome.

## Key Compliance Obligations

The TP Bylaws introduce new compliance requirements that affect all taxpayers in the KSA. The key obligations are set out below.

### Disclosure Requirement

All taxpayers with related party transactions will be required to submit to the GAZT, along with their annual income tax return, a disclosure form that includes details of their related party transactions, irrespective of the value of the transactions.

The disclosure is required to be made with the tax return within 120 days of the fiscal year end. For companies with a financial year ending on 31 December 2018, the first disclosure was required by 30 April 2019.

The disclosure must include an affidavit from a licensed auditor in the KSA certifying the consistent application of the transfer pricing policy by the taxpayer. While it is not clear precisely what this will involve in practice, in our view it does not mean that the auditor is required to confirm that the related party transactions are arm's length.

### Master File and Local File

Taxpayers with related party transactions of an annual value above six million Saudi Arabian riyal (\$1.6 million) are required to prepare and maintain a master file containing information on the global business operations and transfer pricing policies of the group and a local file containing detailed information on all controlled transactions. Pure zakat paying entities are exempt from the requirement to prepare a master file and local file.

There is no deadline by which the master file and local file are required; however, they may be requested by the GAZT any time up to 120 days after the fiscal year end and must be submitted to the GAZT within 30 days of the request (under the draft TP bylaws the local file was required to be submitted within seven days of the GAZT's request but the final TP Bylaws extended this period to 30 days).

For the calendar year 2019, the GAZT will give all taxpayers an extension of 60 days to submit the master file and local file.

### Country-by-Country Reporting

Taxpayers and fully zakat paying entities that are part of a multinational enterprise ('MNE') group and have consolidated group revenue exceeding 3.2 billion Saudi Arabian riyal are required to submit a CbC report within 12 months from the MNE's year end, and to notify the GAZT regarding the ultimate parent entity and the entity that submits the CbC report within 120 days of the end of the reporting year.

The CbC reporting notification and report is required to be submitted in the KSA by the ultimate parent entity or the surrogate parent entity of a MNE group in the KSA. A constituent entity that is not an ultimate parent or a surrogate parent of a MNE group must provide the notification and could file the CbC report in the KSA subject to certain conditions.

The CbC report will include information related to the aggregate value of revenue, profit (or loss) before tax, income tax paid, income tax accrued, stated capital, accumulated earnings and the number of employees.

### Penalties for Non-compliance

No penalties have been specified in the TP Bylaws for any non-compliance with the requirements. However, the GAZT reserves the right to impose penalties under the current tax law and, accordingly, penalties may apply for any adjustments to the tax liability. It is also possible that specific penalties may be announced later by new legislation.

### Do Other GCC Countries have Transfer Pricing Regimes?

While some other GCC countries, such as Qatar, Oman and Kuwait, have rules within their domestic tax laws which require related party transactions to be undertaken on arm's length terms, these countries do not have a specific requirement to have transfer pricing documentation in place.

As the United Arab Emirates, Qatar, Bahrain and Oman are also members of the BEPS IF, the expectation is that these countries will introduce specific legislation to implement the OECD recommendations on transfer pricing and CbC reporting under Action 13 in due course.

### Planning Points

The TP Bylaws are a significant development and introduce new compliance requirements related to transfer pricing documentation and CbC reporting.

As domestic transactions are within the scope of the TP Bylaws, it is important for taxpayers to maintain transfer pricing documentation to support the arm's length nature of the transactions even with pure zakat paying entities where required.

The disclosure form was required to be submitted by 30 April 2019 for all taxpayers with a financial year end of 31 December 2018 where they have related party transactions regardless of their value. It will be a major challenge for such taxpayers to identify the related party transactions within the given timeframe.

Although there is an extension of the period after which the GAZT may request transfer pricing documentation for 2019, giving businesses additional time, in practice, the requirement for a licensed auditor to certify that the transfer pricing policy has been applied on a consistent basis may mean that taxpayers will need to have transfer pricing documentation by the time they submit their tax return in 2019.

All MNEs operating in the KSA, and other companies operating in the KSA, should assess the impact of the TP Bylaws on their businesses and understand their tax obligations.

Businesses that already have transfer pricing documentation in place for example, MNEs that may have maintained such documentation due to transfer pricing requirements in other countries, should review their existing documentation to ensure that it is compliant with the KSA TP Bylaws.

Other businesses should seek to review their inter-company transactions and undertake a functional and economic analysis to ensure that they are conducted on arm's length terms, and put in place transfer pricing documentation to support the pricing.

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*Al Tamimi & Company's Tax Team regularly advises on transfer pricing, corporate tax, VAT and other tax matters in the Middle East. For further information please contact Shiraz Khan (s.khan@tamimi.com).*

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# CON- TENTS





Tara Marlow  
Partner  
Head of Real Estate, Hotels & Leisure  
Dubai, UAE  
t.marlow@tamimi.com

This month's focus is on Real Estate, Hotels & Leisure. Across the region, our teams analyse changes to legislation and provide detailed insights into the most recent trends and developments. The use of technology in the real estate sector is gaining momentum generally and discussions regarding the use of blockchain continue apace. Across the Middle East, real estate development tends to go hand-in-hand with hotel and leisure facilities. As a result, real estate investors have been able to extend their portfolios to hotel rooms and branded residence assets, with investment in holiday homes, in particular, showing a marked increase. The holiday homes sector is rapidly becoming a key market in its own right, particularly in Dubai, where the introduction of new legislation has fostered and encouraged growth. Despite current pressures on hotel occupancy and room rates in some countries, the hotel industry across the Middle East region continues to grow and mature, which is testament to the increasing appeal of the region for tourists. We expect this trend to continue with the implementation of exciting new mega-projects, particularly in Saudi Arabia.

# Destination: Middle East



# Hotel Development: Inception to Operation



**Tara Marlow**  
Partner  
Head of Real Estate, Hotels & Leisure  
Dubai, UAE  
t.marlow@tamimi.com

*N.B. This article was first published by Hotelier Middle East Magazine on 23 March 2011.*

Images of an elegant and luxurious hotel, glimmering in the sun on a white sandy beach, surrounded by palm trees gently swaying in the warm breeze evokes in most, if not all of us, dreamy thoughts of glamour, relaxation, pampering and absolute delight. Those in the industry know very well that whilst this is the experience the hotel staff strive hard to provide for their guests, achieving this requires extreme hard work and dedication. But this hard work doesn't start and end there - this is the public face of the hotel.

The 'private' life of the hotel starts long before the first guest checks in. In many respects, the development process (which commences with identification of a development opportunity and ends with completion of the finished product), is equally as difficult and demanding.

The hotel industry, whether you are an owner, developer or operator, is certainly not for the faint-hearted. This article seeks to outline the private life of the hotel - from inception through to its unveiling. This journey is in fact far from simple, and the development process will take many twists and turns before it is completed.

Whilst both an operator and an owner will each go through a similar process, this article focuses on the development process from an owner's perspective.

This is because not all owners will have the same level of knowledge and experience of development or the hotel industry. This article therefore seeks to show, simplistically, just how complex the development process is and how important it is to get it right. Hotel development is too expensive a business to get wrong!

The process will differ slightly from country to country throughout the Middle East, but on the whole is very similar throughout the region and so is designed to be a guide and a starting place.

## The Beginning: An Opportunity

An opportunity presents itself. Whether this is by way of a development site, an existing building under construction (or already constructed), or an operational hotel, the process starts.

Included in this article, on page 33 is a diagram outlining, in basic form, the various stages of an hotel development, together with identification of what's involved at each stage. This diagram cannot capture all the issues that may need to be dealt with, but hopefully provides an informative overview.

The structure commented on also assumes a stand-alone hotel. In the event the hotel is part of a larger mixed-use development, or forms part of a building which also includes residential and/or commercial components (which will not form part of the hotel and will not be managed by the hotel



operator), the structure necessarily becomes more complex. Additional issues and considerations will be involved in these circumstances.

## Due Diligence

The next step is to undertake a thorough due diligence exercise.

This will require the involvement of various professionals, including hospitality consultants, lawyers, surveyors, architects, accountants, insurers, government liaison representatives and potentially hotel operators.

The due diligence process forms the foundation upon which the project will evolve and the hotel will be built. It is a vital part of the process and it should be afforded sufficient time, resources and effort.

The due diligence process can be broken down into separate components, comprising the following:

- market research covering the geographical location of the project, competition of the proposed hotel, demographic information, potential customer analysis, the political and economic environment of the region, financial analysis of existing hotels in the vicinity of the proposed project, and trading and employment framework etc.;
- land and ownership investigation, to discover whether there are any potential problems with the land (survey and environmental issues), restrictions on the title or 3rd party interests etc., which may affect the development;
- development issues such as planning, access, utilities and licensing requirements - to understand what will be required, hurdles to be overcome and whether it will be possible to build the hotel as required;
- corporate structuring considerations: how does the acquisition impact the owner's corporate structure, is the project located in a different country, is a local company required, do property ownership restrictions apply to the owner, what corporate governance requirements need to be complied with internally?
- financial due diligence and planning: what is the tax regime in the location of the project, how does this impact the owner's existing operations and corporate structure,

can profits be repatriated, does a foreign investment regime apply to the owner's investment, what duties will be payable where goods/materials/services are imported, what are the estimated development and construction costs, can workers and materials be procured locally or do they need to be imported, what borrowing requirements does the owner have, what security will a lender require, and general consideration of lending arrangements to be agreed;

- business plan, forecast and risk analysis (summarising all aspects of the due diligence); and
- (for non-operational assets), hotel operator expressions of interest: it is always beneficial to involve the hotel operator at the earliest stage possible, to obtain their feedback and opinion of the proposed project and the location, together with confirmation of their interest to manage the hotel (subject to agreement of terms).

Where the asset proposed for acquisition is an operational hotel, the due diligence process as outlined above will be required to a large extent. Additionally, detailed analysis of the existing hotel operation and management itself is required as follows:

- review of existing hotel management agreements and consideration of whether sale of the asset will require operator consent or trigger termination, or whether the agreement (and thereby the operator) may be assigned to the owner, does the operator have a first right of refusal to purchase the hotel?
- consideration of the commercial terms of the operator's appointment, including fees, exclusivity arrangements, the existence of a performance test, freedom to dispose of or grant security over the hotel etc.;
- review of the existing hotel management team and performance of the hotel to date;
- review of financial records and audited accounts to establish the trading history of the hotel, income and expense levels and resulting profitability for the owner;
- inspection and survey of the hotel itself: what is the condition of the rooms and public areas, is a refurbishment required?
- is the back of house in good order?

- what is the quality of the FF&E and operating equipment: is there a need for large scale replacement?
- what is the age and quality of the infrastructure and M&E plant - have these been maintained properly, what are the likely costs where replacement and/or repair are required, what warranties over the plant and equipment will be transferred to the owner?
- HR and employees: does a trade union exist, how does the employment legislation regime of the country in which the hotel is located impact operation, what are the likely owner's costs associated with employment of the hotel staff (i.e. pension and insurance contributions etc.), are there any pending legal actions or tribunals against the hotel/existing owner?
- review of all leases, supplier and service agreements entered into by the hotel: what are the obligations and liabilities?
- review of the hotel's insurances and claim history; and
- a detailed analysis of whether the hotel or existing owner is (or is likely to be) a defendant in any legal action, what are the existing and potential legal liabilities of the hotel?

On the assumption that all due diligence investigations, surveys, business plan, financial forecasting and risk analysis are acceptable, then acquisition of the asset can take place and the process will then move into a more detailed development stage.

## Development Stage

The development stage brings in further specialisms and professionals. During this part of the process, involvement will be required from hotel operators, architect and design consultants, a project manager and cost consultant, contractor and potentially other consultants as may be required subject to how the development team is to be structured.

The development stage will also depend on the type of asset that has been purchased.

### a. Development site

If acquisition of bare land for development has occurred, the development stage will necessarily involve:

- appointment of the hotel operator, which ideally should be undertaken pursuant to a detailed RFP and selection process;
- obtaining the various development licences and planning permissions, and non-objections from local tourism authorities;
- commencement of concept design of the hotel, with involvement of the appointed operator to ensure that the hotel will, in all respects, comply with the operator's brand standards;
- preliminary development cost projections; and
- preliminary design and construction programme.

### b. Existing building (whether partially or fully completed)

The development stage, where the asset acquired is an existing building, will follow the requirements of a development site for the most part, particularly with regard to hotel operator appointment and the design process (where the building is partially complete, or only completed to a shell and core finish).

In both cases (acquisition of a development site or an existing building), it is important that selection and appointment of the hotel operator occurs as early as possible. Such an early appointment will facilitate the design programme of the hotel, with the owner being able to obtain input, guidance and approvals from the operator in line with the development programme. It will also ensure that the hotel is designed and built in accordance with the operator's brand standards, and allows the owner to draw on the experience of the operator with regard to market positioning and optimising the marketability of the hotel.

Late appointment of an operator may cause additional pressure and stress to the design and construction programme, and is likely to push up development costs, particularly if design needs to be re-worked to accommodate the operator's requirements.

### c. *Operational hotel*

The development stage may or may not apply where the acquisition is of an operational hotel. This will depend upon whether the existing hotel management agreement is transferred to the owner and operation remains unaffected, whether renovation/refurbishment is required, or whether the hotel management agreement is terminated and a new operator needs to be appointed, with a major renovation.

In the event that the development stage does apply, then it will follow a similar path as per (a) or (b) above. Additional complexity will arise in the event of partial renovation or refurbishment of the hotel, which is to be undertaken without closing the hotel. This will need to be carefully considered, with the operator's views and approval obtained, before the renovation budget and programme can be finalised. It may also be a requirement of the operator that the hotel is 'de-flagged' during the renovation period until it is brand standard compliant.

Renovation of an hotel whilst it remains operational, is one of the most sensitive and difficult scenarios for owner and operator alike. Both parties will try to balance the need for a facelift to the hotel (to hopefully improve revenue) against the requirement for minimal impact on available room inventory, common areas, provision of services, and the guest experience generally. Time is of the essence, and the works programme needs to take these issues into account, which adds further management issues. This is a difficult balancing act to achieve.

### Construction and Beyond

The nature of the project will dictate what is required in terms of construction. The process will differ depending on what is required, i.e. construction of a new hotel, completion of construction of a partially built hotel, refurbishment/renovation of an operational hotel or conversion of a residential building into an hotel.

Renovation/refurbishment of an operational hotel will bring additional complications and considerations. In many ways, this situation raises the greatest risk to owner and operator alike and will require the most management by all parties to ensure that it is successfully executed with minimal impact on the operator, guest experience and revenue.

**The hotel industry, whether you are an owner, developer or operator, is certainly not for the faint-hearted.**

Once a schematic design is completed (incorporating the operator's input to ensure compliance with its brand standards and requirements), the owner can finalise the pricing and programme. The owner can then also commence the tender process for appointment of its contractor.

The owner's professional consultants should advise on the type of procurement method best suited to the project. This advice will structure the construction process, the team and the type of construction contracts to be entered into. The owner's consultants will assist in putting together the tender package and will identify suitably qualified, experienced and licensed contractors that should be invited to tender for the construction works.

In the event that the project is the completion of a partially built hotel, it may be that the best advice for the owner is to re-engage the original contractor for completion of the works. This would be appropriate where the quality of the work is acceptable and will avoid the need to find another contractor that is willing to take responsibility (and liability) for the existing works - something which is often difficult to achieve and will come at a cost to the owner in any event.

Once the contractor has been appointed and the project costs and programme set, detailed design of the hotel can be finalised and fed to the engineer and contractor, and physical construction may commence (subject to obtaining all necessary approvals).

Throughout the construction process, the operator and the owner should continue to work together, to ensure that the operator remains fully involved in the design process, so that each stage of design and construction can be signed off by all parties. It is inevitable that issues, problems and delays will arise at some point, and this is where a cohesive and communicative relationship between owner, operator, professional team and contractor will prove to be beneficial. The construction process very rarely runs smoothly, and it will save time and money in the long term to deal with any issues quickly and pro-actively.

Completion of the detailed design will also enable the owner to fix specifications of all furniture, fixtures and fittings, thereby allowing these items to be procured. It is important to get the timing of this right and to work backwards from the estimated project completion date, ensuring that items with the longest lead times for order and delivery can be procured as a priority. In doing so, this should avoid any need to make late changes to the specifications (which will already have been approved by the operator and incorporated into the construction costs), as well as avoid delaying the construction programme and the anticipated hotel opening date.

### Mock-up and Benchmark Rooms

Completion of the detailed design will also allow the creation of a 'mock-up room' for each room type, for inspection and acceptance by the operator. Sign-off of the mock-up room establishes and fixes the design, layout and specification of the rooms and no further changes should be necessary.

Also, during the construction and fit-out process for the rooms, a 'benchmark room' should be established for each room type. Whilst the mock-up rooms fix design, layout and specification, the benchmark room fixes quality, actual construction processes and finished detail of the rooms. This serves as a marker for all those engaged in the construction, (from the plasterers to the electricians, the plumbers to the carpenters), and the benchmark room should not be deviated from, either in process or finishing quality.

### Completion

Upon completion of the construction works in accordance with the construction contract, the owner's engineer will issue a certificate of practice completion. This is issued subject to a defects' liability period (usually of 12 - 24 months), during which period any snagging or minor defects will be remedied. The authorities will also be required to issue a completion certificate, a permanent utilities connection, and ensure that the building is approved and insured for occupation following inspection of the works.

Completion of the works pursuant to the construction contract is a major milestone - upon this date, the hotel is physically handed over by the contractor to the owner and the risk of and responsibility for the property then passes to the owner. The owner will, in turn, pass the responsibility for management of the hotel to the operator, pursuant to the terms of the hotel management agreement (and ancillary agreements, as appropriate).

### Pre-Opening

Approximately 12 months prior to the estimated completion date, the operator must hire executive personnel for the hotel. These are the people who will work with the owner to take the hotel through the pre-opening stages to actual opening and full operation. Generally, the hotel general manager, the sales and marketing director and the financial controller are among the first employees usually hired. The owner should be entitled to interview candidates proposed by the operator for these roles and approve or reject any proposed candidates.

The 12 months leading up to the opening date are busy for the operator - it is during this time that the sales and marketing strategy plan for the hotel must be put together, the pre-opening budget compiled for agreement by the owner, the first annual operating budget and performance forecast is compiled, cashflow forecasts and working capital requirements are prepared, and the rank and file hotel staff employed and trained. It is also an expensive time for the owner, as they will now start to provide the working capital that the operator requires to implement such points.

At the same time, the FF&E is being installed at the hotel and the construction phase is coming to a close. The operator will remain involved with completion of the hotel fit-out and decoration, protecting its brand throughout and ensuring compliance with the brand standards.

All the various operational licences must be applied for and obtained, including the liquor licence (if applicable) and local police/security department clearance in terms of surveillance and security systems at the hotel. Most of the operational licences will necessarily be applied for in the name of the owner, with the operator's assistance. To facilitate this and the management of the hotel generally, it is usual for the owner to provide the hotel general manager with a power of attorney.

