Issue 320 I June/July 2019

التميمي و مشاركوه
AL TAMIMI & CO.

LAW UPDATE

Latest Legal News and Developments from the MENA Region

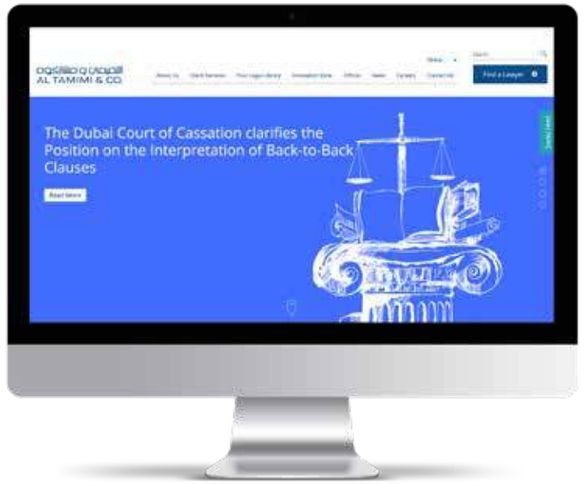
Sports & Events: Playing to win across the Middle East

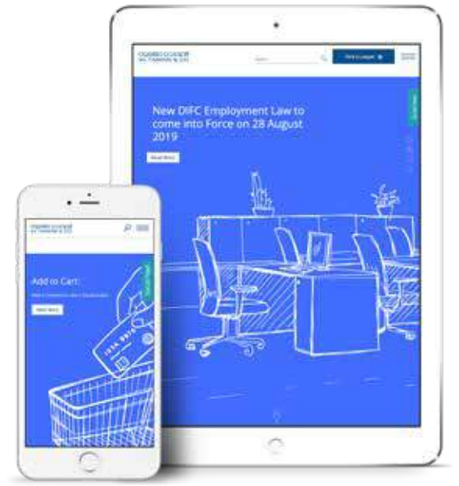
Investment in Egypt, Challenges and Aspirations

Jurisdiction of the Federal Supreme Court: Federal Supreme Court Judgment 2 of 2019

Play that Funky Music… or Can You? An Update on Issues in Music Licensing

LAW UPDATE *Online*





@AlTamimiCompany

@Al Tamimi & Company

Al Tamimi & Company

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

www.tamimi.com

Welcome to the June/July 2019 issue of Law Update.

This summer's double edition focuses on two evolving practice areas in the region: Sports & Events Management; and Egypt.

Looking at the varied articles submitted by our Sports & Events Management teams across the region, it is interesting to note how many various aspects of business are touched by Sports & Events Management considerations. In the UAE our team analyses the impact of a new UAE Football Association rule which requires UAE players to sign their first professional contract with the team with which they have trained. However, the same obligation is not imposed on the new category of non-UAE citizens who are permitted to represent the UAE (page 80). Staying with football, and the upcoming 2022 World Cup in Qatar, our head of Sports & Events Management considers how best to protect the rights of licenced sponsors of one of the biggest sporting events in the world, as well as their investments, from companies attempting to 'piggy-back' off such investments and their legitimate sponsorship deals (page 54).

Tying in with our Egypt Focus section, our lawyers look at the impact on sport of the relatively new Egyptian sports law which seeks to identify talent in the country, and thereby attract further investment into grass-roots sports in the hope of fostering and coaching further talent (page 62). Our Saudi experts on the ground offer their thoughts on hosting an e-sports tournament in the Kingdom. As e-tournaments grow in popularity and with Saudi being home to a number of e-sports champions, the article looks at what is required to stage such an event in the Kingdom (page 98). With the increasing commercialisation of Sports in the region, the importance of commercial documentation setting out parties' rights and obligations is appreciated. Those with vested interests and investments in this area will be keen to protect their assets which means Sports are not immune from disputes, and how those disputes are addressed in the contractual documentation will command as much attention as the financial details. Our UAE practitioners provide an overview of the internal, national and international sports arbitral bodies relevant in the UAE context and go on to shed some light on the key differences between sports arbitration and general commercial arbitration (page 84).

Turning to our joint Focus section, Egypt, the strides the Egyptian government has made in stimulating economic, political and social reform as well as promoting stability, in an otherwise volatile region, are to be commended. Our team in Egypt examines a broad spectrum of topics which highlight the government's efforts, one of which includes positive steps in the Data Protection arena with a view to emulating the strict obligations and requirements contained in the equivalent European legislation (page 132). Our experts continue with a review of the proposed changes to the Takeover Rules (page 120) and the Listing Rules (page 128) which are aimed at attracting foreign investment. One key area which Egypt is assessing closely is Labour law; in particular the importance of regulating the employer/employee relationship so that the rights and obligations of both parties in the workplace are clear (page 108). Another area drawing legislative attention is that of Competition law. Following the country's new economic strategy, the government is keenly aware of the importance of promoting and safeguarding the principles of fair competition and the free market and is putting mechanisms in place to ensure this (page 114).

If you would like to know more about any of this month's topics or other practice areas, please do not hesitate to reach out.

I wish you a relaxing summer break and safe travels to those who will be travelling.

Best regards,

Husam Hourani

h.hourani@tamimi.com

Judgments

Articles

Jurisdiction Update

Focus: Sports & Events Management

Focus: Egypt

CONTENTS

Jurisdiction of the Federal Supreme Court: Federal Supreme Court Judgment 2 of 2019

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

Mosaab Th. Aly
Senior Associate
Dubai, UAE
m.aly@tamimi.com

Zane Anani
Senior PSL
Dubai, UAE
z.anani@tamimi.com

Introduction

This case concerns a conflict of jurisdiction involving two conflicting final decisions: an award of the Dubai International Arbitration Centre ('DIAC') that was ratified by the judicial committee on civil disputes between Dubai Holding and Dubailand and their subsidiaries ('DIAC arbitration proceedings'); and another judgment issued by the Dubai Court of Cassation, which appeared to concern an identical cause of action involving the same subject matter and parties ('Dubai court proceedings'). Notwithstanding that the Federal Court had jurisdiction to decide on the conflict it chose to cede jurisdiction to the local Dubai court to resolve the conflict instead.

Background

The parties to the Dubai court proceedings were in dispute over ownership rights to a plot of land in Dubai. The Claimant prevailed in that case, with judgment declaring the Claimant to be the freehold owner of the plot.

During the Dubai court proceedings, the Defendant commenced arbitration before the DIAC to recover the plot that was the subject of the development agreement. The arbitral tribunal issued an award ordering the return of the plot of land to the Defendant and the refund of the purchase price paid by the Claimant.

The Claimant filed a case before the Dubai Court of First Instance to annul the award. The Defendant argued that the Dubai Court of Instance did not have jurisdiction to hear the case on the basis that a special committee (pursuant to Dubai Ruler's Resolution 15 of 2018) had exclusive jurisdiction. When the Defendant filed a case concerning the arbitration award before the committee, the committee issued an order to ratify and enforce the arbitration award. The Claimant filed a grievance but this was dismissed.

A contradiction therefore arose between the two judicial rulings. Consequently, the matter was required to be resolved pursuant to Article 60 of Federal Law No. 10 of 1973.

The Defendant argued that the Federal Supreme Court had no jurisdiction to hear the dispute because the committee that issued the arbitral award is part of the judicial system of the Emirate of Dubai, which rendered the conflict an internal matter.

Conflicts of Jurisdiction between Judicial Bodies in the Same Emirate

The legislature has defined the jurisdiction of the Federal Supreme Court in Article 99 of the Constitution, and in Article 33 of the Federal Supreme Court Law (Federal Law No. 10 of 1973). Article 33 (10) of Federal Law No. 10 of 1973 establishing the Supreme Federal Court provides that the Federal Supreme Court shall have exclusive jurisdiction to determine disputes in conflicts of jurisdiction between judicial bodies in the same emirate. Article 60 of the Federal Supreme Court Law provides examples of such conflicts and states that in the case of a conflict of jurisdiction between two or more judicial bodies, as referred to in Article 33, if those judicial bodies do not waive their jurisdiction, or if they all waive their jurisdiction, or if conflicting judgments are given, then the matter shall be raised before the Supreme Court to determine which of those courts will have jurisdiction.

In this case, the Claimant argued that there was a conflict between two judgments (one was issued by the Dubai Courts and the other was an arbitral award ratified by a Special Judicial Committee that adjudicates disputes concerning Dubailand). The Claimant requested the Federal Court to resolve the alleged conflict and confirm that the Court of First Instance decision should be enforced, not the award.

Al Tamimi & Company appeared for the Defendant before the Federal Supreme Court. We argued that the Federal Supreme Court had no jurisdiction to rule on the alleged conflict. We also argued that where there is a conflict between two judicial bodies in the same emirate; the Federal Court should not interfere provided that emirate has its own judiciary.

The Federal Supreme Court accepted both submissions. First, it declined to apply Article 33 of Federal Law No. 10 of 1973 to the conflict. Second, it confirmed that the local judiciary of the particular emirate, in this case, Dubai, should resolve the conflict internally.

Commentary

The judgment is both interesting and significant because in general there is no authority or mechanism, at this stage, which is empowered to rule on jurisdictional conflicts between special judicial committees, the judgments of which are final and not subject to any appeal, and any other judicial body in the Emirate of Dubai.

Conflicts of jurisdiction between two judicial bodies within an emirate must be resolved by the Federal Court (pursuant to Articles 99 of the UAE Constitution and 33 and 60 of the UAE Civil Procedure Law). However, with the proliferation of special committees and autonomous legal systems within emirates, the Federal Courts have taken a sensible decision to delegate the power to resolve such conflicts to the local judiciary. This is a reassuring and sensible decision that ought to help reduce unnecessary expense and delay.

Finally, the decision does not affect the standing of the Judicial Body of Dubai Courts and DIFC Courts which determines conflicts of jurisdiction between the Dubai Courts and the DIFC Courts.

Al Tamimi & Company's Litigation and Arbitration teams regularly advise on the enforcement of arbitration awards and judgments. For further information please contact Mosaab Aly (m.aly@tamimi.com).

The Dubai Court of Cassation clarifies the Position on the Interpretation of Back-to-Back Clauses

Diego Carmona
Associate
Dubai, UAE
d.carmona@tamimi.com

Mohieeldin ElBana
Senior Associate
Dubai, UAE
m.elbana@tamimi.com

Mohamed Selim
Associate
Dubai, UAE
m.selim@tamimi.com

Introduction

Back-to-back clauses are a regular feature in, not only, construction but also general commercial agreements. Although, they may come in different variations tailored to specific contracts, a back-to-back clause is in broad terms, an agreement that a Sub-contractor will not be entitled to payment from a Main Contractor unless payment has been received by the ultimate client or Employer.

The interpretation of back-to-back clauses has long been a contested issue in commercial and construction disputes, the latest being the Dubai Court of Cassation judgment in which Al Tamimi successfully acted for a main contractor (overturning the First Instance and Court of Appeal judgments), that provides helpful guidance on how back-to-back clauses will be interpreted by the Dubai Courts.

Dubai Court of First Instance

The Sub-contractor commenced proceedings before Dubai's Court of First Instance requesting the court to order the Main Contractor to pay an outstanding amount for the delivered sub-contracted works. The Main Contractor, at this point represented by another law firm, contended in its defence that the claim was premature on the basis of that the equivalent payment had not been received from the Employer and, therefore, the obligation to pay the Sub-contractor had not arisen pursuant to the back-to-back clause and accordingly requested the court to dismiss the case.

The Dubai Court of First Instance appointed an accounting expert in order to examine the matter and provide a report to the court. Notwithstanding the back-to-back clause and the fact that the Main Contractor had not received all of the equivalent payments from the Employer, the expert concluded that the sub-contractor was entitled to receive the entire claimed amount from the Main Contractor. In the report, the expert took into account the amounts received under the two contracts (the main contract and the Sub-contract). Further, the expert concluded that the percentage of payments received by the Main Contractor from the Employer (in relation to the main contract works) was slightly higher than the percentage of the payments received by the Sub-contractor from the Main Contractor, in relation to the sub-contracted works.

The Main Contractor objected to the expert's report. However, the Dubai Court of First Instance decided to reject the Main Contractor's prematurity plea, issuing its judgment following the expert's finding and ordered the Main Contractor to pay the claimed amount to the Sub-contractor in addition to nine percent legal interest.

Dubai Court of Appeal

The Main Contractor, which was represented by Al Tamimi from the Court of Appeal stage, challenged the first instance judgment before the Dubai Court of Appeal and insisted on the prematurity plea on the basis that the back-to-back clause had not been correctly interpreted by the Court below.

The Main Contractor also pleaded other procedural irregularities in the expert's report and requested the appointment of a new expert. The Court of Appeal decided, however to refer the matter back to the same expert in order to examine the objections. The expert submitted a supplementary report before the Court of Appeal in which he confirmed the initial expert's findings, concluding that the Main Contractor should pay the Sub-contractor the claimed amount on the basis that the Main Contractor had received more payments from the Employer than it had passed on to the Sub-contractor.

Further arguments and objections were raised as follows:

i. the expert had taken into account funds received by the Employer in respect of a completely different project, when determining that the Main Contractor had been 'paid' by the Employer and that therefore payment was due to the Sub-contractor;

ii. the Main Contractor had been successful in an arbitration against the Employer (but not recovered), for non-payment in respect of the same project. This supported the Main Contractor's position that it had not yet received the relevant payments, which included the amounts claimed by the Sub-contractor.

Despite the these objections, the Court of Appeal rejected the Main Contractor's prematurity plea and decided to uphold the Court of First Instance judgment to order the Main Contractor to pay the claimed amount.

Dubai Court of Cassation

The Main Contractor appealed the Court of Appeal's judgment before the Court of Cassation on the following grounds:

- the sub-contract includes a back-to-back clause, which makes it a prerequisite for the Main Contractor to be paid, before the payment is due to the Sub-contractor, as the Main Contractor had not been paid the equivalent sum, the payment was not due. The Court below had erred in interpreting the back-to-back clause;

The latest Dubai Court of Cassation judgment provides helpful guidance on how the back-to-back clauses will be interpreted by the Dubai Courts.

- the expert erred in this report and there was no evidence that the Main Contractor had been paid the equivalent sum by the Employer. Further, the expert's report relied on incorrect assumptions and considered payments from another project; and
- the Sub-contractor, on whom the burden of proof lay, did not establish that the condition of the back-to-back clause was satisfied;

The Dubai Court of Cassation accepted the Main Contractor's arguments and overturned the lower courts' judgments and accordingly decided to dismiss the Sub-contractor's claim on the basis of prematurity and the existence of the back-to-back clause in the sub-contract.

In its judgment, the Court of Cassation relied on the following key provision of the UAE Civil Transactions law No. (5) of 1985, as amended:

Article 420:

A Condition is a future matter upon the existence or absence of which the full effectiveness (of a disposition) depends.

Article 429:

It shall be permissible to defer a disposition to a future time, upon the coming of which the provisions (of the disposition) shall become effective or be extinguished.

Comments and Conclusion

In our view, there may be some changes to the effectiveness and enforcement of back-to-back clauses from a practical point of view. One of those challenges includes the way in which different parties view and interpret the back-to-back arrangement. In our experience, we have come across certain experts who disregard such contractual provisions (including a back-to-back clause). It is our view that the judicial shift, prior to this decision, had been to support the weaker party (such as a sub-contractor) by ordering payment for services performed notwithstanding the existence of a back-to-back clause.

This has caused some concern in the legal community (and, indeed, was leading to uncertainty) and therefore the present judgment provides welcome clarity that contractual provisions will be enforced. The back-to-back arrangement is key in certain industries such as construction and as such should be upheld, especially when express provisions are included in the contracts.

It is for this reason that it is now increasingly important for back-to-back clauses to be carefully drafted in order to avoid the potential for conflicting interpretations and fundamental disagreements as to what is intended by this type of arrangement. This Dubai Court of Cassation judgment is helpful in establishing that the Courts will continue to recognise and apply the back-to-back arrangement, provided that challenges are raised in a timely manner.

Al Tamimi & Company's Litigation team regularly advises in commercial disputes before the onshore and DIFC Courts. For further information please contact Diego Carmona (d.carmona@tamimi.com), Mohamed Selim (m.selim@tamimi.com) or Mohieeldin ElBana (m.elbana@tamimi.com).

The UAE Federal Arbitration Law on its First Anniversary

Thomas Snider
Partner, Head of Arbitration
Dubai, UAE
t.snider@tamimi.com

Introduction

The UAE's much anticipated arbitration law, Federal Law No. 6 of 2018 (the 'UAE Federal Arbitration Law'), came into force in June 2018 and now benefits from a year's worth of implementation. The UAE Federal Arbitration Law has been the topic of numerous conferences and events, practitioners have analysed its provisions in painstaking detail to support their clients' positions, arbitral tribunals have interpreted and applied the meaning of these provisions, and the UAE courts have begun to render judgments on the law in annulment and enforcement-related cases.

While the implementation of the UAE Federal Arbitration Law still remains in its early stages, the law's one-year anniversary offers an appropriate time to step back and review the law's emerging jurisprudence. To that end, this article highlights three key developments in relation to the UAE Federal Arbitration Law and three potential concerns that remain.

Three Key Developments

The UAE Federal Arbitration Law was received with much fanfare in the arbitration community when it came into force last year. The law represents an upgrade over the previous arbitral regime that was found in Articles 203-218 of the UAE Civil Procedure Code, and a number of important developments can be noted. For present purposes, this article will highlight three aspects of the new law that the author believes are particularly noteworthy: (1) the UAE Federal Arbitration Law's signalling of a shift towards an increasingly arbitration-

friendly policy in the UAE; (2) an emphasis on modern communications and technology; and (3) the important role of the Court of Appeal as the Competent Court for arbitration-related matters.

A Shift Towards an Increasingly Arbitration-Friendly Policy in the UAE

The passage of the new UAE Federal Arbitration Law has marked an important shift in the UAE's overall approach towards arbitration and signals a clear intention to cement the UAE as a pro-arbitration jurisdiction. The UAE Federal Arbitration Law contains the core principles and features that are conducive to a well-functioning arbitral regime as found in the UNCITRAL Model Law on International Commercial Arbitration ('UNCITRAL Model Law') and other state-of-the-art national arbitration laws (such as the principles of competence-competence and separability and the power of the arbitral tribunal to order interim measures, among other examples).

The real evidence of this shift in policy, however, can be seen in the fact that the passage of the new UAE Federal Arbitration Law did not occur in a vacuum but has been complemented by two other key legislative developments that have amplified the law's positive impact.

First, in October 2018, the UAE amended Article 257 of Federal Law No. 3 of 1987 Promulgating the Penal Code to exclude arbitrators from the scope of its application. Article 257 had previously been amended in October 2016 to impose criminal liability on arbitrators who issued decisions and opinions contrary to their duties of impartiality and neutrality. The passage of the earlier amendment had led to considerable concern in the arbitration community, but the recent amendment excluding arbitrators from the remit of Article 257 has alleviated those concerns.

Second, the enforcement of foreign arbitral awards in the UAE is now subject to a new streamlined procedure set forth in Cabinet Decision No. 57 of 2018 Concerning the Executive Regulations of the UAE Civil Procedure Law, which entered into force in February 2019. One of the initial debates that emerged in the wake of the passage of the UAE Federal Arbitration Law was whether the law's scope encompassed foreign arbitral awards. This debate appears to have now been put to rest with the passage of Cabinet Decision No. 57, which suggests that the UAE Federal Arbitration Law does not apply to foreign arbitral awards. Nevertheless, the process set forth in Cabinet Decision No. 57 for enforcing foreign arbitral awards in the UAE arguably places the UAE ahead of many other jurisdictions in terms of the speed with which a foreign arbitral award can be recognised. Under Cabinet Decision No. 57, an application for the enforcement of a foreign arbitral award is filed directly with the Execution Judge who must render a decision in just three days. The order of the Execution Judge has immediate effect but can be appealed to the Court of Appeal.

The shift towards an increasingly pro-arbitration approach in the UAE that was heralded by the UAE Federal Arbitration Law has been recognised by the UAE courts. For years, the over-arching view of arbitration by the UAE courts was that arbitration was an 'exceptional' form of dispute resolution. In Appeal No. 8 of 2018, dated 16 January 2019, however, the Dubai Court of Appeal stated that "arbitration is not an exceptional means of resolving disputes but an alternative means that shall be followed once its conditions are satisfied." The importance of the courts viewing arbitration as an alternative rather than an exception cannot be understated.

Back to the Future: A Modern Arbitration Process

The UAE Federal Arbitration Law's emphasis on modern communications and technology underscores the fact that the law is a forward-looking piece of legislation. Several examples of this can be gleaned from the law's provisions.

Article 7.2(a) anticipates that an arbitration agreement can be made in an electronic message; similarly, Article 24.1(a) recognises that a 'mailing address' for the purpose of transmitting notices includes an email address previously used by either party to the other in their communications.

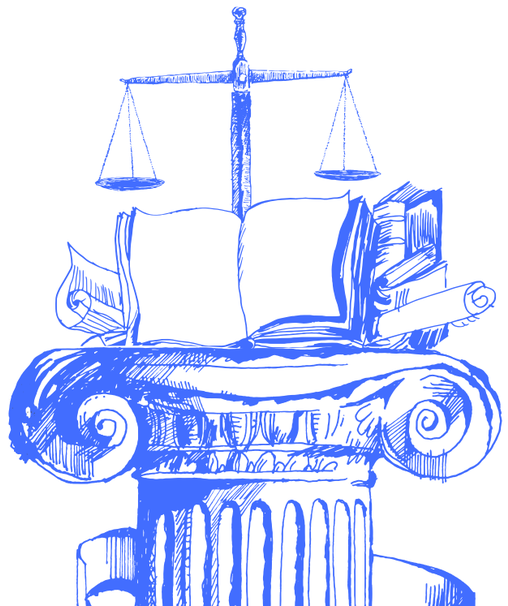
Unless the parties agree otherwise, an arbitral tribunal is empowered to hold arbitration hearings with the parties and deliberate through modern means of communication and electronic technology pursuant to Articles 28.2(b) and 33.3. Consistent with this approach, an arbitral tribunal may question witnesses, including expert witnesses, through modern means of communications without their physical presence at a hearing under Article 35.

Moreover, Article 41.6 permits arbitral tribunals to sign awards by electronic means. Article 41.6 also confirms that arbitrators need not be physically present in the arbitral seat when signing an award, a practice that previously had been viewed as mandatory in arbitrations seated in the UAE based on an interpretation of certain cases issued under the former arbitral regime.

Taken together, these provisions, along with a number of expedited deadlines set forth in the law, will help to ensure that arbitration users in the UAE can enjoy an efficient arbitral process.

Raising the Bar: The Role of the Court of Appeal

A key legal feature of the UAE Federal Arbitration Law is the designation of the relevant federal or local Court of Appeal as the Competent Court, i.e., the court with jurisdiction to supervise the arbitral process. Designating the Court of Appeal rather than the Court of First Instance as the Competent Court has multiple benefits. The most obvious one is that it removes one layer of appeal, thereby expediting the process in line with the emphasis on efficiency noted above.



More fundamentally, this designation reflects the reality of the arbitral tribunal's role as a finder of fact and legal decision-maker in the first instance. Arbitral awards are presumptively final and can only be challenged on a limited number of procedural, jurisdictional, and public policy grounds; the substantive legal and factual findings in an award generally are not to be reconsidered by a court. The designation of an appeals court, which instinctively will be less inclined to re-open factual and legal findings than a court of first instance, as the Competent Court may increase the likelihood that the grounds for challenging an arbitral award will be narrowly construed.

The UAE's decision to make an higher-level court the jurisdiction's supervisory court for arbitration-related matters follows an approach taken by other emerging arbitral seats. For example, the national arbitration law of Mauritius provides that set-aside and enforcement applications involving arbitral awards are directed to a special chamber of the Mauritian Supreme Court (i.e., the country's highest court) consisting of six judges who receive specific training in the field of arbitration. Approaches such as those adopted by the UAE and Mauritius help to ensure that arbitration-related matters are decided by judges well versed in the arbitral process.

Three Potential Concerns

To be sure, the UAE Federal Arbitration Law is a sturdy stepping stone that has substantially improved the legal landscape for arbitration in the UAE. With that said, there are some aspects in which the new law could have done more to improve the status quo. Three such areas relate to: (1) the capacity of parties to enter into arbitration agreements; (2) consolidation of arbitration cases; and (3) untested grounds for challenging an arbitral award.

Capacity to Arbitrate

Historically, one of the greatest concerns relating to arbitration in the UAE involved the stringent requirements relating to the capacity to arbitrate. On numerous occasions, parties have expended considerable time and expense in arbitral proceedings only to have an award

To be sure, the UAE Federal Arbitration Law is a sturdy stepping stone that has substantially improved the legal landscape for arbitration in the UAE. With that said, there are some aspects in which the new law could have done more to improve the status quo.

set aside by the UAE courts because the signatory to an arbitration agreement did not have the requisite authority to bind a party to arbitration (even if the signatory may have had apparent or ostensible authority to do so).

The UAE Federal Arbitration Law presented an opportunity to change this approach by introducing the concept of apparent or ostensible authority as a basis for binding a party to an arbitration agreement. However, the new law did not take this approach and indeed re-confirmed the necessity for parties to strictly comply with capacity requirements in relation to arbitration agreements.

The continued focus on strict capacity requirements can be seen in Article 4 of the new UAE Arbitration Law, which provides that "[a]n Arbitration Agreement may only be concluded, on pain of nullity, by a natural person having the legal capacity to dispose of his rights or on behalf of a juridical person by a representative with specific authority to arbitrate." An award can be set aside if the signatory lacks this specific authority to arbitrate; Article 53.1(c) specifically provides that an award can be set aside if "a person does not have the legal capacity to dispose of the disputed right under the law governing his capacity, as provided for in Article 4 of this Law."

It thus appears that issues of capacity and authority to arbitrate will continue to be matters in relation to which parties must tread carefully in the UAE.

Joinder but No Consolidation

A wide variety of disputes are arbitrated in the UAE, but construction disputes continue to account for a lion's share of the arbitrations in this jurisdiction. Construction disputes are frequently complex and often involve multiple parties and multiple contracts.

The UAE Federal Arbitration Law specifically addresses the issue of having multiple parties at play in a dispute in Article 22. This provision grants an arbitral tribunal the power to allow a third party to intervene in or be joined to the arbitral proceedings, provided that the third party is a party to the arbitration agreement at issue (and after all parties have had the opportunity to be heard on the joinder).

Unfortunately, the UAE Federal Arbitration Law is silent on the issue of consolidation of multiple arbitral proceedings into one arbitration. Consolidation can be a useful technique for enhancing the efficiency of a dispute resolution process when there are multiple related cases, e.g., a dispute between an employer and a contractor under the main contract and a related dispute between a contractor and a sub-contractor under a sub-contract in the context of a construction dispute.

Considering that the rules of neither the Dubai International Arbitration Centre ('DIAC') rules or the Abu Dhabi Commercial Conciliation and Arbitration Centre ('ADCCAC') have provisions on consolidation, this aspect remains a lacunae for UAE arbitrations.

Untested Grounds for Challenge

The grounds for challenging an arbitral award set forth in Article 53 of the UAE Federal Arbitration Law largely track the grounds set forth in the UNCITRAL Model Law and, therefore, generally reflect international practice. There are, however, two grounds for challenging an award set forth in Article 53 that do not appear in the UNCITRAL Model Law.

First, Article 53.1(d) provides that an award may be challenged if "the arbitral award excludes the application of the Parties' choice of law for the dispute." While such a provision is not commonly found in national arbitration laws on a global basis, similar provisions do exist in other regional laws, including Egypt, Oman, Jordan, and Saudi Arabia.

Such a ground for challenge is certainly sound in principle. For example, if the parties to an arbitration agreement clearly select UAE law to govern the substance of their dispute and an arbitral tribunal applies English law wholesale to that dispute, then it is reasonable for a court to set aside such an award. Indeed, there are historical reasons for including such a provision in the national arbitration law of countries in the region, (see, e.g., Petroleum Development (Trucial Coast) Ltd v. Ruler of Abu Dhabi (1951), 18 I.L.R. 144, in which the arbitrator disqualified Abu Dhabi law on baseless grounds.)

On the other hand, such a provision does provide an opening for a court to revisit discrete issues of law should it wish to do so. For example, a party might argue that a tribunal applied a particular principle of law in a manner consistent with another body but not the body of law selected by the parties and request the court to set aside the award on this basis under Article 53.1(d). This would permit an interventionist judge to re-open discrete legal issues decided by the tribunal, which likely is not the approach the drafters of the UAE Federal Arbitration law had in mind.