Where an hotel is operated under a management agreement (which remains the most common form of agreement throughout the Middle East), usually the owner will be the legal employer and sponsor of the hotel staff. Therefore, whilst the operator will manage the staff on a day-to-day basis, and the staff remuneration and benefits packages will reflect those implemented by the operator (either on a regional or international basis), the owner remains legally responsible for the employees, and this includes payment of salaries and any end-of-service benefits as an operational expense.

In terms of marketing and advertising of the hotel, this period sees a gradual rise in activity, as the hotel will officially be included in the operator's portfolio and customer loyalty programmes, and centrally marketed through its international sales networks for bookings to commence. Closer to the opening date, the hotel will also be marketed on a local and regional basis and events will be planned for the opening date. Sometimes, where the operator is comfortable to do so, an hotel may open on a 'soft opening' basis. This is a period prior to the official opening date where the hotel may be partially occupied and therefore not very busy with guests, which allows the staff a period of time to implement their training on a 'live' basis and to de-bug any problems that may arise.

### The Opening Date

At some point during the pre-opening period, the owner and the operator will agree and fix the official opening date of the hotel. Ideally, this might be timed to coincide with a particularly busy period for the tourism industry specific to the location of the

hotel, or with any major conferences, exhibitions or sporting/leisure events taking place within the vicinity of the hotel. Wherever possible, the intention should be to maximise the impact of the launch of the hotel and to capitalise on these events by attracting as many guests as possible. This should allow the hotel to firmly establish itself and commence development of its reputation and customer loyalty.

Completion of the hotel under the construction contract will be subject to snagging and rectification of any minor defects, and the operator will play an important part in logging all the various items with the owner, which will require such remedy by the owner's contractor over the next 12 - 24 months. The operator will want these items to be remedied as swiftly as possible with as little inconvenience to the hotel operation as possible. Retention of a percentage of the construction costs from the owner until all the defects have been remedied also provides the contractor with an incentive to remedy as soon as possible.

### The Start of a Beautiful Relationship...?

On the opening date, the development process (save for snagging) draws to a close and the operator assumes control of the operation of the hotel and hopefully, a return of profit to the owner.

The official launch of the hotel is an exciting time for all involved. It is the culmination of the hard work and endeavours by many individuals involved during the time leading up to this event. It may have been a very stressful or relatively painless process but however the hotel comes into being, the road ahead should hopefully be the start of a long, fruitful and mutually beneficial relationship between owner, operator and of course, the guest.

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*Al Tamimi & Company's regional Hotels & Leisure team advises on all matters relating to the hotel industry. For further information please contact Tara Marlow (t.marlow@tamimi.com).*

# Leasing in the Kingdom of Saudi Arabia



**Jeremy Scott**  
Partner  
Dubai, UAE  
j.scott@tamimi.com



**Andrew Balfe**  
Senior Counsel  
Dubai, UAE  
a.balfe@tamimi.com



**Mohammed Negm**  
Senior Associate  
Riyadh, Saudi Arabia  
m.negm@tamimi.com

## Landlord and Tenant Relationships in the Kingdom of Saudi Arabia

### General overview

There are limited decrees or regulations in the Kingdom of Saudi Arabia ('KSA') that relate to leasing. What regulation is in place, is principally aimed at the licensing of real estate brokers, restricting commissions and the establishment and use of Ejar, the Ministry of Housing's ('MOH's') electronic services platform.

Landlords and tenants are therefore generally free to contract on such terms as are acceptable to them, provided that any agreed terms are not inconsistent with Sharia principles.

General principles of Sharia are consistent with commonly understood contractual principles. As leasing is predominantly a contractual exercise, landlords and tenants therefore have considerable flexibility as to the nature of their lease.

This freedom of contract as well as the developing nature of the KSA has seen a wide variation in the nature of leasing contracts. There has also been a tendency to adopt short-form contracts particularly in residential contracts.

Office, retail and other commercial arrangements are not uniform and may therefore require more sophisticated and bespoke contractual terms in order to clarify the parties' intentions.

## Unified Lease Contracts

The MOH has also issued template leases (known as 'Unified Contracts') for both residential and commercial premises. We understand that the MOH may also implement unified contracts for other asset classes (e.g. industrial and agriculture) in due course.

Use of the Unified Residential Contract ('URC') is mandatory in order to facilitate registration on the Ejar system. In addition, the Ministry of Justice issued a circular in January 2019, which stipulates that unregistered lease agreements (residential and commercial) may not be considered by the Courts.

The implications of this are wide ranging. For example, it could be argued that an unregistered lease agreement may not be capable of enforcement before the Courts. To the best of our knowledge however the circular has not been considered by the Courts. Given the implications of the circular we would expect the Courts or the MOH to broker a solution that allows the Courts to adjudicate on the terms of the lease in question.

Registration on Ejar also has benefits in that it affords the landlord expedited enforcement of the URC as an executory deed.



## Analysis of the URC

The URC is comprehensive and addresses usual lease obligations, such as the payment of rent and utilities, delineates each party's responsibility for maintenance, imposes restrictions on the tenant's use and any alterations and sets out the tenant's yield up obligations at the end of the term.

On the whole, we consider that the URC will be sufficient for the majority of residential (villa and apartment) leases.

The URC also permits additional terms to be added. Landlords should consider what additional terms may be appropriate for their particular needs (if any). Issues that landlords may wish to address may include:

1. linking the tenant's repair obligations to:
  - a. a condition report, prepared at the commencement of the lease; and
  - b. an asset list, where the premises are let in furnished condition.
2. setting out a regime for the landlord to call on the security deposit to remedy a breach; and
3. more detailed 'use' obligations, for example:
  - a. relating to the use of shared facilities/ common areas;
  - b. compliance with any building/community rules; and
  - c. restrictions on the number and identity of occupants.

It is not clear whether parties may agree additional terms that contradict the URC.

**..arbitration along international lines is now possible and may be the preferred route for complex leasing matters.**

## Analysis of the UCC

More recently, we have seen an increase in the use of more sophisticated commercial lease contracts in the KSA. This is particularly the case for bespoke and/or higher end asset classes (e.g. retail malls) and bespoke tenancies such as cinemas. It has also been driven by the increase in international investment into the KSA as well as the emergence of institutional landlords such as real estate investment trusts ('REITs').

Readers will appreciate that the UCC may not be ideally suited to all commercial transactions and it remains to be seen whether the MOH will require the compulsory use of the UCC in order to procure registration in Ejar.

If that is the case, then in due course we would anticipate that landlords may be required to:

1. seek the MOH's approval for the registration of the landlord's template lease (on an exception basis) and in place of the UCC; or
2. develop an addendum of additional terms to the UCC; or
3. execute the UCC as a side agreement to their own template commercial lease.

## Leasing to Government Entities

In addition to the URC and the UCC, a law issued by a Royal Decree No (M/61) 18/09/1427 dated (11 October, 2006) and Finance Minister Resolution No. (3347) dated 16/9/1437 AH (13 September 2016) also imposes certain restrictions and parameters on leasing by Government entities. These include:

1. a requirement to use the approved government lease template, issued by the Ministry of Finance ('MOF');
2. an initial advertising and tendering process, with submissions to be considered by a committee;
3. restrictions on the maximum term, rent and rent increases (subject to certain thresholds, these may be approved by the relevant Government body, or must be escalated to the MOF for approval); and
4. detailed requirements for handover on expiry and payment of any compensation on account of damage.

## Dispute Resolution

The most common forum for resolution of contractual disputes in the KSA remains the Courts. For the majority of leasing transactions, the Courts are likely to be adequate.

That said, Royal Decree No. M/34 of 16 April 2012 ('Arbitration Law') and the recently established Saudi Centre for Commercial Arbitration modernised the regulatory framework for arbitral proceedings in the KSA and signalled the Government's endorsement of arbitration as an alternative and viable dispute resolution mechanism.

As such, arbitration may now offer a preferable alternative dispute forum, particularly in respect of complex leasing arrangements (such as built-to-suit transactions). For foreign investors it may have other advantages, for example, the ability to have the arbitration conducted in English and the ability to choose arbitrator(s).

## Conclusion

Whilst the majority of leasing contracts are likely to be of a short-form nature in the near future, the KSA leasing market is also maturing and adapting to the requirements of international tenants and institutional landlords. In addition, arbitration along international lines is now possible and may be the preferred route for complex leasing matters.

The MOH has also provided a useful template for residential leasing which, once registered in Ejar, means landlords can take the case immediately to the execution courts in the event of tenant default. The MOH commercial lease template may not be suitable for all leasing transactions but is not mandatory at present and may be able to be amended or supplemented. Having said that, both landlords and tenants should be mindful of the circular of the Ministry of Justice (mentioned above) and the risks involved in not registering their lease in Ejar.

Landlords leasing to government tenants also need to be aware of the special requirements applicable in that case.

*Al Tamimi & Company's Real Estate team regularly advises on landlord and tenant matters in the Kingdom of Saudi Arabia. For further information please contact Jeremy Scott (j.scott@tamimi.com).*

**The MOH has also provided a useful template for residential leasing which, once registered in Ejar, means landlords can take the case immediately to the execution courts in the event of tenant default.**



# Changes to the DIFC Real Property Laws



**Jeremy Scott**  
Partner  
Dubai, UAE  
j.scott@tamimi.com



**Sebastian Roberts**  
Associate  
Dubai, UAE  
s.roberts@tamimi.com

The Dubai International Financial Centre ('DIFC') was launched in 2004 and unlike other areas in Dubai, including the free zones, the DIFC is an independent jurisdiction within the UAE, with the laws being modelled on the English common law system as opposed to the Civil Law system in place for the UAE. The application of the common law system to the DIFC, coupled with English being the default language, makes investment in the DIFC an attractive option for investors and has been a driving factor in establishing the DIFC as a major international financial hub.

The first substantive set of laws regarding Real Estate in the DIFC was introduced in 2007. In late 2018, the DIFC announced the following set of new real estate laws and regulations representing the first significant overhaul of the DIFC's real estate framework since 2007:

- a. the Real Property Law (DIFC Law No. 10 of 2018) which repeals and replaces the Real Property 2007 Law (DIFC Law No. 4 of 2007) (the 'RP Law');
- b. the Real Property Regulations (the 'RP Regulations');
- c. the Strata Title Law Amendment Law (DIFC Law No. 11 of 2018) amending certain provisions of the Strata Title Law (DIFC Law no. 5 of 2007) (the 'ST Law'); and
- d. the Strata Title Regulations (the 'ST Regulations'),

with the introduction of these new laws intended to "enhance the current regime... to bring the regime in line with international best practice and to address certain areas that require further clarification" (DIFC Consultation Paper).

What follows is an high level overview of the key changes to the laws. It is important to note that this article is only intended to give readers an high level overview and should not be construed as a comprehensive summary of the laws.

## 1. Real Property Law and Real Property Regulations

### **Real Property Law**

#### a. Leases

A lease with a term equal to or greater than six months (including any option(s) to renew) is now required to be registered with the Registrar of Real Properties (the 'Registrar'), which moves away from the position under the previous law (i.e. a term of 12 months or more). In amending the registration requirements, the DIFC has also extended the required timeframe for a lessor to register a lease from seven days to 20 days from the date that the lease is entered into. A penalty of USD1,000 may be imposed by the Registrar if a lessor fails to register a lease in accordance with the RP Law.

## ...these changes to the Real Property Regulations provide a degree of flexibility for owners to undertake corporate restructuring for its assets held within the DIFC, without having to pay substantial registration fees.

Article 48 of the RP Law alludes to the leasing of real property being subject to the provisions of the RP Law and the 'Leasing Law'. The DIFC Leasing Law is yet to be introduced, however on 31 March 2019 the DIFC released the first draft of the Leasing Law and associated regulations for a 30 day period of public consultation. In issuing the Leasing Law and Regulations for public consultation, the DIFC stated in its Consultation Paper that the new law and associated regulations were being introduced "to enhance the current real property regime in the DIFC in an attempt to introduce areas of protection and assurance to Lessors and Lessees entering into leases of DIFC properties and further align the DIFC with international best practice..."

We will continue to actively follow the progress of the new Leasing Law and Regulations and will provide readers with further updates in due course.

### b. Master Community Declaration

The RP Law now formally recognises the Master Community Declaration (including the right to collect service charges) as a statutory covenant that is enforceable and binding on all owners, which shall be registered as a 'Covenant in Gross' on each title.

### c. Treatment of Minors

The treatment of minors (i.e. under 18 years of age) under the law has been clarified.

Rather than the status of the minor being registered as a 'disability' on title, the title will now be registered in the name of the minor's appointed

guardian and a caveat registered on title noting the minor's beneficial ownership in the property. In addition, a guardian cannot register an instrument in relation to the property unless approved by the court, however the minor (once he or she attains the age of 18) is now provided with the right to provide his or her consent to registration of such instrument.

There is also now a clear obligation on the Registrar to transfer title to the property to the minor once they attain the age of 18 upon the Registrar being provided with the required transfer instrument.

### d. Off-Plan Sales

The law includes a clear regime regarding off-plan sales, with the general principles aligning with the position adopted in relation to off-plan developments in mainland Dubai. In simple terms,

- i. the Registrar now has a greater degree of control over the sale lots off-plan, with a developer unable to enter into off sale and agreements ('SPA') until:
  - a. the Registrar has approved and recorded the development in the 'Off-Plan Register', with the Registrar given a wide discretionary power with respect to the approval of an off-plan development;
  - b. the Registrar has approved the form of the Disclosure Statement to be given to prospective buyers at the time of entry into the SPA; and

- c. the Developer has established an escrow account with an escrow agent that has been approved by the Registrar;
- ii. purchasers of off-plan lots are now afforded a greater level of protection, whereby:
  - a. developers are required to provide the purchasers with a Disclosure Statement containing the information prescribed in Article 161 of the RP Law and any directives issued by the Registrar;
  - b. purchasers are now provided with a right of termination should a developer fail to provide the Disclosure Statement prior to entering into the SPA and fail to rectify such non-disclosure prior to handover of the completed lot. It is important to note purchasers will still have a right to terminate the SPA within a specified timeframe if a Disclosure Statement is provided after signing of the SPA, however the Disclosure Statement does not reflect the off-plan development;
  - c. developers will be required to deposit all amounts paid under the SPA into the escrow account, with restrictions put in place with respect to the developer's ability to draw on the funds in the escrow account;
  - d. an amount will be retained in the escrow account for a period of 12 months following completion of the building as security for the developer's obligation to rectify any defects in accordance with the RP Law;
  - e. the introduction of an one year warranty in respect of non-structural defects and a 10 year warranty in relation to structural defects; and
  - f. the introduction of a right for the purchaser to make a claim against the developer should the completed development be substantially different to what was disclosed.

### e. Registrar's Power to make Orders

The Registrar is now provided with a greater ability to make orders in relation to a party's contravention or failure to comply with the requirements of the RP

Law and RP Regulations, with the Registrar now able to make an order requiring a party to:

- i. take, or refrain from taking, any specified action;
- ii. pay any prescribed fee (as per the RP Regulations) or any penalties levied under the RP Law; or
- iii. pay compensation to the Registrar or a third party.

### Real Property Regulations

The changes to the RP Regulations focus on the payment of transfer fees and the timing for payment of such fees.

#### a. Payment of Transfer Fees

A transfer of any interest, including the transfer of shares in an entity that holds assets in the DIFC, will typically trigger the payment of transfer fees to the Registrar, which are currently equivalent to five percent of the greater of:

- i. the consideration paid for the transfer of the interest; or
- ii. the market value of the interest.

(the 'Transfer Fee')

While the obligation to pay the Transfer Fee remains unchanged and is still non-refundable, the newly introduced RP Regulations now provide for a number of circumstances where no, or a nominal transfer fee (USD273), is payable to transfer a real property interest, in such circumstances including:

- transfer of shares or real property from one person to an entity where the interest held by the person in the entity is in the same proportion as the ownership stake held by the person prior to the transfer;
- an intergroup transfer where the ultimate beneficial owner ('UBO') remains the same and each UBO continues to hold the same proportion of interest for a minimum period of one year following the transfer;
- a transfer between entities where the parent entity of the current owner and the target entity is the same and the UBOs remain the same and continue to do so for a minimum period of one year following transfer;

- the purchase of property by Real Estate Investment Trusts that are domiciled in the DIFC; and
- the buying and selling of shares in a company that is publicly listed on a regulated stock market, with a full list of the circumstances contained in Article 1 of the RP Regulations.

Provided the UBOs of the subject property remain unchanged, these changes to the RP Regulations provide a degree of flexibility for owners to undertake corporate restructuring for its assets held within the DIFC, without having to pay substantial registration fees. It is worthwhile noting that this exemption only applies to property(ies) owned in the DIFC. Should an entity also own assets outside of the DIFC, the Dubai Land Department will also need to be notified of the change in shareholding, with the applicable transfer fees payable to give effect to a change in shareholding.

#### b. Payment of Transfer Fee

The timing for payment of the Transfer Fee has been extended from 30 days to 50 days in relation to the transfer of a property that is subject to a registered mortgage, with the timing for payment calculated from the date of the agreement. The timing for payment of the Transfer Fee for all other transfers remains unchanged (i.e. 30 days from the date of agreement or effective date of the transfer).

The penalty for failure to pay the Transfer Fees on time remains unchanged at USD1,000 plus interest on the overdue Transfer Fee calculated at a rate of five percent per annum.

## 2. Strata Title Law and Strata Title Regulations

Rather than repeal the existing laws in place, the DIFC has introduced a law that amends the existing ST Law.

#### a. Strata Management Statements

There is now a clear obligation on a developer to lodge a Strata Management Statement, which relates to the administration and management of the body corporate and usually includes the by-laws that govern owners and occupiers use and enjoyment of the strata development, at the time of lodging the strata plan with the Registrar for registration.

# The introduction of these new laws is a reflection of the DIFC's commitment to continually improve the laws that govern this unique part of Dubai.

The registered Strata Management Statement will be binding on the body corporate and all owners and occupiers of the strata development.

#### b. Lodgement of Strata Plan

Unless approved otherwise by the Registrar, a developer is now required to lodge the strata plan for registration within one month from building completion.

#### c. Exclusive Use Rights

Prior to the amendment of the ST Law, the grant of any exclusive use rights would automatically lapse after five years of the right being initially granted, however the grant of any such right is now considered to be perpetual in nature and will not lapse provided that the owner complies with its obligations under the relevant by-law.

#### d. Appointment and Approval of Body Corporate Manager

The discretionary right for a body corporate to appoint a body corporate manager has been deleted and replaced with a clear obligation on the body corporate to appoint a body corporate manager that is duly licensed and approved by the Registrar.

Given the introduction of this mandatory requirement, additional provisions have been inserted into the ST Law with respect to the functions, powers and duties of the appointed body corporate manager, with the Registrar also now provided with the power to order the termination and replacement of a body corporate manager in various circumstances.

#### e. Voting Rights at General Assembly

The ST Law seeks to limit the level of control that a developer can retain over a strata development upon the creation of the body corporate for the strata development (i.e. upon registration of the Strata Plan). If the developer (or a party related to or under the control of the developer) retains ownership of more than fifty percent of the lots and/or the lot entitlements, the developer's vote shall only be equal to fifty percent of the lot entitlements of the developer's lots. The introduction of this restriction will ensure that the developer cannot arbitrarily pass motions that may be detrimental to the balance of the owners in the development.

Additionally, the voting members for lots in a principal scheme will now be considered equal notwithstanding their respective lot entitlements. Depending on the nature of the Principal Strata Scheme (i.e. size of the principal plots and each plot's intended use), equal voting rights may not be appropriate in the circumstances, with the ST Law confirming the Registrar can provide its approval to unequal voting rights.

#### f. Lien – Unpaid Service Charges

While it is not uncommon for the constitutional documents for the strata development or the contractual documents signed by a purchaser to provide the body corporate with a right to register a lien over a unit in relation to unpaid service charges, the ST Law now provides the body corporate with an express right to apply to the Registrar to record a lien over the unit in such circumstances by way of a registered caveat.

## Conclusion

The introduction of these new laws is a reflection of the DIFC's commitment to continually improve the laws that govern this unique part of Dubai. As is the case in any jurisdiction, buyers, sellers, developers, landlords and tenants should always seek legal advice with respect to their rights and obligations under the law and the current practices adopted by the Registrar.

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*Al Tamimi & Company's Real Estate team provides a comprehensive range of legal services across the Middle East including Dubai, covering all areas relevant to the property industry including real estate ownership advisory and transactional work assistance. For further information please contact Jeremy Scott (j.scott@tamimi.com) or Sebastian Roberts (s.roberts@tamimi.com).*

# Wafi Program: Off-plan Sales from a Developer's Perspective and Etnam – *Developer Registration*



**Jeremy Scott**  
Partner  
Dubai, UAE  
j.scott@tamimi.com



**Stavros Marcou**  
Associate  
Riyadh, Saudi Arabia  
s.marcou@tamimi.com

On 6 September, 2016 Resolution No. 536 concerning the Regulations Relating to the Sale or Lease of off-plan Real Property Units was implemented by the Council of Ministers ('Wafi Law') along with a number of implementing regulations ('Implementing Regulations').

The Wafi Law and the Implementing Regulations supersede the Council of Ministers Resolution No. 73, as amended by the Council of Ministers Resolution No. 47, which previously covered off-plan sales. The Implementing Regulations include the:

- i. 'Licensing Regulations';
- ii. 'Escrow Accounts Regulations';
- iii. 'Beneficiaries Rights and Developers Obligations Regulations';
- iv. 'Inspection Companies Work Regulations'; and
- v. 'Project Register Regulations'.

The laws form the basis of what is known as the 'Wafi Program', or the off-plan sales and rent programme. The Wafi Program is a platform that was launched by the Saudi government with the purpose of authorising and regulating off-plan property sales. The Wafi Program applies to properties which developers are selling or leasing before or during their development. This applies to all properties that meet the aforementioned condition regardless of their type or purpose.

## The Role of the Ministry of Housing and the Committee

The effect of the Wafi Law and Implementing Regulations is to restrict the activity of off-plan property unit sales unless those sales are made through the Wafi Program which is administered by the Ministry of Housing in support of the committee of sale and rental of off-plan real estate units established by the Wafi Law ('Committee').

The Committee may have the power to remove or limit the obligation of certain developers to comply with the Wafi Law and its Implementing Regulations as set out in Article (7) (3) of the Wafi Law. We understand this is only applied to the requirement to have an Escrow Account and associated obligations (detailed below) and it may not entitle a developer to be excluded from all of the obligations under the Wafi Law or its Implementing Regulations.

## Developer Registration

The Ministry of Housing and the Committee have also created a Real Estate Developer Registry (also called Etnam), which records the names of all registered developers. Should the Committee revoke a developer's licence, the Real Estate Developer Register shall be amended accordingly with the removal of the details of the developer.



## Project Registration

Each project licensed by the Committee must be recorded in the Projects Registry of the Ministry of Housing (which has been developed by the Committee). The requirements for registration are set out in the Project Register Regulations.

Upon signing the contract of sale of a real estate unit, the developer must provide the Committee with a copy of the contract within ten working days from the date of signing the contract, indicating the number of the unit, purchase price, mode of payment, date of the due instalments and obligations of the developer and beneficiary. Only then can a contract be registered in the Projects Registry.

## Inspection Companies

In order for the Committee to be in a position to conduct its duties, it may contract with inspection services companies through a legal tender issued by the Committee to execute the inspection works required for the project. The developer shall incur the relevant costs if violations by the developer are proven.

## Project Licence

The Committee considers the applications submitted by the qualified developers which are recorded in the Real Estate Developer Register within ten days from the date of completion of the application. The information that must be completed in the developer's application is set out in the Licensing Rules.

In the event that the developer is not the owner of the land (for the project), then the Committee must be provided with the agreement concluded between the developer and the owner of the land.

The Committee may consider cancelling or suspending the project's licence if the:

- a. developer becomes insolvent or bankrupt;
- b. developer does not commence the construction works (without a reasonable excuse), within the agreed timeframe – despite having received the necessary approvals for the construction;
- c. developer has ceased constructing the project;
- d. Committee deems that there are other reasons obstructing the completion of the project; and/or

- e. developer violates the Wafi Law and/ or Implementing Regulations or acts in a fraudulent manner.

Before cancelling or suspending a licence, the Committee shall notify the developer in writing of the reasons that led to its decision. The developer shall have the option to respond to the notification within 21 working days of notice of the decision.

## Escrow Account Regulations

An escrow account shall be created under the name of each project into which must be deposited the funds of the investors in the project. The account shall have a unified number to be referred to in each contract of sale with the beneficiaries.

The agreement with the escrow trustee for the escrow account must include the following provisions:

- a. obligations of the escrow trustee, namely:
  - i. not to activate the escrow account except after the issuance of the licence for the project;
  - ii. not to seize the accounts of the project for its interest or for the creditors of the developer;
  - iii. not to assign its tasks under the agreement to a third party;
  - iv. to submit to the Committee quarterly regular statements for the escrow account or at any time deemed necessary by the Committee; and
  - v. to release the proceeds in the escrow account to the developer once the prior approval of the Committee is secured.
- b. an obligation on behalf of the developer to not receive any amounts directly from the depositors and to require depositors to deposit funds in the escrow account directly;
- c. standards that must be met before paying any funds to the developer from the escrow account;
- d. the terms of managing the escrow account of the project by the account trustee and his powers in disbursing from the escrow account to the developer; and
- e. a term stipulating the link between the payment of disbursements from the escrow account and the percentage of actual completion of the project works in accordance with the approved payment dates.

# The effect of the Wafi Law and Implementing Regulations is to restrict the activity of off-plan property unit sales unless through the “Wafi Program” which is administered by the Ministry of Housing in support of the committee of sale and rental of off-plan real estate units established by the Wafi Law.

The developer shall not be allowed to depend exclusively on the funds of the beneficiaries to complete the project and the Committee shall issue a decision to specify the percentage of works required to be completed with regard to the project, prior to the payment of any disbursements from the funds of the beneficiaries deposited in the escrow account.

## Licensing Regulations

It is not permissible to market, advertise or participate in exhibitions either inside or outside Saudi Arabia in relation to projects in Saudi Arabia unless the required licence has been procured from the Committee. A developer cannot obtain a marketing licence. It must engage a marketing company/real estate marketer to carry out activities such as marketing or advertising in exhibitions.

## Beneficiary Rights and Developer Obligations

The Beneficiary Rights and Developer Obligations Regulations set out the obligations of the developer and the rights of the Beneficiaries, as well as the minimum required information that must be included in the contract between the developer and the beneficiary. Indicatively, we mention the following obligations of the developer:

- a. commence and complete works in time;
- b. follow up and supervise the subcontractor's execution of the assigned works, in accordance with the approved technical specifications;

- c. achieve the approved technical specifications, in accordance with the project's designs;
- d. deliver the unit to the beneficiary at the date defined in the contract and under the approved technical specifications that were agreed contractually; and
- e. deliver to the beneficiary a copy of the owners' association bylaw upon the signing of the contract of sale.

Additionally, the Beneficiary Rights and Developer Obligations Regulations mention that the Committee has the right to develop an obligatory form regulating the relation between the developer and the beneficiary.

## Conclusion

The aim of the Wafi Law and its Implementing Regulations is to ensure that the off-plan real estate market within the KSA is properly regulated and structured - with a view to enhancing confidence and transparency in the real estate market as well as assisting developers and investors in making better informed decisions.

*Al Tamimi & Company's Real Estate team regularly advises on the sale of off-plan unit sales. For further information please contact Jeremy Scott (j.scott@tamimi.com).*



# Non-Qatari Individuals: Investment in Real Estate and Succession Planning



**Frank Lucente**  
Partner  
Doha, Qatar  
f.lucente@tamimi.com



**Samiya Mitha**  
Associate  
Doha, Qatar  
s.mitha@tamimi.com

## Ownership of Real Estate in Qatar by Foreigners

Pursuant to the Law on Non-Qatari Ownership and Use of Real Estate (Law No.16 of 2018) ('Foreign Real Estate Ownership Law'), non-Qataris (natural persons and legal entities) can have freehold ownership as well as usufruct rights (leasehold rights for 99 years) in real estate in certain designated areas in Qatar. This article focuses on ownership and leasehold rights of Non-Qatari natural persons.

Real Estate is defined under Article 1 of the Foreign Real Estate Ownership Law as land space, buildings, structures, residential units and detached units in residential complexes.

Article 4 of the Foreign Real Estate Ownership Law allows the Committee for the Regulation and Use of Non-Qatari Property Ownership at the Ministry of Justice to propose areas where non-Qataris are allowed to own and use real estate and the terms and conditions of such non-Qatari ownership and use of real estate. The Committee sends its proposals to the Council of Ministers who then issue decisions to implement the provisions of the Foreign Real Estate Ownership Law.

According to recent media reports, the Council of Ministers has designated the following freehold ownership areas for non-Qataris - West Bay Lagoon (Area 66), The Pearl-Qatar (66), Al Khor Resort (74), Rawdat Al Jahaniyah (investment area), Al Qassar

(administrative area 60), Al Dafna (administrative area 61), Onaiza (administrative area 63), Al Wasail (69), Al Khraij (69) and Jabal Theyleeb (69).

The areas where non-Qataris can lease real estate for 99 years are: Msheireb (Area 13), Fereej Abdelaziz (14), Doha Al Jadeed (15), New Al Ghanim (16), Al Refaa and Old Al Hitmi (17), Aslata (18), Fereej Bin Mahmoud (22), Fereej Bin Mahmoud (23), Rawdat Al Khail (24), Mansoura and Fereej Bin Dirham (25), Najma (26), Umm Ghuwailina (27), Al Khulaifat (28), Al Sadd (38), Al Mirqab Al Jadeed and Fereej Al Nasr (39) and the Doha International Airport area (48).

The addition of Al Dafna and Onaiza as freehold ownership areas significantly covers most of the towers in the lucrative West Bay area.

Under Article 4 of the Law on Real Estate Registration (Law No. 14 of 1964) ('Real Estate Registration Law'), ownership and leasehold rights and any actions that would transfer, change or demise a property, are to be registered with the competent authority which is the Real Estate Registration Department at the Ministry of Justice. If the registration is not concluded, then the rights and obligations of the parties are governed only by the contract between them.

Under Article 6 of the Real Estate Registration Law, the matters that are to be recorded with the relevant Ministries include the particulars of the individual owner - name, surname, age, nationality,

## Foreign Real Estate Ownership Law provides that the right granted to a non-Qatari shall not expire upon death but shall be transferred to the deceased's heirs.

place of residence, father's name as well as details of the property and any special rights or arrangements in relation thereto.

As regards registration, the title deed and proof of payment and any mortgage documents are recorded with the relevant Department at the Ministry of Municipality and Urban Planning. Thereafter, a registration is done with the Real Estate Registration Department at the Ministry of Justice. In certain areas, the registration process is handled through the administrators of those areas so for example, in Lusail, the registration process is handled through Qatari Diar Real Estate Investment Company, while for The Pearl, the registration is handled through United Development Company.

### Death of Non-Qatari Owner of Real Estate in Qatar

Article 2 of the Foreign Real Estate Ownership Law provides that the right granted to a non-Qatari in long term leasehold real estate shall not expire upon death but shall be transferred to the deceased's heirs unless there is an agreement to the contrary between the parties.

Articles 23 and 24 of the Qatari Civil Code (Law No. 22 of 2004) ('Civil Code'), provide that the laws of the deceased's home country (the country of nationality of the deceased) at the time of death will apply in relation to inheritance laws, even if the deceased was Muslim. Qatari law will apply only if the deceased is a Qatari national, or if an estate exists in Qatar which is left without any beneficiaries or heirs.

### Process of Transfer of Real Estate to Heirs of Deceased Non-Qatari Individual

In the absence of a will, the heirs of the non-Qatari deceased would be required to obtain an official inheritance certificate issued by a competent authority in the home country of the deceased along with the death certificate issued by the competent authority from the country in which the individual died. The inheritance certificate is required to contain the names of the heirs and their allocated share in the estate of the deceased (to be determined in accordance with the applicable law in the home country of the deceased).

The inheritance certificate is required to be authenticated by the issuing competent authority in the home country of the deceased, then by the Ministry of Foreign Affairs in the home country, the Qatari Embassy in the home country, and finally upon its receipt in Qatar, by the Ministry of Foreign Affairs in Qatar. Where documents are not in Arabic, Arabic translations may be required. If the translations are done in the deceased's home country, then the translation will have to be attested. If the translations are done in Qatar, these would be through Qatar approved translators and would not require any attestations.

The heirs will then submit the duly authenticated and attested inheritance certificate to the Real Estate Registration Department of the Ministry of Justice.

After receiving the duly authenticated inheritance certificate, the Real Estate Registration Department of the Ministry of Justice shall proceed with the recordal of the real estate in the names of the heirs of the deceased.

If the deceased has left a will, then depending on the law of that country, a notarised will or a formal document, such as a court order, issued by the competent jurisdiction permitting the execution of the will or appointing the executor of the will shall be required to be produced. The authentication procedures described above would have to be followed for the purposes of the will as well as the court order (if any). After receiving the duly authenticated documents, the Real Estate Registration Department of the Ministry of Justice shall proceed with the recordal of the real estate in the names of the heirs of the deceased.

Bearing in mind that in certain areas such as Lusail or The Pearl, the heirs will also have to record the documents with the administrators of those areas.

There are fees applicable regarding the recordal of ownership (whether freehold or leasehold) payable by the owner and in the event of the death of the owner, by the heirs of the deceased to the relevant authorities/administrators.

### Conclusion

As part of Qatar's National Vision 2030 and in the shorter term, as Qatar gears up for the 2022 World Cup, major infrastructure developments have been taking place. The increase in the number of areas where foreigners can own or long-term lease properties complements Qatar's vision for economic development. This coupled with the fact that the ownership continues to be vested in the heirs of a non-Qatari individual even after the death of such an individual (subject to the fulfilment of certain criteria), may well further encourage non-Qatari investment in real estate in Qatar.

*Al Tamimi & Company's Corporate Commercial and Corporate Structuring teams regularly advise on a wide variety of corporate commercial matters, such as restructurings, formation of companies, joint ventures, commercial contracts, compliance with business laws, commercial agencies and real estate. For further information please contact Frank Lucente (f.lucente@tamimi.com) or Samiya F. Mitha (s.mitha@tamimi.com).*

## Non-Qataris can have freehold ownership as well as usufruct rights for 99 years in real estate in certain designated areas in Qatar

# The Ownership of Real Estate Assets in Dubai by a DIFC Foundation



**Izabella Szadkowska**  
Partner  
Dubai, UAE  
i.szadkowska@tamimi.com



**Malek Al Rifai**  
Senior Associate  
Dubai, UAE  
m.alrifai@tamimi.com

Since March 2018, when the Dubai International Financial Centre ('DIFC') Foundations Law (DIFC Law No. 3 of 2018) ('Foundations Law') came into effect, Al Tamimi & Co. has assisted several clients in the registration of their foundations in the DIFC ('DIFC Foundation(s)').

Whilst a DIFC Foundation can be utilised as a vehicle for philanthropic and charitable purposes, it was ultimately designed to provide an alternative mechanism for wealth management as well as the safeguarding of assets for individuals, companies and families.

## Foundation Features

A DIFC Foundation is normally established by a founder who dedicates certain assets towards a specified charitable or non-charitable purpose.

Although a DIFC Foundation has a separate legal personality, unlike a typical corporate vehicle, it does not have partners, shareholders or members, but rather is 'self-owned'. In the absence of an ownership structure as such, a DIFC Foundation, is generally administered by a council appointed by its founder.

The management, governance and control of the DIFC Foundation can be tailor-made, to the extent permitted by the Foundations Law, to reflect the arrangements that the founder desires, via a

combination of provisions set out in the charter and by-laws.

DIFC Foundations are often used in commercial transactions (for example, for off-balance sheet holding of funds), or for the purposes of securitisation structures (normally public foundations) or as anti-hostile takeover instruments or to hold orphan entities in order to forbid the ultimate legal owners disturbing the DIFC Foundation's objective.

Moreover, in the UAE and the greater GCC, the DIFC Foundation is a vehicle predominantly recommended in the context of succession planning and the family wealth management context, where it can be used by families to structure ownership of their assets and properties, as long as the local ownership restriction, as well as Sharia principles, are respected.

The DIFC Foundation concept proves to be suitable in the context of succession due to the fact the founder can remain in control of the assets of the DIFC Foundation during his/her lifetime and beyond, under the terms of the charter and the by-laws of the DIFC Foundation. Once the founder transfers the assets to the DIFC Foundation, those assets cease to form part of his/her private/individual estate. Those assets then form part of the estate of the DIFC Foundation itself.



## A positive development that made the offering of the DIFC even more attractive to family businesses and other commercial entrepreneurs.

### DIFC Foundation's Assets

The DIFC Foundation shall have capital, which can be in the form of cash or in kind/other assets (including real estate assets as mentioned below), and further endowment towards the capital can be made by the founder.

The assets of the DIFC Foundation are commonly managed by the council, for the benefit of one or more beneficiaries identified by the founder in the charter/by-laws. The beneficiaries can include the founder as a natural person or a corporate vehicle, or possibly the natural person's family members.

### Ownership of Real Estate Assets in Dubai

On 4 May 2018 the DIFC announced it entered into a Memorandum of Understanding ('MoU') with the Dubai Land Department ('DLD') which allowed entities based in the DIFC to purchase and register real property and property rights ('Real Estate

Assets') with the DLD. While the terms of the MoU have not been made public at the time of writing, it is our understanding, from our discussions with officials in DIFC and the DLD, the MoU is intended to apply in respect of DIFC Foundations. Under the current DLD approach, DIFC Foundations are allowed to own Real Estate Assets located in the areas of Dubai that are designated for foreign ownership by the Ruler of Dubai.