Second, Article 53.1(g) provides that an award may be challenged if "*the arbitral proceedings were marred by irregularities that affected the award or the arbitral award was not issued within the specified time frame.*"

The first part of this provision – "marred by irregularities" – may seem uncontroversial at first blush because it seems to reflect the due process principle that is found in most national arbitration laws. However, this understanding appears not to be the case because another provision, Article 53.1(d), contains the due process principle, providing that an award may be challenged "*because the Arbitral Tribunal breached due process.*" The "marred by irregularities" language thus seems to suggest something different, and it is not clear at this stage what this distinction may be.

The second part of Article 53.1(g) requiring an award to be issued in the specified time frame reflects the UAE Federal Arbitration Law's overall emphasis on efficiency. Under Article 42.1 of the law, an arbitral tribunal must issue an award within six months from the date of the first arbitration hearing, and this time period may be extended by the tribunal for up to six additional months unless the parties agree to a longer extension. If the parties do not agree to a longer extension, then the tribunal or the parties can apply to the Court of Appeal to issue a decision extending the time period further or terminating the arbitral proceedings.

This ground for challenge could create difficulties if a recalcitrant party insists on the arbitration being completed within one year in a complex, highly technical dispute. The tribunal will be faced with balancing efficiency with the need to carefully consider the issues and ultimately the threat of an award that can be challenged.

Conclusion

The UAE Federal Arbitration Law has been a positive development and, based on the law's implementation to date, the trajectory of arbitration in the UAE is on an upward track. While the law as a whole reflects the state of the art, there are some provisions that warrant some level of constructive criticism.

Al Tamimi & Company's Arbitration team regularly advises on arbitrations and arbitration-related matters. For further information please contact Thomas Snider (t.snider@tamimi.com).

Dubai International Arbitration Centre Founding Statute Revised: What has Changed?

Sergejs Dilevka
Associate
Dubai, UAE
s.dilevka@tamimi.com

Maria Darwish
Trainee Lawyer
Dubai, UAE
m.darwish@tamimi.com

***N.B.** This article was first published on the Kluwer Arbitration Blog on 6 June 2019.*

Introduction

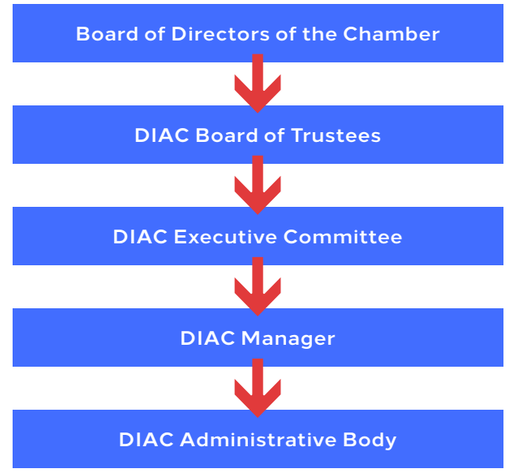
The Dubai International Arbitration Centre ('DIAC') is a regional arbitration centre created by a statute in 1994 as part of the Dubai Chamber of Commerce and Industry (the 'Chamber').

On 23 April 2019, the Ruler of Dubai issued Decree No. 17 of 2019 approving a new statute for DIAC (the 'New DIAC Statute'). The New DIAC Statute replaced the previous DIAC statute on 2 May 2019, the day of publishing the Decree in the Official Gazette.

Unlike the proposed changes to the DIAC Rules, which have been widely circulated in draft form, no proposed changes to the previous DIAC statute were circulated prior to its enactment as far as the authors of this article are aware. However, there are important changes recorded in the New DIAC Statute and this brief article highlights some of these provisions, specifically with regard to DIAC's structure, the functions and authority of the relevant bodies, and the recorded process for implementing the long-awaited new DIAC arbitration rules.

1. DIAC's Structure

According to Article 6 of the New DIAC Statute, DIAC consists of a Board of Trustees (the 'BoT'), an Executive Committee (the 'EC'), and an Administrative Body. Article 2(B) of the New DIAC Statute states that DIAC "shall enjoy full independence in the provisions of its services for settling disputes through arbitration or conciliation." However, upon perusing the New DIAC Statute and for the reasons set out below, it is apparent that the Chamber's Board of Directors appoints the BoT, and that the structure of DIAC is as follows:



Accordingly, based on the contents of the New DIAC Statute, the level of actual independence of DIAC vis-à-vis the Chamber is, arguably, not as apparent as it was under the previous DIAC statute, and DIAC will need to take care to ensure its independence is maintained and seen to be maintained.

A. Board of Directors of the Chamber

The only noteworthy reference to the Chamber in the previous DIAC statute simply recorded the fact that DIAC forms part of the Chamber. According to the New DIAC Statute, however, the role of the Chamber's Board of Directors (the 'BoD') at DIAC is presently indispensable, for example:

- all members of the BoT are to be appointed by the Ruler upon the proposal of the BoD;
- the DIAC Manager (the 'Manager') is to be appointed by a BoD resolution; and
- any amendments to the New DIAC Statute or DIAC Arbitration Rules 2007 (the 'DIAC Rules') are to be prepared in consultation with the BoD, which has the authority to submit said amendments for approval by the competent authorities of the Emirate of Dubai.

The examples above make evident the BoD's fundamental role, pursuant to the New DIAC Statute, in appointing DIAC's senior management, overseeing DIAC's structure and operations, and implementing any important changes. However, we understand that the BoD does not have any involvement in the handling of cases, which remains with DIAC.

B. Board of Trustees

The BoT is the governing body carrying out the overall responsibility for the management of DIAC.

Similar to the previous DIAC statute, the New DIAC Statute prescribes that the BoT will comprise a chairperson, a vice-chairperson, and a number of members with arbitration experience. The number of BoT members however, was cut from 20 in the previous DIAC statute to 15 members in the New DIAC Statute. As mentioned in the previous section, the New DIAC Statute now specifically prescribes that the BoT members will be proposed by the BoD to the Ruler for appointment by decree for three years, the same term as in the previous DIAC Statute.

Furthermore, the New DIAC Statute contains a particularised list of the BoT's functions, for example:

- to adopt DIAC's general policies;
- to propose amendments to the New DIAC Statute and the DIAC Rules and procedures; and
- to approve DIAC's organisational structure, regulations and by-laws.

However, as mentioned in the previous section, the BoT's functions set out in the New DIAC Statute are generally subject to the approval of the BoD.

C. Executive Committee

The EC assists with implementing the BoT's decisions and carries out various functions assigned to it in the DIAC Rules. The EC consists of at least five members, including the EC's chairperson and vice-chairperson, who are appointed by the BoT chairperson after consulting the members of the BoT.

The BoT also has authority to form and delegate certain EC duties and powers to the EC's sub-committees.

D. Manager

The Manager, as the job title suggests, is responsible for controlling and administering DIAC and its Administrative Body. In the previous DIAC statute, the Manager was called a Director. To the authors' best knowledge, since the departure of the former Director in August 2013, the position of Director (now Manager) has been vacant.

Under the previous DIAC statute, the Director could be appointed by the BoT. However, the New DIAC Statute prescribes that the Manager may be nominated by the BoT and then ultimately appointed by a BoD resolution.

E. Administrative Body

The Administrative Body is the body responsible for ensuring that the services provided by DIAC and the arbitration proceedings between parties are running in a smooth and effective manner and, more importantly, in accordance with the DIAC Rules. The Administrative Body, comprising case management and other administrative staff, is supervised by the Manager.

2. Implementation of the New DIAC Arbitration Rules

One peculiar feature to note about the DIAC Rules is that they were issued by Decree No. 11 of 2007. Thus, in order to introduce a new set of DIAC arbitration rules, it is necessary for the Ruler to issue a new Decree.

The current DIAC Rules have been in force for more than 12 years. Despite the "Launch and Discussion of the New 2018 Arbitration Rules" during the Dubai Arbitration Week in November 2017 (approximately 18 months ago) and the subsequent flurry of articles and analysis based on various drafts of the new DIAC arbitration rules, the new rules are yet to see the light of day.

It is possible that the New DIAC Statute is another step in this direction as it sets out a process for updating the DIAC Rules, i.e., issuing new DIAC arbitration rules. The process now involves the EC making the relevant proposal to the BoT, which has to be approved by the BoT in consultation with the BoD. Subsequently, the BoD has the authority to submit the new DIAC arbitration rules for consideration by the Dubai government authorities, which may forward the new DIAC arbitration rules to be issued under a decree passed by the Ruler. The process may be visualised as follows:

"DIAC will need to take care to ensure its independence is maintained and seen to be maintained.

3. Independence and Autonomy

The UAE Federal Law No. 6 of 2018 on Arbitration introduced significant changes to the UAE's arbitration law. More specifically, under Article 10(2), the previously mentioned law provides qualifications required for arbitrators, which provides the following:

> *"The arbitrator cannot be on the board of trustees or the administrative body of the Arbitration Institution responsible for administering the Arbitration in the State."*

Accordingly, the DIAC Statute seconds the above-mentioned provision in Article 23 dealing with the 'Appointment in Arbitral Tribunal', which states the following:

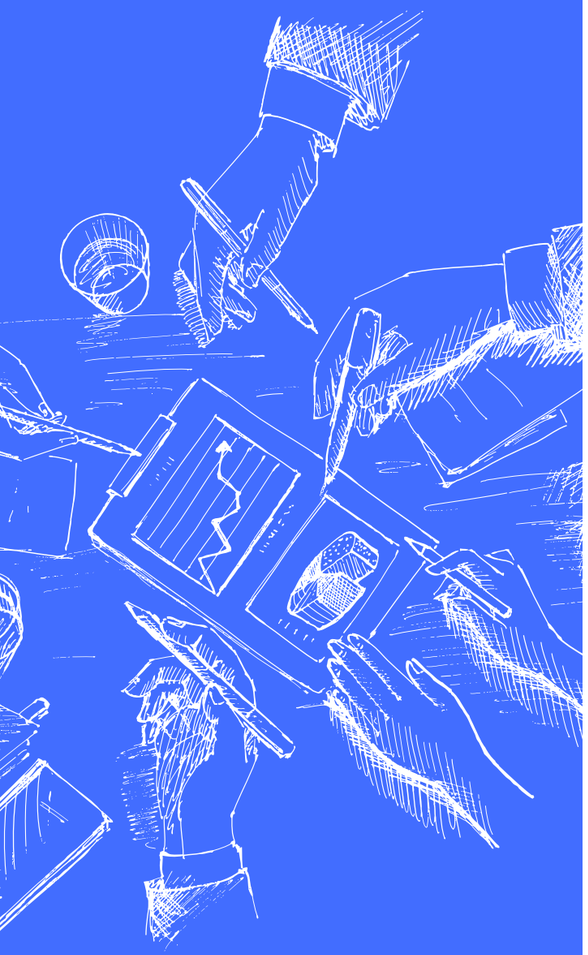
> *"A member of the [BoT], a member of the Centre's committees, the Manager or any of the Centre's staff shall not be the arbitrator who will consider any dispute submitted before the Centre, whether he is an individual arbitrator or a president or a member of the arbitral tribunal."*

Conclusion

Overall, the New DIAC Statute is a more comprehensive document than the previous DIAC statute, which may suggest it is a preparative step to the issuance of the long-awaited new DIAC arbitration rules by Decree of the Ruler. It is difficult to say how important the involvement of the BoD will be on the functioning of DIAC – it may be a tectonic shift in the oversight and control of DIAC in favour of the Chamber; or simply a reflection of the changes at DIAC over the last decade such that no change in DIAC's functioning will be noticed. In any event, DIAC will need to ensure that it maintains its independence if it is going to keep its position as the most used arbitral institution in the region.

Al Tamimi & Company's Arbitration team regularly advises on international investment and commercial arbitration. For further information please contact Sergejs Dilevka (s.dilevka@tamimi.com).

A Law to Regulate Finance Leases in the UAE



Muhammad Ammad Yasin
Associate
Dubai, UAE
m.yasin@tamimi.com

Leasing has become an increasingly important mode of finance for companies, particularly in the case of financing of expensive capital equipment (such as machinery, equipment, vehicular assets, vessels, aircrafts) and for individuals, particularly in the case of financing of real estate and motor vehicles.

Historically, such activities relied on the general principles of UAE law without a defined regulated framework. The UAE Federal Law No. 8 of 2018 on Finance Lease ('Law'), which came into effect on 1 January 2019 ('Effective Date'), has addressed this uncertainty by introducing a legislative basis on which the sector can rely.

Scope and Application of the Law

The Law provides the regulatory framework for conducting finance lease business in the UAE and is applicable to all finance leases in relation to any immovable and movable assets (including real estate, aircraft, vessels, vehicles, plant, machinery equipment etc) which provide an option to the customer to own the leased asset.

Finance leases are defined in the Law as "*a relationship between lessor and lessee, whereby the lessor shall own the leased asset for the purpose of leasing it. The lessor shall lease the asset to the lessee for a limited period and through an independent contract with an option to the lessee to own the leased asset according to the provisions of this law*" ('Finance Lease'). The lessor must be a Central Bank licenced financial institution leasing the leased asset and the lessee is the customer taking the leased asset on lease with the option to own the leased asset. The ownership option is the feature that differentiates regulated finance lease activities from operational leases, which are not captured by the Law.

Ijara financing, currently undertaken by the Shari'a compliant UAE financial institutions, would come within the ambit of the Law.

Salient Provisions of the Law

Highlighted below are the salient provisions of the Law that are relevant to financial institutions in the UAE.

Licensing

Any person or an entity intending to undertake Finance Lease business in the UAE is required to obtain a licence from the Central Bank.

It is not clear from the Law whether existing banks and finance companies, which are practising Finance Lease business in the UAE under an existing licence from the Central Bank, require a separate licence under the Law. On consultation with the Central Bank, we understand that such banks and finance companies are not required to apply for a separate licence under the Law.

Any Finance Lease contract entered into with an unlicenced entity is void.

Registration of Finance Lease Contracts

All Finance Lease contracts (and any amendments thereto) entered into after the Effective Date must be registered; otherwise they are void. This is an important consideration for banks and finance companies that have structured their Finance Lease documentation under an Ijara mortgage model (i.e. customer as owner and bank or finance company as mortgagee), as opposed to a Ijara ownership model (bank or finance company as owner and customer as lessee).

Finance Lease contracts for:

1. immovable land (including off-plan sales) must be registered at the relevant land department. The Dubai Land Department has had such a system for some time, whereas other Emirates will need to implement new systems to cater for this;
2. movable assets must be registered in a registry to be established and regulated under a resolution to be issued by the UAE Cabinet. As of the date of this update, the movables assets registry has not been established. Further, at this stage, it is not clear what role the Emirates Movable Collateral Registry will play as it already allows for registration of finance leases over moveable assets; and
3. special movable assets (such as vehicles, aircraft and vessels) must be registered at the existing special register for that type of asset.

The obligation to register the Finance Lease contract (and any amendments thereto) lies with the lessor.

A Finance Lease contract, registered in accordance with the Law, is considered as evidence against third parties.

Prescriptive Provisions of Finance Lease Contracts

The Law is, in many respects, quite prescriptive as to the components that should be included in a Finance Lease contract and, unless otherwise agreed in the Finance Lease contract, the rights and obligations of the lessor and the lessee. These include:

Key components of Finance Lease contract:

1. names and details of the lessor and the lessee;
2. detailed description of the leased asset;
3. term of the Finance Lease contract;
4. purpose for the use of leased asset and the limits of such use;

5. rent, number of payments and due dates;
6. terms and conditions of the delivery of the leased asset to the lessee;
7. lessee's right to own the leased asset;
8. material rights and obligations of the lessor and lessee;
9. particulars of the supplier (i.e the person or entity supplying the leased asset to the lessor) ('Supplier'); and
10. the party that selected the Supplier.

Rights and obligations of the Lessee:

1. receive the leased asset from the lessor (or the Supplier);
2. use the leased asset for the purpose permitted in the Finance Lease contract;
3. pay rent to the lessor;
4. maintain the leased asset and carry out ordinary maintenance;
5. pay any financial costs applicable to or imposed by any government authority on the leased asset;
6. procure, renew and maintain any licence required for utilisation of the leased asset. Such issued licence must include the name of the lessor and include a statement that the leased asset is in the possession of the lessee;
7. transfer its rights and obligations under the Finance Lease contract to a third party, subject to the Lessor's consent; and
8. be responsible for the use of the leased asset and any damages to the leased asset, lessor or any third party because of such use or possession of the leased asset.

Rights and obligations of the Lessor:

1. deliver the leased asset to the lessee;
2. notify the Supplier of the existence of the lease on the leased asset;
3. insure the leased asset;
4. carry out major maintenance on the leased asset;
5. inspect the leased asset;
6. repossess the leased asset on default of the lessee. This appears to be a self-help remedy and the lessor is not required to initiate court proceedings to exercise its rights of repossession of the leased asset (assuming, of course, that it can legally repossess the asset). The Law does not however stipulate any other rights or remedies the lessor has, such as enforcing the purchase of the asset, damages and so on; and
7. transfer its rights under the Finance Lease contract or transfer the leased asset to any third party without the lessee's consent.

Improvements

If the lessee does not exercise its option to take ownership of the leased asset and returns the leased asset to the lessor, if any improvements have been made to the leased asset, where they can be removed the lessee must remove them. However, where they cannot be removed, and the lessor consented to the improvements, the lessor must pay compensation to the lessee for the improvements unless otherwise agreed in the Lease Finance contract.

Delivery of the Leased Asset

On delivery of the leased asset to the lessee, a delivery receipt must be signed by the Supplier or the lessor and the lessee. The lessee can only refuse to take delivery if the leased asset does not meet the agreed specifications or if the Supplier or the lessor refuses to issue a delivery receipt. The delivery receipt must state the condition of the leased asset and whether or not the leased asset meets the requirements and specifications agreed upon in the Finance Lease contract.

Selecting the Supplier and the Leased Asset

It is essential to determine the party who has selected the Supplier of the leased asset and determined specifications of the leased asset as the Law provides corresponding rights to the lessor and the lessee accordingly. In particular:

"The Law provides the regulatory framework for conducting finance lease business in the UAE and is applicable to all finance leases in relation to any immovable and movable assets (including real estate, aircraft, vessels, vehicles, plant, machinery equipment etc) which provide an option to the customer to own the leased asset.

1. whoever selects the leased asset and determines its specifications will be responsible for its appropriateness for purpose; and
2. the lessor will not be responsible to the lessee for any violation by the Supplier of its obligations under the supply contract (i.e. the contract under which the leased asset is supplied by the Supplier to the Lessor) ('Supply Contract'), unless the lessor selected the Supplier or the Supplier was in violation of its obligations under the Supply Contract due to any reasons attributable to the lessor.

The lessee is entitled, under the Law, to select the Supplier and determine the specifications of the leased asset.

Liability for defects in the leased asset rests with the Supplier. Without prejudice to the lessor's right to recourse against the Supplier, save for a claim in relation to the termination of the Supply Contract (for which only the lessor will have direct recourse against the Supplier), the lessee has direct rights against the Supplier in relation to the Supply Contract of the leased asset. The lessee accordingly can directly deal with the Supplier in connection with any warranties, service arrangements, etc.

Ownership of the Leased Asset

The lessor is the owner of the leased asset, however subject to the lessor's approval, the lessee may own the leased asset during the term of the Finance Lease contract. If the lessee exercises its option of ownership, subject to the lessee paying all amounts agreed under the Finance Lease contract, the lessor must convey the leased asset to the lessee in the following manner:

1. where the leased asset is real estate, the lessor must convey the leased asset to the lessee at the relevant land department within 15 working days from the date of the lessee notifying the lessor of exercising the option to own the leased asset;
2. if the leased asset is special movable assets (such as vehicles, aircraft and vessels), the lessor must assign the

leased asset to the lessee at the relevant government authority within 15 working days from the date of the lessee notifying the lessor of exercising the option to own the leased asset; and

3. if the leased asset is anything other than real estate or special movable assets (which do not require registration with any government authority), the lessee shall be deemed owner of the leased asset from the date of the lessee notifying the lessor of exercising the option to own the leased asset.

Liquidation, Bankruptcy or Death of the Lessee

In case of the liquidation or bankruptcy (or where applicable death) of a lessee, the leased asset does not form part of the lessee's estate available to creditors of the lessee and the leased asset must be returned to the lessor within 90 days from the issuance of a liquidation decision or from adjudication of bankruptcy or the death of the individual (unless the liquidator or administrator in bankruptcy has decided to continue performing the Finance Lease contract). This is a clear legislative exception to the UAE Bankruptcy Law.

Destruction of the Leased Asset

If the leased asset is destroyed to the extent that it becomes wholly or partially unfit for use for the purpose agreed in the Finance Lease contract, the Finance Lease contract shall be deemed terminated.

The lessor is entitled to claim compensation from the lessee if the leased asset is destroyed for any reason attributable to the lessor. In determining the compensation, the amount paid by the lessee as rent and insurance proceeds (if any) must be taken into consideration.

Termination of the Finance Lease Contract

The lessor and the lessee are granted certain termination rights under the Law. These include:

<u>Lessor</u>

1. lessee fails to maintain leased asset or carry out ordinary maintenance;
2. lessee uses the leased asset for any purpose other than that agreed in the Finance Lease contract;
3. lessee fails to pay the rent when due;
4. lessee refuses to accept delivery of the leased asset provided it is as per the specifications agreed in the Finance Lease contract;
5. lessee is in default of any of its material obligations under the Finance Lease contract; and/or
6. lessee causes material damage to the leased asset.

Prior to exercising its rights of termination, the lessor is required to provide the lessee with a 'cure period' of 60 working days to remedy the default, failing which the lessor may immediately terminate the Finance Lease contract.

<u>Lessee</u>

1. lessor fails to deliver the asset as per the agreed specifications;
2. lessor fails to insure the asset; and/or
3. lessor fails to carry out major maintenance of the asset.

Prior to exercising its rights of termination, the lessee is required to provide the lessor with a cure period of 60 working days to remedy the default, failing which the lessee may immediately terminate the Finance Lease contract.

The aforementioned termination rights of the lessor and the lessee are statutory rights and therefore cannot be contracted out of under a Finance Lease contract. The Finance Lease contract can, of course, provide additional termination rights.

Jurisdiction

Courts of the UAE have the jurisdiction to hear and determine any suit, action or proceeding and to settle any disputes which may arise out of or in connection with the Finance Lease contract. The Law does not deal with Finance Lease transactions that are conducted on a cross-border basis (and governed by foreign laws and foreign courts). However, according to the Law, it appears that UAE courts would assume jurisdiction if matters relating to foreign law governed Finance Lease contracts were brought before such courts. This is an important consideration for local Finance Lease transactions which may have opted for arbitration as a means of dispute resolution or the application of foreign law.

Adjustment of position with the Law

The Law stipulates a grace period of one year for full compliance with the provisions of the Law.

Effective from the Effective Date, all Finance Lease contracts must be registered in accordance with the Law. That being said, in relation to Finance Lease contracts in relation to movable assets (which are to be registered in the registry to be established pursuant to the Law) and immovable assets, while the Law is not clear, in practice since there is no register available to register a Finance Lease contract for movable assets and no systems are in place in the land departments of the relevant Emirates (other than the Dubai Land Department) to register a Finance Lease contract for immovable assets, a lessor would be unable to register, and therefore cannot comply with this requirement of the Law.

In relation to Finance Lease contracts executed before the Effective Date, the Law states that a lessor 'may' register such contracts within one year of the Effective Date. The inclusion of the word 'may' creates confusion as to whether it is a mandatory requirement or not. One interpretation is that it is providing a one-year period to register if the lessor chooses, the other being it is giving the lessor up to one year to register such contracts.

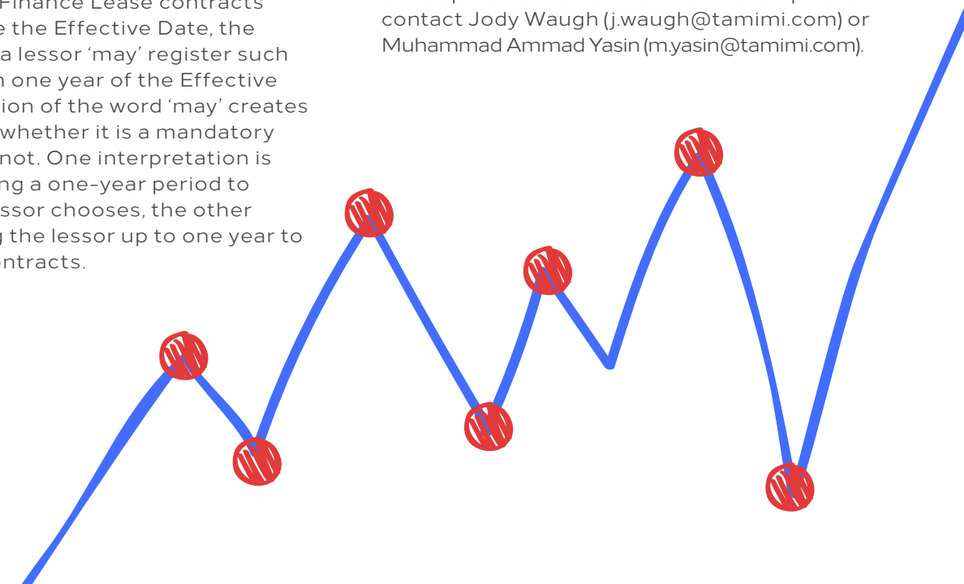
Implementing Regulations

The Law mandates the Central Bank issue regulations to regulate the Finance Lease business. On consultation with the Central Bank, we understand that the Central Bank does not intend to issue a separate set of regulations and has indicated that finance companies wishing to carry out Finance Lease business in the UAE will be subject to the Finance Companies Regulations issued by the Central Bank in 2018. Finance Leasing is a 'permitted activity' under the Finance Companies Regulations.

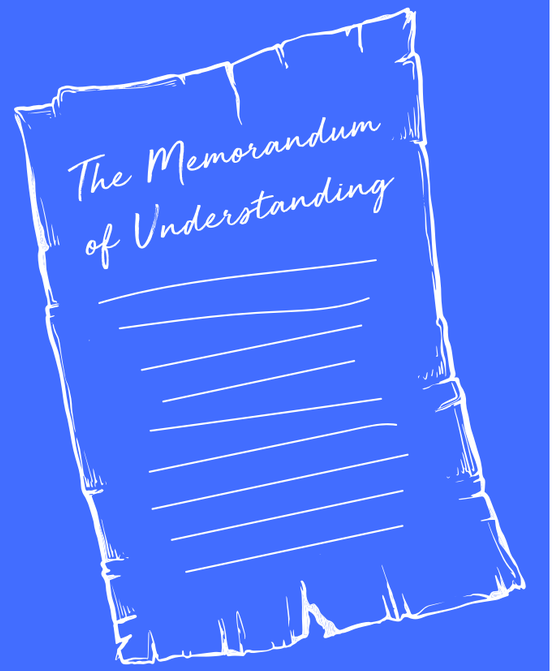
Conclusion

The introduction of the Law is a welcome legislative development in the UAE as it provides a framework for conducting Finance Lease business in the UAE. All entities carrying out a Finance Leasing business in the UAE are encouraged to undertake a full review of their Finance Lease contracts in order to ensure they align with the requirements of the Law and, where necessary to approach the Central Bank for guidance on adjusting their licences.

Al Tamimi & Company's Banking & Finance team regularly advises financial institutions operating in the region on new legislative developments. For further information please contact Jody Waugh (j.waugh@tamimi.com) or Muhammad Ammad Yasin (m.yasin@tamimi.com).



The Surprising Pitfalls of the MOU



Anna Robinson
Associate
Dubai, UAE
a.robinson@tamimi.com

Introduction

The Memorandum of Understanding ('MOU') document (also commonly described as a 'letter of intent' or 'heads of terms') is often negotiated and signed before lawyers are consulted. This is ironic, because it is a surprisingly difficult document to get right and the signed final product often falls short of the mark.

The main purpose of any MOU, in the context of an acquisition of shares or a joint venture, is to outline, record and agree in principle the basic components of the deal upfront, before incurring the expense and effort of negotiating a definitive transaction agreement.