In order to register a Real Estate Asset in the name of a DIFC Foundation with the DLD, in addition to the documents typically required by the DLD for this purpose, the DIFC Foundation is required to apply to the DIFC Registrar of Companies ('ROC') for a no objection certificate addressed to the DLD. This no objection certificate should include the following:

- a. the full name and registration number of the DIFC Foundation;
- b. the names, nationality and passport details of each interest holder in the DIFC Foundation who is a natural person;
- c. the name of each legal person that is an interest holder in the DIFC Foundation and, where it is not a publicly listed entity, the details of the shareholders, partners or interest holders of that legal person up to the level of the full names and passport details of individual beneficial owners;
- d. that the DIFC Foundation is in good standing and that all licences are up to date and fully paid up; and
- e. that the DIFC Foundation is permitted to own Real Estate Assets in accordance with its constitutional documents, resolutions or authority documents.

The DLD will approve the registration of the Real Estate Assets and issuance of the title deed in the name of a DIFC Foundation in accordance with the rules, regulations and policies adopted by the DLD as agreed with the ROC.

With regard to the fees levied by the DLD in connection with the transfer of Real Estate Assets, the typical rates set out in the Executive Resolution no. 30 of 2013 apply depending on the type of requested transfer (sale, usufruct, long-term lease, etc.). However, if a natural person is the ultimate beneficial owner of a Real Estate Asset and intends to transfer such Real Estate Asset to a DIFC Foundation in which that person holds the position of founder, it is likely that the transaction can be

## The DIFC entered into a Memorandum of Understanding with the Dubai Land Department on 4 May 2018 allowing entities based in the DIFC to purchase and register real property and property rights.

regarded by the DLD as a gifting transaction and therefore could be subject to a reduced fee of 0.125 percent calculated with respect to the value of the Real Estate Asset. The application of the gifting fee requires a no objection certificate from the DLD which has a high degree of discretion in determining whether the gifting fee would apply.

The introduction of the DIFC Foundations' regime was a positive development that made the offering of the DIFC even more attractive to family businesses and other commercial entrepreneurs.

What is more, the willingness of the DIFC and the DLD to recognise the ability of a Foundation to own Real Estate Assets in the Emirate of Dubai, albeit with certain restrictions, has strengthened the DIFC Foundation model even further, making it a viable option worth considering in the context of wealth

management and corporate restructuring. However, as experience often shows, there is no-one-size-fits-all solution and careful attention therefore needs to be given to the specific requirements of each case to ensure that a DIFC Foundation can potentially achieve the intended objective.

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*Al Tamimi & Company's Real Estate and Corporate Structuring teams regularly advise on how best to benefit from significant developments in the UAE. For further information please contact Izabella Szadkowska (i.szadkowska@tamimi.com) or Malek Al Rifai (m.alrifai@tamimi.com).*

# Property Assets: The Rising Treasures in Egypt



**Mohamed Khodeir**  
Partner, Head of Capital Markets  
Cairo, Egypt  
m.khodeir@tamimi.com

In a country with a surface area of almost one million square kilometres, of which only seven percent was utilised for many years, the opportunities of urbanisation of new areas in Egypt were unlimited for the incumbent government. With a population of 100 million, Egypt had no option but to venture into developing new cities and urbanise new areas to allow the implementation of Egypt's ambitious reform programme, as well as its inclusive growth and sustainable development plan.

Even before being elected to office, Egypt's investment policy was announced by HE President Abdel Fattah El Sisi. He presented an ambitious economic growth plan focusing on expanding the breadth of Egypt's reach to include underdeveloped areas through the establishment of mega projects and new cities across Egypt. Today, it is reported that over 20 cities are under construction including the New Administrative Capital, New Al-Alameen, New Mansoura and many other projects that not only aim to expand the population's distribution across the country but also create unlimited labour and investment opportunities which inevitably accompany the construction of such mega projects.

At the heart of Egypt's reform and development plan lies real estate development opportunities, one of Egypt's unexplored treasures that leads to unlimited investment opportunities while allowing Egypt's growing population to expand into new horizons.

Statistics announced by the government show that Egypt witnessed the construction of 383 thousand units between 2005 and June 2013 in the field of national housing, while 24 urban communities were constructed over the last three decades. High levels of population growth led to a housing deficit. However, since 2014, the government has allocated 813 billion Egyptian pounds for investment in the field of housing and infrastructure projects up to 2020. As of December 2018, 1029 projects were completed including new urban communities for social housing and medium housing while abolishing dangerous and informal housing zones and moving the communities at risk to new urban areas. With over 1.7 million completed units, the number of social housing projects completed in Egypt in the past five years is unprecedented.

The policy adopted by Egypt to attract urbanisation of new areas has been a simple but yet a very intelligent one. The government launched large scale projects to develop key infrastructure requirements including facilities and services in uninhabited areas with a view to attracting investors that would not have otherwise considered such areas. The government has done so in many areas across the country, consequently opening up lucrative investment opportunities in most key sectors of property investment including commercial, administrative and high-end residential properties. Investors were invited to participate in

these projects at market competitive prices, which generated significant returns for the government, thus enabling it to continue the same model in other projects. Some commentators have claimed that the prices offered by the government were expensive however, the reported revenues from investment in the projects launched by the government indicate otherwise. Billions of Egyptian pounds were reported as proceeds from investments in the new cities and the government continue to manage even more projects, whether directly or through special purpose vehicles.

With this newly adopted mind-set in Egypt, property development has become a cornerstone for the continuation of Egypt's ambitious development plan. In our view, land and underutilised assets in Egypt are available in abundance and can be offered as lucrative investment opportunities. However, challenges highlighted by investors and commentators in many instances cannot be ignored.

The points below summarise these challenges as suggested by some commentators, followed by corrective recommendations and a snapshot of the steps undertaken by the government to address them:

#### **Pricing and Locations**

Some investors claim that the cost of land has been somewhat exaggerated. In the first instance, we believe that this is not entirely accurate given

the number of projects already allocated and their confirmed revenue. The time when land was offered in Egypt for free is over, save for underdeveloped areas, where the government is seeking to encourage effective investment to populate such areas. However, lucrative locations and areas, where real investment opportunities are available necessitate a premium. This also applies to industrial land opportunities available across Egypt.

#### **Underutilised Government Assets**

One of the major investment opportunities the government has been preparing for is the exploitation of underutilised public assets owned by either government entities or public sector companies. These assets not only consist of land, but also different forms of assets that are being revamped to be offered for investment. One of the main objectives of the recently established sovereign wealth funds is to reutilise such assets and increase the returns from them by re-offering them for investment, whether via PPPs or other forms of investment arrangements.

#### **Government Crowding out Private Developers**

Some investors raised the argument that real estate development should be left solely to the private sector without government competition/ intervention. However, as a matter of fact, the government was forced to offer its developmental

**However, the current efforts and encouraging signals of the government's proposed measures have created immense opportunities for investors in all sectors including property investment which is seen as one of the rising treasures in Egypt.**

**With this newly adopted mind-set in Egypt, property development has become a cornerstone for the continuation of Egypt's ambitious development plan.**

arm to kick-start new projects launched by the government across the county where developers, that seek specific margins, were reluctant to take the investment risk. As the new cities reach new heights of success, private sector engagement is increasing. Both local and international developers expanding into Egypt now have wide-ranging and lucrative investment opportunities.

#### **Land Segregation and Allocation Procedures**

One of the common complaints posed by investors is the way in which land has been historically allocated and property development activity. Several attempts were made by the government to address

this concern through numerous pieces of legislation however, they have not yet fully materialised. One suggestion was to consolidate the country's land bank under one body and offer land to investors via a single allocation procedure. This concept, which is a potentially viable solution for a considerable problem, is still under review by the government. Given the way in which new cities are now developed, they are immune from such concerns.

#### **Role of Property Developers**

As part of the government's initiatives to unlock the potential in the field of property development, a new draft law is underway. The draft law introduces provisions that focus on enhancing the role of property developers and institutionalising their activity. The draft law provides for the establishment of a 'developers' union' to oversee property development activity and enhance its operation in Egypt in accordance with best practices.

The draft law also proposes the establishment of a hedge fund to hedge risks associated with property development activity in order to attract more buyers and investors by reducing underlying risks.

While the draft law is still being debated in Parliament, upon promulgation, it is expected to open up new frontiers for property development activity and foster a more institutional approach to the industry while improving professional standards.

That being said, the opportunities for property development and investment in underutilised real estate assets are quite significant and in line with investment opportunities in Egypt due to decades of underutilisation. Furthermore, the investment opportunities opening up as a result of the new approach adopted by the Egyptian government are endless. On the other hand, bureaucracy remains an area that requires more streamlining and ongoing reform. However, the current efforts and encouraging signals of the government's proposed measures have created immense opportunities for investors in all sectors including property investment which is seen as one of the rising treasures in Egypt.

*Al Tamimi & Company's Capital Markets team regularly advises on transactional activity. For further information please contact Mohamed Khodeir (m.khodeir@tamimi.com).*



# Legal Framework for Investment in the Oman Tourism Sector



**Ahmed Al Barwani**  
Head of Office - Oman  
Muscat, Oman  
a.albarwani@tamimi.com

## Introduction

Tourism has been identified by the Oman government as one of the sectors to diversify the economy away from oil, which is currently the main source of revenue for the country. Based on this initiative, the Oman government, represented mainly by the Ministry of Tourism and the Ministry of Housing, has issued a number of laws and regulations that regulate local and international investment in the tourism sector.

The key law is the Tourism Law (Sultani Decree Number 33/2002 (the 'Tourism Law')). The aim of the Tourism Law is the promotion and development of tourism in Oman in order to increase the industry's participation in the national economy. The Law regulates the establishment and utilisation of geographical areas and locations for tourism within the Sultanate, as well as putting in place the administrative and regulatory framework to ensure availability of the necessary work force to encourage and develop tourism activities. The Tourism Law is also intended to support cultural communication between Omani nationals and other nations.

The Tourism Law defines a tourism project as any activity relating to tourism carried out by natural and juristic persons whether this is related to the utilisation and management of touristic areas and sites, or establishment of hotels, tourism villages and camps, or conducting touristic transportation or travel offices.

The Ministry of Tourism is the regulator of the tourism industry in Oman and it is in charge, with other relevant bodies, of regulating, developing and promoting tourism in Oman. Other elements of its remit include the assessment of tourism resources in Oman, preparation of programmes and national plans relating to tourism development in accordance with the five year plan of the Sultanate, studying new tourism projects, and attracting investors. Other responsibilities include consideration of applications relating to exemption of tourism projects from taxes and fees, organisation of conferences and seminars relating to different tourism aspects and proposing the execution of international agreements within the tourism sector. The Ministry of Tourism has the power to determine fees for tourism services and to monitor the price of goods and services offered by touristic and hotel establishments.

## Reporting and Licensing Regime

In terms of reporting requirements, tourism companies and other establishments licensed to conduct touristic activities (including branches and offices operating in the Sultanate) are required to provide to the General Directorate at the Ministry of Tourism, a statement, every six months, setting out the tourism programmes that have been executed. Details of such programmes are confidential and it is not permitted for the concerned officials at the Ministry of Tourism to disclose any information to third parties. The

companies, establishments and branches must submit to the Ministry of Media all publications and leaflets which will be distributed to tourists inside and outside of Oman for approval. Printing and distribution must be carried out in coordination with the Ministry of Commerce and Industry.

It is not permitted for a natural or juristic person to utilise or make use of any touristic site without a licence from the Ministry of Tourism. It is not permitted either, without a licence issued by the Ministry of Tourism, to establish or manage any touristic establishment or hotels.

The Implementing Regulations of the Tourism Law set out in more detail the conditions and procedures for the issuance of the licence. Any person, whether

them, or a company owned by Omani and non-GCC, foreigners, subject to the Foreign Capital Investment Law. A bank guarantee will be required for some type of touristic activities or projects which must be unconditional and remain valid during the period of conducting the touristic activity. The Ministry of Tourism may encash the guarantee partly or fully in order to satisfy any dues owed to it, including fines, fees or financial liabilities.

The Ministry of Tourism may issue an initial approval to the applicant subject to satisfaction of stated conditions and obtaining all approvals required from other relevant bodies. Such an initial approval will not permit the applicant to commence the project or conduct any touristic activity. The initial approval is valid for one year from the date of

## Tourism Law, its Implementing Regulations and the Integrated Tourism Complex Law have created a legal framework for investment in the tourism sector by local, regional and foreign investors.

natural or juristic, intending to carry out a touristic project or activity must submit an application in order to obtain approval or a licence from the Ministry of Tourism on the standard application form prepared for this purpose. All supporting documents and information required for the project or the activity must be enclosed with the application. All documents and information submitted to the Ministry of Tourism will be considered confidential. The Ministry of Tourism will consider the application for the licence and issue its decision within 30 days. The lapse of 60 days without issuance of a decision shall be considered to be a rejection of the application.

The applicant must be an individual who is an Omani or a GCC national, companies wholly owned either by Omani or GCC nationals or by both of

its issuance and cannot be extended or renewed. In case of its expiry and where the applicant intends to complete the project, a new application must be lodged with payment of the required fees.

### Integrated Tourism Complexes

Integrated Tourism Complexes which are commonly known as ITCs in Oman, are regulated by Sultani Decree Number 12/2006 (the 'ITC Law') which exempts non-Omani natural and juristic persons from the rules set out in the property laws and regulations in Oman. The ITC Law grants them the right of ownership in ITCs for residential and investment purposes.

Since the issuance of the ITC Law, a number of ITCs have been developed following the approval of the Ministry of Tourism including, by way of an example, the Wave, Muscat Hills and Barr Al Jissah. The owner of real estate within an ITC may dispose of the built property at any time. However, if it is a piece of land, it must be utilised or built within a period of four years from the date of its registration. The owner may not dispose of the land during this period but may mortgage the land for the purpose of developing it. If the land is not utilised or developed within four years, the Ministry of Housing may dispose of the land by way of a sale through a public auction, whilst compensating the owner for the value of the land (at a value set at the time of purchase or sale, whichever is lower). The owner has a right to appeal the decision before the judicial authorities.

The Ministry of Housing may extend the period mentioned in the preceding paragraph pursuant to a recommendation by the Ministry of Tourism if the owner has submitted a request for an extension, and the Ministry of Housing is satisfied with the reasons advanced in support of the extension application. An extension period cannot be for more than two years. The implementing regulations of the ITC Law set out the procedures and details required for such a request and the period during which it must be submitted. The public auction is undertaken by a government committee formed pursuant to a decision of the Minister of Housing through coordination with the Ministry of Tourism, provided that the committee must have legal, financial and technical members, and a member who represents the Ministry of Tourism.

### Conclusion

The Tourism Law, its Implementing Regulation and the ITC Law have created a legal framework for investment in Oman's tourism sector by local, regional and foreign investors. Since their issuance, investment in the Sultanate's tourism sector has witnessed a sharp increase in the issuance of the number of licences by the Ministry of Tourism for various activities and projects. Local and international investment funds, as well as local and regional investors, have been active in the Oman market primarily through development of hotels and appointment of international operators to manage the hotels on their behalf. The fact that the Ministry of Tourism offers, and has made available land for development and investment on a usufruct basis, has also contributed to growth of the tourism sector.

In parallel with the existing legal framework, the Oman government has generally relaxed the requirements relating to investment in Oman and the issuance of visas to tourists and investors, which have led to more inward investment and tourist arrivals which is intended to contribute to the success of tourism projects in the Sultanate.

When planning new economic cities like Duqm in the Al Wusta region, the Oman government has designated certain areas for investment in tourism. Such areas can be utilised for the establishment of parks, restaurants, children's playgrounds, travel offices, tourist guide offices or any other type of touristic project or activity. Investment in such areas will, (subject to any local regulations of the area to be developed), provide foreign investors with a number of incentives that include full ownership of the corporate vehicle used without the requirement for a local sponsor, exemption from tax for a certain period, exemption from the minimum share capital requirement, no restriction on transfer of funds and dividends, the grant of an usufruct agreement for a term of up to 50 years, and a one-stop station which provides all type of services required by investors.

*Al Tamimi & Company's Hotels & Leisure team regularly advises on hotel & leisure resort development and operation within the Sultanate of Oman. For further information please contact Tara Marlow (t.marlow@tamimi.com) or Ahmed Al Barwani (a.albarwani@tamimi.com).*

# Living on the Edge: Edge Computing and the New Micro Data Centre Topology



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



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

## Introduction

Until very recently, the data centre world looked very different. Massive giga-data centres were being built at the network core to manage and store enormous amounts of data. This was where cloud computing services were housed and supplied.

That was before the Internet of Things (‘IoT’) and 5G mobile networks and their impact on both telecommunications networks and data centres. With the proliferation of billions of IoT devices (internet connected (‘smart’) devices) and the greater bandwidth offered by 5G mobile networks to support them, telecommunications networks, and the data centre ecosystem they connect with, are undergoing rapid, material change.

This change has been so fundamental that Gartner announced in 2018 the end of the traditional data centre as we currently know it by 2025. Data workloads, Gartner announced, will be managed very differently. Out of this change has come (network) edge computing.

## So, what is edge computing?

‘Edge computing’ is defined by the research group IDC as a “mesh network of micro data centres that process or store critical data locally and push all received data to a central data centre or cloud storage repository.” It is a new, distributed, digital infrastructure focused on meeting new business

needs. It is important to note that edge computing includes both smart devices themselves, such as drones, which perform a lot of the computing functions that would normally be managed in a cloud, as well as mini-data centres performing what are termed ‘near cloud’ functions on the network edge.

## A new agile, scalable, network infrastructure has emerged at the network edge, but why is it needed?

Connected cars are a great example of why micro data centres are springing up at ‘edge’ locations. Loaded with IoT devices (sensors, etc.) to enable autonomous driving, connected cars (basically, high powered computers on wheels) are generating huge amounts of data that need to be processed as quickly as possible. Latency is a critical issue for connected cars. The distance data has to travel to be processed, and the time it takes to do it, has to be shortened as much as possible to ensure safe, reliable driving.

As a result, the software that processes the data needs to be much closer to the IoT devices collecting the data. It cannot wait to flow back to the central data centre, be processed in a cloud and then sent back. It cannot be dependent on network bandwidth issues. That is where edge computing comes in.

With the huge growth in data that IoT devices will generate and 5G mobile networks will circulate, bandwidth constraints mean that data has to



## An analysis of the issues generated by edge computing - a diversified ecosystem of micro-data centres driven by new IoT and 5G technology - and their impact on traditional data centre estates and cloud computing infrastructure.

be processed differently. A lot of the data that IoT devices will process will not be as critical as connected car sensor data or the data pumping out from medical wearables and other healthcare smart devices. It may be largely inconsequential data, for example, sensor data confirming that industrial or manufacturing systems are functioning properly. There is no reason to add this data to the huge amounts of data being pumped back over the network to the cloud. This data can be processed locally at the 'edge', with only the important data routed back to the cloud.

Edge computing will not replace the traditional data centre or the cloud computing resources housed in these data centres. The new breed of micro data centre will become an addition to this established digital infrastructure, extending a lot of the computing resources traditionally housed in centralised cloud environments further out into the network. Processing data closer to the edge of the network will be particularly helpful in areas of poor or intermittent network connectivity where it is difficult to quickly and easily get data to (and back from) the data centre at the network core and which cannot support full cloud computing environments with all their connectivity needs. It also helps to manage sporadic power supply in remote areas (for example, supporting the IoT devices needed to manage large scale agribusiness).

The micro data centres sit along the route between the IoT device and the data centre. They will be increasingly used to perform key data processing functions such as data analytics, applying machine learning and artificial intelligence. Those network connections between the edge computing resources and the central data centre-based cloud form what has become known as the fog computing infrastructure (an article for another time!).

It is worth noting that edge computing is not a new concept, just a hugely expanded one. For many years, the financial services industry has focused on placing computing resources as close to its business as possible. Stock exchanges built data centres close to the trading floor, ensuring low latency and high computing power to quickly process huge amounts of business (and time) critical financial trading data.

In addition to the benefits edge computing brings with lower latency, faster real-time data processing and analysis and increased application efficiency, by building out a micro data centre ecosystem at the network's edge, organisations also effectively manage their risk if there is an issue with their centralised cloud environment or a network failure.

Key to the expansion of edge computing will be the enhanced customer experience it provides. With the ever increasing use of devices for accessing content, such as video streaming, and the need to provide a high quality digital performance with low latency, edge computing will provide an important new infrastructure.

Where will we find these micro data centres? Due to their smaller size, they will be found in many different locations. IDC estimates that much of the new edge computing infrastructure will take up less than 100 sq. feet. Many will be situated close to, or co-located as part of, mobile tower infrastructure. It makes sense to locate them on such existing infrastructure for easy access to network connectivity and power as well as to simplify access for support and maintenance work. This will also offer a physically secure location.

In addition, it is likely that these micro data centres will be deployed within commercial and residential buildings (for example, smart buildings). Smart buildings are those that use interconnected IoT technologies to share information about the building between their various systems, such as those controlling heating, ventilation, air-conditioning, lighting and security, in order to automate processes and enhance user experience. The use of edge computing and micro data centres either in, or very close to, such buildings could greatly increase efficiency and reduce costs through making real time adjustments to such systems in response to changes in the building environment and occupancy levels. It would also allow rapid, automated responses to system failures or security breaches.

### What are some of the key issues edge computing will raise?

Data security is becoming a big issue as edge computing infrastructure develops. There are differing viewpoints on whether edge computing provides greater or lesser data security. It reduces the data held in the centralised cloud; arguably, reducing the impact of a cloud data breach, and reduces the amount of data moving up and down networks vulnerable to cyber-attack. By decentralising some data processing and storage functions, there is the counter argument that it provides a great many more cyber targets. Data encryption, access controls and network security will be key to protecting edge computing systems in addition to physical security management. The result will be increasingly complicated technology environments.

Edge computing will also impact (and be impacted by) the current trend, seen both in the Middle East and elsewhere, for data localisation. With the growing mandate for certain categories of data to be held locally, within particular countries, rather than stored in centralised cloud environments located outside the countries, edge computing with its localised storage and processing capability may well help meet some of these data localisation requirements.

Finally, as regional Middle East data protection laws and regulations roll out, in addition to specific IoT requirements, edge computing infrastructures will need to be assessed to ensure that they meet these legal requirements. More complex digital infrastructures will throw up new and interesting data protection and cybersecurity regulatory questions.

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*AI Tamimi & Company's Technology, Media & Telecommunications 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) and for further information related to Real Estate, please contact Ian Arnott (i.arnott@tamimi.com)*

# “Move in Now, Pay Later” Developer Incentives in Dubai



**Andrew Balfe**  
Senior Counsel  
Dubai, UAE  
a.balfe@tamimi.com

In recent years, Dubai-based real estate developers have offered various incentives to encourage buyers to purchase their product. Readers will be familiar with advertisements promising extras such as free cars, furnishing packages and holidays to buyers.

Over the last 24 months, as developers have come under increased competition and supply pressure, these additional incentives have become relatively standard in the market, including developers offering to pay Dubai Land Department fees and offering buyers extended payment terms.

Typically, such ‘deferred sale’ arrangements will require a buyer to pay a small percentage of the purchase price on signing, a further proportion on handover of possession of the unit and the balance over an extended period (say, five years) by equal monthly or quarterly instalments. The title deed (i.e. legal ownership) of the property does not transfer until the buyer achieves 100 percent payment.

Deferred sale arrangements help developers sell surplus stock and also make real estate more accessible to buyers who may otherwise have insufficient equity to enter the market (e.g. due to the loan-to-value restrictions that may prevent such buyers procuring finance in the short-term). However, it is important to recognise that while deferred sale arrangements offer potential positives, there are a number of issues that both developers and buyers should consider in deciding whether offering/purchasing a product on a deferred sale basis is appropriate for them.

## Buyer Considerations

By its nature, a deferred sale arrangement results in the developer receiving the purchase price over an extended period (and after the buyer receives possession). For ‘off-plan’ sales in particular, as the bulk of the purchase price is often only paid after completion and handover of possession to a buyer, there is a potential cash flow risk during the construction phase of the development.

Buyers therefore need to carefully consider (as far as possible) their chosen development and seek comfort from the developer that it has sufficient capital to complete the development. To that end, buyers would generally be advised to evaluate the developer’s prior track record for delivering similar projects.

This risk is obviously mitigated in the case of built real estate sold on a deferred sale basis.

Where buyers are taking advantage of a deferred sale arrangement to enter the market (i.e. without sufficient equity to secure financing for the balance), there is also a risk that a tightening of lending criteria may leave the buyer exposed at the point in time when the balance payment is due.

## Developer Considerations

On the developer side, there are numerous more issues and include both practical and legal risks.

### *Buyer default*

If a buyer defaults on its payment obligations, the developer may wish to terminate the sale and purchase agreement. This becomes more problematic in a practical sense if possession of the property has already been handed over to the buyer. There are a number of strategies that developers can put in place to mitigate against this risk, in particular by ensuring that the payment plan is appropriately structured and appropriate security is provided.

The procedure for termination of the sale and purchase agreement also presents some issues (although these are not specific to deferred sale arrangements). While the 'off-plan' scenario is relatively straightforward, with the developer able to avail itself of the termination procedure set out in Law No No. 13 of 2008 (as amended by Law No. 9 of 2009) ('**Interim Registration Law**'), a developer who sells constructed units on a deferred sale basis must bring a claim for termination to Dubai Courts. This can be a costly and time-consuming exercise.

### *Re-taking possession of the property*

Following any such termination, the developer may still be confronted with the practical difficulty of evicting a buyer who refuses to leave the property (either via personal physical occupation, or by leaving their possessions in the property). This would generally require the assistance of the Dubai Courts and relevant authorities and leads to additional time and cost for the developer.

Additionally, the condition of the property may have suffered from wear and tear or damage, requiring the developer to spend additional funds in order to make the property fit for sale. Again, the developer can minimise this risk by using appropriate contractual obligations and security structures. The developer may also be able to insure against material damage.

The developer may also be left to deal with various unpaid charges, such as service charges or DEWA charges that need to be cleared in order for the developer to resell the property.

**While deferred sale arrangements offer potential positives to developers and buyers, there are a number of issues that both parties should consider before transacting on a deferred sale basis.**

### *Tenant in possession*

The risks associated with re-taking possession are further complicated if a buyer has leased the property to a third party. In that scenario, if the developer terminates the sale and purchase agreement, it is now left with a property that is encumbered by a lease. Further, the tenant may have already made rent payments directly to the buyer.

Whether or not to permit leasing (and if permitted, the manner in which that leasing occurs) is a crucial issue to which developers must give serious consideration. Some developers may prefer to restrict deferred sale arrangements to owner-occupiers (although that will not be practical in all cases) and many developers would not wish to exclude buyers looking to purchase investment properties. If buyers are permitted to lease their units prior to payment of the full purchase price, ideally contractual arrangements and other procedures would be put in place to provide as much protection as possible for the developer.

### *Compensation*

For 'off-plan' sales, the Interim Registration Law prescribes the amount of any instalment payments that a developer is entitled to retain in the event of termination of a sale and purchase agreement. Where 'off-plan' units are sold pursuant to a deferred sale arrangement, developers should consider how their instalment structure may impact their instalments under the Interim Registration Law.

For 'completed' property sales, the law does not provide any specific regime for calculating the amounts to which a developer is entitled. The issue would generally be left to a contract, subject to the Courts' discretion to adjust the amount of any compensation to reflect the actual loss suffered.

### *Cash flow*

Developers offering 'off-plan' units on a deferred sale basis should also consider the cash flow implications against their capital requirements for the development.

## The Way Forward

The above 'developer' risks can generally be mitigated against by putting in place appropriate contractual and security structures. The deferred payment plan itself may also be structured in a way that best balances the developer's desire to sell the property, while providing a level of protection against the risks inherent in such sales. In particular, developers that are considering selling existing completed stock on a deferred sale basis should seek advice as to the appropriate methods for protecting against the 'buyer default' scenario and the need to bring a claim before the Courts.

Similarly, buyers can put themselves in the best position by undertaking appropriate due diligence on the developer and the development project and, if required, clarifying the likely lending conditions ahead of time.

It will be interesting to see where the market for developer incentives goes from here. Deferred sale arrangements have become relatively market standard and developers are likely to be creative in order to differentiate their offerings. Readers will appreciate that any such incentive is likely to have practical (and legal) consequences and developers should seek advice on those issues to ensure that their interests are best protected.

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*Al Tamimi & Company's Real Estate team regularly advises on deferred payment arrangements and managing their inherent risks. For further information please contact Andrew Balfe (a.balfe@tamimi.com).*



# Construction and the Hotel Sector



**Euan Lloyd**  
Senior Counsel  
Abu Dhabi, UAE  
e.lloyd@tamimi.com

## Background

Many hotel projects are continuing to be developed across the GCC while several high profile and established hotels have recently undertaken (or are on the verge of undertaking) significant renovation or refurbishment projects, having been in operation for a number of years.

In the hotel and hospitality industry, quality and appearance (including small details) are of the utmost importance. Indeed, expectations of guests are becoming increasingly sophisticated, while positive online reviews are important for the purpose of enticing future patronage. In recognition of this, agreements with hotel operators often contain detailed and high quality specifications, while penalties frequently apply if the required levels (as well as times for completion) are not achieved.

However, satisfactory levels of delivery can only be achieved with a significant amount of careful planning and preparation.

Over recent years, we have received several instructions to assist with hotel projects that have not gone according to plan and that have encountered difficulties (including in the forms of delay and substandard quality of work). We therefore set out below what we have identified as some key 'pressure points', together with our recommendations regarding how these issues can be best mitigated.

## Provision of Inadequate Works

Given the importance of quality, a frequent complaint we have encountered relates to substandard Works.

Some quality issues can emanate from the fact that the Contractor simply lacks the necessary skill, experience and/or resources to satisfy the requirements set out in the Operator's (usually stringent) requirements (which need to form part of the Construction Contract). To address this risk, we recommend that the Employer invests the time in undertaking a thorough tender process to ensure that the Contractor that is engaged is well positioned to properly perform the Works (i.e. having previously undertaken Works of a similar nature).

While inadequate Works that are visible should, in theory, be identified and dealt with relative ease (i.e. such Works should be rejected by the Engineer), more challenging issues arise if substandard Works have been covered up and/or additional Works have been undertaken 'on top' of defective Works, meaning that the defects in question are no longer visible and may only manifest themselves at a later date (sometimes after the expiry of the defects liability period).

Although Works obviously should not be covered up without being inspected and approved (and many Construction Contracts contain provisions to

this effect), defective Works appear to be covered up with alarming regularity (either on account of inspections not taking place or the inspections failing to identify defects).

In this situation, the focus falls upon what the Employer can do to remedy the situation and the appropriate remedy often depends on when the defect was identified (as the Employer's remedies and causes of redress typically decrease with the passage of time).

If, for example, the defect was discovered prior to the issue of the Taking Over Certificate, then the defect could be used as a compelling reason for not Taking Over the Works, thus meaning that the Contractor would be required to correct the defective Works as a precondition to the issue of the Taking Over Certificate. This often constitutes a strong incentive for the Contractor to address the defect.

Alternatively, the Employer could invoke its rights under the Defects Liability Period if the defect is discovered after the Works have been Taken Over but prior to the expiry of the Defects Liability Period. However, complications may arise if the hotel is operational and is accepting guests at this stage, particularly as repair Works (i.e. to MEP systems) can be slow, expensive and disruptive (to the extent that it may be necessary to even close part of the hotel).

A further difficulty that the Employer may encounter is that the Performance Security that it is holding is insufficient to cover the cost of the rectification Works. This can cause significant issues if the Contractor is failing to cooperate and voluntarily comply with its rectification obligations, meaning that the Employer is required to step in and independently undertake the necessary Works (usually on an urgent basis). Indeed, it is not usual for Construction Contracts to provide that the Employer's Performance Security is halved upon the issue of the Taking Over Certificate (while we are aware of some Construction Contracts which even state that the Employer relinquishes all entitlements to Performance Security upon the issue of the Taking Over Certificate).

The situation is even more undesirable for the Employer if a material defect is only discovered after the expiry of the Defects Notification Period, in which case all Performance Security will have invariably been released while the Contractor may even provide that the Contractor is released from all liability upon the expiry of the Defects Notification Period. Even if the Contractor is not released from liability, the Contractor may be reluctant to remedy

the defect voluntarily, particularly if its Performance Security has been returned. This may result in the Employer having to make good the defect at its own cost in the first instance before potentially bringing proceedings against the Contractor.

However, liability for the performance of defective Works does not exclusively lie with the Contractor as the Certifier (typically the Engineer (if a FIDIC based Construction Contract is being used)) should be responsible for erroneously certifying defective Works. The basis upon which and the extent to which a claim can be brought against the Certifier will be largely determined by the provisions of the Certifier's appointment. In our experience, it is not unusual for Certifiers to be engaged on either terms of engagement that do not prescribe the Certifier's obligations in detail or are on favourable terms from the Certifier's perspective (usually at the request of the Certifier's professional indemnity insurer). For instance, liability for indirect and consequential loss (such as loss of profit) may be excluded while the Certifier's liability may be capped at a relatively low amount. This may mean that there is little point, in practice, in bringing a claim against the Certifier.

On account of the importance of ensuring the delivery of good quality Works, it is not unusual for the Employer to engage a Project Manager to proactively supervise the Works as well as the certifications of the Engineer, while the Operator may also engage its own inspector. We endorse this approach as it can safeguard quality, thus aligning with the adage that 'prevention is better than cure'.

### Coordination & Interface

Coordination and interface issues are significant if an existing hotel is being refurbished in phases (i.e. parts of the hotel remain open to the public while other parts are closed for renovations), but we note that this approach is usually only adopted if the refurbishment Works are 'cosmetic' as opposed to, say, substantive structural Works.

Even if the refurbishment Works are relatively minor in nature, it is important that the Construction Contract contains a detailed programme that sets out the times (as well as restrictions) regarding when the Works can be performed in order to minimise interference and nuisance to guests. Additionally, the health and safety aspects of performing Works in such circumstances need to be carefully considered (particularly given the potential interface with the public) and fully addressed in a comprehensive health and safety plan.

**Although each hospitality project needs to be considered on a case by case basis (and tailored for the specific circumstances in question), certain fundamental issues apply to all hotel projects and need to be clearly addressed. These include the need to ensure that an experienced contractor is engaged, that Works are properly and independently certified and that the Employer has clearly defined contractual remedies to mitigate the impact of any breaches by the Contractor.**

Given that renovation Works are invariably disruptive, we recommend that (as with any Construction Contract) the Construction Contract in question contains a detailed delay damages regime to incentivise the Contractor to complete the Works as quickly as possible and this should be allied with a clear mechanism that requires the Contractor to accelerate the Works (including through the deployment of additional manpower) if the actual progress fails to correspond with the requirements of the programme.

If commercially viable, the Employer may wish to consider paying a bonus if the Works are completed ahead of schedule.

### Payment Issues

Payment issues frequently afflict projects, including in the hospitality sector.

Failure to make payments can come in several forms and include failure by the Employer to make due payments to the Contractor, which will

obviously have a detrimental effect on the Project as a whole (and in respect of which the Contractor should ensure that it has clearly defined rights of suspension (and ultimately termination)).

However, a more common issue, in our experience, is that of the Contractor diverting payments from the Employer to satisfy other commitments that are not related to the Project. This approach frequently results in the non-payment of key Subcontractors (some of whom may be nominated by the Employer or by the Operator). This, in turn, can mean that progress and quality can be severely compromised while delays are a further likely consequence.

In this situation, an option (depending on the specific drafting) may be for the Employer to terminate the Contractor, but termination is clearly a disruptive and confrontational process that can entail both unforeseen and costly consequences and is therefore often regarded as the remedy of last resort.

As such, an alternative approach may be for the Employer to make direct payments to the Subcontractor and to deduct such payments from sums that would otherwise be due to the Contractor. However, such rights do not exist at law so it is important that the Construction Contract

confers such rights upon the Employer. It is also helpful for the Employer's right to make direct payments to be supplemented by a clear right of audit, which enables the Employer to accurately access the sums that are rightfully due to the Subcontractors in respect of whom direct payments are contemplated. This can help circumvent the common concern that direct payments to Subcontractors may result in the subcontractor receiving payments to which it is not entitled.

If the Employer decides that termination is the only solution, then the consequences of termination and the next steps need to be carefully considered and strategised. As well as ensuring that the Construction Contract has a clear basis upon which it can be terminated (and that any local law nuances have been satisfied), the Employer frequently requires the ability to directly engage (either itself or through a replacement main contractor) the Contractor's key Subcontractors (and this right needs to be clearly provided for in the drafting of both the Construction Contract and the relevant Subcontracts). It is therefore important that such Subcontractors have been engaged on sufficiently robust terms and do not contain any provisions (including in the confidentiality provisions) that

prevent such Subcontractors from being directly engaged. This is particularly the case in respect of any specialist Subcontractors that are specifically identified in any agreements with the Operator.

## Variations

Finally, variations need to be carefully considered.

We are aware of Employers instructing variations that are incompatible with the base design. In our experience, this can be particularly problematic in the context of projects that are in the process of being completed having been on hold for a number of years and the requirements of the Employer or the Operator have evolved since the design was initially finalised. In this regard, it is important to ensure that the variations (particularly in the form of expansions) do not negatively impact the availability of key utilities and services and issues of this nature need to be carefully considered prior to the Variation in question being instructed.

In this regard, the Contractor (and the Engineer) should be under an express obligation to proactively advise on the impact on a proposed variation.

## Concluding Thoughts

Hotel projects tend to be complicated and focus on quality (especially finishes). Although each hospitality project needs to be considered on a case by case basis (and tailored for the specific circumstances in question), certain fundamental issues apply to all hotel projects and need to be clearly addressed. These include the need to ensure that an experienced Contractor is engaged, that Works are properly and independently certified and that the Employer has clearly defined contractual remedies to mitigate the impact of any breaches by the Contractor.