Regardless of whether your MOU is expressed to be legally binding, it can be very difficult to 'row back' from a position agreed commercially and recorded in the MOU. The challenging task of re-opening agreed positions is nonetheless often attempted at a later stage, when specialist advice has been taken and the actual consequences and implications of the MOU are better understood. Often this re-opening is essential because legal, accounting or tax problems are discovered in the signed MOU.

Should your MOU be Legally Binding?

One common pitfall we see with MOUs is caused by a failure to appreciate that, in most cases, it is in the interests of each party signing that some portions should be legally binding, even if it is intended by all that other

terms should be non-binding. For example, in most cases it is appropriate that clauses dealing with these topics should be binding:

- deal exclusivity during due diligence and negotiation;
- confidentiality of information disclosed during the diligence;
- due diligence rights of access to key information;
- obligation to pay break fees; and
- governing law/forum for dispute resolution.

If the MOU does contain binding elements, the parties to be included should be considered carefully. Subject to narrow exceptions, courts will not enforce imposed obligations on third parties who did not sign the MOU. Therefore, if some MOU provisions are intended to be binding, it is important that the right parties are included. A common mistake is for the target entity signing a MOU governing the sale of shares in itself, rather than the selling shareholders signing the document. If the selling shareholders are not parties to the MOU there is nothing binding them to any exclusivity period stipulated in the MOU.

"There is dispute even amongst practitioners as to whether legal title to shares passes on issue of the commercial licence or upon attending the notary."

In some circumstances the target should be added as a party to the MOU if the target has its own responsibilities under the terms of the MOU, such as procuring the disposal of assets, the termination of employees or the taking of other actions needed prior to the share sale.

How Much Detail should be in the MOU?

Most MOUs should contain a clause that particular terms are not binding unless stated otherwise and that the overall transaction remains subject to the negotiation of fully comprehensive and definitive transaction documents.

Failure to include such a clause can allow the other party the opportunity to argue that, if a specific provision is not set out in the MOU, it cannot be introduced into the transaction at the later stage. Examples of clauses which can cause disagreements when the detailed transaction documents are negotiated include provisions that:

- any warranties given by the sellers will be subject to appropriate limitations - this may give the buyer the opportunity to argue that no limitations should be included in the final transaction document;
- the purchase price will be subject to adjustment at completion - this may lead a seller to argue that no adjustment can be allowed; and
- an escrow or retention is required to protect the buyer in respect of any warranty claims - this will open the door for the seller to argue that the entire purchase price must be paid in one tranche.

Timing of Payment of the Purchase Price

Because it is common for a MOU to provide that the purchase price should be paid when the shares are transferred, a common dispute which can arise in the Middle East context after entry into the MOU concerns the precise sequence of completion steps.

In Dubai, the formal process for transferring shares involves both parties attending the notary to sign the formal transfer documents and then submitting these documents to the Dubai Economy Department (the 'DED').

Under Middle Eastern legal systems there is dispute even amongst practitioners as to whether legal title to shares passes on issue of the commercial licence or upon attending the notary. There will be a delay between attending the notary and a fresh commercial licence being issued for the target, which will record the new shareholdings. Most buyers prefer to defer payment until the fresh commercial licence is issued.

On the date that the documents are notarised and submitted to the DED it is no longer within the parties' control as to whether and when the company's commercial trade licence will be amended to reflect the revised shareholdings. The government registry might even refuse to register the change. Outside Dubai, the laws of a number of Middle Eastern jurisdictions require advance advertising of changes to shareholdings, which leads to delays of several weeks after notarisation. Sellers are often uncomfortable if they remain unpaid during this period of delay, because all action within the control of the sellers in relation to the transfer of legal title to the shares has already been taken.

Should the price be paid on the date the parties have notarised and lodged the documents, or should the price be paid when the new commercial licence evidencing the transfer of the shares has been issued? This problem commonly leads to one party assuming some risk around timing of the payment of the purchase price or an escrow arrangement being required pending issue of the commercial licence.

This timing issue is present in most Middle East jurisdictions, so payment timing needs to be specified with some precision in the MOU.

Choice of Governing Law

Foreign investors making acquisitions in the Middle East often wish their deals to be governed by the laws of England, because that system is more familiar to them than local laws.

These are two major pitfalls with this approach.

Firstly, if Middle Eastern courts consider that a transaction has a strong nexus with their jurisdiction (e.g. the acquisition of shares in a locally incorporated company) the court will often disregard the choice of law provision. So the court will hear a case brought by either side in that local court; and, moreover, apply local law to a transaction which had been framed under foreign law.

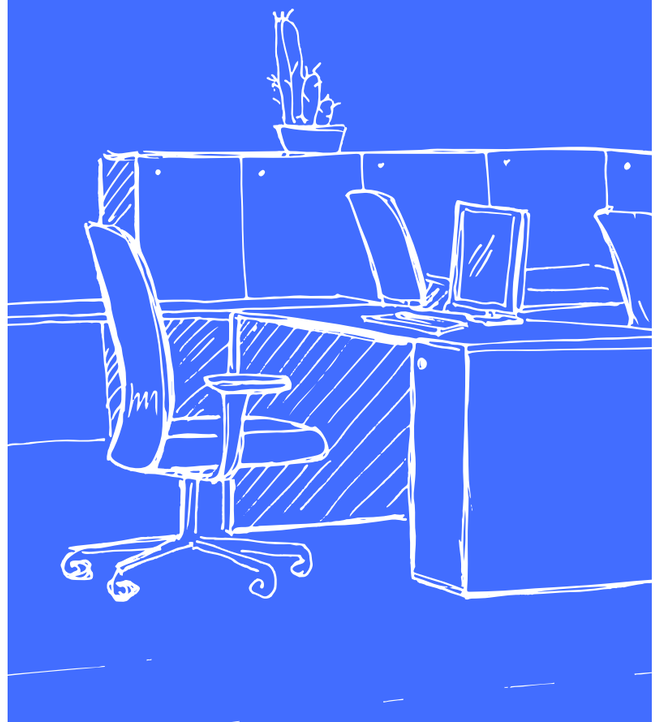
Secondly, the choice of dispute resolution forum for the MOU needs to take into account the possibility that a party will need to enforce the binding clauses of the MOU through an urgent injunction or interim court order (e.g. an order restraining the misuse of confidential due diligence information, an order restraining sale to a competing buyer during exclusivity period), so the forum for any dispute should take this factor into account. Because the DIFC Court has the ability to make orders of this nature but local Middle Eastern courts do not, the DIFC Court is often a preferred forum for this reason.

Conclusion

The principal purpose of a MOU is to outline the main terms of the proposed deal and to provide a structured basis for negotiating formal documentation relating to the transaction. It is therefore important that all of the main terms are included in the MOU and that parties recognise the importance of having a full understanding of the terms of the MOU prior to signing. It is also vital to identify those components of the MOU which will be required to be binding in nature and ensure that the MOU is clearly framed to achieve this objective.

Al Tamimi & Company's Corporate Commercial team regularly advises on share acquisitions at all stages from heads of terms to post-closing obligations. For further information please contact Anna Robinson (a.robinson@tamimi.com) or Richard Catling (r.catling@tamimi.com).

New DIFC Employment Law to come into Force on 28 August 2019



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

A new employment law for the Dubai International Financial Centre ('DIFC') has been enacted and will enter into force on 28 August 2019 (DIFC Law No. 2 of 2019) (the 'New Law'). The New Law will replace the current DIFC Employment Law (DIFC Law No. 4 of 2005, as amended by DIFC Law No. 3 of 2012) (the 'Current Law') in its entirety and introduces quite extensive changes to the Current Law.

To reflect and recognise recent developments and trends in working practices, the New Law will accommodate a variety of different working arrangements in the DIFC including part-time and short-term employment. Further, the New Law specifically provides for secondments to the DIFC whereby an individual can remain employed by a third party (inside or outside of the UAE) and have their employment continue to be governed by a different employment law. The new secondment arrangements should be particularly helpful where an individual will only be working for a DIFC company on a particular project (e.g. for 6 to 12 months) before returning to their employer, whether in the UAE or elsewhere.

There are various changes to employee leave entitlements under the New Law, some of which enhance an employee's rights under the Current Law and others which reduce them. For example, the New Law introduces five working days of paid paternity leave, provides male employees with paid time off work to attend ante-natal appointments or adoption proceedings with their wives, and extends the right to statutory maternity leave to females who are adopting a child under the

age of five. Certain other leave entitlements are being reduced, however, including the entitlement to sick leave at full pay (reducing from 60 to 10 working days per year), special leave to perform the Hajj pilgrimage (reducing from 30 to 21 calendar days) and the ability to carry over accrued but untaken annual leave to the following year (reducing from 20 to 5 working days). In general, these changes to employee leave entitlements are intended to strike a fairer balance between the respective rights of employers and employees than under the Current Law.

A number of changes under the New Law enhance an employee's rights and benefits when their employment terminates. For example, an employer will only be permitted to pay an employee in lieu of notice if the employee agrees, pursuant to a written agreement on termination of their employment, and an employer and employee will no longer be able to agree to a shorter notice period than the statutory minimum requirements. In addition, for the purpose of calculating end of service gratuity ('ESG') the employee's basic salary must comprise at least 50 percent of their fixed monthly remuneration, and an employee will not forfeit their entitlement to ESG even if they are dismissed for cause. While these changes are largely to the benefit of employees, one change under the New Law which is beneficial to employers is the watering down of the penalties which an employer must pay an employee for late payment of the employee's termination benefits.

In the event that a dispute does arise on the termination of an individual's employment, the New Law introduces a six-month limitation period in which an employment claim can be filed with the DIFC Courts. In an attempt to encourage the settlement of employment disputes out of court, the New Law specifically provides for the use of settlement agreements in order to terminate the employment or settle a dispute, and allows an employee to waive their minimum rights provided they have had an opportunity to seek legal advice or have engaged in court-facilitated mediation proceedings prior to entering into the settlement agreement.

One of the most important developments under the New Law is the expansion of the anti-discrimination provisions. Age, pregnancy and maternity will all be added to the current list of protected characteristics on which an employer may not discriminate against an employee, and the New Law prohibits the victimisation of an employee who has made a claim or allegation of discrimination (or otherwise participated in such proceedings). Significantly, the New Law introduces specific remedies where an employer is found to have unlawfully discriminated against an employee, whereby the DIFC Courts can make a declaration, make a recommendation and/or award the employee compensation of up to one year's salary (which can be increased to two years' salary in certain circumstances). DIFC companies should carefully review their policies, procedures and practices for dealing with HR and employment matters in light of the increased scope (and repercussions) for employee discrimination claims under the New Law.

The New Law also includes various additional provisions from a compliance and enforcement perspective, including the right for the DIFC Authority to inspect DIFC companies' premises and records and to impose monetary fines (up to USD $10,000) for non-compliance with the New Law.

In light of the extensive changes under the New Law, all DIFC companies should review and update their employment contracts, employee handbooks and any other HR policies and procedures to ensure compliance with the New Law. Consideration must also be given to how existing employees' employment contracts and accrued benefits will be dealt with in light of the new developments.

Al Tamimi & Company's Employment & Incentives team regularly advises on the full spectrum of employment and HR matters, both within and outside of the DIFC. For further information please contact Anna Marshall (a.marshall@tamimi.com) or Gordon Barr (g.barr@tamimi.com).

Astana's New Dispute Resolution Institutions: Developing Business Relations between the GCC and Kazakhstan

Peter Wood
Senior Counsel
Dubai, UAE
p.wood@tamimi.com

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

Background

Kazakhstan has long sat at the heart of the so-called 'Silk Road' linking Asia, the Middle East and Europe, thanks to its geographical position at the crossroads of Central Asia. Now, Kazakhstan is seeking to capitalise on its location, its history as a trade route, and the wealth generated by its considerable natural resources, to become a hub for international commerce in the twenty-first century.

As part of this development, Nur-Sultan, the newly re-named capital, opened the doors of the Astana International Financial Centre ('AIFC') on 1 January 2018, with the specific aim of growing its financial and professional services.

As its named suggests, the AIFC is a specialist financial free zone, situated in repurposed buildings originally constructed for Expo 2017. The AIFC comprises a set of institutions and a growing concentration of financial companies, both established international firms and disruptive start-ups, covering all aspects of banking and finance including capital markets, asset management, private banking and Islamic finance. As part of its measures aimed at attracting international investment, the AIFC's official language is English.

The AIFC is particularly targeting developing markets in its surrounding region, including Central Asia, the Caucasus, the Eurasian Economic Union, and Mongolia. Along with wider investment in the country's infrastructure (and particularly its transport links), the AIFC is a central part of Kazakhstan's participation in the Chinese 'One Belt, One Road' development and investment strategy.

AIFC's legislative framework

The AIFC has its own legal framework underpinned by the Constitution of the Republic of Kazakhstan. The principal legal instrument is the Constitutional Law, 'On the Astana International Financial Centre', approved on 7 December 2015. The AIFC applies its own civil and commercial law within its jurisdiction, which stretches beyond the territory of the AIFC buildings on the edge of Nur-Sultan.

So far, over 50 AIFC Acts have been issued to form the AIFC's legislative corpus. These laws include laws governing the incorporation of companies and not-for-profit entities, banking (securities and netting laws), different forms of partnership formation (general, limited and limited liability), and employment in the free zone. The laws also cover contracts, implied and unfair terms in contracts, data protection, insolvency, obligations, damages and remedies.

AIFC's institutions

Like financial free zones across the GCC – notably Dubai, Abu Dhabi and Qatar – the AIFC has a number of foundational bodies that serve to manage and operate it.

The AIFC Management Council is chaired by the President of Kazakhstan and is the management board of the free zone. The Council's main objectives are to determine strategic development and to promote the financial centre. It also superintends the AIFC Authority, the administration with responsibility for the development of the centre's strategic plan, the promotion of the AIFC in global markets and attracting businesses.

The Council and Authority are working on six strategic avenues for the development of the AIFC: capital markets, asset management, private banking, financial technology ('FinTech'), 'green' finance and Islamic finance. To support the drive to develop an Islamic finance industry, an Advisory Council on Islamic Finance was created last year, under the auspices of the AIFC, to advise on the creation and issue of Sharia-compliant instruments.

The Astana Financial Services Authority ('AFSA')is the independent regulator of financial and non-financial services activities within the AIFC's jurisdiction. It registers, licences and regulates entities, known as Participants, which are permitted to carry out financial and ancillary services and capital markets activities within the AIFC. The current CEO of the AFSA was for 13 years a member of the executive team responsible for the development of the DIFC's regulatory framework.

The AIFC intends to retrain over 2,000 specialists to work in financial and supporting services. To train this workforce, and to run training on the range of financial services, the AIFC Bureau for Continuing Professional Development has been established.

Although not part of the AIFC structure, the Astana International Exchange ('AIX') was founded in 2017 in partnership with Nasdaq, Goldman Sachs, the Silk Road Fund and the Shanghai Stock Exchange. Trading commenced on 14 November 2018 and in the same month the exchange held its first initial public offering ('IPO'), when shares from Kazatomprom JSC, a uranium mining company, were listed.

Kazakhstan is in the process of privatising many state industries and it is anticipated that a large number of listings of these new Kazakh companies will take place on the AIX.

The Astana International Financial Centre Court and International Arbitration Centre

For international counterparties, two of the most important institutions in the AIFC are the Court and International Arbitration Centre ('IAC'). The DIFC Dispute Resolution Authority assisted the Kazakh authorities in designing, developing and implementing the AIFC Court and IAC.

There was considerable appetite in Kazakhstan for the development of a common law system of justice. Kazakhstani companies were recently found to be the second largest group of foreign litigants before the Courts of England and Wales. One of the reasons for the popularity of litigating in London was the absence of robust commercial courts at home. The AIFC Court and IAC aim to fill this demand.

The AIFC Court has exclusive jurisdiction over disputes arising out of the activities and operations of the AIFC and its Participants, and over disputes where the parties have opted into the Court's jurisdiction. The Kazakh Government has begun to insert clauses in favour of the AIFC Court into its standard contracts, and the State Courts of Kazakhstan are giving parties the option of having their disputes transferred to the AIFC Court.

There are many similarities between the AIFC Court and the Courts of the ADGM and DIFC. For instance, the AIFC Court is a specialist commercial court, including a small claims tribunal and a court of appeal, that hear commercial cases in proceedings conducted in the English language and before experienced judges drawn from common law jurisdictions (the AIFC's Chief Justice is Lord Woolf). The AIFC Court Rules are modelled on the English Civil Procedure Rules and the Rules of the DIFC Courts. The Courts have made considerable use of technology to enable remote participation in hearings and the use of electronic documents throughout the litigation process.

The AIFC goes further than the common law Courts of the UAE in at least two respects. As noted above, the jurisdiction of the AIFC Court is considerably greater than the buildings in the immediate vicinity of the Court building and, although, the AIFC Court is independent and distinct from the State Courts of Kazakhstan, AIFC Court orders and judgments are directly enforceable across all of Kazakhstan.

The IAC is an alternative to litigation. Principally, the IAC will administer arbitrations for parties who have opted into its jurisdiction. The centre has its own arbitration and mediation rules which parties may use, or they may elect to administer their disputes under other rules including the UNCITRAL Arbitration Rules. The IAC maintains a panel of approved international arbitrators and meditators.

Links between Kazakhstan and the Arab world

The Arab world and Kazakhstan have had close and friendly ties since the latter became an independent state in 1991. The UAE is Kazakhstan's largest Arab trading partner, with almost US$ 643 million in bilateral trade recorded in 2017. Over the past decade, the UAE has made substantial investments, exceeding US$ 2 billion, in a wide range of Kazakh economic sectors, financing projects in strategic areas such as oil, gas and agriculture.

There are a number of points of similarity between the UAE and Kazakhstan, and there are many flights each week between Abu Dhabi, Dubai, Nur-Sultan and Almaty. Both are tolerant Muslim countries with centres of international trade and commerce situated in key geographical locations. Both have concentrations of industries specialising in energy supply, trade in cargo, and construction.

Over the past decade, the UAE has made substantial investments, exceeding US$ 2 billion, in a wide range of Kazakh economic sectors, financing projects in strategic areas such as oil, gas and agriculture.

The Arab world and Kazakhstan have had close and friendly ties since the latter became an independent state in 1991.

Whereas the UAE and the wider GCC depend mainly on cargo carried by ship, Kazakhstan is effectively landlocked (its only maritime access is to the Caspian Sea, which does not connect to global waterways). Kazakhstan is also a vast country: the overland distance from Nur-Sultan to Almaty, the country's old capital, is the same as Muscat to Manama.

The Kazakh President visited the UAE twice in early 2018 to reinforce relations between the two countries, and a number of agreements and memoranda of understanding have been signed to boost partnerships and co-operation across a range of commercial sectors. These include:

- agreements on the reciprocal encouragement and protection of investments between the Ministry of Investments and Development of Kazakhstan and the UAE Ministry of State for Financial Affairs;
- agreements between the UAE Ministry of Energy and Industry and the Ministry of Energy of Kazakhstan to build advanced plants for the manufacture of polyethylene and polypropylene in Kazakhstan;
- the UAE's DP World and the regional government of the Mangistau region of Kazakhstan signed a framework agreement for DP World's acquisition of a 49 percent stake in the Aktau Seaport special economic zone on the Caspian Sea. Another framework agreement outlined DP World's equity participation in the Khorgos Eastern Gate Management Company; and
- cooperation agreement between the UAE Space Agency and Kazakhstan's Ministry of Defence and Aerospace Industry to collaborate in various fields of space exploration projects.

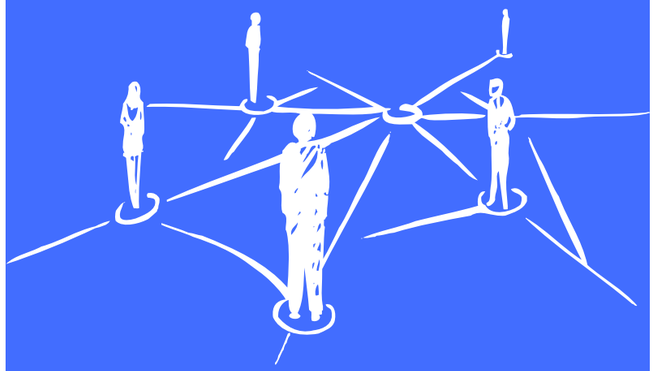
It is expected that a number of Kazakh companies will list on the UAE's stock exchanges in the near future, and it is foreseeable that a number of GCC companies will also list in Kazakhstan.

Conclusion

Kazakhstan is optimistic for the AIFC: it is predicted to attract US$40 billion of investments by 2025 and it is envisaged that it will play a main role in the country's ambition of becoming one of the top 30 developed countries by 2050. The foundations have been laid for ever-greater commercial ties between the GCC and Central Asia, and the relationship between Kazakhstan and the UAE is a solid beginning. The mechanisms and institutions to facilitate cross-border trade are in place, with the security of international dispute resolution processes. There is every reason to expect Kazakhstan will achieve its ambitious targets for growth and development, and for the GCC, led by the UAE, to play a part.

Al Tamimi & Company is in the process of becoming a registered law firm with the right to conduct litigation before the AIFC Court. Members of the International Disputes team are registered practitioners with rights of audience before the AIFC Court. For more information about dispute resolution in Kazakhstan, please contact Peter Smith (p.smith@tamimi.com), Peter Wood (p.wood@tamimi.com) or Rita Jaballah (r.jaballah@tamimi.com)

Friends in Need and International Comity: Interim Freezing Orders in Aid of Foreign Proceedings before the DIFC Courts



Patrick Dillon-Malone
Senior Associate
Dubai, UAE
p.malone@tamimi.com

Diego Carmona
Associate
Dubai, UAE
d.carmona@tamimi.com

Introduction

It is a common feature of financial fraud schemes for the proceeds of the fraud to be scattered across several jurisdictions, frequently through a network of connected entities. For the victims of the fraud, the first step in attempts to salvage their investments will often be to seek a worldwide freezing order in the courts of the country where the defendants and their activities are centred. In many such cases, however, the freezing order in the primary jurisdiction will not be sufficient to effectively prevent dissipation of assets elsewhere, and it may therefore be necessary to approach courts in other jurisdictions, where some of the defendants or their ill-gotten gains are located, with a request that they grant ancillary freezing orders in aid of the main proceedings.

DIFC Court of First Instance Judgment

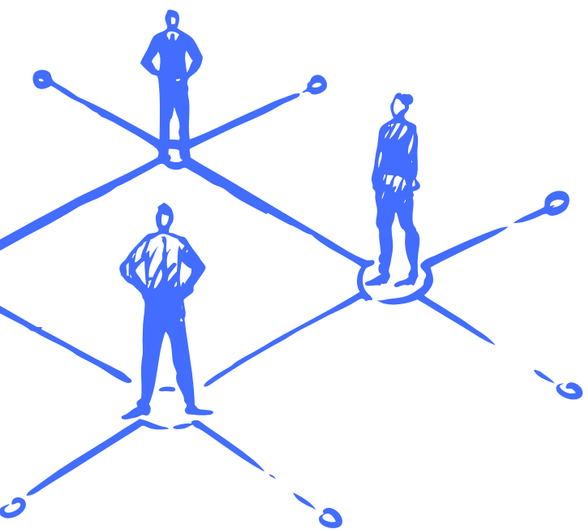
The DIFC Court of First Instance has recently had the opportunity, for the first time, to affirm its jurisdiction to grant freezing orders in aid of foreign proceedings. The issue arose in *United States Securities and Exchange Commission v Wintercap SA & Others* [2019] DIFC-CFI-003, in which the claimant (the 'SEC'), represented by Al Tamimi & Company, successfully obtained a freezing order in aid of an interim worldwide asset freeze order granted by the US District Court, District of Massachusetts on 16 November 2018 (the 'US Asset Freeze Order').

In the course of the case before the DIFC Court, which was heard over several return dates in January and February 2019, the Court heard argument on the legal basis for its jurisdiction, and how it related to other potentially overlapping elements of the Court's powers of recognition and enforcement of foreign judgments, and to the Court's powers of direct international judicial assistance.

Whist the DIFC Court did not deliver a written judgment, the Court's conclusions on the core matters in issue are confirmed by the terms of the order that was ultimately issued on 4 March 2019 (the 'Final Freezing Order'). It is therefore instructive to consider the arguments advanced by the SEC in the course of the case, and to consider the extent to which these arguments may have found favour with the Court in shaping its Final Freezing Order.

The US and DIFC Court Proceedings

The US proceedings were a securities enforcement action brought by the SEC against a so-called 'microcap' securities fraud scheme, see Securities and Exchange Commission v Roger Knox & Others, US District Court, District of Massachusetts. Record No. 18-CV-12058-RGS.



Under the relevant US statutory provisions, the US federal courts have power to order disgorgement of the proceeds of fraud together with a civil penalty by way of damages against the perpetrators in favour of the SEC. The proceedings are a civil action for compensation as distinct from a regulatory prosecution, see for example SEC v Happ, 392 F. 3d 12 (2004), judgment of US Court of Appeals First Circuit, 10 December 2004.

The Respondents in the DIFC proceedings, which were also each named defendants in the US proceedings, were a Swiss entity controlled by a British individual who at the time of the DIFC proceedings was in custody in Massachusetts (the 'Swiss entity'); a Fujairah entity controlled by the same British individual (the 'Fujairah entity'); and a DMCC entity controlled by a French individual who resided in Germany and was believed, at the time of the DIFC proceedings, to be at large in Europe (the 'DMCC entity').

The assets sought to be frozen in the DIFC proceedings were, respectively, funds and equities held in the name of the Swiss entity by a DIFC licenced financial services provider; funds held in an onshore Dubai bank account of the Fujairah entity; and funds held in an onshore Dubai bank account of the DMCC entity. The two onshore banks and the DIFC financial services provider were each named notice parties in the DIFC proceedings. Neither of the onshore banks had branches within the DIFC.

Source of the DIFC Court's Jurisdiction

In common with many (but not all) common law jurisdictions, the DIFC Court's power to grant a freezing order in aid of foreign proceedings is a feature of its general injunctive jurisdiction and does not derive from any dedicated statutory provisions.

In SEC v Wintercap the Court, in its final order, identified the legal basis for its jurisdiction as residing in Article 5(A)(1)(e) of the Judicial Authority Law, Article 32(b) of the DIFC Court Law and Rules 25.1.6(a), 25.1.6(b), 25.1.7 and 25.24 of the Rules of the DIFC Courts ('RDC'). To these could be safely added Article 22(2) of the DIFC Court Law, which essentially repeats and is co-extensive with Article 32(b) in providing for the DIFC Court's general power to grant injunctive relief wherever it considers it appropriate to do so.

The Evidential Position

In the course of submissions the SEC accepted that the legal and evidential burden upon the applicant was the same as in any freezing order case. In the present case, it was submitted on the basis of the witness statements and exhibits before the Court, including the terms of the US Asset Freeze Order – the mandatory elements of which had not been complied with – that the necessary threshold had been met. In particular, notwithstanding the US Asset Freeze Order, the SEC had highlighted a number of features of the fraudulent scheme and its operation to date that pointed to a real and continuing serious risk of dissipation of the funds known to be in the UAE should the ancillary freezing order not be granted. It was also just and convenient to grant the ancillary relief, given the protection of investors and the compensatory purpose of the US proceedings, as well as the considerations of comity in this case relevant to the granting of a freezing order over assets located in onshore Dubai.

In so submitting, the SEC agreed that the DIFC Court should not extend any binding or determinative weight to the reasoning and conclusions of the Massachusetts Court in arriving at the separate US Asset Freeze Order. The DIFC Court had to independently assess and weigh the evidence before it.

The Order relating to Funds located in the DIFC

The bulk of the funds sought to be frozen in the SEC case were funds located in the DIFC, namely funds and equities to the value of over USD 7.1 million held in the name of the Swiss entity by a DIFC licenced financial institution, which was the First Notice Party in the case.

Following argument on behalf of the SEC on an ex parte basis at the first interim hearing, on 17 January 2019 the Court granted an initial freezing order in respect of the assets of the Swiss entity within the DIFC to the threshold value of the funds and equities. In the Final Freezing Order that ultimately issued on 4 March 2019, the Swiss entity was additionally ordered not to in any way dispose of, deal with or diminish the value of its assets wherever located up to the same value.

In the event, the First Notice Party cooperated with the SEC in providing up to date information on the funds and assets it managed and held on behalf of the Swiss entity. This information resulted in a valuation of USD 5.66 million for the Swiss entity's relevant assets, which the SEC accepted, and in the circumstances the need for an information order as against the Swiss entity fell away in the Final Freezing Order.