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*Al Tamimi & Company's Construction & Infrastructure team regularly advises on all elements of the construction procurement process. For further information please contact Euan Lloyd (e.lloyd@tamimi.com).*





# PropTech (Part Two): Real Estate FinTech, Tokenisation and Use of Blockchain in the Real Estate Sector



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



**Shirley Zhang**  
Associate  
Dubai, UAE  
s.zhang@tamimi.com

In our April edition, we explored how 'PropTech' - the marriage of property and technology - is being used with disruptive effect at every stage of a real estate asset's life cycle. The first article focused on smart buildings, co-working spaces, effects on the retail sector and the potential effects on real estate of autonomous vehicles.

In the second of our two-part article on PropTech, we take a look at how the growing business of FinTech is being used in the real estate sector and also bring you an update on the tokenisation of real estate assets and the use of blockchain in real estate transactions.

## Real Estate FinTech

The term 'PropTech' itself has emerged out of 'FinTech', the term used to describe how new technology is used to improve and automate the delivery and use of financial services. At its most basic, FinTech includes money transfer apps such as Venmo, PayPal and Square's new Cash App, crowdfunding applications such as GoFundMe, peer-to-peer lending such as Funding Circle and more recently, the announcement of Apple Card. FinTech has disrupted just about every facet in the provision of financial services and is showing no signs of slowing down.

Peer-to-peer lending platforms ('P2P') and crowdfunding have grown in recent years, allowing investors and borrowers to bypass traditional

sources of funding. P2P technology does not forego the due diligence involved in a property transaction. Rather, it streamlines the lending process by capturing automated data from different sources in order to underwrite loans faster and provide access to wider sources of capital. In the realm of property lending, P2P predominantly provides short-term bridging, buy-to-let mortgages, development finance and commercial investment loans. However, loan portfolios for P2P lending in the real estate market are still very small compared to the conventional sources of funding.

The concern with the P2P market is that it is far less regulated than the traditional banking sector. In a first, the Dubai Financial Services Authority ('DFSA'), the regulator of financial services and securities in the Dubai International Financial Centre ('DIFC'), launched its regulatory framework for loan and investment-based crowdfunding platforms in August 2017 in order to licence and protect the rights and obligations of all parties involved in crowdfunding activities.

For example, Dubai-based real estate crowdfunding platform, Smart Crowd, has utilised this framework to allow investors to 'co-own' a property with other investors through shares in a corporate vehicle that owns the relevant asset. This form of co-ownership lowers the barrier for entry to property investment by allowing investors to own a fraction of a property. Such platforms are still in their early days in the UAE, currently only investing



in residential properties but if successful, could lead to investment in larger assets such as commercial or industrial buildings and hotels.

Underpinning the potential success of P2P and real estate crowdfunding are the more basic building blocks of FinTech such as data analytics (increasing personalisation in investment decision-making), personal finance tools (providing greater insight into an investor's financial position) and investment property calculation tools (increasing accuracy for forecasting performance).

### Tokenisation of Real Estate Assets

The idea of tokenisation is the process of converting rights to a real-world asset into a digital token on a blockchain which can then be held privately or be traded like crypto-currency on a digital exchange. Real estate assets are, by their very nature, illiquid, non-fungible assets. Sale and purchase transactions take time to complete and there are a number of set processes that need to be carried out in order to complete the transaction by various third parties and intermediaries with associated transaction costs. Asset backed tokenisation has the potential to reduce these liquidity obstacles.

Fractional and proportional ownership is one of the more interesting potential applications for real estate. Tokenisation has the potential to provide a financing alternative through buildings being assigned their own tokens, which constitute fractions of the whole or part of the asset's ownership or debt. It is also likely that we will see an increase in real estate investment funds issuing tokens instead of shares.

Such tokenisation of real assets differs from the offering of so called 'utility' tokens, which usually have a payment function and represent future access to a company's goods and services (which may not yet, or ever, be developed). It was the rampant speculation seen in 2017 in Initial Coin Offerings ('ICOs') of 'utility' tokens and so called 'alt coins' which had no obvious use that, arguably, led to the subsequent bear market in crypto assets and in relation to which the need for consumer protection and regulation became apparent.

In the UAE, there are separate legal and regulatory frameworks in play. The financial free zones of the DIFC in Dubai and ADGM in Abu Dhabi each have their own laws and regulators, whilst the remainder of the UAE, outside of the geographical areas of such financial free zones, falls within the remit of the UAE Securities and Commodities

Authority ('SCA'). The position is further complicated by the fact that crypto-currency and tokens issued on the blockchain represent a new form of asset class – which simultaneously may exhibit certain characteristics of currency, securities or commodities but which does not fit comfortably into an established category. Different regulators may therefore take a different view as to how such crypto-assets should be categorised and regulated.

The Financial Services Regulatory Authority ('FSRA'), the regulator for ADGM, was the first in 2018, to issue regulations in the UAE relating to crypto-assets, making it an attractive option for crypto-related businesses as it provides greater certainty from a regulatory compliance perspective. The SCA has also indicated that it intends to issue regulations relating to ICOs and the trading of crypto-assets later this year. Such increased regulation and legal certainty will undoubtedly lead to greater activity in the space and we expect the tokenisation of real estate assets to form a significant part of this, particularly with the crypto-market cycle showing some initial signs of returning to a more bullish phase with increased institutional investor involvement and mainstream adoption. The proposed launch of trading platforms and custodial solutions this year by players such as Fidelity Investments and Intercontinental Exchange (parent company of the New York Stock Exchange), with their respective Fidelity Digital Assets Services and Bakkt projects, are likely to provide such greater comfort to institutional investors. Further, bitcoin 'halving' events, which are hard wired into the bitcoin code, occur roughly every four years. Such 'halving' events result in the bitcoin reward for mining new blocks being cut in half, thus limiting further the availability of an already limited and scarce, fixed supply. The next one is due to occur around May 2020. In the past, such 'halving' events have had a positive effect on bitcoin price, which usually also results in renewed and increased interest in crypto-currencies and digital assets generally.

### Use of Blockchain by Land Registries

The potential for land registries to use blockchain to transform the process for land registration and reduce fraud in property transactions has been explored previously. The UK and Dubai, in particular, have made great progress towards this goal.

In October 2018, the UK's HM Land Registry announced that it was partnering with the software company, Methods to explore how R3's blockchain

platform, Corda, could be used to develop a faster, cheaper and more reliable land registration process. It has reported that Digital Street, HM Land Registry's research and development project, has already created a digital register for a small sample size of properties with the ultimate goal of establishing a digital register built upon blockchain technology.

The Dubai Land Department ('DLD') is also in the process of creating a blockchain system to record title deeds and real estate contracts. By capturing all this information, over time, an immutable database of current and historic property ownership, dealings and encumbrances will be achieved, bringing greater transparency and trust in property transactions.

'Smart contracts', which are discussed below, also have the potential to allow the register to be automatically and accurately updated without the manual process of submitting a transfer of ownership through a paper application form.

### Smart Contracts

A smart contract has all the requirements of a traditional contract (i.e. offer, acceptance and consideration). However, it utilises blockchain technology to automatically execute contracts between buyers and sellers. Rules are put in place so that an action is automatically generated upon the occurrence of a specific event. For example, a rule could be enacted so that title of a property is automatically transferred to the buyer when they deposit funds to the appropriate account. It therefore has the potential to enact the transfer of property instantaneously and securely, without the need for middlemen (e.g. escrow agents, brokers) in a transaction.

A move to smart contracts by the DLD may also include lease registrations whereby a tenant will be able to receive their tenancy contract digitally. The blockchain system may incorporate databases containing information such as Emirates ID, the validity of residency visas and allows tenants to make payments electronically. The immutable data stored on the blockchain system may also be shared with different government and private entities such as Dubai Electricity & Water Authority, telecommunications and district cooling providers and various other services, eliminating the current manual set-up procedures for each entity.

The most important issue to be addressed by such platforms is the protection of personal information and important financial data. There will also be

the need for the introduction of digital signatures and verification of identity to digitally process and recognise the legitimacy of such transactions.

Additionally, sale and purchase contracts may contain complex condition precedents and uncertainties which cannot be broken down into a definitive set of coded rules. Therefore, it is likely that human lawyers will continue to play an integral role in complex real estate transactions, at least for the foreseeable future.

### Other Applications

Whilst it does not eliminate the due diligence to be performed prior to purchasing a property, a digital register (potentially facilitated by smart contracts) may allow buyers to access key data about a property in order for them to conduct their due diligence faster. For example, the DLD is currently developing a smart listing portal which shall provide real-time listing of such information on properties for sale and, which, through the use of smart contracts, will be able to be automatically de-listed from such portal upon the transfer of title.

The DLD is also building a blockchain mortgage platform which would allow banks to mortgage and de-mortgage property online. However, on a wider application, blockchain can be used to securely store information from surveyors, credit agencies and land registries that would allow banks to quickly verify the ownership of the property or confirm the market price of a property, removing the need for paper-based applications and various intermediaries.

The application of blockchain in the real estate market is still at a nascent stage but it has the potential to optimise and streamline all steps of a real estate transaction, while at the same time, increasing transparency and trust in the real estate market.

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

# Real Estate Investment Funds in the UAE: The Key Aspects of Administrative Decision No. (6/R.T) of 2019 Concerning Real Estate Investment Fund Controls



**Malek Al Rifai**  
Senior Associate  
Dubai, UAE  
m.alrifai@tamimi.com



**Ali Awad**  
Senior Associate  
Dubai, UAE  
a.awad@tamimi.com



**Kathryn Smith**  
Senior Associate  
Dubai, UAE  
k.smith@tamimi.com

Demand for real estate investment funds (more commonly known as 'REITs') is on the rise as family offices and real estate companies seek to capitalise on the continued surge of investors looking to access UAE real estate as an alternative asset class. In this article, we discuss the Administrative Decision No. (6/R.T) of 2019 Concerning Real Estate Investment Fund Controls ('UAE REIT Regulations') which was recently issued by the UAE Securities and Commodities Authority ('SCA'). The UAE REIT Regulations have updated and repealed the earlier legal framework for REITs established onshore in the UAE (excluding the Dubai International Finance Centre ('DIFC') and the Abu Dhabi Global Market ('ADGM')) ('UAE REITs').

## Core Requirements and Obligations

In order to qualify as a UAE REIT, an investment fund established onshore in the UAE must, in addition to the SCA Board of Directors' Chairman Decision No. (9/R.M) of 2016 Concerning the Regulations as to Mutual Funds, comply with the provisions of the UAE REIT Regulations. Notably, the following core conditions are required to be met:

- where the UAE REIT is a private UAE REIT, at least 75 percent of its total assets must be invested in real estate, whether in the form of construction, development or re-fitting, providing it is in preparation for sale, management, lease or disposal;

- a public UAE REIT is required to:
  - invest at least 75 percent of its total assets in income generating real estate assets;
  - receive at least 90 percent of its total revenue from real estate, interest, dividends and capital earnings relating to such income generating real estate; and
  - distribute at least 80 percent of its net profits to unitholders each year.
- where the UAE REIT owns one or more real estate service companies, the UAE REIT Regulations now stipulate that investments in such service company(ies) cannot exceed 20 percent of the UAE REIT's total assets;
- borrowing must be restricted to amounts of not more than 50 percent of the UAE REIT's total asset value.

The UAE REIT Regulations also impose a number of additional conditions with respect to the valuation of assets and obligations upon the UAE REIT's management company and real estate appraisers. As with the previous UAE REIT regime, importance continues to be placed on the roles undertaken by real estate appraisers, legal counsel and other professional advisors whose expertise must be sought by the UAE REIT as a matter of compliance. Examples include the requirement for the appointed real estate appraiser to evaluate all real estate assets prior to their acquisition or disposal by the



## Demand for real estate investment funds is on the rise as family offices and real estate companies seek to capitalise on the continued surge of investors looking to access UAE real estate as an alternative asset class.

UAE REIT, with reliance on the evaluation reports restricted to three months from their date of issue. Legal advisors must also be retained to, amongst others, carry out legal due diligence on the real estate assets and advise on the UAE REIT's legal dealings. In terms of liability, however, the UAE REIT Regulations leave no doubt as to the accountability of the management company and its board of directors who must assume full responsibility for the UAE REIT's management, projects, investment decisions and assets.

Whilst the UAE REIT Regulations have sought to clarify the pre-existing UAE REIT regime, there are still areas of ambiguity, including the types of real estate that fall within the definition of 'real estate assets' and uncertainty with respect to governance and valuation practices. We understand that these are currently being discussed and considered by the SCA and further amendments to the existing UAE REIT Regulations are expected to be released in due course.

### Benefits of UAE REITs

Despite certain perceived deficiencies in the UAE REIT Regulations, the UAE REIT regime offers many benefits, making it one of the jurisdictions of choice for those wishing to establish a REIT. Advantages of the UAE REIT regime include the ease with which capital can be raised or liquidity achieved without the need to sell either a stake in the property holding company(ies) or the property(ies)

themselves. A UAE REIT is also permitted to accept contributions by cash or in-kind, provided that where non-cash consideration is accepted, independent appraisers are appointed to assess its value.

UAE REITs also have access to a wide market, being able to offer their units to investors residing in the UAE (excluding the DIFC and ADGM) without the need to appoint a local distributor, utilise the new Fund Passporting Rules or rely on cross border marketing practices (which we note are coming under increasing scrutiny by the SCA).

In addition, UAE REITs, being domestic funds, have the ability to list more easily on the Dubai Financial Market ('DFM') or Abu Dhabi Securities Exchange than REITs that are not established onshore in the UAE. Listing on these global exchanges is an attractive proposition to investors due to the liquidity they offer. Further, the DFM is actively encouraging the listing of REITs with measures including the publication of the REIT Listing Regulations, paving the way for the launch, in the coming months, of the DFM's REIT platform, and the execution of a memorandum of understanding ('MoU') with the Dubai Land Department. Whilst the contents of the MoU are currently confidential, the DFM has announced that it will encourage greater numbers of REIT listings due to the 'many incentives' which it provides, leading to speculation that the MoU will, for REITs listed on the DFM, relax existing restrictions on land ownership and payment of fees on the transfer of beneficial land ownership.

### Conclusion

The use of UAE REITs is currently limited, however, as the real estate market in the UAE matures, their popularity is set to increase. The rules and regulations with respect to UAE REITs continue to be an area of development and great consideration for the authorities and, as the UAE continues to strive to become the leading jurisdiction for those seeking to exploit the many benefits of REITs, we anticipate further progression in the UAE REIT regime in the near future.

The key characteristics of the REIT regimes in both the DIFC and ADGM will feature in upcoming articles in Law Update over the coming months.

*Al Tamimi & Company's Real Estate and Banking teams regularly advise on all aspects of the life-cycle of a real estate fund, from formation to real estate acquisition, regulatory matters, tax and corporate advice through to exit strategies. For further information please contact Malek Al Rifai (m.alrifai@tamimi.com), Ali Awad (a.awad@tamimi.com) or Kathryn Smith (k.smith@tamimi.com).*



# Recent Developments in Real Estate in Bahrain



**Unkar Chanian**  
Senior Associate  
Manama, Bahrain  
u.chanian@tamimi.com

## Introduction

It has been a busy year for the real estate sector in the Kingdom of Bahrain as there have been numerous changes to the sector's regulatory framework, in addition to the development of new innovative technologies.

In this Article, we highlight the changes introduced by the newly established Real Estate Regulatory Authority ('RERA') and the recent innovations introduced to the real estate industry in the Kingdom.

## Establishment and Aims of RERA

RERA was officially formed by the issuance of Royal Decree 69/2017. The central roles of RERA are to:

- boost the real estate industry within the Kingdom;
- educate real estate investors about their rights and protect them against fraud;
- promote the Kingdom's economic growth;
- create effective rules and regulations to regulate the real estate market in addition to facilitating real estate transactions for all stakeholders;

- promote a transparent real estate environment that positively affects real estate investment within the Kingdom and also impacts occupier decision making; and
- work to enrich the knowledge of professionals within the sector so that they can deliver an unmatched service and maintain excellent communication with all stakeholders.

The establishment of RERA aligns the Kingdom with international best practice standards and enables individuals within the real estate industry to deliver a professional service in a cost-effective and transparent manner.

RERA oversees the development of a national real estate policy supported by a five-year sector strategy. According to the CEO of RERA, Sheikh Mohammed bin Khalifa bin Abdulla Al Khalifa, RERA had initially focused on new developments and the licensing of real estate service providers. The next stages of RERA's strategy include strengthening real estate practices, driving consumer confidence in a well-functioning property market, ensuring that developments are financially viable, consumers are protected, and that enforcement processes are in place to maintain the highest standards in real estate practice.

### **Advantages RERA has brought to Bahrain's Real Estate Market**

RERA has introduced the following changes to the Kingdom's real estate sector:

#### **1. Licensing of real estate developments and developers**

Since 31 August 2018, RERA has increased transparency within the market by requiring all brokers, sales agents and developers to hold a RERA licence. Mandating licensing of developers and developments has strengthened the regulatory framework by identifying and prohibiting unlicensed real estate enterprises. Currently, there are 14 licenced developments, 90 licenced developers within the Kingdom, and we expect to see the numbers of registered developers and developments to continue to rise.

#### **2. Issuing market research advertising licence**

To minimise the delay in the development stage of real estate projects, RERA has currently granted 30 real estate developers market research advertising licences. This licence allows developers to carry out research, advertise and test the real estate market prior to committing to a development project licence. This licence has also assisted developers in preserving the equity of the purchaser and the project as well as minimising the legal and financial risk for all parties involved.

#### **3. RERA advances professional development programmes within Bahrain**

According to Sheikh Mohammed bin Khalifa bin Abdulla Al Khalifa the launch of a continuous professional development programme ('CPD') by RERA has increased "professionalism in the sector, making sure that all practitioners have the expert knowledge, skills and competencies required to operate in the dynamic real estate sector". The 'RERA Diploma' in real estate and the 'RERA Practitioner Certificate' in real estate are two courses that have been made available via the CPD programme for real estate brokers and sales agents. To date, 100 brokers and sales agents have completed the RERA Practitioner Certificate as part of the CPD.

**The regulatory clarity introduced by RERA has created a favourable environment by which new technologies can be utilised and developed within the Kingdom.**

#### **4. Insurance bond on escrow accounts**

In collaboration with the Bahrain Insurance Association and Swiss RE, RERA has provided an insurance bond of escrow accounts for real estate projects. The bond is provided by local Bahrain insurance companies which are regulated by the Central Bank of Bahrain and members of the Bahrain Insurance Association. The bond has been fully supported by the AA rated and world's largest reinsurer, Swiss RE, thus demonstrating a strong vote of confidence in the Kingdom's real estate sector. This insurance bond has brought stronger buyer and investor protection, improved cash flow management for developers, increased the availability of finance for developers and investors. Currently, there are six licensed Bahrain Insurance Association members providing the insurance bond on escrow accounts for real estate projects.

#### **Next steps for RERA**

In order to enhance the sustainability of the Kingdom's real estate industry, RERA is also working towards regulating the real estate evaluator profession within the Kingdom. Sheikh Mohammed bin Khalifa bin Abdulla Al Khalifa has stated that RERA will ensure that the Kingdom's real estate sector aligns itself with international best practice by implementing International Valuation Standards and collaborating with world renowned organisations such as the Royal Institute of Chartered Surveyors in designing and implementing training and development programmes to further professionalise the real estate valuer sector.

### **Property Technology ('PropTech') in Bahrain**

Due to the Kingdom's reputation as a technology hub within the region and the increased transparency and stability introduced by the establishment of RERA, the Kingdom has recently welcomed its first PropTech company.

#### **Implications of PropTech within Bahrain**

PropTech's launch in the Kingdom is representative of the growing opportunities for real estate investment within the country due to the Kingdom's

low operating costs (30 percent less than other GCC markets) and the large number of mixed-use freehold developments, which offer opportunities to foreign investors.

Additionally, the launch of the first PropTech company within the Kingdom puts the Kingdom at the forefront of the PropTech wave. Globally, the PropTech industry is witnessing rapid expansion, with a 2018 KPMG survey of the real estate industry revealing that 93 percent of respondents feel that traditional real estate organisations must engage with PropTech companies in order to adapt to the changing global environment.

### **Conclusion**

The regulatory clarity introduced by RERA has created a favourable environment in which new technologies can be utilised and developed. RERA has also bolstered investor confidence within the region and has complemented the Kingdom's efforts to attract private investment into the property market.

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*Al Tamimi & Company's Real Estate team regularly advises on All aspects of Real Estate including disposal and acquisitions (with a particular expertise in off-plan sales) and landlord and tenant work. For further information please contact Unkar Chanian (u.chanian@tamimi.com).*



# IoT-VNO: Licensing Internet of Things Virtual Network Operators 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

In late 2018, the Communications and Information Technology Commission (the telecoms regulator in Saudi Arabia) issued the *Rules and Conditions for Provision of Mobile Virtual Network Operator Services and Internet of Things Virtual Network Operator Services* (the 'Rules and Conditions'). As the name suggests, the Rules and Conditions address both Mobile Virtual Network Operator Services ('MVNO') and Internet of Things Virtual Network Operator Services ('IoT-VNO'), although in this article we focus on the provision of IoT-VNO services.

Equipment and devices with embedded sensors and internet connectivity are becoming increasingly common. The ability for remote and automated monitoring and interaction between devices has endless potential to enhance modern life. Saudi Arabia's new licensing regime for Internet of Things Virtual Network Operators provides greater clarity for businesses hoping to provide these types of services in the Saudi market.

## IoT-VNO Services Licence

In the Rules and Conditions, the term 'IoT-VNO services' refers to services that enable the automated communication between machines and devices using data SIM cards, eSIM (embedded data SIM), or any other future functional equivalent. In order to provide IoT-VNO services, a service provider (that is not already licensed as a telecommunications service provider) must have first obtained a Class A

IoT-VNO Services Licence from the CITC. This type of licence is intended for service providers who procure mobile network capacity from others, on a wholesale basis, so as to provide IoT-VNO services to their own customers without obtaining any frequency allocation or constructing any telecommunication networks.

The application process is set out in the *Conditions for Obtaining a Licence for the Provision of IoT-VNO Services in Saudi Arabia*, published by the CITC. Along with details of the applicant (including information on structure and ownership), the applicant must submit information on:

- strategy, and how the applicant will contribute to the communications market in Saudi Arabia;
- services, including products, services and sectors targeted, timing, and the proposed method for supply of innovative services;
- organisational structure, including administration, marketing, sales, subscriber care, operations and maintenance;
- a market study, setting out market segments and expectations, proposed services and pricing, contemplated customer attraction;
- a subscriber care plan, including information on aftersales service, service levels, and a plan for continuous improvement; and
- Human Resources plan, including anticipated Saudization levels.

## In order to provide IoT-VNO services, a service provider (that is not already licensed as a telecommunications service provider) must have first obtained a Class A IoT-VNO Services Licence from the CITC.

The applicant is also required to submit a technical plan, including a description and design of any infrastructure, network operation processes, performance management, and continuous improvement.

The Rules and Conditions include a number of Special Conditions for IoT-VNO licensees. Despite what the name would suggest, these conditions are all fairly typical and many of them could be seen to be of general application to any business operating in Saudi Arabia. As well as the obligation to comply with the policies and instructions of the CITC (including by refraining from providing unlicensed services or using equipment not cleared for use in the Kingdom), IoT-VNO licensees must:

- not discriminate between customers, and ensure customer privacy (including by not spamming them or selling their contact details);
- respect intellectual property rights, and ensure that AV/media content has been cleared with the relevant local authorities;
- obtain approval from the local Chamber of Commerce before running any commercial promotions;
- comply with CITC's instructions with regard to Saudization of the workforce; and
- act consistently with Islamic Shari'ah rules, good manners, morals, and public taste, and the laws and regulations of the Kingdom.

There are also requirements to publish service fees in advance of applying them, to provide billing and customer care services from launch date, and to have the technical capability to retain and identify user data for a minimum period of 12 months.

An IoT-VNO licensee needs to launch commercial services within 12 months of the issuance of its licence, failing which the CITC has the discretion to revoke the licence. An IoT-VNO licence typically lasts for ten years, and during that time the CITC is permitted to vary the terms of the licence, or to suspend or revoke it if circumstances warrant it. With the prior written approval of the CITC, an IoT-VNO licence can be subcontracted and assigned - provided the assignee meets all the requirements of holding the licence. Pursuant to the Telecoms Law (Royal Decree No. (M/12) of 12/03/1422H (3 June 2001); Council of Ministers Resolution No. (74) of 05/03/1422H (27 May 2001), the CITC has considerable power to investigate and take action in respect of violations of licence terms.

IoT-VNO licensees need to ensure that the SIM cards they use in the provision of IoT-VNO services are configured solely for automated Machine-to-Machine communication, and for no other purposes without the CITC's prior written approval. The IoT-VNO licensees must also keep a register of all SIM cards (the IMSI (International Mobile Subscriber Identity)) numbers and the MSISDN (Mobile Subscriber Integrated Services Digital Network) numbers used in their IoT-VNO services, and make such records available to the CITC upon request.

### Agreements with Host Service Providers

IoT-VNO licensees can enter agreements with host service providers to access the infrastructure necessary to provide the IoT-VNO services. A host service provider is typically a licensed mobile telecommunications operator that has infrastructure in Saudi Arabia and can provide the IoT-VNO licensee with capacity on its network on a wholesale basis. The Rules and Conditions set out the general basis for agreements between IoT-VNO licensees and host service providers.

If a host service provider receives a written approach from an IoT-VNO licensee seeking wholesale infrastructure services, the host service provider is required to enter into 'good faith' negotiations with the IoT-VNO without delay. The Rules and Conditions set out types of conduct that would indicate a host service provider is not acting in good faith. Besides general delaying tactics, these include:

- refusing to provide necessary information;
- requiring advance or simultaneous negotiations or agreement for other services;
- demanding that the licensee sign a non-disclosure agreement preventing disclosure of information to the CITC;
- offering terms less favourable than those offered by the host service provider to its retail customers;
- offering terms that do not provide for a reasonable margin for the licensee;
- offering terms inconsistent with the terms of the licensee's IoT-VNO licence; and/or
- refusing to permit amendment of the proposed agreement to comply with any changes to the law or regulations.

The terms ultimately agreed also need to be consistent with the host service provider's telecoms licence obligations. If the host service provider wishes to reject proposed terms on the basis that they are not consistent with its obligations pursuant to its own licence or to the law, then it needs to set this out in a written response to the would-be IoT-VNO licensee.

The Rules and Conditions contemplate mechanisms by which the CITC can influence the development of terms between IoT-VNO licensees and host service providers. These include issuance of decisions and guidelines, as well as requiring

host service providers to publish reference offers to the market. The Rules and Conditions also impose an obligation on IoT-VNOs and host service providers to provide the CITC with copies of their agreements if requested.

Whilst the expectation in the Rules and Conditions is that agreements between IoT-VNO licensees and host service providers are determined freely on a commercial basis, the Rules and Conditions contain a variety of provisions aimed at ensuring agreements between IoT-VNO licensees and host service providers do not lessen competition in the market, such as by preventing the IoT-VNO from changing its business model, issuing its own SIM cards, providing certain services, or using licensed third parties for other technical infrastructure. There are also restrictions that prevent a host service provider from acting in an obstructive manner (either technologically or commercially) in the event that the IoT-VNO licensee wishes to transfer its business to another host service provider.

### What's next?

There is still some degree of ambiguity regarding the application of the IoT-VNO licence requirements, including whether they apply to any entity that is operating an IOT virtual network (even for its own, internal purposes) - or only to those that are offering an IoT virtual network service to others. Additionally, the CITC has recently held a consultation on a draft *Regulatory Framework on Internet of Things* and draft *Special Conditions for a Class Licence to Provide IoT Services Using Licence-Exempt Frequencies*. Those active in the IoT space would be well advised to undertake a proper review of the licensing landscape to make sure that they are compliant.

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*Al Tamimi & Company's Technology, Media & Telecommunications team regularly advises on Industry 4.0 and Internet of Things related legal issues in Saudi Arabia and the Middle East. For further information please contact Nick O'Connell (n.oconnell@tamimi.com) or Amy Land-Pejoska (a.pejoska@tamimi.com).*

# Launch of the Electronic Registration System for Commercial Pledges in the Kingdom of Saudi Arabia



**Sikander Siddiqui**  
Senior Associate  
Riyadh, Saudi Arabia  
s.siddiqui@tamimi.com



**Mohammed Alkredees**  
Trainee Lawyer  
Riyadh, Saudi Arabia  
m.alkredees@tamimi.com

The Ministry of Commerce and Investment ('MOCI') announced on 17 March 2019 the issuance of the Regulations of the Unified Registry for Commercial Pledges (the 'Regulations'). The Regulations are an important step in the implementation of the Commercial Pledge Law issued in April 2018 (the 'CPL'). The CPL regulates the creation of security over movable property including current and future movable property as well as future rights (including receivables).

Clarity has now been provided under the Regulations as to the functions, operation and management of the Unified Register for Commercial Pledges (the 'Registry').

## Registration Procedures

Pursuant to Article 3 of the Regulations, all services of the Registry under the Regulations will be provided electronically. For the purposes of using any of the Registry's services, an account is required to be created with the Registry (discussed below).

The procedure for registering pledge contracts (made in accordance with the CPL) with the Registry is provided under Article 6 (1) of the Regulations. The key steps are as follows:

1. the pledgee must submit an application for registering the pledge along with a copy of the pledge contract and the relevant documents;

2. the Registry will then notify the pledgor of the said application and its details;
3. the pledgor has a period of seven days from the date of the Registry's notification to raise any objections to the registration application. If any such objections are raised by the pledgor within the prescribed period, the registration application will be cancelled;
4. the registration will be completed where the pledgor approves the registration application or where the pledgor does not raise any objection to the said application within the stipulated period.

The above steps apply for both 'present' and 'future' movable property.

Where a specific special registry (the 'Special Registry') regulates the ownership of the movable property but does not record security interests, the pledgee must ensure that the requirements of Article 6 (1) of the Regulations (above) are complied with and the Registry will notify the relevant Special Registry. In other cases, where the Special Registry does register security interest (e.g. at the Depository Centre established by the Tadawul for listed shares), the security interest is required to be registered at the Special Registry.

Under Article 8 (1) of the Regulations, once the future pledged property comes into existence, is owned by the pledgor or transformed into movable



property, the pledgor must submit an application to the Registry to amend the status of the pledged property recorded in the Registry from a future to a current one. This amendment can be made without the pledgee's consent.

### Cancellation of Registration

Under Article 9 of the Regulations, the registration will expire if:

1. it is cancelled by the pledgee or under a judgment;
2. its term expires, subject to (c) below; or
3. 60 days lapse from the date of issuance of the 'Executive Instrument' (defined in the Regulations as an extract of an instrument of execution or a direct execution instrument). The Registry may extend the said period by an additional period not exceeding 60 days upon the request of the pledgee or the execution agent.

Article 10 of the Regulations requires the pledgee to cancel the registration within a maximum period of three days from the date of expiry of the pledge contract or the date of completion of execution of the pledged property.

## The CPL regulates the creation of security over movable property including current and future movable property as well as future rights (including receivables).

### Review of Registration Information

The pledgor, the pledgee or the execution officer can review the information registered with the Registry. While third parties can check if a pledge is registered in respect of a particular entity, third parties can only review the registration information with the pledgor's approval. In order to obtain approval, the following information is required: the name of the third party; and details of the registration(s)/ information to be reviewed.

### Issuance of Executive Instrument for Enforcement

An Executive Instrument is required in order to proceed with enforcement over a pledge created pursuant to the CPL. Where the issuance of the Executive Instrument is sought, the pledgee or the execution officer can request the Registry to issue the Executive Instrument when the right to execute on the pledge property arises. For such issuance, an application to this effect is required to be submitted to the Registry within the registration period. Under the Regulations, an Executive Instrument can be issued only in respect of a pledged property in existence.

### Registration System

In line with the Regulations, MOCI has launched the electronic registration system to operate the Registry which allows the registration of pledge contracts (made in accordance with the CPL) for various types of movable assets.

MOCI has published the User Guide for the Regulations (the 'User Guide'), clarifying how the Registry will be managed. The User Guide, inter alia, lists the processes of: (i) registration of pledge contracts; (ii) conducting a search of the Registry; and (iii) uploading constitutional documents of the parties (to the extent relevant and applicable). The user of the Registry (KSA national/Muqem, GCC national or SAGIA foreign investor) must first create an account through the portal: <https://efile.mci.gov.sa>. Following the creation of the account in the Registry, the services of the Registry can be accessed through the portal: <https://rhn.mci.gov.sa>.

*Al Tamimi & Company's Banking and Finance team regularly advises on financing transactions and related security creation related matters. For further information please contact Rafiq Jaffer ([r.jaffer@tamimi.com](mailto:r.jaffer@tamimi.com)).*

United Arab Emirates  
Ministry of Justice

49<sup>th</sup> Year  
Issue No. 650  
24 Rajab 1440H  
31 March 2019

#### FEDERAL DECREES

- 205 of 2018 Ratifying the UAE-Guinea Agreement for Air Services Between and Beyond their Respective Territories.
- 214 of 2018 On the UAE's accession to the Protocol of 1997 Amending the International Convention for the Prevention of Pollution from Ships (MARPOL 1973) and Adding Annex VI entitled Regulations for the Prevention of Air Pollution from Ships.
- 37 of 2019 Appointing a UAE non-resident ambassador to the Dominican Republic and Saint Kitts and Nevis.

#### MINISTERIAL DECISIONS

- From the Ministry of Finance

315 of 2018 Granting signatory rights on the bank accounts of the Financial Restructuring Committee.

- From the Ministry of Justice

225 of 2019 On the formation of the Tax Dispute Resolution Committee – Emirate of Abu Dhabi.

237 of 2019 On the creation of a specialist division to hear tax cases in the Abu Dhabi Federal Court of First Instance.

238 of 2019 On the creation of a specialist division to hear tax cases and a specialist division to hear challenges to members of tax committees in the Abu Dhabi Federal Court of Appeal.

- From the Ministry of Human Resources and Emiratization

242 of 2019 On waivers and instalment plans on administrative fines.

- From the Ministry of Climate Change and Environment

98 of 2019 On the use of alternative fuels derived from refuse (RDF) in the cement industry.

#### ADMINISTRATIVE DECISIONS

- From the Federal Transport Authority - Land and Maritime:

4 of 2019 Chairman of the Board Resolution amending Chairman of the Board Resolution 30 of 2014 on the requirements for issuing navigation licenses for national and foreign-flag vessels operating in UAE territorial waters.

- From the Securities & Commodities Authority:

- Certificate of approval of amendment of the Articles of Association of Gulf Navigation Holding PJSC.

United Arab Emirates  
Ministry of Justice

49<sup>th</sup> Year  
Issue No. 651  
8 Shaban 1440H  
14 April 2019

#### FEDERAL LAWS

3 of 2019 Approving the consolidated final account of the Federation and the final accounts of independent bodies for the financial year ended 31.12.17.

#### FEDERAL DECREES

- 39 of 2019 On the termination of the duties of the UAE Ambassador to Cameroun and Burkina Faso.
- 40 of 2019 Appointing a UAE non-resident ambassador to Benin and Cameroun.

42 of 2019 On the transfer and appointment of the Chairman of the General Authority for the Security of Ports, Borders and Free Zones.

43 of 2019 Appointing a UAE Consul-General in Los Angeles.

44 of 2019 Ratifying the UAE-Serbia Protocol to amend the Agreement on the Abolition of the Visa Requirement for Holders of Diplomatic and Special/Official Passports.

45 of 2019 Ratifying the UAE-China Agreement on Mutual Assistance and Cooperation in Customs Matters.

#### REGULATORY DECISIONS OF THE CABINET

23 of 2019 Amending Cabinet Decision No. (19) of 2017 on fees for media services.

27 of 2019 On UAE public holidays.

#### MINISTERIAL DECISIONS

- From the Ministry of Justice

259 of 2019 Procedural guidelines on the conduct of litigation through electronic means and remote communication technologies in criminal proceedings.

260 of 2019 Procedural guidelines on the conduct of litigation through electronic means and remote communication technologies in civil proceedings.

- From the Ministry of Community Development

52 of 2019 On the registration of Mothers of Persons with Disabilities Association (Himah).

53 of 2019 On the Registration of Erada Association.

54 of 2019 On the registration of Abu Dhabi Animal Welfare Society.

55 of 2019 Renaming Emirates e-Safe Society.

56 of 2019 Renaming Emirates Seniors' Friends Association.

61 of 2019 On the deregistration of Jumeirah Foundation.

62 of 2019 On the registration of Manar Al Iman Charity Foundation.

63 of 2019 On the registration of Mohammed bin Butti Al Hamed Charity Foundation.

- From the Ministry of Climate Change and Environment

120 of 2019 Amending Ministerial Decision No. (115) of 2017 regulating fishing using fixed equipment (Al Hadhra fishing traps) in Abu Dhabi.

#### ADMINISTRATIVE DECISIONS

- From the Federal Authority for Nuclear Regulation:

15 of 2018 Chairman of the Board Resolution adopting the Regulation for Radiation Dose Limits and Optimisation of Radiation Protection for Nuclear Facilities (FANR-REG-04).

- From the Securities & Commodities Authority:

- Certificate of incorporation of Emirates Water and Electricity Company PJSC.

- Certificate of approval of amendment of the Articles of Association of Foodco Holding PJSC.



## Essam Al Tamimi receives recognition from Dubai Community Development Authority for his contributions to the success of the Legal Clinic Program

Newspaper: Al Bayan, Al Khaleej

Essam Al Tamimi of Al Tamimi & Company, Mohammed Al Obaidli and Saud Al Zarooni of Al Obaidli & Al Zarooni Advocates & Legal Consultants, and Humaid Darwish of Humaid Darwish Advocates & Legal Consultants received recognition from Ahmed Julfar, Director General of the Dubai Community Development Authority, for their contributions to the success of the Legal Clinic Program.