The Order relating to Funds located outside the DIFC

As is apparent from the model RDC 25 Schedule A Freezing Order, and from decided cases, the DIFC Courts may grant a freezing order in relation to funds and assets located outside the DIFC when satisfied that it is appropriate to do so, see for example *Bocimar International NV v Emirates Trading Agency LLC* DIFC CFI-008-2015, judgment of 28 January 2016 and Amended Freezing Order dated 8 February 2016; *DNB Bank ASA v Gulf Eyadah Corporation & Another* DIFC CA-007-2015, judgment of 25 February 2016; *Akhmedova v Akhmedov & Another* DIFC CA-003-2018, judgment of 19 June 2018.

Additional and different considerations may arise where the freezing order sought is in aid of foreign proceedings. In such cases, there may be special considerations, arising from the threefold relationships and interests in play as between the jurisdiction of the main proceedings, the jurisdiction of the requested court, and the jurisdiction of the place where the affected entities and/or relevant assets are located. In general, it is clear that, in the absence of some underlying independent connection to the jurisdiction of the requested court, it will only be in exceptional circumstances that the requested court will extend its ancillary order in aid of foreign proceedings to assets located in a third country.

In the leading English case, *Motorola Credit Corporation v Uzan (No.2) at [147],* Potter LJ set out five particular considerations for the court to have in mind in considering whether it is inexpedient to make a worldwide freezing order in aid of foreign proceedings.

Although made in the context of the equivalent statutory jurisdiction in England, these considerations (considered below) have been recognised as providing valuable guidance on the limits of ancillary freezing orders in aid of foreign proceedings in those common law, including offshore financial, jurisdictions where the question has since been examined.

At the interim ex parte stage in SEC v Wintercap the DIFC Court did not hear detailed submissions on the Motorola test and, in the event, the Court decided for the purposes of the initial interim order to limit the freezing order to assets located in the DIFC.

On the first and subsequent return dates the SEC contended that this geographic limitation was unwarranted, that it was contrary to the practice of the DIFC Court and to the model wording of freezing orders as set out in Schedule A to RDC Part 25, and that it deprived the Court's order of substantial effect. It was argued that under Article 5(A)(1)(a) of the Judicial Authority Law the Court had jurisdiction over the claim or action as one to which a DIFC entity was party, i.e., subject matter jurisdiction over the action as a whole. In this regard, it was pointed out that the funds at issue including the funds held by the onshore Dubai banks were the fruits of a complex international fraud in which the Respondents and the persons and entities who controlled them were core co-conspirators.

In addition, it was pointed out that the SEC investigation had unearthed significant movements of funds, being the proceeds of the fraud, by way of transfers into and out of the DIFC and into and out of onshore Dubai accounts in the name of the Respondents, to and from connected entities, during the previous 18 months. It was therefore a matter of reasonable inference that the funds paid into the onshore UAE accounts were and remained intimately connected to and were indistinguishable from the totality of the funds under inquiry in the US proceedings.

In these circumstances, it was submitted that all of the funds were controlled in common by the Respondents and by persons and entities who controlled the Respondents, and it was argued that it would therefore be artificial, contrary to the established practice of international commercial courts in respect of complex frauds, and inimical to efforts at recovery by and on behalf of the victims of those frauds, for the DIFC Court to limit the scope of its order in the manner adopted in the interim order.

It was not a requirement for establishing jurisdiction in respect of the non DIFC entities' funds that the banks in which the funds were held should have branches in the DIFC. The banks were not respondents in the DIFC proceedings, nor even third parties with any independent interest in the proceedings, but simply named notice parties who, in their capacity as banks, were known to hold funds in the name and to the account of the Fujairah and DMCC entities.

It was further submitted on behalf of the SEC that none of the five considerations identified by the English Court of Appeal in *Motorola Credit Corporation v Uzan (No. 2)* told against the making of an order that would extend to the accounts in onshore Dubai. In particular it was noted that:

i. The making of an order would not interfere with the management of the case in the US District Court of Massachusetts - on the contrary it was by way of ultimate assistance to the US Court;

ii. It was not the policy or the practice of the US District Court of Massachusetts to itself decline to grant the type of relief sought - on the contrary, it had done so;

iii. There was no danger that the order sought in respect of the onshore accounts would give rise to disharmony or confusion and/or risk of conflicting, inconsistent or overlapping orders in onshore Dubai. In the first place, the Dubai Courts would be called upon to give effect to the same US Asset Freeze Order as the DIFC Court; and secondly, in the event of any parallel proceeding that risked a conflict, the mechanism of the Joint Judicial Committee ('JJC') would be available to resolve the conflict. In this last regard, it was submitted that the consideration that the JJC might resolve any such conflict of concurrent jurisdiction in favour of the courts where the funds were located was not a reason for the DIFC Court - absent any actual or even threatened or suggested onshore proceedings - to decline jurisdiction in the first place;

iv. There was no likely potential conflict as to jurisdiction rendering it inappropriate or inexpedient to make an order in the terms sought; and

v. In the event of disobedience of the order the DIFC Court would not later be adjudged to have made an order which could not be enforced. This was because the DIFC Court's order could be enforced under the special execution mechanism between the DIFC Court and the Dubai Courts; and through the special enforcement mechanisms available for enforcement of DIFC Court orders in Fujairah including under Article 221 of the Federal Civil Procedures Law.

The Court's Final Order

Ultimately, in its final order, having heard the above and other submissions on the requested scope of its eventual order, the Court modified the freezing order by extending it in terms to the Fujairah entity's funds held in its identified Dubai bank accounts. In a further modification of its original order, the Court ordered that the Swiss entity and the Fujairah entity should not dispose of, deal with or diminish the value of their assets up to the value of their respective frozen thresholds whether they were in or outside the DIFC.

Both entities were also ordered to provide information within 10 working days in respect of their assets: (a) within the DIFC; and (b) in the UAE exceeding USD 5,000 in value whether in their own names or whether solely or jointly owned, giving the value, location and details of all such assets (subject to the usual procedural terms and safeguards as set out in the RDC Part 25 Schedule A Freezing Order).

In order to protect against the risk of having extended its jurisdiction in an impermissibly exorbitant way, and following the example that had been set some years before in Bocimar above, the DIFC Court took the precaution of stipulating in the Final Freezing Order that, in respect of assets located outside the DIFC, nothing in its order should prevent any third party from complying with any orders of the courts of the country or state where those assets were situated, provided that reasonable notice of any application for such an order would be given to the SEC's legal representatives; or from complying with what it reasonably believed to be its sole obligations under the law of that country or state, or under the proper law of any contract between itself and any of the Respondents.

In respect of the DMCC entity, no eventual freezing order was made as it had been indicated on its behalf in a direct communication to the Court from one of its promoters, and the SEC had accepted, that it now held no funds or assets greater than

The order made in SEC v Wintercap is an important precedent confirming the jurisdiction of the DIFC to grant freezing orders in aid of foreign proceedings.

USD 5,000 in value within the UAE. In those circumstances it was accepted that the need for a DIFC Court freezing order fell away.

Yet, notwithstanding that a freezing order was no longer required, the Court in its final order, following submissions by the SEC on the potential frustration of the Court's process, maintained its order as against the DMCC entity for the provision of information. In doing so, the Court directed the DMCC entity to identify the date or dates when the funds in the DMCC entity's specified onshore bank account fell below USD 5,000 in value following the institution of the DIFC Court proceedings, as well as the precise destination(s), recipient(s) and account(s) to which such funds were transferred.

Conclusion

The order made in SEC v Wintercap is an important precedent confirming the jurisdiction of the DIFC to grant freezing orders in aid of foreign proceedings. In the absence of a written judgment, however, some caution must be exercised in drawing definitive conclusions from it for the future.

What can be said with certainty is that the Court identified and affirmed the legal basis of its jurisdiction as recited in its final interim order of 4 March 2019. It can also be said with confidence that the Court had no hesitation in granting the freezing order in respect of the Swiss entity's funds located in the DIFC and that it eventually agreed that this was an appropriate case in which, exceptionally, to extend the freezing order to the identified account of a non DIFC entity located in an onshore Dubai bank that had no branch within the DIFC.

Further, the Court was content, on the particular facts, to grant the order preventing dissipation of assets below the relevant thresholds as against both the Swiss entity and the Fujairah entity on the usual worldwide terms.

It is also of interest that the DIFC Court, once satisfied as to its freezing order jurisdiction, was prepared to grant information orders as against the Respondents to the proceedings even though they were already subject to the primary disclosure obligations of the US Asset Freeze Order.

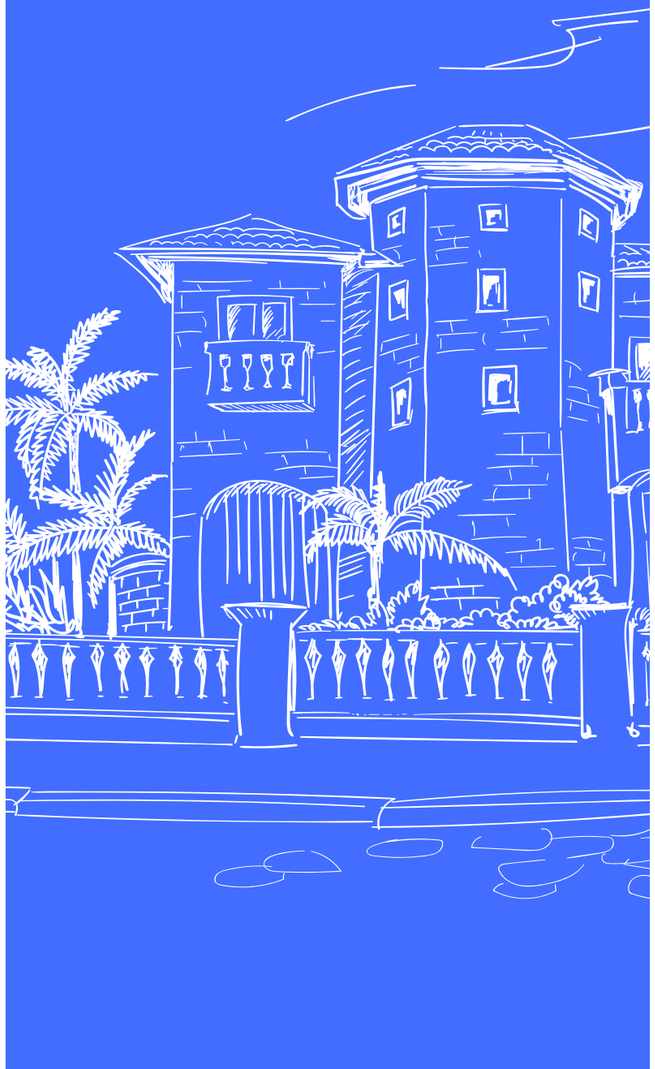
At the same time, it has to be borne in mind that this was an international securities enforcement action prosecuted by the world's foremost financial regulator; that the entity that had no funds in the DIFC was an UAE rather than a truly international entity; that its funds were located in onshore Dubai and were therefore amenable to the special enforcement mechanism as between the DIFC Courts and the Courts of Dubai; that the Court further included special safeguards in its Final Freezing Order to guard against exorbitant jurisdiction; and, last but not least, that the Court's attention had been drawn by the SEC to specific features of the evidence that arguably brought the case within the category of cases where the DIFC Court in any event had an underlying jurisdiction over the subject matter of the dispute.

A further practical advantage that stood to the benefit of the claimants here was that the DIFC Court accepted, in line with comparative international practice, that as a law enforcement body charged with tackling international fraud the SEC ought not be required to give the usual undertakings as to damages in support of the freezing orders sought.

Notwithstanding these points of caution, the SEC case serves as a useful reminder that in appropriate cases, as an ancillary remedy in support of primary proceedings elsewhere, claimants may have available to them a distinct and stand-alone injunctive remedy to freeze assets in the DIFC, and potentially in onshore Dubai and other UAE Emirates, without the need to commence full substantive proceedings and without having to bring a recognition and enforcement action.

Al Tamimi & Company's International Litigation Group regularly advises on the enforcement of foreign judgments, arbitral awards and complex multi-jurisdictional disputes. For further information please contact Patrick Dillon-Malone (p.malone@tamimi.com), Diego Carmona (d.carmona@tamimi.com) or Rita Jaballah (r.jaballah@tamimi.com).

Holiday Homes: Dubai



Aruna Mukherji
Associate
Dubai, UAE
a.mukherji@tamimi.com

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

With the Middle East, particularly Dubai, becoming an increasingly popular tourist destination for those who wish to explore this unique part of the world or make the most of their stopover on their way to Europe, property owners ('Owners') are presented with an opportunity to capitalise on the holiday home accommodation industry. In recent times, within Dubai in particular, we have seen an increase of Owners entering the holiday home market, which not only creates competition for the hotel industry, but also provides tourists with a wider selection of accommodation for the duration of their stay. The demand for holiday home accommodation within Dubai will inevitably increase with upcoming events such as Expo 2020.

In previous Law Update editions, we have provided readers with an understanding of the legal framework regarding the holiday home system in Dubai. While we will give readers an high level refresher on the legal framework, this article focuses more on the considerations to be given by the holiday home operator (i.e. the Owner or an appointed licenced operator ('Operator')). As always, Owners and Operators should seek legal advice regarding the laws and requirements that regulate this industry.

The Law – Generally

As platforms such as Air BnB become more prevalent around the world there has been a call for regulations to be put in place in a number of jurisdictions to govern Owners offering their properties for lease on a short-term basis.

The Department of Tourism and Commerce Marketing ('DTCM'), in conjunction with the Department of Economic Development, oversee the licensing and regulation of the holiday home market in Dubai.

Prior to 2016, the operation of a property as a holiday home was restricted to Operators appointed by Owners, however this requirement was relaxed in mid-2016 with Owners (and tenants) now able to apply for a holiday homes licence.

The law defines a holiday home as a furnished real property unit leased out by a licence holder regularly and on an ongoing basis for the purposes of further sub-letting to end-user guests, with such guests being natural persons who intend using the property for overnight accommodation on a daily, weekly, monthly or yearly basis.

A holiday home can be an apartment, town house or independent villa, and falls within either of the two classifications prescribed by DTCM being, 'Holiday Homes – Deluxe' or 'Holiday Homes – Standard'. As the name of each classification suggests, the classification will depend on the nature of each property and the associated amenities and services available to guests. The classification of a property under the 'Holiday Homes – Deluxe' classification, will result in a slightly higher Tourist Dirham fee applying to each booking, with the licence holder responsible for remitting the Tourist Dirham to the relevant regulatory body.

The Owner (or the appointed Operator) will be responsible for self-classification of the property at the time of submitting the application to DTCM for registration of the property as a holiday home. Once the property has been registered with DTCM, the Owner (or its appointed Operator) must ensure that it complies with the requirements of DTCM, including but not limited to, guest registration and payment of the Tourist Dirham.

Owners

As outlined above, individual Owners are no longer required to appoint an Operator to manage the property, and may apply for a licence to do so in his/her own name.

While the ability for an Owner to hold a licence and manage the operation of their property as a holiday home themselves should allow the Owner to realise a greater return on their investment (i.e. no need to pay a management fee to the Operator), it does create a greater administrative and regulatory compliance burden on the Owner. The Owner, amongst other things, would be required to:

- manage the check-in and check-out process with guests;
- collect the Tourist Dirham and remit to the relevant authority;
- comply with the reporting obligations imposed by DTCM;
- be on call to address any queries or concerns of guests;
- arrange the cleaning and periodic housekeeping of the property; and
- arrange ongoing maintenance and repair of the property.

If an Owner was considering appointing an Operator to manage the property on his/her behalf, what follows below are some key considerations that should be taken into account by the Owner when appointing an Operator to manage his/her property as a holiday home. The below list is not intended to be an exhaustive list of the considerations that should be taken into account and both Owners and Operators should always seek legal advice prior to entering into a management agreement.

The Operator

An Owner should undertake due diligence on any proposed Operator that it intends to appoint.

It should be confident that the Operator is an established and licensed operator in Dubai (or elsewhere in the world) who has the necessary ability and experience to operate the property as a holiday home to an high standard.

Agreement with Operator

Commercial provisions will vary, however the agreement with an Operator can be in the form of a:

1. lease of the subject property from the Owner to the Operator; or
2. management agreement between the Owner and the Operator.

Each arrangement has its pros and cons and it is strongly recommended that advice be sought from the outset as to the most appropriate structure to be adopted in each individual case.

Standard and Classification of Property

The required classification of the property should be agreed from the outset. If the property needs to be brought up to a specific standard (i.e. standard or deluxe), consideration needs to be given to who bears the responsibility for the refurbishment and payment of associated costs.

Depending on the commercial arrangement with the Operator, the Operator may prefer to refurbish and refurnish the property itself (at the Owner's cost) to bring it to the agreed standard which is consistent across the Operator's portfolio of properties managed.

Fee Payable to Operator

While there are a variety of fee arrangements that may apply to the management arrangement, typical fee arrangements are either a:

1. fixed return paid to the Owner; or
2. percentage of revenue paid to Operator with the balance paid to the Owner.

The first option would see the Operator pay a guaranteed return to the Owner, with the Operator entitled to retain revenue achieved over and above the guaranteed return. This would result in the Operator taking the financial risk of the operation of the property as a holiday home, as the Owner would be guaranteed the return regardless of the performance of the property.

On the other hand, the second option would see the Operator being paid a fixed percentage of the revenue achieved during the relevant period, which would vary depending on the performance of the property.

The fee structure may also vary depending on the nature of the agreement with the Operator and the fee structure must be carefully reviewed given that this will ultimately affect the returns realised by the Owner and the Operator respectively.

Maintenance and Repair

Consideration must be given to who bears responsibility for the maintenance and repair of the property for the duration of the agreement, including the payment of associated costs.

If the Owner remains responsible for maintenance and repair costs, the agreement could provide the Operator with a right to undertake the works on behalf of the Owner, without the need to obtain the Owner's prior consent. If this right were being entertained, an Owner may wish to impose a cap on the costs that can be incurred by the Operator without the Owner's consent.

Consideration also needs to be given where the property is an apartment where maintenance and repairs are undertaken and controlled by the building's appointed FM provider as part of the services for which the Owner contributes by way of service charge payment. In this respect, arrangements would need to be put in place allowing the Operator to liaise with the FM provider on behalf of the Owner as appropriate.

Services to be provided to Guests

Given the competitiveness of the market, the extent of services available to guests may be a determining factor as to the performance of the property, and guests' requirements are likely to vary depending on the category of the property.

An Owner should discuss with the Operator the nature and extent of the services available to its guests, who will bear the cost of such services and how additional revenue generated from the provision of such services is distributed.

Right to Use Property for Personal Use

If the Owner would like to have the right to occupy the property for a certain period during the term of the arrangement with the Operator, such right to occupy must be included in the agreement. In considering such right for the Owner, an Operator is very likely to restrict the Owner's access during peak seasons throughout the year, in order to maximise revenue generation.

End-Users – Guests

Key considerations of an end-user should also be taken into account, as follows:

Fees and Services

A guest must have clarity on the fee payable for the duration of their stay and the services included in the fee being charged for rental of the property. The fee must include the Tourist Dirham, which is required to be collected by the Operator (or the Owner) before the guest's stay.

Key services that may be attractive to a guest are:

1. periodic housekeeping and cleaning;
2. internet connectivity and TV access;
3. airport transfers;
4. access to a driver or a cook for the duration of their stay; and/or
5. concierge services.

If such services are made available, it should be made clear at the time of booking as to whether the additional services are included in the holiday home fee or if such services will incur an additional cost on an a la carte basis.

Terms and Conditions of Occupation

A number of Operators have their own standard terms and conditions that guests agree to at the time of making their booking online, however some Operators may also require a guest to sign an end-user agreement.

Regardless of the nature of the agreement between the Operator (or the Owner) and a guest, the guest should have a clear understanding of the terms and conditions that apply for the duration of their stay at the property. As part of the terms and conditions, a guest will be required to comply with rules and regulations in place for a property located within a development, as well as the rules and regulations imposed by DTCM that apply to all holiday homes. Such rules and regulations must be displayed in the property.

Privacy of Information

The collection of guests' private information is inherent in the nature of the service to be provided by Owners and Operators (as applicable). Both Owners and Operators must comply with the local data privacy requirements in respect of the collection, storage and use of guests' private information. An additional layer of regulatory compliance may apply if persons in the European Union are targeted and/or their behaviour monitored for sales or marketing purposes as such activities are likely to trigger the extra-territorial scope of the EU General Data Protection Regulation 2016/679.

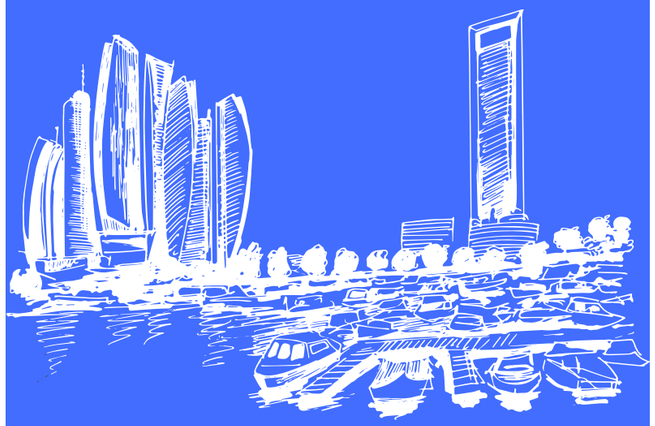
Owners and Operators should always ensure that policies and procedures that comply with the local and international data protection laws (as applicable) are put in place and it is strongly recommended that legal advice is sought in this regard to mitigate any risks of non-compliance. It is worthwhile noting that a guest will be required to provide a copy of their passport at the time of check-in in accordance with the requirements of the DTCM.

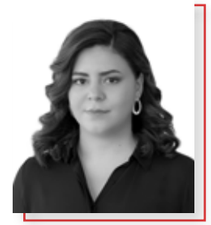
Conclusion

The holiday home market for both short-term and long-term stays is certainly on the rise in Dubai as more and more Operators continue to enter the market. An Owner or Operator should have a clear understanding of the regulatory requirements that must be complied with and should ensure that the commercial arrangement put in place aligns with standard market practices and best protects their and the guests' interests.

Al Tamimi & Company's Real Estate and Hotel & Leisure team provides a comprehensive range of legal services across the Middle East including Dubai, covering all areas relevant to the hotel and property industries and regularly advises both owners and operators looking to enter the holiday home market. For further information please contact Tara Marlow (t.marlow@tamimi.com), Sebastian Roberts (s.roberts@tamimi.com) or Aruna Mukherji (a.mukherji@tamimi.com).

Abu Dhabi Reduces the Real Estate Registration Fees and adds a New Investment Area in Kaser Al Amwaj





Maha Dahoui
Associate
Abu Dhabi, UAE
m.dahoui@tamimi.com

New Schedule of Municipal Services Fees

Abu Dhabi Executive Council issued Resolution No. (336) of 2018 on the Reduction and Cancellation of the Fees of Some Municipal Services in the Emirate of Abu Dhabi ('Resolution 336'). Resolution 336, which came into effect on 01 December 2018, has either reduced or cancelled many fees applicable to real estate disposals and related municipal services in the Emirate of Abu Dhabi.

All fees stated in Resolution 336 are payable to Abu Dhabi City Municipality, Al Ain City Municipality and Al Dhafra Region Municipality, as applicable depending on the location of the property.

Pursuant to Resolution 336, 75 municipality services fees were cancelled and 23 municipality fees were reduced by 10 to 50 percent. Below is an outline of some of the most important fees that have been reduced (or cancelled) by Resolution 336:

"A new investment area in Kaser Al Amwaj, Abu Dhabi is now open for foreign investment.

No.	Service	Fees before Reduction (AED)	Fees after Reduction (AED)
1.	Registration of Musataha, Long-Term Lease and Usufruct Agreement	4% of the total rent or consideration	3.6% of the total rent or consideration
2.	Registration of gift between ascendants, descendants, spouses, and second-degree relatives and companies owned by these individuals	Residential Land: 3,000 Agricultural Land: 3,000 Investment Land: 5,000 Commercial Land: 10,000	Residential Land: 2,700 Agricultural Land: 2,700 Investment Land: 4,500 Commercial Land: 9,000
3.	Issuance of licence/renewal of master developer licence, including registration on the real estate development register	50,000	45,000
4.	Issuance of licence/renewal of sub-developer licence, including registration on the real estate development register	25,000	No Fees
5.	Registration of a new real estate development project on the real estate development register, including registration of development plans, division and strata management statements (floors/building/communities), as applicable	150,000 per project	135,000 per project
6.	Accreditation and registration of escrow account trustee on the real estate development register	75,000	No Fees
7.	Issuance of certificate of approval for opening a project escrow account	5,000	No fees
8.	Registration of a project escrow account agreement on the real estate development register	1,000	No fees
9.	Issuance of licence/renewal of broker licence (companies), including registration on the real estate development register	10,000	9,000
10.	Issuance of licence/renewal of broker licence (individuals), including registration on the real estate development register	5,000	No fees
11.	Issuance of licence/renewal of broker's employee licence (individuals), including registration on the real estate development register	2,500	No fees
12.	Issuance of licence/renewal of real estate valuer's licence (companies), including registration on the real estate development register	10,000	No fees
13.	Issuance of licence/renewal of real estate valuer's licence (individuals), including registration on the real estate development register	5,000	No fees
14.	Licence/renewal of real estate surveyor's licence (companies), including registration on the real estate development register	10,000	No fees
15.	Issuance of licence/renewal of real estate surveyor's licence (individuals), including registration on the real estate development register	5,000	No fees
16.	Issuing permit to advertise off-plan sale of real estate in local or foreign media	1,000	No fees
17.	Registration of mortgage	0.0009 of the mortgage value	0.001 of the mortgage value

Resolution 336 abolishes and replaces any provisions in previous laws and resolutions which contradict or are inconsistent with its provisions (in particular Resolution No. 49 of 2018 on the Municipal Services Fees in the Emirate of Abu Dhabi ('Resolution No. 49') and Resolution of the Chairman of the Department of Municipal Affairs No. (247) of 2015 Issuing the Executive Regulations on the Adoption of Fees in accordance with Law No. (3) of 2015 on the Regulation of the Real Estate Sector in the Emirate of Abu Dhabi which came into effect on 1 January 2018).

New 20th Investment Area – Kaser Al Amwaj

Abu Dhabi Executive Council issued Resolution No. (9) of 2019 on the Twentieth Investment Area in the Emirate of Abu Dhabi ('20th Investment Area'). The 20th Investment Area includes three plots (Nos. P1, P2 and P3) in Kaser Al Amwaj area in Abu Dhabi City.

Resolution No. (9) of 2019 sets a limit on foreign ownership of up to 50 percent of the real estate units developed within the 20th Investment Area.

Foreigners and companies wholly or partly owned by them are entitled to purchase freehold title to land, apartments, offices, villas and other real estate units in the investment areas of Abu Dhabi. The right for foreigners to hold freehold title to land within investment has recently been allowed by Law No. (13) of 2019 amending certain provisions of Law No. (19) of 2005 on Real Estate Property Ownership.

Foreigners also have the right to acquire all other real estate rights with regard to land and other properties in investment areas such as usufruct right, musataha right and long-term lease rights for a period not exceeding 99 years.

Al Tamimi & Company's Real Estate team regularly advises on real estate investment in Abu Dhabi. For further information please contact Maha Dahoui (m.dahoui@tamimi.com) or David Bowman (d.bowman@tamimi.com).

Play that Funky Music... or Can You?

An Update on Issues in Music Licensing

Fiona Robertson
Senior Counsel, Head of Media
Dubai, UAE
f.robertson@tamimi.com

The business of music licensing continues to be a difficult area in the UAE and, generally, across the gulf region. European collective rights' management agencies are once again writing letters to various users of music, claiming their rights. On that basis, we felt that it was timely to address this issue so that everyone fully comprehends the rights' position.

Firstly, despite claims that we read, from time to time, on social media posts, the UAE Copyright Act recognises various rights relating to music, including the much discussed issue of the public performance rights, as part of the rights granted to Authors under Article 7.

> *"Only the author and his successor or the copyright holder may authorise the exploitation of the work of art, in any manner whatsoever, namely by way of copying including downloading, electronic saving, any drama performance, radio broadcast transmission and re-transmission, public performance or communication, translation, rearrangement, amendment, renting out, borrowing, or publication in any manner including presentation via computers or information or communication networks or any other medium."*

These rights are similar in the various GCC countries.

Internationally, when it comes to broadcasting or any public performance of music (such as in restaurants or hotel lobbies), the practice of licensing is done by way of 'collective rights' management'. This is the process by which the user of the music engages with a copyright collection society to obtain a blanket licence to allow them to legally use the music in their businesses.

As an industry, both users and owners of music will be best served by the introduction of certainty as soon as possible.

In many jurisdictions, the copyright collection societies typically enter into relationships with the creators/owners of the music whereby the public performance rights are exclusively licensed to the copyright collection society. They then have the exclusive rights to globally licence the public performance rights in the music. Notably, they also work with other copyright collection societies across the globe in order to collect money on behalf of their national members. Therefore, if a restaurant in Paris plays music from a Brazilian composer, that composer should receive a fee.

At this moment in time, there are no copyright collection societies operating in the GCC region. This is for a number of reasons, and can be traced back to the operation of the Copyright Acts in each country. Some territories require them to be licensed (UAE, Oman, Bahrain). Kuwait does contemplate the existence of copyright collection societies, but with no clear guidance. The KSA does not mention them in its Copyright Act, neither by way of allowing or prohibiting them, and neither does Qatar.

From an UAE perspective, the government has yet to license any entity to undertake the activity of a copyright collection society. This includes activities undertaken by foreign copyright collection societies which nonetheless continue to send demand letters to UAE businesses from other countries, seeking licence fees. They do not have the right to do this.

So, what does this all mean in practical terms?

- even if a company WANTS to license music within its business, it is going to find it difficult to do so. Large entities have the ability to consult lawyers for advice, but smaller businesses continue to use music without a licence;
- anyone wanting to negotiate any rights is at the mercy of the commercial operators – the record companies and publishers that control the rights in this region – because there is no established rate card for payment for the licences. In other countries, the rate card gives businesses absolute certainty as to money that needs to be set aside for music licensing;
- foreign companies will continue to write unpleasant demand letters to local companies despite not having the government mandate to operate in the country;
- UAE and GCC talent are not represented overseas. If Emirati music is played on a radio station in New York, there is no copyright collection society here to receive the money that is generated from the public performance; and
- large scale events cannot provide third parties (such as performers or exhibitors) with a platform for public performances that are free of potential infringement. They often are left without the ability to license the public performance rights at all because of the complexity of the global law and practice in that area.

As an industry, both users and owners of music will be best served by the introduction of certainty as soon as possible.

Al Tamimi & Company regularly advises on Technology, Media & Telecommunications. For further information please contact Fiona Robertson (f.robertson@tamimi.com).

Sports & Events Management:
Playing to win across the Middle East

Steve Bainbridge
Partner,
Head of Sports & Events Management
Dubai, UAE
s.bainbridge@tamimi.com

Welcome to the Sports and Events Management focus edition of Law Update. This edition provides a colourful glimpse of some of the opportunities and challenges our clients throughout the Middle East region are working through in this rapidly growing sector. Year on year we cannot help but note how the sports and events sector has truly flourished. Whether supporting entities, individuals or institutions from the public or private sector, we feel privileged to support clients consistently leading the way. This edition of Law Update gives us a chance to share some of the insights and experiences we have been fortunate to gain in this area over the past year.

We start with a look at issues as diverse as commercial best practices in stadium naming rights, particularly poignant in the context of the recent opening of the industry-leading Coca-Cola Arena, and how statutory guidance can encourage investment and athlete development, as demonstrated by Egypt's Sports Law. Turning to football, we also consider mandatory player registration and a clarification in third party ownership under FIFA's rules as well as requirements in working with intermediaries for player transfers under the Saudi Arabian Football Federation's regulations and the implications of employment law in the sporting context. We offer a comparative look at the rapidly growing field of sports arbitration and its more established cousin commercial arbitration as dispute resolution mechanisms. As if to underscore the theme of a diversifying and multifaceted sector, we step off the pitch to grapple with the tensions between new products and advertising oversight in the context of e-cigarette advertising at sporting events in the UAE and to see how government is taking steps to promote public safety, which could be particularly relevant to large public events, through the development of a much anticipated "Good Samaritan" law. We also take a practical and principled look at the rise of e-sports not only as a competitive sporting discipline but also as a promising economic development in the sports sector.

The media headlines properly go to the athletes, teams and varied competitors we are proud to represent as they chase their dreams across golf, tennis, motorsports, football, cricket, rugby, cycling and so many other sports. It also seems sure that the trajectory of the sports and events sector in the Middle East will ensure the commercial ecosystem of sponsors, suppliers, contractors, broadcasters, governing bodies, regulators, community stakeholders and fans will keep us busy between now and next year's sports edition, so please enjoy this snapshot as we are already working on some great projects for the next one!

Ambush Marketing and the FIFA 2022 World Cup™

Steve Bainbridge
Partner,
Head of Sports & Events Management
Dubai, UAE
s.bainbridge@tamimi.com

N.B. The author's original longer version on which this article is based first appeared in Intellectual Property Magazine in April 2019.

Ambush Marketing and the FIFA 2022 World Cup™

Preparations are underway and the FIFA 2022 World Cup has all the ingredients to be a tremendous socio-cultural and sporting event. It will be the first World Cup held in the Middle East and the first to be hosted by an Arab country. In keeping with the scale and scope of the event, the business of sports will also be on showcase. This means that rights holders and organisers will need a reliable legal framework within which to market, promote and deliver the event consistent with global expectations for the showpiece.

FIFA has certain expectations of a host country in relation to baseline legal requirements for rights protection and obligations necessary for its flagship tournament. These can involve certain changes to local laws in order to accommodate commercial, licensing and tax requirements, among others. While certain changes should be made to local laws to meet tournament requirements, such changes will need to be by way of agreement between the host country and FIFA, taking into account the legal traditions and current processes. Getting this balance right will result in benefits both for Qatar and for FIFA - a successful tournament as well developing an ongoing legacy for the host country.

1. Ambush Marketing: Opportunism vs Preparedness

One of the most prominent areas of concern where local legal changes are widely anticipated to prepare for the World Cup is in respect of ambush marketing. Precisely what ambush marketing is and whether or not it is contrary to the law are two questions at the heart of the short but storied history of guerilla advertising. Broadly speaking, ambush marketing is the attempt, usually by a competitor of a licenced sponsor, to: (i) associate itself or its products with a major event in a manner misleading to consumers ('Ambush by Association'); or to (ii) interject itself or its products in close proximity to an event to gain brand exposure ('Ambush by Intrusion').

The aim, via clever marketing and the pushing of legal boundaries, is to create the perception (and obtain the related commercial value) of the ambushing entity being associated with the event in question. In a competitive market, this is not perceived as '**win-win**' but rather more akin to a **'zero-sum**' to the detriment and loss of the authorised event sponsor/licensee who has paid a substantial amount for such privilege. Not all ambush marketing is illegal. Legality will depend on the particular activity and applicable law in the relevant jurisdiction.

2. What are the Key Concerns?

The FIFA World Cup reaches a larger, more diverse audience than any other single-sport event. For the organisers of a World Cup, revenues generated from advertising make up the lion's share of budgeted income. Staging the tournament, welcoming the world in the manner that Qatar deserves and paying for the event, are partly premised on the ability to properly market: (i) corporate sponsorship packages; (ii) broadcast rights; and (iii) merchandising opportunities.

Commercial sponsors are entitled to legal protection of their vital investments. Ambush marketing can compromise the value proposition in any one or all three of those areas. For sponsors that pay millions of dollars for a share of those rights (and in a number of cases significantly more than that in the activation of those rights) ambush marketing jeopardises that investment. Unchecked, this weakens the product the organisers are offering, dilutes the value and ultimately reduces the ability of an event to attract future sponsors.

3. What Ambush Trends can We Anticipate?

We have seen a continuing trend for opportunistic and creative advertisers to attempt to exploit major events. There remains no broadcast market with the pull to attract viewership like live sports. For example, in the US market alone, the recent furore over the final season of the HBO series Game of Thrones reached a fever pitch with many millions tuning in for the final episode; however, it was noted that if viewership for that episode were compared to viewership for regular season NFL games, it would not have placed in the top 70!

The level of fairness required of competitors on the pitch will not necessarily be observed by advertisers off it. Some of the world's premier brands have done battle via ambush. The stakes are high and the potential for global exposure has been a temptation many advertisers, including a number of market heavyweights from the soft drinks market to sportswear manufacturers and electronics giants cannot seem to resist. There is no reason to suggest this will not continue.

4. What does a Solution Look Like?

Comprehensive changes based on the enactment of enabling laws in respect of government guarantees, customs requirements and taxation have not yet been fully implemented. It is expected these processes are underway and will be agreed between Qatar and FIFA and duly rolled out within an appropriate time period prior to the 2022 tournament. While the precise description of these new laws is not yet clear, it is likely that in respect of ambush marketing, the legal approach and position will be similar to that of previous World Cups. FIFA is adept at taking on ambush marketers. It has published an exhaustive and strict code of what it considers to be unacceptable marketing practices surrounding its event and the list is far-reaching. Fundamentally, any marketing practice, which draws a commercial association with the FIFA World Cup is banned unless it has FIFA's authorisation.

A rights holder's options in pursuing an ambush marketer depends on the law in the country in which the ambush takes place. While FIFA will work with Qatar's Supreme Committee for Delivery and Legacy to ensure appropriate statutory provisions are promulgated, sponsors should take proactive steps to protect their substantial investment by ensuring they are ready. Readiness should include:

- implementing full trademark protection in respect of the relevant goods and services;
- entering into a comprehensive sponsorship agreement;
- ensuring prominent trademark and copyright notices are placed on all official merchandise and hoardings;
- choosing whether or not to adopt a zero tolerance approach by being vigilant and ensuring swift and decisive action against all infringers; and
- considering adding non-legal alternative strategies (such as a publicity campaign designed to identify and endorse official sponsors) where they can be useful.

The attainment of a mutually beneficial solution will take strong coordination as well as a unified strategy and a strong understanding of existing Qatari law but can be achieved subject to the necessary research and analysis being undertaken in order to understand the laws that

> **..[Ambush Marketing]' is not perceived as 'win-win'but rather more akin to a 'zero sum' game..**

may need to be enacted or changed to host the tournament. South Africa enacted a law to enable speedy trials in special courts in respect of crimes committed by fans; Brazil enacted legislation to accommodate FIFA requirements; and Russia, the 2018 hosts, also made changes to its laws in connection with the World Cup.

5. Tips to Achieve Robust Preparedness

Tried & Tested. Event-specific local legislation protecting sponsors is now commonplace - even mandatory in the case of any Olympic host nation. FIFA is amongst the best and most effective bodies at protecting sponsors' rights. Incremental improvements in such laws are made before each new mega-competition and consideration should be given to preparing the best possible statutory solution for Qatar, accounting not only for the event but also for Qatar's unique cultural and legal environment. Lessons learned from experiences in South Africa, Brazil and Russia should be adopted; and, an eye should be kept on opportunities to incorporate effective developments in law and to account for market trends.

Home-field advantage. Qatar has a useful existing framework of legal and regulatory traditions that can provide an additional opportunity for protection. Advertising regulations typically require approval and permit protocols, such that Ministerial and/or municipal approval in advance of displayed promotional signage. This administrative approach establishes an '**ask-first**' rather than an '**apologize-later**' dynamic, which imposes a positive obligation on potential infringers to secure prior approval. The 2022 bid process capitalised on the compact World Cup (the close proximity of playing venues will make Qatar 2022 one of the most geographically compact FIFA World Cups ever). This means exclusion zones could be policed very effectively to combat Ambush by Intrusion. In respect of Ambush by Association, elements of laws concerning Intellectual Property including new event-specific legislation, consumer protection and the Civil Code (for tort and contract-based remedies) can all be used to defend against guerilla tactics.

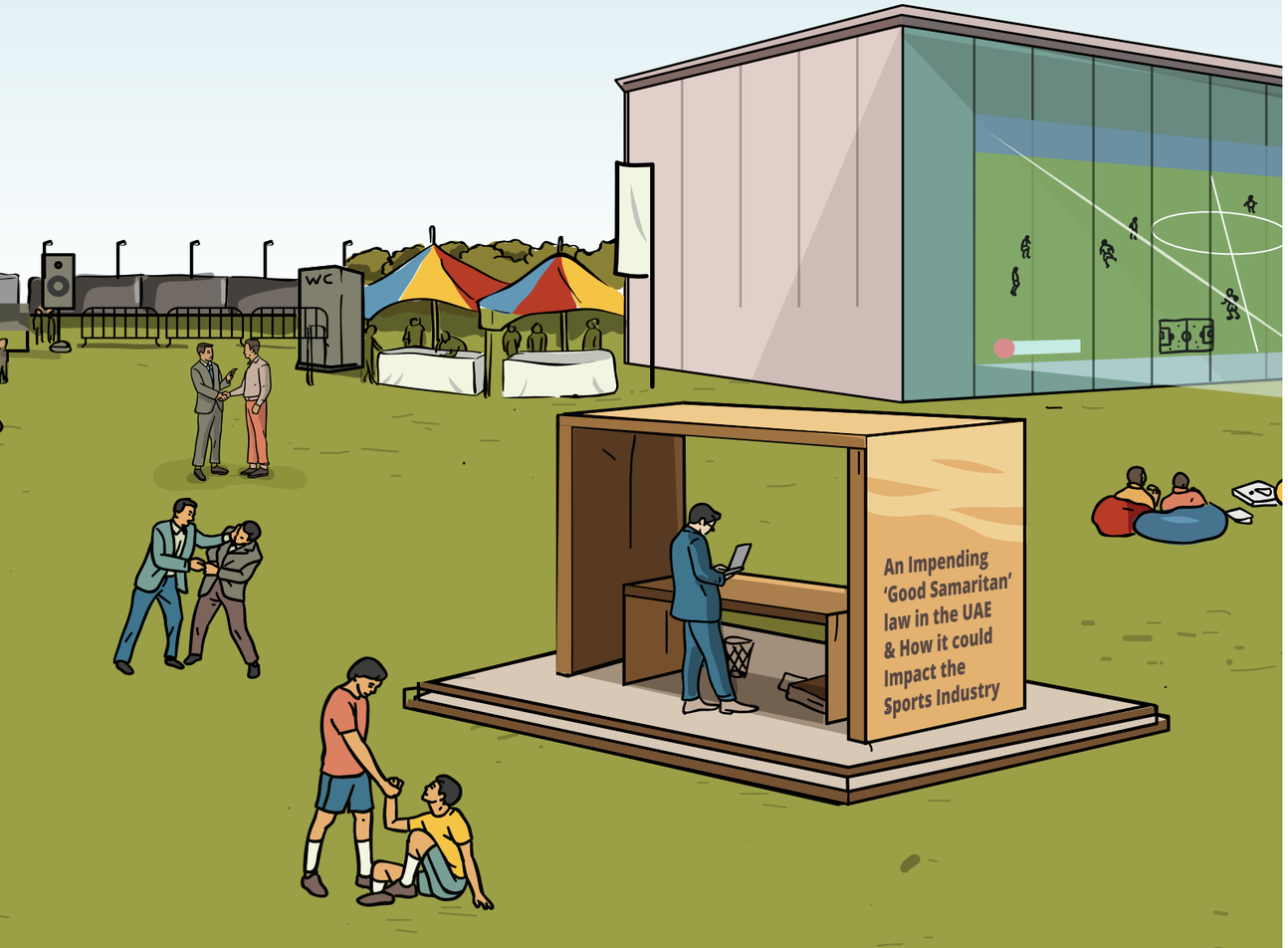
6. Beyond 2022: Parallel Developments, Building a Coherent Legal Strategy

Qatar has historically held a positive outlook and recognition of intellectual property rights and has recently invested significant resources in promoting the development of a knowledge economy. Such steps notably include Qatar's reinforcement of its IP protection regime through the provision of a stronger legal basis for protection and enforcement, in addition to improving and organising IP administrative filing systems and amending the Consumer Protection law to combat counterfeit goods.

The process of facilitating and promulgating enabling legislation should be well under way in Qatar to effect changes to laws and standards for the World Cup. Qatar, in conjunction with FIFA, should ensure the best possible legal framework to deter ambush marketing is in place well before 2022. Effectiveness suggests this needs to be complemented by a flexible and dynamic ability to enforce that framework of legal rights and restrictions to maximise sponsor value as well as protecting the short- and long-term value of the event, whilst taking into account the requirements of internal and external stakeholders to set the table for a successful tournament for FIFA and the host nation as well leaving a meaningful legacy for improved intellectual property protection.

Al Tamimi & Company's Sports & Events Management team regularly advises on a wide array of National, Regional and Global Events. For further information please contact Steve Bainbridge (s.bainbridge@tamimi.com).

An Impending 'Good Samaritan' law in the UAE and how it could Impact the Sports Industry



Steve Bainbridge
Partner,
Head of Sports & Events Management
Dubai, UAE
s.bainbridge@tamimi.com

James McMillan
Senior Associate
Dubai, UAE
j.mcmillan@tamimi.com

N.B. *The original long form of this article was written for and first published on LawInSport.com (3 June 2019).*

Recently, iconic Spanish World Cup winning goalkeeper Iker Casillas, during practice for his current club side, Porto, suffered a heart attack. Fortunately, in his case, trained medical professionals employed by the club (and subject to obligations to assist) were at hand and administered appropriate emergency care before he was safely transported to hospital. But what if it had happened to a fan, high in the stands during a match, or travelling to or from a sporting event with no trained professionals on duty? For many people, helping a stranger who requires assistance seems like the natural thing to do, especially in an emergency. This human instinct has been a source of many life-saving interventions and heroic bystander 'Good Samaritan' rescues over the years.

Like a number of other jurisdictions the UAE, with its expanding sports and events market, recognises the need to encourage this type of assistance by alleviating the fear of prosecution or civil liability. This article examines the dynamics relating to the impending enactment in the UAE of a specific 'Good Samaritan' law, which has been anticipated for some time. In particular, it looks at what a 'Good Samaritan' law might entail and the prevailing international standards, as well as the current position in the UAE.

Background

1. What is a Good Samaritan Law?

Good Samaritan laws are statutory provisions that offer legal protection to people who give reasonable assistance to those who are, or whom they reasonably believe to be, injured, ill, in peril, or otherwise incapacitated. The protection is intended to reduce bystanders' (including, in the sporting context, volunteers') hesitation to assist, for fear of being sued or prosecuted for unintentional injury or wrongful death. The principle of the Good Samaritan has developed over time to include first aiders and rescuers providing assistance in the aftermath of an emergency.

The Good Samaritan doctrine, which has developed in common law jurisdictions is a legal principle that protects a responding rescuer, who has voluntarily helped a victim in distress, from being successfully sued for wrongdoing. Effectively, the responder will not be held legally liable for any harm to the person assisted, as long as the responder acted rationally, in good faith, and in accordance with their level of training. The purpose is to keep people from being reluctant to help a stranger in need for fear of legal repercussions should they make some mistake in treatment.

This Good Samaritan scenario applies in all walks of life and can be of particular relevance in the sports and events context, where tens of thousands of participants and spectators travel and gather to enjoy a broad range of active and sometimes risk-involved pursuits.

2. What is the International Position?

Good Samaritan laws naturally tend to vary as specific measures are tailored and implemented to fit specific jurisdictions and account for cultural and historic practices. However, in determining optimal features for a new law in the UAE, it may be instructive to consider what common features appear in similar laws in other jurisdictions. Amongst these common features are the following points:

Imminent Peril - Good Samaritan provisions are intended for specific circumstances rather than minor incidents. In some jurisdictions this is termed 'imminent peril'. In the absence of imminent, serious danger to life, the actions of a rescuer may be perceived to be reckless and not worthy of protection. However, what if a sports professional (e.g. a boxer) is in immediate danger, what safety protocol should apply? What if the boxer is an amateur, training at a club, without medical professionals on hand?

No Intended Reward or Compensation - Only first aid provided without the intention of reward or financial compensation is covered. Medical professionals are typically not protected by Good Samaritan laws when performing first aid in connection with their employment.

Obligation to Remain - If a responder initiates first aid, he/she should not leave the scene until it is safe to do so, a rescuer of equal or higher ability takes over, or continuing to give aid is unsafe. This can be as simple as a lack of adequate equipment or protection against potential danger to themselves.

Consent - The responder must obtain the consent of the patient, or of the legal guardian of a patient who is a minor, unless this is not possible. Consent may be implied if an unattended patient is unconscious, delusional, under the influence of medication or other chemical substances or otherwise unfit to make decisions regarding his or her safety, or if the responder has a reasonable belief that this is the case.

Duty to Assist - In most jurisdictions with such a statute, unless a caretaker relationship (such as a parent-child or doctor-patient relationship) exists prior to the incidence of illness or injury, or unless the Good Samaritan is responsible for the existence of the incidence of illness or injury, no person is required to give aid of any sort to a victim.

Current situation in the UAE

In the UAE it has been reported by a number of sources in the media that a draft 'Rescuer Protection Law' has been prepared with suitable input from the Ministry of Health and the Emirates Medical Association. The authors understand that the draft law has been tailored to ensure that no civil or criminal litigation may be successfully pursued against any person who has, in good faith, provided help to another person in an emergency situation. The UAE would be the first Arab country to introduce such a law.

1. What Can/Can't a Responder Do Without Fear of Incurring Liability in the UAE?

Until a Good Samaritan Law has been enacted, it is important to keep in mind that there are a number of laws and procedures that could apply to any given set of circumstances that might otherwise be akin to a Good Samaritan situation, when an individual offers first aid as a rescuer.

Abu Dhabi police have previously stated it is a criminal offence not to immediately contact police in the event of a traffic injury, but pursuant to the UAE Penal Code, it may also be an offence to provide assistance without being trained in first aid. No criminal offence will have occurred, in a broad first aid context, if medical treatment administered has been performed in accordance with accepted scientific principles. The consent of the patient is required (express or implied), unless medical interference is required in emergency cases.

There are certain contexts in which urgent care by non-professionals has been recognised by law. Specifically, in the workplace context, employers will be aware of the minimum first aid requirements under the UAE Federal Labour Law, Law No. 8 of 1980. Sharia law principles do not expect that a rescuer should be competent before assisting someone suffering from a heart attack. In the UAE, a first aid Fatwa allows for a non-Muslim to provide first aid to a Muslim, and for a male to administer first aid to a female. However, employers ought to note carefully in employment files, if there are specific objections to this until the new Good Samaritan Law is fully in force.

With reference to the educational setting, schools in the UAE must have at least one full time nurse and one part time doctor where the school has upwards of 1,000 children. The requirements increase to one full time nurse and at least two full time doctors for schools with up to 2,000 children, in accordance with the School Clinic Regulations administered by the Ministry of Health and Prevention. The Ministry of Interior arranged installation of 82 defibrillators across the UAE during 2016 to ensure lifesaving is a priority. The Abu Dhabi Occupational Safety and Health Centre ('OSHAD') Code of Practice encourages all workplaces, worksites and corporate offices to install automated external defibrillators and install an automated external defibrillator programme.

2. What are the specific risks of acting/not acting for a bystander?

The UAE Civil Code states in part that: "Any harm done to another shall render the doer thereof, even though not a person of discretion, liable to make good the harm." Accordingly, the risks to a Good Samaritan of civil claims and or criminal prosecution are prima facie substantial. In many cases, whether it be at sporting events or in public places, the human instinct to help others will overcome immediate concerns about the potential impact upon one's own position.

If someone refrains from assisting a victim despite being in a position to do so, penalties could apply under the Penal Code. Specifically, the Penal Code provides for penalties if someone "refrained, at that moment, from helping the victim… in spite of the fact that he was capable of doing so". A personal trainer, for example, may accordingly face a dilemma when pushing a client to their limits. At what point, should they stop, and are they aware of the adequate steps which require to be taken to avoid injury?

With health and safety in contemplation, it is important to strike an appropriate balance in terms of policy. Perhaps there is a developmental aspect to this issue to the extent that the timing for a Good Samaritan law is now right; whereas prior to the proliferation of basic first aid knowledge, training and best practices the ultimate concern related to not causing harm. The Penal Code states a person may be fined or imprisoned for a period of at least one year, if they cause the death of another person, or fined or imprisoned for up to two years if an act caused the permanent disability of a victim. A Good Samaritan law could potentially reduce the risk of such provisions being applied in all but egregious circumstances.

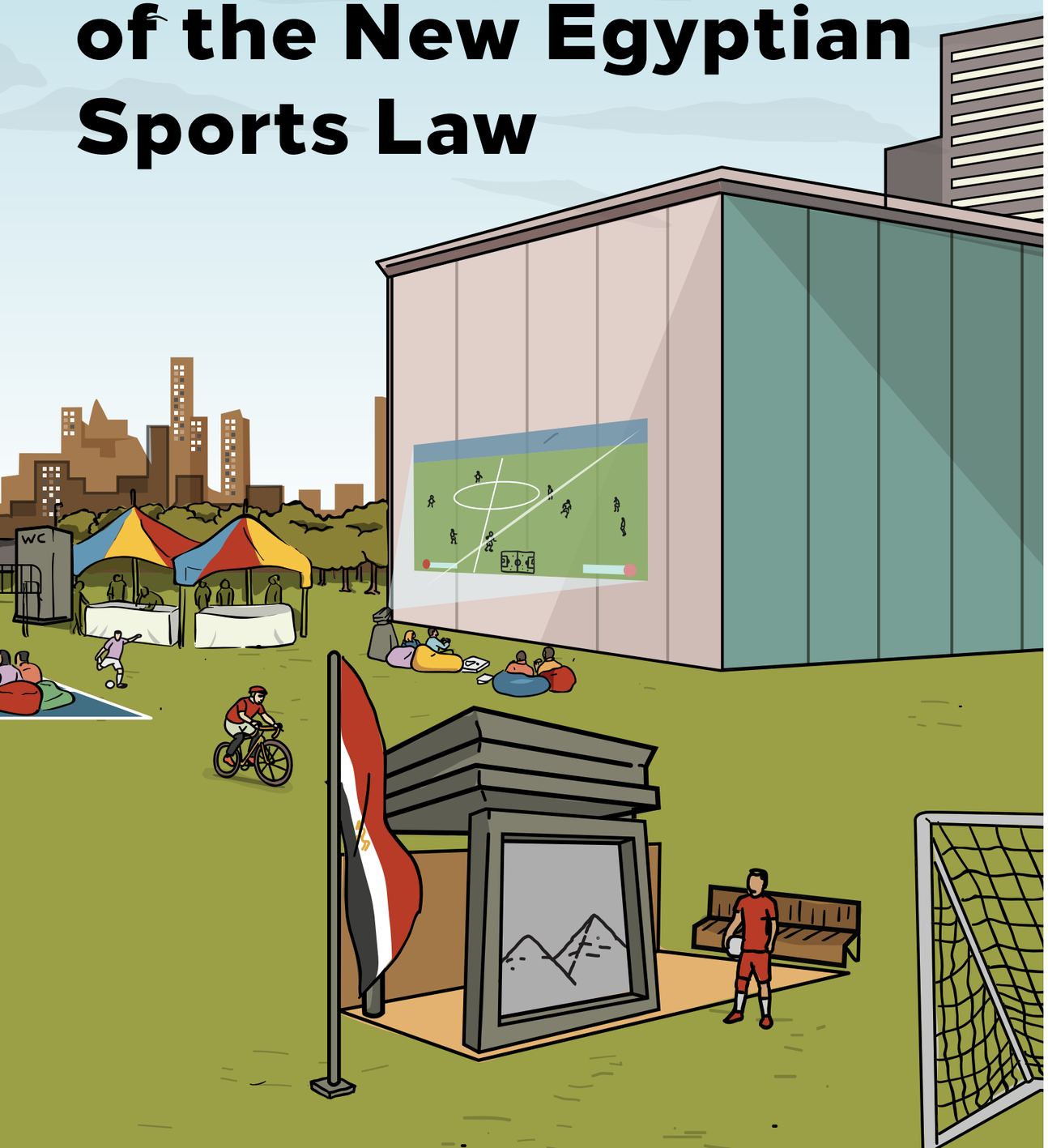
Conclusion

We have seen a number of positive legislative steps in the UAE aimed at facilitating improved safety and security at sporting events in recent years. Provided appropriate guidelines are applied to prevent misinterpretation, the authors take the view that a Good Samaritan law would be beneficial for the UAE to promote helpful intervention and potentially life-saving assistance by decreasing bystander hesitation (i.e., to counteract the well documented 'Bystander Effect', the inhibiting influence of the presence of others on a person's willingness to help someone in need) and provide some comfort and clarity to those who may otherwise have liability concerns on assisting in an emergency situation.