In its first phase, the program has, over the past year, provided 174 free legal consultations to UAE citizens with limited income in areas ranging from the legal rights of women, children and people of determination to personal and family matters.



## Ibtissem Lassoued ranked amongst the 50 Most Influential Women in Middle East Finance

Publication: Financial News

Ibtissem Lassoued, Partner and Head of Advisory in our Regional Financial Crime Practice has been included on the Financial News' list of the 50 Most Influential Women in Middle East Finance Department. Ibtissem joins the ranks of some of the most prolific businesswomen across the Middle East in recognition of the impact she has had in shaping the strategic direction, prosperity and innovative culture within the finance sector. This is the first time the Financial News' prestigious list has been published with a regional focus and it is a source of great pride and pleasure for our Firm that Ibtissem has received such a notable accolade.

As part of the international publishing group Barron's Group (formerly the Dow Jones Media Group), Financial News is affiliated with world leading publications such as the Wall Street Journal, and is acclaimed for its coverage of the global finance industry. Ibtissem's inclusion on this prestigious list puts her amongst an esteemed group of women whose specialisms include Asset Management, Investment Banking, Private Equity and Financial Technological Development. She is the sole financial crime practitioner to receive the award, which is testament to the hard work and thought leadership that Ibtissem brings through her practice.

We are exceptionally proud of Ibtissem and we are excited to see how the Regional Financial Crime practice will continue to develop throughout all of our jurisdictions.



**Ibtissem Lassoued**  
Partner, Head of Advisory  
Financial Crime  
Dubai, UAE  
i.lassoued@tamimi.com



## Success at the Middle East Legal Awards

The Middle East Legal Awards, are hosted by the Association of Corporate Counsel (ACC) Middle East and Legal Week and acknowledge achievement and excellence in the legal profession. The awards recognise both private practice law firms and in-house legal departments with coverage in the region.

Al Tamimi & Company has won the following awards:

- Regulatory and Investigations Team of the Year, led by Andrea Tithecott
- Rising Star Award: Sara Koleilat-Aranjo, Senior Associate, Arbitration.

Congratulations to Andrea and her team and to Sara.

The Firm was also "highly commended" in the Best Use of Technology category for our eLitigation tool.







## Legal 500 rankings for 2019

The recently published Legal 500 directory rankings have again demonstrated our strength and depth as a firm across the region. Highlights include:

# 15

Tier 1  
Practice Rankings

# 18

Leading  
Individuals

# 10

Next Generation  
Lawyers

### Practice Areas

#### UAE

- **Banking & Finance:** Promoted from Tier 3 to Tier 2
- **Dispute Resolution:** Arbitration and International Litigation – Promoted from Tier 3 to Tier 2
- **Energy & Infrastructure:** Ranked for the first time, achieving a Tier 4 ranking

#### Bahrain

- **Banking & Finance:** Ranked for the first time achieving a Tier 2 ranking
- **Commercial, Corporate and M&A:** Promoted from Tier 3 to Tier 2

#### Egypt

- **Banking & Finance:** Promoted from Tier 3 to Tier 2
- **Dispute Resolution:** Arbitration – Promoted from Tier 3 to Tier 2
- **Dispute Resolution:** Litigation – Promoted from Tier 3 to Tier 2
- **Employment:** Promoted from Tier 2 to Tier 1
- **Intellectual Property:** Ranked for the first time, achieving a Tier 2 ranking

#### Kuwait

- **Corporate, Commercial and M&A:** Promoted from Tier 2 to Tier 1

#### Oman

- **Corporate, Commercial and M&A:** Promoted from Tier 2 to Tier 1

#### Qatar

- **Banking, Finance & Capital Markets:** Tier 1
- **Commercial Corporate & M&A:** Tier 1
- **Dispute Resolution:** Tier 1
- **Projects, Real Estate & Construction:** Tier 1

#### Saudi Arabia

- **Projects and Energy:** Ranked for the first time, achieving a Tier 4 ranking

Congratulations also to Hassan Arab, Omar Obeidat and Khaled Saqqaf who were again recognised in the Legal 500 Hall of Fame.

1st  
**APR**

## Al Tamimi's Healthcare Expertise spreads across Egypt

Cairo Marriott Hotel, Cairo, Egypt

As the Egyptian population continues to grow and the government continues to develop legislation for universal health coverage by 2030, there will be an increasing need for both services and facilities, presenting widespread opportunities for goods, services and training in both urban and rural settings. In this regard, Al Tamimi & Company in partnership with BEBA (British Egyptian Business Association) held a successful event "Healthcare: New Frontiers for Egypt" at the Cairo Marriott Hotel on April 1st, 2019 to address the challenges and opportunities that the Healthcare sector presents.

Andrea Tithecott, Partner and Head of Regulatory and Healthcare, moderated one of the most impressive panels, which addressed "best practice in healthcare". She attended the event together with Ayman Nour, Partner, Head of Office – Cairo Khaled Attia, Partner, Head of Dispute Resolution & Mohamed Khodeir, Partner, Corporate Commercial who delivered the closing speech, remarks and recommendations.

The conference was a huge success and hosted high profile Ministers, Members of Parliament, Ambassadors of UK, Singapore and Cyprus, potential clients and experts working within the healthcare sector, creating an excellent networking opportunity for the Healthcare and Egypt Teams.





3rd  
APR

## 2nd Biennial France-United Arab Emirates International Arbitration Conference

Le Bristol Hotel, Paris, France

As part of Paris Arbitration Week (PAW), Al Tamimi & Company in collaboration with the France-UAE Arbitration Society, McDermott Will & Emery, LexisNexis and the Sharjah International Commercial Arbitration Centre (Tahkeem) sponsored and organised a successful 2nd edition of the Biennial France-United Arab Emirates International Arbitration Conference at Le Bristol Hotel in Paris.

The event reinforced the strong economic ties between France and the UAE and how arbitration plays a role in strengthening such links. Insightful and thought-provoking keynote addresses covering recent arbitration trends and developments in France and the UAE were delivered by Alexis Moore, President of the ICC International Court of Arbitration, and Prof. Emmanuel Gaillard, Global Head of Disputes and Partner at Shearman & Sterling.

The first panel included Al Tamimi & Company's Head of Litigation (Abu Dhabi) and Partner Mohammed Al Marzouqi, Prof. Mohamed S. Abdel Wahab, Head of International Arbitration, Zulficar & Partners – Cairo, Jacob Grierson (Partner, McDermott, Will & Emery), Roland Ziadé (Partner, Linklaters), Prof. Hugo Barbier and moderated by Sara Koleilat-Aranjo, Senior Associate, Al Tamimi & Company. The panel discussed the recent legislative and regulatory developments to the arbitration framework in the UAE through a comparative French lens.

The second panel was composed of Ahmed Al-Echlah (Director, Tahkeem), Sami Houerbi, Director, ICC Dispute Resolution Services for Eastern Mediterranean, Middle East & Africa, Yasmin Mohammad, Head of International Arbitration, Vannin Capital – Paris, Prof. Marie-Elodie Ancel, Professor of Law, Université de Paris – Est Créteil and Mirèze Philippe, Co-founder ArbitralWomen Special Counsel, ICC International Court of Arbitration and moderated by Victor P. Leginsky, Independent Arbitrator Arbitralis - Dubai. The panel discussed recent trends and salient issues in the practice of arbitration in both France and the UAE, such as third-party funding, the growing use and impact of technology in arbitration, about diversity, innovative practices by arbitral institutions as well as diversity in international arbitration.

Prof. Guillaume Leyte, Alec Emmerson and Guillaume Deroubaix impeccably closed the curtains down on this 2nd edition of the France-United Arab Emirates International Arbitration Conference which gathered over 100 attendees. Participants were then treated to a networking cocktail reception in the historic Le Bristol Hotel's salons.





8th  
APR

## Saudi Energy Forum KAPSARC, Riyadh , Saudi Arabia

Al Tamimi & Company was honoured to support the first Saudi Arabia Energy Forum in Riyadh recently, under the patronage of HE Khalid Al-Falih, Minister of Energy, Industry and Mineral Resources of Saudi Arabia and chairman of Saudi Aramco. This inaugural event was held at King Abdullah Petroleum Studies and Research Center (KAPSARC) with this first forum focusing on The Saudi 4.0 Industrial Revolution – Outlook to Energy, Industry & Minerals.

TMT Partner, Nick O'Connell, spoke on a very insightful roundtable discussion which focused on The Future of Work - How Should the Saudi Energy Sector Adopt a Digital Transformation Culture? Other speakers on the roundtable included:

- **Michael Train**, President, Emerson & Chairman, Emerson Automation Solutions Emerson Automation Solutions
- **Eng. Khalid Al Salem**, Deputy Minister for Industry, Ministry of Energy, Industry & Minerals;
- **Dr. Anas Al Faris**, Vice President of Research Institutes, King Abdulaziz City for Science and Technology (KACST);
- **Dr. Esam Al Wagait**, Chief Executive Officer, Saudi National Digital Transformation Unit; and
- **Bandar Allaf**, Chief Executive Officer, Jufael Energy & Utilities and Chairman, MENA Region IEEE Power & Energy Society

President of Emerson, Michael Train, stated that "The first Saudi Arabia Energy Forum comes at a crucial time in the 4.0 digital transformation of all industries in the Middle East as it has done progressively across the world over the last decade".

Thus focus of discussion on the economic and the industrial transformation of Saudi Arabia is very much in line with both the goals of the Saudi Energy Forum and importantly, the long-term objectives of Saudi Arabia's Vision 2030.

The event was very successful, with many high-level representatives from the industry's public and the private sector. We look forward to supporting similar events in this upcoming year.



16th  
APR

## Legal 500 GC Roundtable Egypt Dusit Thani Lakeview, Cairo, Egypt

On Tuesday 16th April, Al Tamimi & Company in collaboration with Legal 500 hosted a roundtable discussion for 25 high profile GC's to come together and talk about the changing role of legal departments & in-house legal counsels in Egypt and their relationship with external legal advisors.

The in-depth discussion focused on key areas such as, the impact of current affairs on the role of GC, cross-border challenges, talent management and the future of the legal function. Feedback highlighted the demand for the Egypt GC community to take part in more events and discussions like these and how beneficial it was for all involved.





22nd  
APR

## VAT Implementation is coming to Oman: Are you ready?

PDO Auditorium, Muscat, Oman

On Monday 22nd April at the PDO Auditorium in Muscat, Oman, Al Tamimi & Company, Thomson Reuters & ACCA came together to present to clients and ACCA members about the key features of Oman's incoming VAT regime and the steps needed to take to ensure companies are VAT ready due to the Oman Ministry of Finance indicating that VAT will be implemented by September 2019.

Speakers included, Shiraz Khan, Head of Taxation, Al Tamimi & Company, Ramy Rayan, Pre-sales Functional Specialist, VAT, Thomson Reuters and Fazeela Gopalani, Head of ACCA Middle East, ACCA, who spoke about the key topics, including; Introduction of VAT in the GCC, Basics of VAT, Expected features of VAT regime in Oman, How to prepare for the implementation of VAT in Oman, Lessons learned from VAT implementation in Bahrain, KSA & the UAE, other tax developments in Oman including the introduction of excise tax and amendments to the corporate tax law. As well as VAT automation in the GCC and best practices and role of technology.

The evening seminar had over 50 attendees all very interested to understand how VAT will impact their businesses in the region with great feedback and many attendees asking for more seminars in the future.



23rd  
APR

## Higher Education Roundtable Dinner

86 The Steakhouse, Address Dubai Marina, UAE

On Tuesday, 23 April, our Education Sector Group came together to host our first Higher Education roundtable dinner in Dubai.

The team were delighted to be joined by a diverse group of operators and experts active in the region and thoroughly enjoyed the engaging conversation, hearing perspectives on recent developments, pain points, how to better promote and encourage students to study and stay in the UAE, how technology disruption is affecting them and discussing what the future landscape of the higher education sector looks like.

Ivor McGettigan (Partner, Head of Education), Martin Hayward (Head of TMT), Ahmad Saleh (Partner, Head of Patents & Designs (R&D & Innovation)), Dipali Maldonado (Senior Associate, Private Client Services), Fiona Robertson (Senior Associate, TMT) and Anna Marshall (Senior Associate, Employment) all attended from Al Tamimi to host our guests, which included attendees from American University in Dubai, Amity University, EY Parthenon, Heriot-Watt University, HSBC Bank Middle East Limited, Hult International Business School, Institute of Management Technology, Middlesex University Dubai, Murdoch University, S P Jain School of Global Management, The British, University in Dubai (BUiD), University of Birmingham, University of Sharjah and University of Wollongong (UOW).



24th  
APR

## 5th Annual International Arbitration and Regulatory Global Summit

Shangri-La Hotel, Doha, Qatar

We are pleased to share that our Associate Khushboo Shahdadpuri was invited to speak in the 5th Annual International Arbitration and Regulatory Global Summit organized by Wolters Kluwer, that took place at the Shangri-La Hotel in Doha on 24 April 2019.

Khushboo was a panellist in the Grand Panel which focused on Consolidation in International Arbitration Proceedings. The Grand Panel was moderated by Victor Leginsky and included George Vlavianos and Mark Kantor as co-panellists. The Summit was attended by independent arbitrators and in-house legal counsel in the region, amongst others.



**Khushboo Shahdadpuri**  
Associate  
Arbitration  
Doha, Qatar  
k.shahdadpuri@tamimi.com

26th  
APR

## ATCO-ICAK Seminar Seoul, Korea

On 26 April 2019, Al Tamimi & Company hosted a joint seminar, titled “Key Issues in Construction Disputes in the Middle East” in Seoul, Korea in collaboration with the International Contractors Association of Korea (“ICAK”), the largest construction association in Korea with 700+ member companies.

With focus on construction & infrastructure industries, the seminar provided insights on latest legal developments and practical tips around construction in the Middle East. The event was delivered in six sessions each covering a number of relevant and timely topics. The first presentation by Naief Yahia, Partner, UAE discussed the key issues in construction litigation in the Middle East. Thomas Snider, Partner & Head of Arbitration, UAE addressed construction arbitration in the GCC and gave advice on choosing arbitrators and dealing with experts. Jiwon Ha, Senior Associate, UAE explored the key considerations for Business in the Middle East and various challenges surrounding contractual and legal issues. Our Senior Associate Dukgeun Yun, UAE shared great insight into the overview of PPP framework in the GCC and its recent trends. Saeed Alqahtani, Senior Associate, KSA focused on the KSA Sharia and Court system and practical tips for construction disputes in KSA. Hyungmin Song, Senior Associate, KSA concluded with an introduction to nuclear projects in KSA including recent trends of the In-Kingdom Total Value Add (IKTVA) to give a platform for Korean companies' looking to invest in KSA.

A lively and informative panel discussion took place before more than 100 attendees from major Korean construction companies, providing an interactive discussion with each panellist contributing insights from their own area of expertise, several themes emerged from the sessions which helped to strengthen the attendees knowledge of Middle East and further support new opportunities for Korean companies in the industry.

A big thank you to all the speakers and guests who kept the panellists on their toes with interesting questions. We look forward to seeing you next time!

*\*IKTVA is a new program created by Saudi Aramco to baseline, measure and support increased levels of localization in the Kingdom.*



28th  
APR

## Saudi Employment Presentation to the Jeddah British Business Group

British Consulate, Jeddah, Saudi Arabia

Mohsin Khan from Al Tamimi & Company's Employment & Incentives practice delivered a presentation on Saudi Employment Law to the Jeddah British Business Group at the British Consulate on 28 April 2019 in Jeddah, one of the most active national business groups in KSA.

During his presentation, Mohsin discussed key employment rights under the Labour Law, issues relating to Saudisation and provided an update on other recent developments in KSA. The presentation was extremely well received and was attended by the British General Consul 'Kabir Rahman' and other members of British Business Group.

With consultancy, retail, education, engineering, construction and manufacturing being some of the main business sectors within the group, the seminar also provided a platform to hear from the members in relation to their 2019 objectives and future plans

We look forward to continuing to collaborate with the British Business Group and the British Consulate in future.



Tuesday 2nd April  
London

Joint Client Seminar  
**New DIFC Employment Law**  
*Lewis Silkin LLP Office - London*

**Speaker:**  
Samir Kantaria, Partner, Head of Employment & Incentives

Tuesday 9th – Thursday 11th April  
Ras Al Khaimah

Sponsorship  
**Arabian Hotel Investment Conference (AHIC) 2019**  
*AHIC Village, Ras Al Khaimah*

**Attendees:**  
Tara Marlow, Partner, Head of Real Estate and Hotels & Leisure

Ammar Haykal, Partner, Head of Office - RAK

Ian Arnott, Senior Associate, Real Estate

Wednesday 17th April  
Bahrain

Client Seminar  
**Arbitration 101 Breakfast Seminar**  
*Capital Club, Bahrain*

**Speakers:**  
Thomas Snider, Partner, Head of Arbitration

Foutoun Hajjar, Partner, Head of Office - Bahrain

Mahmood AlAraibi, Head of Litigation - Bahrain

Noor Al Rayes, Senior Associate, Litigation

Sara Koleilat-Aranjo, Senior Associate, Arbitration

Wednesday 17th April  
Qatar

Speaking Opportunity  
**Employer Session at Georgetown University**  
*Georgetown University, Qatar*

**Speaker:**  
Roy Georgiades, Senior Associate, Litigation

Tuesday 30th April  
Dubai

Joint Client Seminar  
**Turnaround Prevention and Management Conference**  
*In collaboration with AlixPartners  
DIFC Office*

**Speakers:**  
Abdullah Mutawi, Partner, Head of Corporate Commercial

Mamoon Khan, Partner, Banking

Tuesday 30th April  
Dubai

Client Seminar  
**ICT Health Data Law Briefing**  
*In collaboration with Dubai Health Authority  
DIFC Office*

**Speakers:**  
Andrea Tithecott, Partner, Head of Regulatory and Healthcare

Andrew Fawcett, Senior Counsel, TMT



## About Us

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

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

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



## Client Services

### Practices

Arbitration | Banking & Finance | Capital Markets | Commercial | Competition | Construction & Infrastructure | Corporate/M&A | Corporate 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

Automotive | Aviation | Education | Expo 2020 | FMCG | Healthcare | Hotels & Leisure | Innovation, Technology & Entrepreneurship | Projects | Rail | Shipping | Sports & Events Management | Transport & Logistics |

## Country Groups

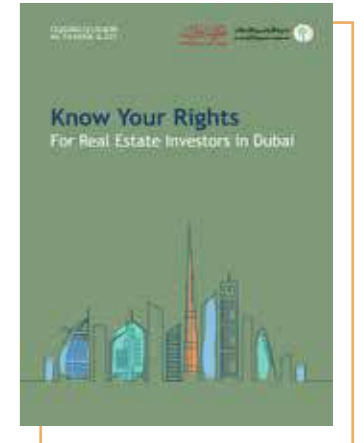
China | India | Korea |

**Al Tamimi & Company'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](http://www.tamimi.com).



## Regional Footprint



## 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

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التميمي و مشاركون  
AL TAMIMI & CO.

[www.tamimi.com](http://www.tamimi.com)