Moreover, with a robust and expanding sports and events calendar and an ever-increasing profile as a global tourism hub, residents, tourists and business travellers alike should feel comfortable that this is a step in the right direction as more helping hands will be available if adverse situations arise in public spaces. Those with appropriate skills and training can feel free to follow their best human instincts and provide aid to others in need without fear of legal action.

Al Tamimi & Company's Sports & Events Management team regularly advises on a wide array of National, Regional and Global Events. For further information please contact Steve Bainbridge (s.bainbridge@tamimi.com).

Economic Impact of the New Egyptian Sports Law



Steve Bainbridge
Partner,
Head of Sports &
Events Management
Dubai, UAE
s.bainbridge@tamimi.com

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

The Egyptian Sports Law No. 71 of 2017 (the 'Sports Law') was among the package of laws promulgated during the last few years intended to re-invigorate the Egyptian economy. In fact, the Sports Law was issued on the same day as the New Investment Law, which jump-started foreign investment in Egypt. The goal of the Sports Law was to regulate basic sports activities that were left either unregulated or in the hands of independent authorities. Moreover, it was meant to open up the sports field to the rest of the economy and attract a broad range of potential investments.

Additionally, the Sports Law has formalised the process of seeking out talent. Talent is, above all, the bedrock of all sports. The identification and subsequent development of this asset – effectively a natural resource – is key to the growth and sustainability of a dynamic sports industry. Without talent, no investment, no matter how large, would fill the gap of talent. As such, the Sports Law has attempted to increase the economic impact of the sports industry with a two-pronged strategy: firstly, through establishing mechanisms and processes to actively seek out sporting talent; and secondly, through ensuring that investment can be made more easily available to support, develop and optimise assets in the industry.

Investment in Sports

Before the Sports Law, there was essentially no regulation or distinction between quasi-public entities, such as sporting clubs, and private entities that establish a sporting club, health club, gym or other type of entity that engages in providing or otherwise facilitating sports services. Private companies that established clubs or similar facilities found themselves in legal limbo. There was uncertainty as to whether they were subject solely to the laws regulating companies conducting regular commercial activities, or whether they fell within the legal framework specifically governing 'sports entities.' Sports entities were previously subject to strict regulation by the Ministry. Private companies, on the other hand, remained largely subject to the broader body of Egyptian corporate, civil and commercial laws.

The legal uncertainty was most apparent in cases where private companies owned and operated a facility, such as a health club. Health clubs could reasonably be construed as coming within the paradigm of sport; nonetheless, they did not strictly fall within the framework governing sports entities. This problem was exacerbated by the increase in diversity to which the sports sector has been subjected globally. In recent years the proliferation of sports enterprises, such as

football academies as well as rapid growth and demand for an ever-increasing range of sports services delivered by health and fitness clubs has been exponential. Thankfully, Articles 71 to 78 of the Sports Law have clarified some confusion by distinguishing between sports entities and companies that conduct sports services, establishing a guiding framework under which such companies may operate.

All companies that conduct sports services must be joint stock companies. Sports services are not exhaustively defined in the Sports Law and may include managing, marketing, or operating private clubs and academies, health clubs, and/or fitness centres. Accordingly, small sports-related businesses (such as spas and gyms) may be obligated to abide by this legal structure.

These companies, under the Sports Law, are entitled to issue shares through a public offering and ultimately list on the Egyptian Stock Exchange Market, with the proviso that such action should not affect its sports services. The Sports Law does not define specifically what those issues are which might affect a company's sports services. An individual interpreter may have discretionary power to determine whether a company may issue its shares through a public offering or be listed.

Additionally, sports entities have the flexibility to form joint stock companies with investors and members, or to set up branches established by joint stock companies. All such companies remain subject to approval by the competent authorities in terms of activities while remaining compliant with the provisions of the Sports Law. They are also subject to financial oversight, including such obligations as being required to submit financial statements to the competent authorities, adhering to standards for minimum and maximum fees for the provision of their services, as set by the Minister of Youth and Sports, etc.

Talent Discovery

Articles 63-65 of the Sports Law establish talent discovery centres across Egypt under the management of the Ministry of Youth and Sports. Moreover, the Sports Law also addresses talent discovery of special needs children. Undoubtedly, establishing a system whereby talent can be sought, identified and developed can be quite a driving force behind a field that has its core based on talent. There are numerous international examples, which have long established that investing in talented youth as they are growing can help take these talents to new heights. The economic impact of discovering such talents can be quite significant as well. For example, Egypt's foremost football player, Mohamed Salah, was discovered at a young age through unofficial scouts. If we imagine for a moment that Egyptian football would have established talent discovery programmes several decades ago, we would inevitably conclude that talent discovery can revolutionise the sports industry.

"...the sports industry offers an entirely new asset class from a previously untapped sector.

Conclusion

Although the newly formed talent discovery programmes are yet to bear substantial fruit, we can already see the potential economic impact that opening up the sports industry to investors can have. A small club called Al Assyouty was recently purchased by Saudi investor Turki El Sheikh. As the second part of his investment plan, he renamed the club Pyramids FC and then signed several important and expensive players to rapidly put the team amongst the top teams in the Egyptian Premier League. In economic terms – and this is how investors should see the sports industry under the Sports Law - this is a case of prudent investment followed by solid practices in asset management. Such effects cannot go unnoticed, as the sports industry offers the potential to develop an entirely new asset class from a previously untapped sector. The power of opening up the economy as a whole to investments can have a massive impact on Egypt's economic development and the sports sector is off the bench and ready to go.

Al Tamimi & Company's Sports & Events Management team regularly advises on a wide array of National, Regional and Global Events. For further information please contact Steve Bainbridge (s.bainbridge@tamimi.com). or Youssef Sallam (y.sallam@tamimi.com).

Intermediaries in Saudi Football

Bandar Al Hamidani
Partner
Riyadh, Saudi Arabia
b.alhamidani@tamimi.com

Introduction

Intermediaries can have a profound impact in the transfer market in the world of football. Consequently, the Fédération Internationale de Football Association ('FIFA') has implemented the relevant regulations, namely the Regulations on Working with Intermediaries.

For FIFA, it is essential to protect both players and clubs from being involved in unethical and/or illegal practices and circumstances when negotiating transfers and employment contracts.

Accordingly, national football associations must comply with the minimum standards approved by FIFA, which includes those of the Saudi Arabian Football Federation ('SAFF'), the governing body for football in the Kingdom.

An intermediary is defined as "*a natural or legal person who represents players and/or clubs in negotiations with a view to concluding an employment contract or represents clubs in negotiations with a view to concluding a transfer or loan agreement with a fee or free of charge.*"

SAFF was founded in 1956 and in the same year joined FIFA and the Asian Football Confederation ('AFC').

When professional football started in Saudi Arabia, SAFF developed laws and regulations to regulate the relationship between football players and clubs in Saudi Arabia.

On 11 June 2014, the General Assembly of FIFA passed Resolution no. 64. This resolution replaced the 'Regulation relating to Players Agents' by a new 'Regulation on Working with Intermediaries' ('RWI').

The objective of RWI is to promote the relationship between intermediaries and players and/or clubs. It aims to regulate methods and principles of negotiation between the parties and sets out parties' rights and obligations. RWI also allows SAFF to implement its own regulations that determine the procedures and methods to resolve disputes between clubs, players and intermediaries. Accordingly, RWI was adopted in Saudi Arabia pursuant to the Resolution no. 8400/Q/1 issued by the Executive Board of SAFF on 1, July 2015 as amended on 8 August 2017.

RWI in Saudi Arabia also deals with drafting and preparing employment contracts between football players and clubs, as well as preparing permanent transfers and loan agreements between clubs.

In 2015, SAFF established a Disputes Resolution Chamber in order to adjudicate disputes involving intermediaries.

Key Principles of RWI

SAFF has adopted a similar approach to the FIFA Regulation as to the scope of the Principles and Definitions. The arrangements between players, their intermediaries and clubs are, according to Article 3 of the RWI, based on three key principles:

a. football clubs and players may benefit from intermediaries' services when it comes to the execution of football players' employment agreements and/or loan and transfer agreements;

b. an intermediary must be registered in accordance with the provisions of Articles 4 and 5 of the RWI in Saudi Arabia. When an intermediary is selected, players and clubs must use their best endeavours to ensure that an intermediary has signed the intermediary declaration and representation agreement;

c. all members of boards of directors and committees, referees and their associate trainers and associates, technical-medical, administrative affairs' officials of the federation, professional associations and clubs, and any other individuals related to any legal person (official) are prohibited from working as intermediaries. These provisions are aimed at associations in relation to the engagement of the services of an intermediary by players and clubs to terminate an employment contract between a player and a club. The provisions can also conclude a transfer agreement between two clubs.

Registration

As indicated in Article 4 of RWI in Saudi Arabia, SAFF must keep a specific record for intermediaries which will be published. However, relevant parties must declare each time intermediaries are involved in any transaction. Football clubs and players who use intermediary services must submit the intermediary declaration and any other documents requested by the committee of professionalism and players' status with SAFF in respect of each transaction. In addition, SAFF has the right to request any further information or documentation.

Registration Requirements for Intermediaries

In order to be officially registered with SAFF, the intermediary must:

a. submit a written intermediary application;

b. not hold a criminal record nor have violated any public regulations or customs;

c. not be subject to any active decision taken against him issued by a sports authority or the subject of any disciplinary suspension or not be prevented from participating in any football activity;

d. hold a bachelor's degree;

e. experience in football for not less than five years. However, an intermediary is exempt from holding a degree when he has experience of not less than five years as a professional director at a professional club and/or as a players' agent with high school certificate or an equivalent;

f. Saudi national or a registered foreign intermediary, registered in his country or at any federation, recognised by FIFA, with valid registration as an intermediary;

g. contracting with a lawyer licenced by the competent authorities in KSA, if required. Contracting with a lawyer not licenced in KSA is prohibited;

h. be fluent in English, speaking and writing or submit a letter confirming that the intermediary has an employee fluent in English or is dealing with a translation office;

i. should have a special office for his activity as an intermediary and must submit valid evidence from Saudi official authorities;

j. provide a letter signed by the applicant to confirm that the applicant does not hold any official work at SAFF, FIFA, AFC, Association, League or any club when submitting the application;

k. provide a letter signed by the applicant to confirm that the applicant does not have any direct or indirect financial or commercial interest of any form of financial or business relationship with the SAFF or any club;

l. not have any contractual relationship with FIFA, AFC, SAFF or leagues that could lead to a potential conflict of interest. Intermediaries are precluded from implying, directly or indirectly, that such a contractual relationship with FIFA, AFC, SAFF or leagues exists in connection with their activities;

m. submit a copy of his ID and passport;

n. pay the registration fees (currently SAR 20,000 riyals per annum) to the account of the Committee at SAFF. In addition, Intermediaries in Saudi Arabia that have an office registered with the relevant authorities are required to pay five percent of any amount made on an employment, transfer or loan transaction upon registering the player. Furthermore, intermediaries must pay 10 percent in every employment transfer or loan transaction upon registration of the player if they do not have an office in the Saudi Arabia;

o. submit any documents requested by the Committee at SAFF; and

p. when applying for registration, declare that he will comply in full with the laws, regulations, directives and decisions issued by the competent authorities at the SAFF, AFC and FIFA and sign the declaration in accordance with Annex 1 or 2 of the RWI in Saudi Arabia.

"Intermediaries may have a profound impact on the transfer market in the world of football.

Impeccable Reputation

Pursuant to Article 5 of the RWI in Saudi Arabia, the intermediary must sign a declaration in a prescribed format. The complete application and declaration must then be submitted to SAFF.

The applicant is required to make certain declarations and must satisfy various other requirements including the following:

a. pledge to respect and comply with any mandatory provisions of applicable national and international laws, including in particular those relating to his activities as an intermediary. In addition, an intermediary agrees to be bound by the Laws and regulations of SAFF, AFC and, FIFA in the context of carrying out his activities as an intermediary;

b. declare that he has an impeccable reputation and confirms that no criminal sentence has ever been imposed upon him with regard to a financial or violent crime;

c. declare that he has no contractual relationship with SAFF, leagues, AFC or FIFA that could lead to a potential conflict of interest. In case of any uncertainty, the relevant contract must be disclosed;

d. acknowledge that he is precluded from implying, directly or indirectly, that such a contractual relationship with SAFF, leagues, AFC or FIFA exists in connection with his activities as an intermediary;

e. declare that, he shall not accept any payment to be made by one club to another club in connection with a transfer, such as transfer compensation, training compensation or solidarity contributions;

f. declare that he shall not accept any payment from any party if the player concerned is a minor;

g. consent to SAFF to obtaining full details of any payment of whatever nature made to him by a club or a player for his services as an intermediary;

h. consent, to the leagues, SAFF, AFC or FIFA to obtain, if necessary, for the purpose of their investigations, all

contracts, agreements and records in connection with his activities as an intermediary or if any third party involved;

i. consent, to SAFF publishing details of any disciplinary sanctions taken against him; and

j. consent to SAFF to use any data or information for the purpose of their publications.

Conflicts of Interests

Prior to engaging the services of an intermediary, SAFF requires a number of measures to be adhered to so as to avoid conflicts of interest arising. Players and/or clubs shall ensure that there are no conflicts of interest that are likely to exist either for the players and/or clubs or for the intermediaries prior to engaging the services of an intermediary. If the intermediary discloses, in writing, that there is any actual or potential conflict of interest and the intermediary obtained, in writing, consent of all the other parties involved prior to the start of the relevant negotiations, then no conflict of interest is deemed to arise.

When a player and a club each want to use the services of the same intermediary for the purposes of the same transaction, the player and the club must give their express written consent prior to the start of the relevant negotiations, and shall confirm in writing which party (player and/or club) will remunerate the intermediary. The parties shall inform SAFF within 72 hours of any such agreement and accordingly submit all the aforementioned written documents within the registration.

Disclosure and Publication of Full Details

The requirements relating to disclosure and publication of payments to an intermediary are set in Article 8 of RWI. These are as follows: players and clubs are required to disclose to SAFF the full details of any and all agreed payments of whatsoever nature that they have made or that are to be made to an intermediary.

When SAFF requests players and clubs to disclose all contracts and agreements signed with intermediaries, information should be disclosed within three business days. All contracts and agreements signed with an intermediary shall be attached to the transfer agreement, loan agreement or the employment contract, as the case may be, for the purposes of registration of the player. The transfer agreement, loan agreement or the employment contract must include the name and the signature of the intermediary,

“The implementation of RWI was effective in reducing the financial burden on football clubs and prevent unlawful practices.

if the player and club have used the services of an intermediary. In the event that a player and club have not used the services of an intermediary in their negotiation, they are obliged to prove that to be the case.

SAFF is required to disclose at the end of March of every calendar year, on its official website, the names of all intermediaries it has registered, details of transactions in which they were involved and the total amount of all remuneration or payments actually made to intermediaries by their registered players and by each of their clubs.

Remuneration

Article 9 of the RWI sets out particular requirements in relation to the remuneration arrangements for an intermediary in Saudi Arabia:

Type I - Player Representation

The total amount of remuneration due to an intermediary who represents the player in negotiation must not exceed 10 percent of the total value of the player’s contract.

Type II - Club Representation Whether Transfer Contract or Loan Contract

The total amount of remuneration due to an intermediary who represents a club in a negotiation of transfer or loan contract of player must not exceed 10 percent of the total value of the player’s contract.

Type III - General Principles

a. Clubs that engage the services of an intermediary shall remunerate him by payment of a lump sum agreed prior to the conclusion of the relevant transaction. In the case of the completion of a transfer process or loan, the agreed lump sum will be calculated as part of the maximum permitted 10 percent entitlement referred to above.

b. Clubs shall ensure that payments to be made by one club to another club in connection with a transfer or loan agreement, such as transfer compensation, training compensation or solidarity contributions, are not paid to intermediaries and that payment is not made by intermediaries.

c. Clubs are not permitted to pay to intermediaries on behalf of players and any club violating this provision shall be subject to disciplinary sanctions.

d. Officials are prohibited from receiving any payment from an intermediary of all or part of the fees paid to that intermediary in a transaction. Any official who contravenes the above shall be subject to disciplinary sanctions.

e. Players and/or clubs that engage the services of an intermediary when negotiating an employment contract and/or a transfer agreement are prohibited from making any payments to such intermediary if the player concerned is a minor.

Disciplinary Powers and Sanctions

In accordance to Article 11of the RWI, SAFF has the power to impose sanctions and penalties on any party violating the requirements of the RWI. SAFF is required to publish the disciplinary sanctions against any intermediary and to inform FIFA in relation to any disciplinary sanctions taken against any intermediary. In addition, SAFF may impose sanctions on any intermediary, club or player that/who violates SAFF regulations and/or AFC regulations and FIFA regulations.

The new regulations ensure that SAFF is obliged to publish accordingly and inform FIFA of any disciplinary sanctions taken against any intermediary. SAFF may impose a minimum of one or more sanctions such as a written warning, a financial penalty of no less than SAR 20,000 and not exceeding SAR 500,000 register suspensions, register holding or impose a ban on any football- related activity.

Conclusion

With the regulations outlined by FIFA establishing the relevant minimum standards, the business of intermediaries has suffered some changes over the years. RWI serves to promote the role of an intermediary and the contractual relationship between intermediaries, football players and clubs. Intermediaries compete with other intermediaries not only on a national level, but also on a global scale.

The implementation of RWI has been effective in reducing the financial burden on football clubs and preventing unlawful practices, especially by promoting transparency within national associations that regulate intermediates on a local level. Most importantly, RWI allows FIFA to monitor association members and check the continuous application of the relevant minimum standards.

Al Tamimi & Company’s Sports & Events Management team regularly advises on football transfers and intermediary arrangements. For further information please contact Bandar Al Hamidani (b.alhamidani@tamimi.com).

Registration of Professional and Amateur Football Players

Bandar Al Hamidani
Partner
Riyadh, Saudi Arabia
b.alhamidani@tamimi.com

Pedro Castro
Senior Associate
Riyadh, Saudi Arabia
p.castro@tamimi.com

Introduction

FIFA Regulations on the Status and Transfer of Players ('FIFA RSTP') set out the relevant rules governing the registration of players and the relevant contractual relationships between players and clubs in football. National football associations must comply with the binding provisions mentioned in FIFA RSTP. These provisions must be included, without modification, in the relevant regulations of each and every national association. According to Article 1.3.a) of FIFA RSTP, such binding provisions include Articles 2, 3, 4, 5, 6, 7, 8, 10, 11,12bis, 18ter, 19 and 19bis of FIFA RSTP. Accordingly, national football associations must incorporate the binding provisions in their own regulations. Among others, provisions concerning the registration of players are deemed mandatory.

The Status of Players

Football players are either amateurs or professionals. Pursuant to Article 2 of FIFA RSTP, professional football players are defined as all those who have a written contract with a football club and are paid a reasonable remuneration that cover all living costs and expenses. All players who do not have a written contract and/or need to obtain remuneration from other sources are considered amateurs.

Change of Status

All football players start their career as amateur players. Those who have the capacity to pursue a professional career are normally offered the first professional contract when they become of age. Talented young players may be offered contracts as professional players at the age of 16 or 17, when they start having the prospect of being called to the first team.

Once professional, it is likely that a football player will maintain that status for many years. But it is possible for a player to change his status to amateur. According to Article 3 of FIFA RSTP, a player can only be registered as amateur after 30 days of the last match as professional. And it is also possible for the same player to be re-registered as professional, at any time.

However, if a professional player registers as amateur and re-registers as professional within 30 months, the new club must pay the relevant training compensation to other clubs, as may be due.

Registration of Players

The registration of football players is regulated under Article 5 of FIFA RSTP.

First of all, it is important to emphasise that all football players need to be registered irrespective of the relevant status. It is mandatory that professional players, as well

as amateur, are registered with a football club in order to be eligible to play in organised competitions. Such registration is made with the relevant national association. Failing to use a football player who is not duly registered in an official match will result in sanctions to the player and/or the club.

Secondly, football players can only be registered with one club at a time. It is not admissible for the same player to maintain registration with two clubs simultaneously, even if the clubs are affiliated with different national associations.

FIFA RSTP also stipulate that players can be registered with a maximum of three clubs during one season, but can only be eligible to play for two clubs. As an exception to this rule, a player may be eligible to play for a third club if the player moves to a club of a national association which season overlaps the season of the previous club (for example, autumn/summer as opposed to spring/winter) and provided the player has fully complied with the contractual obligations towards the previous club.

When a player wants to be registered with a club from a different national association, the new registration is conditional upon the issuance by the former association of an International Transfer Certificate (also simply known as 'ITC').

"Players can only be registered within one of the two annual transfer windows fixed by the national association.

Registration Periods

One of the most relevant aspects of football competition, namely in regards to the transfer of players, is the registration period also commonly known as the 'transfer window'. There are two annual transfer windows which periods are determined by each national association separately, at least 12 months in advance. Normally, there is one registration period in the summer and another in the winter, but the specific dates will depend on when the season starts in each national association. It is possible for national associations to determine different registration periods for the male and female competitions. In case an association fails to determine and communicate the relevant registrations periods, the same shall be fixed by FIFA.

According to Article 6 of FIFA RSTP, the registration period between the end of one season and the start of the new season cannot exceed 12 weeks. The registration period in the middle of the season has a maximum of four weeks.

Football players can only be registered within one of the two annual transfer windows fixed by the national association of the relevant new club. This rule allows, for example, a player to be transferred from a club in one country in which the transfer window is closed to a club in a different country in which the transfer window remains open. Every year, we witness the transfer of many players from clubs from top European leagues to clubs in Eastern Europe and in the Middle East, where registration periods remain open for a few more weeks.

Registration of Free Players

Notwithstanding the above, football clubs are allowed to register free players outside of the transfer windows. Article 6.1. of FIFA RSTP expressly stipulates that "*a professional whose contract has expired prior to the end of a registration period may be registered outside that registration period*".

This exception is only applicable to professional players and to those whose contracts have expired (or been terminated) prior to a registration period. It is important to observe that national associations must give due consideration to the sporting integrity of competitions. Accordingly, national associations may fix a deadline for the registration of free players outside of a transfer window. In particular, it is common to see a prohibition to register players in the last rounds of a competition league (for example, within the last five or ten matches).

It is also important to clarify that if a professional player terminates his contract, for whatever reason, after the end of a registration period, he will not able to register with another club before the next registration period.

"It is mandatory that professional players as well as amateur players are registered with a football club in order to be eligible to play in organised competitions.

Registration of Amateur Players

The requirements mentioned above are not applicable to competitions which are 100 percent amateur, i.e., where all participant players are amateur.

Similarly, to professional competitions, national associations also need to determine the registration periods for amateur competitions. However, such periods are typically longer than the ones fixed for professional competitions.

It is worth noting that with regard to clubs participating in professional leagues that intend to register amateur players, they will need to abide by the provisions concerning registration periods.

Registration Status upon Termination of Activity

According to Article 4 of FIFA RSTP, professional players who end their career upon expiry of the relevant contracts will remain duly registered for an additional period of 30 months. The same is applicable to amateur players who terminate their activity.

The period above is counted from the last official match of the player by the club.

Al Tamimi & Company's Sports & Events Management team regularly advises on the transfer and registration of players.
For further information, please contact Bandar Al Hamidani (b.alhamidani@tamimi.com) or Pedro Castro (p.castro@tamimi.com).

Stadium Naming Deals: Why Clubs and Sponsors should always Consider their Termination Rights

Adam Powell
Head of Corporate Commercial - Ras Al Khaimah
Ras Al Khaimah, UAE
a.powell@tamimi.com

Pedro Castro
Senior Associate
Riyadh, Saudi Arabia
p.castro@tamimi.com

Match-day at sports' clubs stadiums is, of course, big business with the potential to generate large amounts of revenue from various streams including tickets, merchandise, concessions and sponsors. In addition, the proliferation of global connectivity and the distribution over several different types of media (broadcast, digital, streaming) means that high-profile sports clubs have the ability to attract tens of thousands of spectators from domestic and international markets.

Therefore, increasing stadium capacity and stadium design, either by an expansion and redevelopment of a current stadium or the development of a new stadium, optimises these valuable revenue streams.

A stadium also provides an opportunity for a club to monetise its stadium's name by entering into a naming rights sponsorship deal, with big international companies and brands – already alive to the demographic appeal of the sports sector – keen to affiliate themselves with a high-profile sports team.

Under these sponsorship arrangements, the club is contractually obliged to name its stadium with the title sponsor's name, for example, in the English Premier League ('EPL'), Arsenal Football Club's stadium is called the Emirates and Manchester City F.C. play at the Etihad stadium. In the media and market, the title sponsor becomes synonymous with the club and recognised as part of the club's fabric.

Stadium naming rights' partners are extremely attractive for a club (and venue) to supplement revenues needed to cover increasing expenses such as players' high salaries, transfer fees and to service commercial loans and other construction costs and expenses.

For the title sponsor, a close affiliation with a globally supported high-profile club (or venue) creates valuable brand awareness, and the arrangements are typically long-term (and high-value) in order for the sponsor's relationship and association with the stadium and club to become sufficiently entrenched to gain maximum value and exposure in the global market.

The History of Stadium Naming Rights

The history of naming stadiums can be traced back to the early 1900s in the USA, when in 1912 the Boston Red Sox Fenway Park is said to have been connected by name to its owner's property company which was called Fenway Realty. Wrigley Field, home of the Chicago Cubs, was named after the Wrigley Brothers chewing gum company in 1926. Examples of other high-profile venues with international banks as title sponsors include Citi Field, home of the New York Mets, and Barclays Center, home of the Brooklyn Nets and New York Islanders.

In 2017, it was reported that the current highest value naming rights deal had been agreed in relation to the Scotiabank Arena, home of, amongst others, the iconic Toronto Maple Leafs. It has been reported that the deal with Scotiabank is worth USD $800 Million over a 20-year period.

In Dubai, the recently opened Coca-Cola Dubai Arena demonstrates the trend that, aside from sports clubs, naming rights are valued for multi-purpose use events venues and that naming rights partnerships really are a global affair.

However, the [re]naming and [re]branding of a stadium is a complex and costly process and, therefore, naming rights agreements are generally long-term contracts, under which the club, or stadium owner, is likely to benefit from a significant, and reliable, revenue stream. On the other hand, the sponsorship benefits for the naming rights' partner, whilst heavily dependent upon the nature of the naming rights' sponsors business, generally include:

- physical branding, advertising and signage at the stadium;
- the use by the club or stadium of the partners' name in the media;
- if relevant, exclusive supply rights to the stadium (for instance, a food and beverage company may require exclusive rights to supply certain products on matchday); and
- "back-end rights", including matchday experiences at the stadium which can be used for corporate hospitality and the rights of first offer and refusal on various events or items relating to the club and stadiums.

What Happens if Things go Wrong?

The deal value to a club and the title sponsor is clear if the partnership lasts the distance. However, these types of long-term and high-profile arrangements create a raft of potential legal and commercial issues, and given the underlying concept of a sponsorship deal is to enhance market reputation, a key issue relates to circumstances when actions (or omissions) of one of the parties threaten to tarnish, by association, the goodwill and reputation of the other. In such circumstances, the million-dollar question is: how easily can either the club, or the sponsor, disassociate itself from the other?

There have been a number of cases in North America where clubs or venues have sought to disassociate themselves from naming rights' partners that were subject to bankruptcy proceedings, including, the Tennessee Titans in the case of the Adelphia Coliseum, the Rams in the case of the Trans World Dome and the Houston Astros in case of Enron Field.

In March this year, the United Airlines Memorial Coliseum (formerly the LA County Memorial Coliseum) was subject to public objections, including politicians and World War 1 veteran groups raising arguments that the change of name was disrespectful and amounted to changing the fabric of a national heritage site. It will be interesting to see if the 16 year, USD $69 million naming rights' deal is ended following public pressure.

On the other hand, could a title sponsor disassociate itself from a 'rogue' or reputationally damaged club or venue to avoid or limit any negative associated publicity? The reputation of a stadium or club, and by association its title sponsors, may be affected by various potential issues, examples of which could include:

- misbehaviour of high-profile professional players employed by the club;
- misbehaviour of supporters - recent examples in the news in the UK of football supporters' actions causing potential reputational damage by association, include an Arsenal supporter invading the pitch at the Emirates Stadium during play and assaulting Chris Smalling, a Manchester United player. EPL club Chelsea FC has recently had to deal with being associated with a number of its supporters who have been the subject of Police investigations for racial hate crimes;
- corporate offences - for example, in the case of penalties imposed on certain corporations relating to money laundering offences; and/or
- safety and security issues – for example, there have tragically been a number of recent terrorist attacks, including in the Stade de France Stadium in Paris in 2015.

Accordingly, there is potential for unforeseen events, often beyond the control of the parties, to become associated with a venue, the club and/or a sponsor, and, whilst not all events will cause medium or long-term damage, public sentiment is arguably at the very heart of brand value.

Termination Rights

Naming rights' agreements will provide early termination rights for both the club or the sponsor upon certain events occurring.

Upon the occurrence of a specified event(s), the party wishing to terminate the agreement will, typically, need to serve a notice to terminate, and grant the other party a period in which to remedy the position, if possible. The termination provisions should deal with who pays the cost for rebranding the stadium, which should be set out in the terms of the contract.

Typical termination events include a failure of the sponsor to pay its sponsorship fees, the bankruptcy of a party or a failure to comply with a material provision of the agreement. In the Kiel Center St. Louis Blues' naming rights agreement, the sponsor, Savvis, had a right to terminate the agreement if the club did not play their home games at the stadium.

The concept of termination for events which may be reputationally damaging are particularly sensitive. Whilst strict 'morality clauses' may be difficult to negotiate since they are not necessarily seen as market practice for these types of agreements, as mentioned above, the agreements should provide for an early termination event of a material or persistent breach of any of the main contractual provisions. Therefore, a breach of an undertaking or warranty not to damage the reputation of the other may fall within this category. However, relying on such a provision to terminate an agreement comes with certain risks since it can be difficult to ascertain causation for reputational damage, causing even greater scope for dispute.

The issue surrounding the former LA County Memorial Coliseum is particularly interesting, since it appears unlikely that that this agreement may be terminated unilaterally by the contracting parties in circumstances where third parties object to the rebrand.

In civil law jurisdictions, the relevant codified laws relating to contractual arrangements will also need careful consideration. In the United Arab Emirates, for example, under the UAE Civil Code, in certain circumstances, a contract may be terminated for non-performance and/or the termination of a contract may require a court order.

Moreover, to the extent that a title sponsor and club have been affiliated for a significant number of years, the name of the sponsor and the stadium will be synonymous in the public domain, with supporters and media channels alike referring to the stadium as the sponsor's name rather than the club's name.

Therefore, and notwithstanding a successful early termination of the contractual provisions, the disassociation between the parties may well take some time; and then there remains the question of compensation and damages.

Conclusion

Whilst the financial benefit for a club, and the marketing benefit for the sponsor is clear, as demonstrated above, both the sponsor and the club must be particularly careful when considering a long-term stadium naming rights' arrangement.

Interestingly, neither of the EPL clubs Manchester United F.C. or Liverpool F.C. have entered into stadium naming rights' agreements with title sponsors, with both clubs retaining their traditional stadium names of 'Old Trafford' and 'Anfield' respectively, which have years of history and goodwill for its worldwide fans and supporters.

On 3, April 2019, EPL football club Tottenham Hotspur ('Spurs') played its inaugural EPL match, against Crystal Palace F.C., at its new 'state-of-the-art stadium, complete with retractable pitch for conversion for use for NFL games. This new 62,000-seater stadium took around two years to construct on the site of Spurs' old White Hart Lane stadium, and the new stadium holds almost twice as many supporters as the old one. Presently, the new Spurs' stadium does not appear to have entered into a naming rights' arrangement with a third-party sponsor, and the new stadium is currently known simply as the 'Tottenham Hotspur Stadium'.

Given the increase in television rights' revenue for EPL clubs (and a comparison may be made with NFL in the USA) these clubs may be less tempted to agree upon title sponsorship arrangements, which have the potential to materially influence the club and stadia persona. A GBP £20 million per year stadium naming rights' agreement may now not be as attractive as it was previously for these clubs, particularly given the potential long-term issues a club may have in shaking off a stadium name in the event of an unpopular or damaging event involving the sponsor.

Al Tamimi & Company's Sports & Events Management team regularly advises on Naming Rights and Sponsorship Agreements. For further information please contact Adam Powell (a.powell@tamimi.com).

Unlucky Article 13: A Footballer's First Professional Contract in the UAE; Is the Deck Stacked Against Locals?

Adam Powell
Head of Corporate Commercial - Ras Al Khaimah
Ras Al Khaimah, UAE
a.powell@tamimi.com

Daniel Magdi Louis
Associate
Dubai, UAE
d.louis@tamimi.com

N.B. *The majority of this article was first published on the LawInSport Blog on 21 June 2019.*

This blog examines the United Arab Emirates ('UAE') Football Associations ('UAEFA') Regulations on the Status and Transfer of Players ('RSTP'). More particularly, Article 13 of the UAEFA RSTP is proving controversial at present for two main reasons:

1. it obliges amateur junior players, upon turning 18 years old, to sign their first professional contract with the same club at which the players had been training;
2. it only applies to UAE nationals, not to a new category of 'non-UAE citizens' (namely children of Emirati mothers, expats born in the UAE, and expats resident in the UAE for at least the past three years) who are now permitted to compete in domestic sports pursuant to a 2018 UAE Cabinet Resolution.

We discuss each point in turn.

The UAEFA Regulations on the Status and Transfer of Players

Article 13 of the RSTP provides the following conditions (amongst others) for UAE nationals to become professional football players:

- UAE players should be at least 18 years old;
- players are obliged to sign their first professional contract with the club they have been training with as an amateur junior player (the 'Parent Club'), on the condition that a written offer is to be presented by the Parent Club to the player within two months of the player's 18th birthday;
- the written offer presented to the player should not exceed a term of five years;
- any offers presented by the Parent Club to the player should be legally binding on both parties;
- in the absence of the above-mentioned written offer, the player is considered, and further to the expiry of the two-month period, to be free to contract with a third party club at the discretion of the player.

The obligation on amateur junior players, upon turning 18, to sign a professional contract with the same Parent Club at which the player had been training prior to turning 18 is controversial. Whilst beneficial to the clubs, it appears to conflict with the doctrine of 'freedom of contract'.

The imposition of the above conditions was previously justified by sports specificity in the UAE football market. Football clubs in the lower division had raised concerns that high-performing junior UAE players developed at a Parent Club would not stay with those clubs once they reached the age of eligibility to sign their first professional contract. This meant that such players could benefit, at the Parent Club's expense, from its investment training programmes and facilities and then immediately upon reaching the age of 18 leave to join one of the higher ranking/powerful clubs.

This situation created an imbalance amongst UAE football clubs - rather than being able to sell the economic and federative rights to a player to a third party club for a financial benefit, a Parent Club would receive only a sum equal to *training compensation* (a 'one-off' compensation payment to a Parent Club that developed a player from the age of 12 but did not ultimately sign a professional contract with the player on turning 18). In all cases, the level of such training compensation was significantly lower than a corresponding rights-based transfer fee. This situation was deemed unfair and thus Article 13 of the RTSP was viewed as a legitimate means to create certain balance by protecting the investment of Parent Clubs while still encouraging players to seek to develop at different clubs in the country.

However, because of the strict conditions of Article 13, it became common practice for some of the UAE national payers to refuse to sign their first obligatory professional contract and to try to circumvent this obligation. This situation has created tension between different clubs and players within the UAE and creates the potential for disputes.

FIFA's view

The provisions of Article 13 of the RSTP raise questions as to its general compatibility with the UAE Constitution, Civil Code and Employment laws and the FIFA RSTP, primarily in relation to compliance with the doctrine of freedom of contract and the freedom of movement of players.

In its circular to the UAEFA evaluating the UAEFA RSTP, FIFA recommended that, unless UAE Law generally contained a provision similar to the restrictions under Article 13 of the RSTP, Article 13 should be repealed as it violates one of the most valuable principles in the football world; the freedom to contract.

Despite the recommendations made by FIFA, and the absence of any parallel laws in the UAE allowing restrictions on contracting with Emirati football players turning 18 years old, the UAEFA has maintained its position, justifying the imposition of this restriction under sports specificity in the football market.

It is accepted that FIFA has no authority to oblige the UAEFA to amend the provisions of Article 13 since the content of Article 13 does not fall under the mandatory provisions imposed by FIFA on its affiliated members (i.e., provisions that must be included in the regulations of the national football associations). Hence, the provisions of Article 13 are an internal matter under the exclusive jurisdiction of the UAEFA; and FIFA's powers are limited to evaluating UAEFA regulations and to making recommendations for amendments.

The provisions of Article 13 of the RSTP raise questions as to its general compatibility with the UAE Constitution, Civil Code and, Employment laws and the FIFA RSTP.

Moreover, Article 13 only applies to Emirati players and clubs affiliated with the UAEFA. This means that in the event of a dispute arising between a player and one or more clubs in connection with Article 13, FIFA has no jurisdiction - the dispute is ultimately deemed to be between members of the UAEFA.

FIFA's lack of jurisdiction regarding the enforcement of Article 13 at a national level may be explained by the absence of an international dimension and that such provisions are applicable only to Emirati players in accordance with the regulations imposed by the UAEFA. On that basis, the competent judicial body to address any issue arising from Article 13 is the UAEFA Players' Status Committee (which initially applies the regulations at the national level rather than FIFA regulations).

The Cabinet Resolution and its Impact on the UAE Football Market

Moving onto the second area of controversy: in June 2018, United Arab Emirates Cabinet Resolution No. 27 ('Resolution') was issued following the Instruction of His Highness Sheikh Khalifa Bin Zayed Al Nahyan, President of the UAE. The Resolution allows certain 'non-UAE nationals', mainly including:

- children of Emirati mothers,
- expats born in the UAE, and
- expats resident in the UAE for at least the past three years, to participate and compete in official domestic sports competitions on the same terms as nationals, offering them the possibility to become professional athletes as members of UAE sports' squads.

One of the reasons behind the Resolution was to expand the base for selection, feeding competitive sports in the UAE. Increasing the level of competition and play is, in the long term, expected to increase standards at the national level as well.

Prior to the Resolution, only UAE nationals were able to lawfully compete in competitive domestic sports. There has now been a restructuring of UAE national sports' federations to accommodate new categories of non-UAE nationals eligible to compete.

Specifically, in relation to football, these non-UAE nationals no longer fall under the 'quota' for foreign players, which restricts the permissible number of foreign players in any professional football club to a maximum of four in the professional league and two in the first division. As a result, they can enter into professional contracts and enjoy the same privileges and protections as Emirati players. In addition, they also benefit from FIFA's jurisdiction and the enforcement of FIFA's regulations (mainly with respect to the freedom of contract and freedom of movement), because their non-UAE citizenship provides the requisite international dimension for FIFA to assume jurisdiction over disputes involving such players. This means that the general doctrine of freedom of contract should prevail to the extent permissible for non-UAE national players.

Comment and the Difficulty with Article 13: Potential Discrimination

The interaction between the Resolution and Article 13 appears to raise issues of potential discrimination against UAE football players.

Article [20.1] of the Resolution allows certain non-UAE nationals to compete and play in official domestic competitions and to enjoy the privilege of being considered as local players. Therefore, an UAE football club that develops a non-UAE national junior player **cannot** oblige that the junior non-UAE player to enter into a first professional contract with the club under Article 13 (in contrast with Emirati players discussed in the section above).

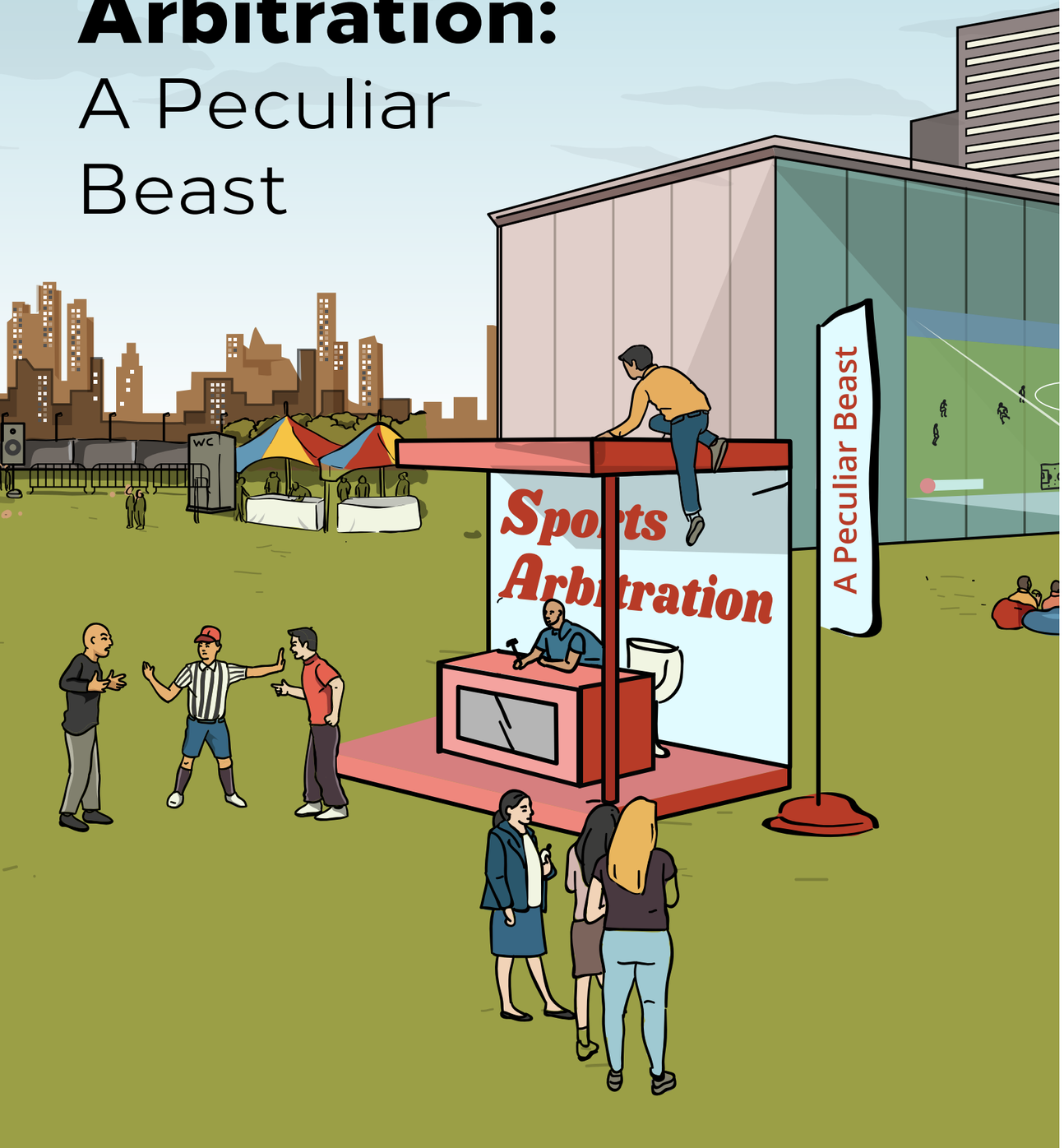
Before the issuance of the Resolution, the restrictions under Article 13 on Emirati players may have been disproportionate, but were somewhat understandable based on market requirements, sustainability and sports specificity. However, the Resolution has perhaps now cast it in a different light as it may appear to result in potential discrimination against Emirati players.

The rationale behind the obligations and restrictions stipulated in Article 13 could be construed as protecting the overall interests of football development in the UAE, by granting powers to protect the interests of clubs (particularly feeder clubs skilled at player scouting and development). However, such measures should still be proportional and non-discriminatory and should not prohibit players' fundamental rights.

In the authors view, issuance of the Resolution may have unintentionally raised concerns as to the proportionality of Article 13 and could open the door to challenges as to the legality of this Resolution. Therefore, regulatory reform may be required to be considered, including considering reducing the maximum term permitted for the first professional contract, imposing Article 13 across all categories of junior amateur players or waiving Article 13 in its entirety.

Al Tamimi & Company's Sports & Events Management team regularly advises on Player Contracts. For further information please contact Adam Powell (a.powell@tamimi.com) or Daniel M. Louis (d.louis@tamimi.com).

Sports Arbitration: A Peculiar Beast



Jane Rahman
Senior Counsel
Dubai, UAE
j.rahman@tamimi.com

Andrew Moroney
Associate
Dubai, UAE
a.moroney@tamimi.com

N.B. *A version of this article was originally published on LawInSport, the leading online international sports law publication.*

Introduction

Ever-increasing public and private sector investment into the Middle Eastern sports market, through high-profile sponsorship deals, investment in sporting properties and successful bids for major events, continues to transform the region into a major player in the global sports industry. Having a legal infrastructure that underpins such initiatives, particularly in relation to the resolution of disputes, is crucial to safeguard their long-term sustainability.

In broad terms, sports disputes tend to fall into two categories: commercial disputes; and disputes of a disciplinary nature. The former covers disputes relating to the execution of commercial contracts, such as those relating to player transfers, broadcasting rights, sponsorship rights or the staging of sporting events. The latter covers alleged breaches of a particular governing body's regulations designed to protect, amongst other things, the integrity of its sport, such as doping and match fixing.

In the UAE, as well as in many other GCC countries and in line with international practice, sports disputes are routinely referred to arbitration. The relevant contract and/or governing body's regulations will generally determine the appropriate forum for disputes to be resolved. Ordinarily, first instance disciplinary decisions are handed down by a non-arbitral dispute resolution chamber of the relevant governing body, usually with a right to appeal such decisions to an arbitral body either internally (i.e., an arbitral body set up by the governing body), nationally (e.g., a national sports arbitration centre) or internationally (e.g., the Court of Arbitration for Sport).

This article provides an overview of the internal, national and international sports arbitral bodies relevant in the UAE context, and goes on to consider some of the key differences between sports arbitration and commercial arbitration that underscore the need for bespoke sports arbitral bodies both locally and internationally.

Sports Arbitral Bodies

The Internal Dimension – Case Study: UAEFA Arbitration Committee

The Arbitration Committee of the UAE Football Association ('UAEFA') is a typical example of how certain UAE sports federations have established arbitral bodies to resolve certain disputes between stakeholders in their sports.

In accordance with FIFA's Statutes, the UAEFA Statutes contain a general prohibition on stakeholders (UAEFA members, players, officials, agents etc.) taking their disputes to local courts, unless specifically provided for in the UAEFA Statues or FIFA Regulations.

Instead, domestic disputes should be referred to the UAEFA, and international disputes referred to the Asian Football Confederation ('AFC') or FIFA.

The UAEFA Statutes state that the UAEFA's Dispute Resolution Chamber has jurisdiction to hear domestic disputes between clubs and players relating to employment contracts (save for certain matters that should be heard by local courts pursuant to UAE public policy considerations), training compensation and solidarity payments, with appeals being heard by the UAEFA's Arbitration Committee. Furthermore, the UAEFA Arbitration Committee Regulations confirm that its jurisdiction extends to: (i) disputes between parties who have agreed to submit their dispute to the Arbitration Committee; (ii) disputes between the UAEFA, its board, committees, members, players and/or intermediaries that do not fall under the jurisdiction of the UAEFA Judicial Bodies (comprising the Disciplinary Committee and Appeal Committee); (iii) cassation appeals against decisions of the UAEFA Judicial Bodies; and (iv) appeals against decisions of the UAEFA Player Status Committee. The UAEFA Statutes expressly exclude any jurisdiction on the part of the Court of Arbitration for Sport ('CAS') to examine any decision passed by the UAEFA Arbitration Committee. Hence, decisions rendered by the UAEFA Arbitration in respect of purely domestic disputes are final and there is no external right of appeal; it being noted that where the UAE's Federal Arbitration Law applies to the arbitration then its provisions, including its provisions in respect of setting aside an arbitral award, will apply.

The National Dimension

Given the special nature of sports dispute resolution and the requirement in certain sporting contexts to abide by specific international sports procedures, UAE legislators are mindful of the potential benefits of having a dedicated forum to resolve disputes in the sports sector. In 2013, the UAE Minister of Youth, Culture and Community Development formed a committee to draft the articles of association for a new UAE sports arbitration centre, prompted by a decision of the UAE National Olympic Committee that, inter alia, approved the formation of such an entity. A draft law creating a National Sports Arbitration Centre ('NSAC') has since been produced, which envisages the NSAC having jurisdiction to hear appeals challenging the decisions of UAE sports federations.

> **"Sports arbitration is a different beast to commercial arbitration. This is largely due to the overriding objective to facilitate consistency of decisions and public sanctioning, so as to uphold the integrity of sport in the eyes of fellow athletes and the general public.**

The draft law is yet to be promulgated and some UAE sports federations have made alternative interim arrangements either by expressly including a right of appeal to the CAS within their regulations or establishing their own internal arbitral body. The establishment of the NSAC remains a very attractive prospect and would help cement the UAE's status as a progressive sports market, following in the footsteps of the recently opened Saudi Sport Arbitration Centre ('SSAC').

The SSAC opened in 2016 and has its headquarters in Riyadh. It is an independent body established in accordance with the Olympic Charter, the CAS Rules and Regulations and the Saudi Law of Arbitration. It has exclusive jurisdiction to resolve sports-related disputes in the Kingdom of Saudi Arabia ('KSA'). Arbitration awards issued by the SSAC are final and not subject to appeal (unless otherwise stated in the Statutes of the SSAC or the relevant international federation). The applicable KSA arbitration law will determine what challenges, if any, an SSAC arbitral award may be subject to. The wide jurisdiction of the SSAC, and its range of specialised divisions (including, most notably, a specific football disputes division) is a laudable statement of intent and should help preserve the rights of sporting stakeholders and aid the broader development of the KSA sports sector.

The International Dimension: Court of Arbitration for Sport

The CAS, which is by far the best-known independent international sports arbitral tribunal, was established in 1984 in Lausanne, Switzerland on the initiative of the International Olympic Committee. It is an independent institution that facilitates the resolution of global sports-related disputes by arbitration or mediation, and has its own dedicated procedural rules that cater to the specific needs of the sporting world. Cases are heard by a sole arbitrator or a panel of three arbitrators, who the parties select from a closed pool of around 300 experts in sports law.

The CAS has three divisions. The Ordinary Arbitration Division determines first-instance disputes between sporting stakeholders that are generally commercial (rather than disciplinary) in nature. The Anti-Doping Division hears first-instance anti-doping cases. The Appeals Arbitration Division hears disputes arising from first-instance decisions made by sports governing bodies. In addition to providing Ordinary Arbitration, Anti-Doping and Appeal Arbitration services, the CAS also provides ad hoc expedited arbitration services at major sporting events, such as the FIFA World Cup and the Olympic Games.

Individuals and entities within the Gulf Cooperation Council ('GCC') sports sector have, for many years, submitted cases to the CAS and its role in providing a neutral, efficient and cost-effective mechanism to resolve sports disputes is well recognised across the GCC. Indeed, the Abu Dhabi Judicial Department entered into a partnership agreement with the International Council of Arbitration for Sport ('ICAS') in 2012 that paved the way for the opening of a CAS Alternative Hearing Centre in Abu Dhabi later that year, following in the footsteps of those opened in Sydney and New York. Such a development is recognition by ICAS that the region is a key growth market in professional sport, as demonstrated by the opening of Yas Marina F1 circuit in Abu Dhabi and the relocation of the International Cricket Council headquarters to Dubai, as well as the staging of major international sporting events including the 2022 FIFA World Cup Qatar, the FIFA Club World Cup, the AFC Asian Cup and numerous ATP tour tennis, European Tour golf and UCI cycling tour events. Crucially, it also affords local sporting stakeholders privileged access to the jurisdiction of CAS with concomitant time and cost efficiencies.

Unique Nature of Sports Arbitration

Sports arbitration has a number of features that make it different to standard commercial arbitration, such as:

1. **Public judgments** – many sports disciplinary cases result in a public judgment and sanction. Indeed, the CAS and many other national and international arbitral bodies often publish judgments on their websites to demonstrate to both the public and fellow athletes that justice is being done. This is in contrast to the strict confidentiality that ordinarily applies to commercial arbitration proceedings.
2. **Public hearings** – recent cases in the sports disciplinary context have emphasised the right to a fair hearing including, where desired by the athlete, the right to a public hearing. Part of the rationale for this is that public hearings reassure the public and fellow athletes as to the integrity of the proceedings and mitigate the potential for real or perceived bias, negligence or corruption in private proceedings. This is in contrast to commercial arbitration where it is usual for hearings to be held in private.
3. **Standardised penalties** – many sports governing bodies operate a tariff system for decision-makers to refer to when sanctioning athletes for disciplinary offences, for example in the context of anti-doping. The rationale for this is that sports disciplinary panels should not apply wholly inconsistent sanctions to similar offences. As a result, the outcome of certain sports arbitrations can be less discretionary than the outcome of commercial arbitrations.
4. **Lex Sportiva** – a body of sports law jurisprudence has developed over the years that, inter alia, ensures the fundamental principles of fairness and proportionality are borne in mind by decision-makers. Since sports arbitral awards are often public, sports arbitrators routinely refer to, and rely upon, the decisions of other arbitrators and governing bodies in analogous disciplinary cases which, whilst not binding in nature, are highly persuasive. This promotes consistency of decisions and reassures sporting stakeholders that analogous cases will be treated similarly. This contrasts with commercial arbitration where arbitral decisions are often confidential and not routinely available to guide subsequent arbitrators.
5. **Expedited proceedings** – sports governing bodies and ad hoc CAS tribunals routinely hand down decisions within 24 hours when required by the demands of sporting competition timetables e.g. when a footballer receives a red card and seeks to challenge his/her suspension for the next match which is only 48 hours hence. Although it is open to the parties to commercial arbitrations to agree the procedures that will apply to their dispute, including expedited proceedings, and although the rules of many commercial arbitration institutions provide for the same, it is rare for commercial arbitrations to be conducted with the level of expedition as many sports arbitrations.
6. **Interim measures and enforcement** – generally speaking interim measures are often more effective in the sporting context than general commercial arbitration, as sports governing bodies invariably comply with such orders (and arbitral awards) and have very effective and direct means of ensuring that their members do likewise (e.g. preventing them from taking part in a tournament). As a consequence, they are routinely sought to address issues discrete to sporting competition, such as provisional suspensions and transfer bans pending the conclusion of proceedings. The system of enforcement of interim measures (and arbitral awards) in standard commercial arbitrations is less predictable and may necessitate the additional time and expense of going to local courts.
7. **Closed list of arbitrators** – it is often the case in the sporting context (e.g. CAS arbitrations) that the parties may only nominate an arbitrator from a closed list of potential candidates. This restrictive system is justified on the basis that it ensures that sports law specialists determine such disputes. This is in contrast to standard commercial arbitration, where parties often have freedom to nominate an arbitrator of their choosing.
8. **Consistent legal seat** – the legal seat of all CAS arbitral proceedings, regardless of the venue of the hearing, is Lausanne in Switzerland. Hence, all CAS arbitrations are subject to Swiss arbitration law and decisions are only challengeable (in very limited circumstances) before the Swiss Federal Tribunal. This is also the case with other key Swiss-headquartered sporting institutions, such as FIFA and the International Olympic Committee. This consistency of seat and therefore the applicable procedural law is not replicated in standard commercial arbitration, where parties generally have the freedom to choose the seat of their arbitration.

As explored above, sports arbitration is a different beast to commercial arbitration. This is largely due to the overriding objective to facilitate consistency of decisions and public sanctioning, so as to uphold the integrity of sport in the eyes of fellow athletes and the general public. Consequently, bespoke arbitral bodies – on an internal, national or international level – are necessary in order to administer justice in the unique context of sport. Such bodies are efficient in terms of cost and time and help promote consistency in decision-making, which in turn reassures investors that the region's sports market is mature, predictable and worthy of investment.

"A body of sports law jurisprudence has developed over the years that, inter alia, ensures the fundamental principles of fairness and proportionality are borne in mind by decision-makers.

Al Tamimi & Company's Sports & Events Management team regularly advises on sports disputes and arbitrations. For further information please contact Steve Bainbridge (s.bainbridge@tamimi.com).

Football Players: Not a Third Party in the Context of TPO Ban

Pedro Castro
Senior Associate
Riyadh, Saudi Arabia
p.castro@tamimi.com

The New Edition of the FIFA RSTP: June 2019

The Fédération Internationale de Football Association ('FIFA') has published an amended version of its Regulations on the Status and Transfer of Players ('FIFA RSTP') effective as of 1 June 2019.

The amended version of the FIFA RSTP introduces only one but yet very important amendment that is relevant in the context of the prohibitions of Third Party Influence and mainly Third Party Ownership, also commonly known as 'TPO'. In particular, FIFA has amended the wording of the definition of "third party".

Under the new edition of the FIFA RSTP, "third party" is now defined as

> "a party other than the player being transferred, the two clubs transferring the player from one to the other, or any previous club, with which the player has been registered."

The previous version of the FIFA RSTP did not include any reference to the player object of a transfer, but only to the clubs transferring the player and to previous clubs. The new wording provides clarification as to the football player not being considered a 'third party' for the purposes of the prohibition of TPO arrangements.

Background of the TPO Ban

TPO refers to a contractual arrangement in which the economic rights of a football player are assigned, either in full or in part, to any type of investor, including but not limited to agents, sports management companies and investment funds. TPO typically relates to the right to receive a percentage of the value of a future transfer of a player to another club, which is assigned to an investor pursuant to a certain financial investment made in a football club.

TPO arrangements have been common practice in South America as well as Portugal, Spain and Eastern Europe.

In 2006, Premier League team West Ham United signed Argentinian top players Carlos Tevez and Javier Mascherano. Upon completion of the said transfers, it was found that the economic rights of both football players were owned by offshore investment funds. This situation shocked the football community in England, particularly because the investment funds had the right to influence and decide on the future transfers of each player, including the new club and the transfer fee.

Due to concerns pertaining to the integrity of competitions as well as the development of young players, the English Football Association ('FA') prohibited TPO starting from the 2008-2009 season. A few years later, the FA and the English Premier League initiated discussions with other associations and FIFA so as to ensure that a TPO ban could be introduced worldwide.

In September 2014, after due consideration of all implications related to TPO, the FIFA Executive Committed passed a general principle of a ban on TPO. Accordingly, the FIFA RSTP were amended and a new Article 18ter was introduced in the version that came into effect on 1 January 2015 stating as follows:

18ter Third-party ownership of players' economic rights

1. *No club or player shall enter into an agreement with a third party whereby a third party is being entitled to participate, either in full or in part, in compensation payable in relation to the future transfer of a player from one club to another, or is being assigned any rights in relation to a future transfer or transfer compensation.*
2. *The above-mentioned interdiction is to come into force on 1 May 2015.*
(...)

Subsequent to the decision of FIFA to ban TPO, the European Parliament also issued a Written Declaration dated 11 November 2015 regarding the ban on TPO of players in European sport. The said Written Declaration of the European Parliament encompassed all team sports.

The prohibition of TPO arrangements is aimed at protecting the integrity of competitions, sportsmen and women, by sustaining the independence and autonomy of football clubs and players.

Relevant Decisions of FIFA Disciplinary Committee

On 26 June 2018, FIFA issued a press release concerning the interpretation of 'third party' in four distinct cases involving the following clubs: SV Werder Bremen (Germany), Panathinaikos FC (Greece), CSD Colo-Colo (Chile) and Club Universitario de Deportes (Peru). Such cases related to the remuneration terms agreed with certain football players and whether there would be any issue pursuant to the limitation of TPO under Article 18ter of the FIFA RSTP. In addition, FIFA also considered Third Party Influence pursuant to Article 18bis of the FIFA RSTP.

In particular, the said football clubs have agreed with certain players that the players would be entitled to receive, as part of the remuneration package, an additional amount in a future transfer to another club. The FIFA Disciplinary Committee decided that in such circumstances the additional amount, either a lump sum or a percentage of the transfer fee, was not considered a violation of Article 18ter of the FIFA RSTP. Thus, FIFA considered that the player would not be deemed a 'third party' for the purposes of TPO.

However, the FIFA Disciplinary Committee concluded that the agreements between CSD Colo-Colo and Club Universitario de Deportes were a violation of Article 18bis of the FIFA RSTP as it enabled one football club to affect the other club's independence. The clubs were fined in the amounts of CHF 40,000 and CHF 30,000, respectively, based on the findings of Third Party Influence.

"It has now been clarified that football players are not considered a 'third party' for the purposes of TPO.

"Third Party Ownership refers to a contractual arrangement in which the economic rights of a football player are assigned, either in full or in part, to any type of investor.

It was based on the cases described above that FIFA discussed and approved the amendment of the definition of 'third party' in the FIFA RSTP.

The Impact of the New Definition of 'Third Party'

As explained, the previous version of the FIFA RSTP only made reference to the clubs transferring the player and to previous clubs of the player. Although it was possible to argue that a player, by nature, should not be deemed to be a third party with respect to his/her transfers, the situation was not clear under the previous definition of 'third party'.

With the amendment introduced by the new edition of the FIFA RSTP, it has now been clarified that football players are not considered a 'third party' for the purposes of TPO.

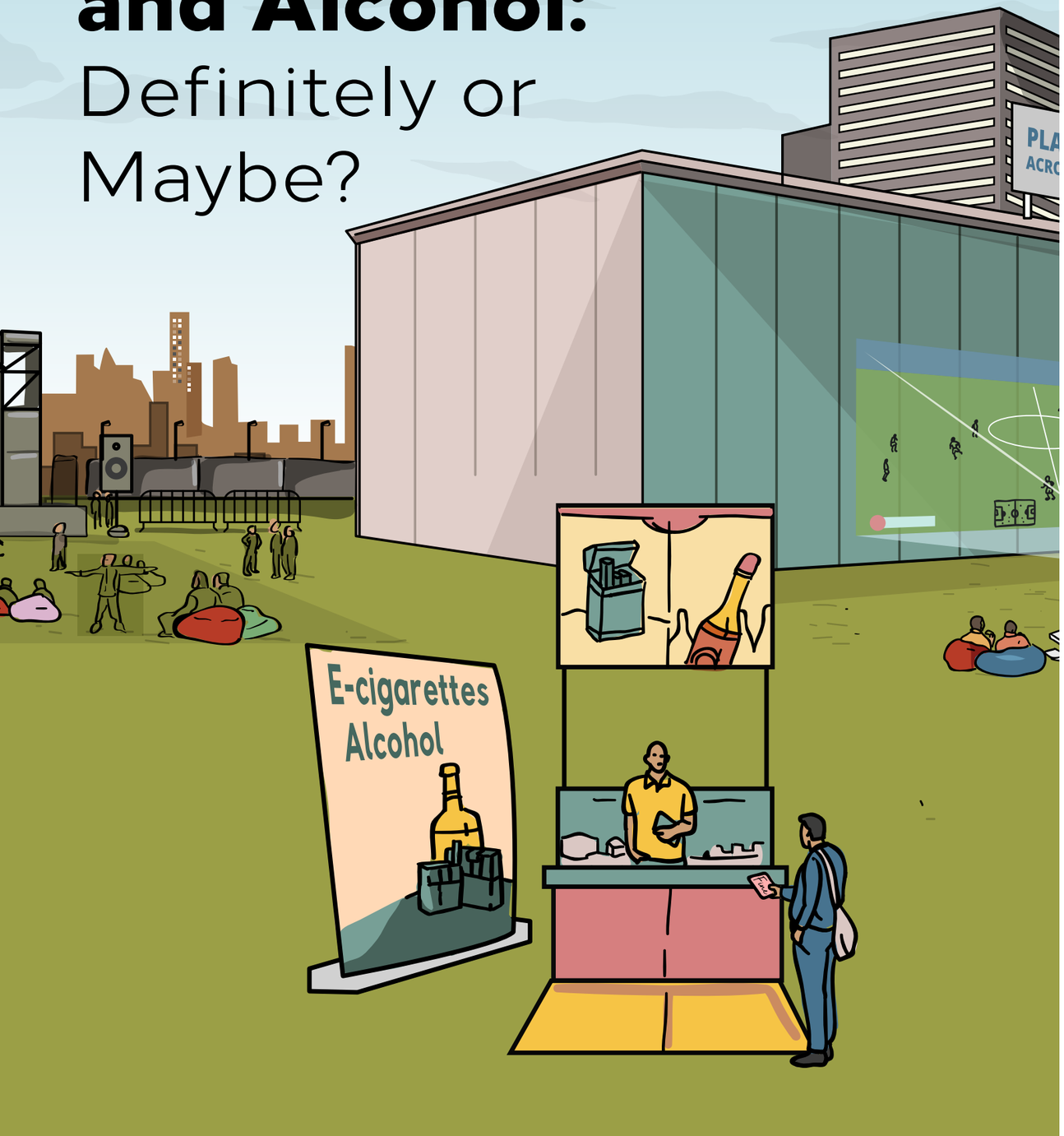
This will certainly potentiate the increase of the number of agreements granting players the right to receive a percentage of the relevant transfer fee in future transfers.

With the registration period (i.e. transfer window) now open and with many players being transferred to new clubs during the summer, the impact should be immediate.

On 1 July 2019, FIFA announced that in a meeting held on 3 June 2019 the FIFA Council approved additional amendments to the FIFA RSTP which will come into force in October 2019. The KSA Sports Team will provide a separate update on the extent and potential impact of these additional amendments in due course.

Al Tamimi & Company's KSA Sports & Events Management Team regularly advises on transfer of football players. For further information please contact Bandar Al Hamidani (b.alhamidani@tamimi.com) or Pedro Castro (p.castro@tamimi.com).

E-Cigarettes and Alcohol: Definitely or Maybe?



James McMillan
Senior Associate
Dubai, UAE
j.mcmillan@tamimi.com

Andrew Moroney
Associate
Dubai, UAE
a.moroney@tamimi.com

***N.B.** A version of this article was originally published on LawInSport (19, June 2019), the leading online international sports law publication.*

The laws in the UAE concerning the sale, promotion and consumption of e-cigarettes, tobacco and alcohol can be tricky to navigate. Recent regulatory developments in the e-cigarette space have provided a welcome degree of clarity; however, venue owners, event managers and other sporting stakeholders should proceed with caution in this area to avoid falling foul of the law and offending local customs. This article provides an overview of the current regulatory landscape.

New National Standards for E-Cigarettes

The Emirates Authority for Standardisation and Metrology ('ESMA') recently issued new standards for Electronic Nicotine Delivery systems ('ENDs', also known as 'e-cigarettes' or 'vapes'). This has caused a flurry of activity amongst wholesalers and retailers alike who, for the first time, may legally import and sell such devices and affiliated products in the UAE marketplace from April 2019.

Under the new ESMA standards (5030:2018), wholesalers and retailers may import and sell e-cigarettes, electronic pipes, electronic shisha devices and e-liquid refills, so long as they conform to certain legal requirements and carry appropriate health warnings. Previously, such activities were not permitted under UAE law.

This relaxation of the restrictions on e-cigarettes and associated products has prompted a robust warning from the UAE Ministry of Health and Prevention ('MOHAP') that such products are potentially unsafe, particularly for young people. A recent MOHAP circular to healthcare facilities specifically alerted doctors to check whether e-cigarettes have been a factor in any reported fits or seizures, in light of similar concerns raised in the US market. The circular requests that doctors clarify whether patients have been using e-cigarettes, obtain details of the e-cigarette brand and duration of use, observe blood and/or urine cotinine levels and report any concerns to MOHAP as regards adverse reactions to e-cigarette products.

Despite the abiding concerns regarding the safety of e-cigarettes, increased regulation should allow authorities to clamp down on the hitherto active black market in illegally imported (and often dangerous) devices and refills sold in the UAE. This development also perhaps reflects a commonly held view that e-cigarettes are the lesser of two evils when compared to regular cigarettes. However, their use remains subject to much the same controls as regular cigarettes in the UAE, including a prohibition on use in certain public areas such as shopping malls and cinemas.

Advertising of E-Cigarettes and Tobacco

The advertising of e-cigarettes and tobacco products remains prohibited in the UAE. Federal Law No. 15 of 2009 regarding Tobacco Control restricts direct and indirect tobacco advertising, promotion and sponsorship; and imposes legal obligations in respect of health warnings on packaging and labelling. Cabinet Decision No. 24 of 2013 concerning the Implementation Regulation for the Federal Tobacco Control Law also sets out further restrictions in relation to advertising, promotion and sponsorship. Consequently, direct tobacco advertising (e.g. national TV, newspapers, magazines, internet advertising and billboard advertising) is prohibited, as is free distribution, promotional discounts and sponsorship. In addition, the UAE is a signatory to the World Health Organisation Framework Convention on Tobacco Control ('WHO FCTC') and is thus under an obligation to implement comprehensive restrictions on tobacco advertising, promotion and sponsorship . Prevailing health concerns and the addictive nature of nicotine mean that it is highly unlikely that any change will be made to UAE advertising laws to accommodate e-cigarettes.

In the sporting context, rights holders, teams and venue owners are increasingly cognisant of developments in the e-cigarette space. Sport has had a chequered history of dependence on tobacco sponsorship revenues over the years. Formula 1, in particular, was synonymous with tobacco advertising for decades until it was banned in 2007, prompting the exit of long-time sponsors such as West and Lucky Strike from the sport. Nevertheless, the 40+ years association between Phillip Morris International ('PMI') and Scuderia Ferrari endured, albeit largely reduced to a corporate hospitality footing. That remained the case until 2018, when PMI's 'Mission Winnow' branding appeared on Ferrari's cars and driver's helmets in the final five Grand Prix races of the 2018 season, including the season-ending Formula 1 Etihad Airways Abu Dhabi Grand Prix. Mission Winnow is a CSR initiative to showcase PMI's scientific pursuit of less harmful ways to consume tobacco. Following closely on PMI's heels, British American Tobacco ('BAT') announced an eight-year partnership with McLaren from 2019 onwards, under 'A Better Tomorrow' branding designed to promote BAT's portfolio of 'potentially risk-reduced products'.

Sport has had a chequered history of dependence on tobacco sponsorship revenues over the years. Formula 1 in particular was synonymous with tobacco advertising for decades until it was banned in 2007.

The extent to which such campaigns will be tolerated remains to be seen. Early signs suggest that host countries, rather than sporting regulators, will take the lead on this front. Indeed, increased scrutiny by Australian regulators (and calls from the World Health Organisation) appears to have played some part in Mission Winnow and 'A Better Tomorrow' branding being removed for the 2019 season-opening Australian Grand Prix (although PMI deny any link in this regard). Mission Winnow was also removed from the 2019 official team name of Scuderia Ferrari, having formed a part of it in pre-season testing. Mission Winnow and 'A Better Tomorrow' branding did, however, appear at subsequent Grand Prix, with McLaren taking matters a step further by including Vype (a BAT e-cigarette product) branding as part of its car livery at the 2019 Bahrain Grand Prix, marking the first occasion a Formula 1 team has promoted an e-cigarette product by name.

Federal Law No. 15 of 2009 prohibits the promotion of tobacco products directly and by any other means which stimulate trading and increase the number of users. UAE Cabinet Decision No. 24 of 2013 prohibits the direct or indirect provision of information regarding tobacco products with the aim of encouraging the tobacco trade or increasing the number of tobacco consumers. Similarly, tobacco advertising and promotion are defined broadly in the WHO FCTC and capture activities having the effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly. It seems likely therefore that the lawfulness of the PMI and BAT campaigns under UAE law will hinge on whether e-cigarettes are considered to fall within the definition of 'tobacco products' (which is a matter of some debate as, for example, some e-cigarettes contain laboratory synthesised nicotine, rather than nicotine derived from tobacco) and the extent to which such campaigns are considered to indirectly promote such products.

Albeit less headline-grabbing in nature, the legalisation of e-cigarettes could also lead to other practical considerations for sporting venue owners and attendees. For example, larger designated smoking zones may be needed at venues to reflect the increasing popularity of such products. Visitors to Expo 2020 Dubai and tourists in the UAE, will be pleased that they can, if they so wish, bring their e-cigarettes with them into the UAE or purchase such products whilst in the UAE without falling foul of local laws.

Alcohol: Sale, Consumption and Advertising

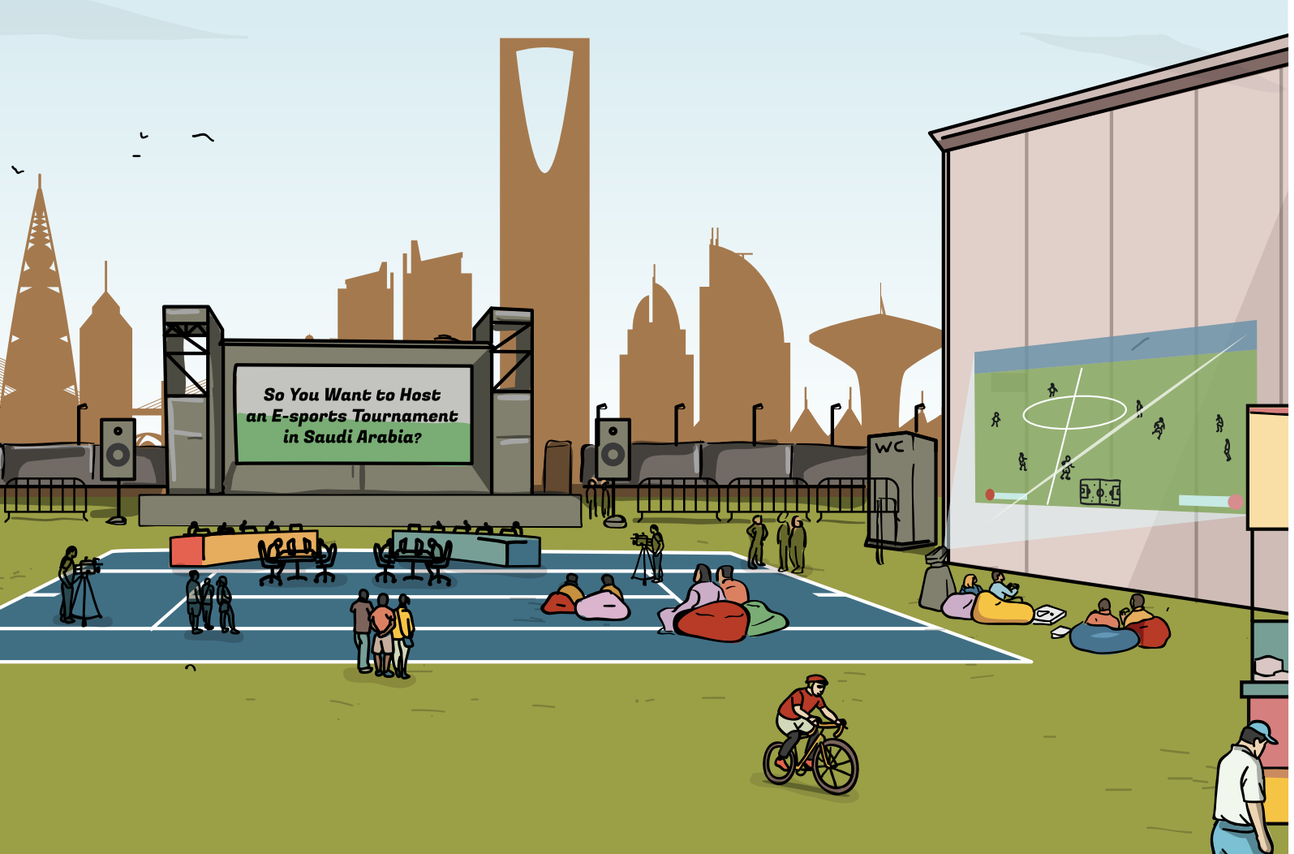
The position as regards alcohol sale and consumption in the UAE is more settled, being only permitted in specific designated areas, including licensed restaurants and bars attached to hotels. It is acceptable for tourists and non-muslim UAE residents to drink alcohol in such locations, provided that the latter obtains an alcohol licence before doing so. Anyone brought to the attention of the police who has consumed alcohol may be arrested outside of the designated area where they consumed the alcohol. Being drunk and disorderly, in a public area in the UAE is a serious offence and may result in imprisonment for up to six months and fines of between AED 1,000 to 2,000. In addition, there is a zero tolerance approach to drink driving. Holding an alcohol licence does not permit that person to drink in public places or to be intoxicated in a public area, in accordance with Dubai Law No. 16 of 1972 concerning alcohol beverage control.

The UAE's National Media Council has issued guidelines for advertisers, making it clear that advertising for alcohol (and e-cigarettes/tobacco) is prohibited in all forms in the UAE, including social media. A contravention of the NMC guidelines could result in that company being fined and shut down for six months, as well as the senior management being at risk of imprisonment under the UAE Penal Code. However, confined alcohol promotion at sports and other mass attendance events in the UAE is a relatively common sight, purportedly under the umbrella of the alcohol licence held by the relevant establishment on such occasions. Accordingly, attendees at events such as the Dubai Duty Free Tennis Championships, the Emirates Airlines Dubai Rugby Sevens and the newly opened Coca-Cola Arena may see contained alcohol promotion, for example branded neon signs, brand specific bars, and 'two for one' offers. Often such promotions are in screened-off areas at such venues, but this is not always the case. This may indicate that the level of understanding of the relevant laws is inconsistent, or simply that some stakeholders are more alert to the risks than others.

Navigating the UAE regulatory landscape therefore requires careful thought, in particular by alcohol and e-cigarette companies, venue owners and event operators alike to ensure that all relevant federal and local laws are complied with and local customs respected.

Al Tamimi & Company's Sports & Events Management team regularly advises on regulatory issues in the sports and events sector. For further information please contact Steve Bainbridge (s.bainbridge@tamimi.com).

So you want to Host an E-sports Tournament in Saudi Arabia?



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

Sarah AlSaif
Associate
Riyadh, Saudi Arabia
s.alsaif@tamimi.com

Saudi Arabia boasts a rising number of globally successful Saudi e-sports champion players, and e-sports are hugely popular. Therefore, you may be wondering, how do I host an e-sports event in Saudi Arabia, or an online e-sports tournament targeting Saudi players? Do I need a permit or licence? How do I bring e-sports stars from other countries to test their mettle against Saudi players here in the Kingdom? This article sheds some light on the process.

The Saudi Arabian Federation for Electronic and Intellectual Sports ('SAFEIS') was established in October 2017 to foster and manage the development of the Saudi e-sports industry, issue permits and licences for e-sports tournaments and ensure that such tournaments comply with a few basic integrity and public safety-type considerations. While SAFEIS is the key authority in Saudi Arabia responsible for approving e-sports events, the General Entertainment Authority ('GEA') has been established to manage the development of entertainment and public events in the KSA more broadly and will also be involved for certain aspects of "on-the-ground events".

The most important recent achievements of Saudi Arabia in terms of seasonal e-sports events are qualifying for the FIFA 2018 World Cup; the National Championships for Small Dialogue; the Kingdom of Balot Championship; and the Bodyweight Cup for the Rammers, which was hosted in Saudi Arabia over five days.

In line with one of the pillars of Vision 2030, the organisation of such e-sports events is now becoming more open in term of participation by both local and foreign entities. The role of the participants is to organise and contribute with SAFEIS by signing agreements governing the organisational relationship between the participant company and SAFEIS. For instance, SAFEIS has contracted with a well-known local food restaurant to be an exclusive partner for food services in the upcoming SAFEIS e-sports events, in which the participant in such food services obtained certain permits from SAFEIS. However, the companies may be required to obtain a licence from other government authorities in addition to SAFEIS, depending on the activities included in the e-sports events, most commonly the GEA.

Legal Requirements Specific to E-sports Events

There is a requirement to comply with the SAFEIS E-sport Competitions and Tournaments Regulations.

There are age limits associated with competing in an e-sports tournament. While they are not set out in the regulations, we expect it is likely that if an event is open to players under the age of 18 this should be flagged to SAFEIS for its prior approval.

There are certain integrity rules, for example that devices must be identical for all players. Device specifications must be sent to SAFEIS for approval for the largest types of tournaments. If you have your own equipment, the rules also allow players to use their own devices where such devices are not prohibited. Our expectation is that if a player's individual device conforms with specifications pre-approved by SAFEIS, it would be permitted. The use of a player's own device should be flagged to SAFEIS in the licence application process.

SAFEIS requirements differ depending on the size of the tournament. When competitions are free to enter, small and do not involve the award of prizes, there is no need to engage with SAFEIS.

"In line with one of the pillars of the Kingdom's Vision 2030, the organisation of e-sports events is now becoming more open in terms of participation by both local and foreign entities.

licence must also be obtained. The temporary permit is issued on an event-by-event basis. (Whether or not this includes the various rounds of an e-sports event is unclear in the Regulations and is something that may depend on individual tournament format.) Permits are temporary and cannot be transferred or re-used. Future competitions may not be announced on the basis of holding a permit for a particular e-sports tournament.

While there is no fee for a temporary permit or licence, operational fees are payable to SAFEIS per day that the competition is occurring. Such operational fees increase in proportion to the size and scale of the event.

Generally, for small e-sports tournaments, it is not permitted to use the SAFEIS logo for any reason in association with the tournament. However, for larger tournaments, use of the SAFEIS logo can be agreed with SAFEIS on a case-by-case basis. Organisers should be aware that they are required to send information to SAFEIS both before and after the competition, such as data about the participants (before the competition) and results (after the competition).

As would be expected, for larger events, rules and referees should be pre-approved by SAFEIS and publicly announced in advance once approved by SAFEIS. There are also other requirements, such as appointing team liaison officers who have responsibility for team conduct before SAFEIS. Larger tournament organisers must also update SAFEIS regarding certain changes to event schedules and other details.

Small public or private tournaments that impose a participation fee and award prizes must obtain a temporary permit from SAFEIS in advance. For smaller scale competitions, either individuals or entities may apply for a temporary permit, but for larger competitions, only entities institutions may do so, and a

Infringement of SAFEIS Regulations

SAFEIS officers attend e-sports events and will monitor activity for any violations and refer them to a Disciplinary Committee. Punishments for violations of the rules may be imposed, including revocation of a licence, repayment of fees to players and fines of up to 100,000 Saudi Riyals (about 30,000 USD). A licence may be cancelled or suspended for certain conduct including:

- violations of public order, morals or endangerment to security, public health, environment or safety;
- forgery, fraud or misleading information in any documentation or application submitted to SAFEIS by the event organiser;
- misuse of the SAFEIS logo; and/or
- assignment of a licence without SAFEIS's prior written approval.

On-the-ground Events

As mentioned by Prince Faisal bin Bandar, the President of SAFEIS "*By organizing these events we aim to increase the recognition of the legitimacy of gaming and e-sports as an economic source rather than simply as entertainment.*" It is a growing global competitive sport with a path joined by participants from anywhere in the world, representing a very significant economic opportunity for us as in Saudi Arabia "Our focus is on helping the state explore and expand the entire gaming industry by opening up new ways to participate and benefit from it."

The GEA was established by Royal Decree on 30 Rajab, 1437H corresponding to 7 May 2016 to organise, develop, and lead the entertainment sector in Saudi Arabia. GEA contributes to e-sports events with a view to improving and enriching the lifestyle and social cohesion among the community. It also works with SAFEIS in providing licences and permits to the participating companies related to the entertainment and peripheral events associated with an e-sports event.

The essential conditions for obtaining such licences are that the applicant:

- can demonstrate sufficient experience in the field of entertainment;
- provides a complete operational plan for the entertainment activity with which the licence complies as determined by the GEA criteria;
- provides a detailed marketing plan for the contemplated entertainment activity;
- obtains all other necessary licences from all relevant authorities;
- the participating companies shall not be from the prohibited list in GEA; and
- confirms that the content of entertainment activity shall not include anything that violates the culture and values of Saudi Arabia.

The General Authority for Sport may also co-operate with these seasonal events, in relation to the Facility Reservation Service to enable companies and governmental organisations to apply for a reservation to the sports facility under certain terms and conditions set out by the authority.

What's Next?

Given the enormous popularity of e-sports we expect continued interest by Saudi Arabia's young population and therefore an attractive opportunity for those looking to involve Saudi players in their tournaments. If you are hosting an event in Saudi Arabia, you may need to obtain a SAFEIS licence, and other licences depending on the peripheral entertainment. If you are hosting an e-sports event targeting Saudi Arabian players you would be well advised to inform SAFEIS and potentially apply for a permit. As of 13 June 2019, the e-sports rules have not been made publicly available, so talking with local experts experienced in advising on Saudi Arabian events both virtual and 'on-the-ground' will be a must.

Al Tamimi & Company's Corporate Commercial and Technology, Media and Telecommunications teams regularly advise on virtual and on-the-ground sports events and other entertainment. For further information please contact Sarah Al Saif (s.alsaif@tamimi.com) or Amy Land Pejoska (a.pejoska@tamimi.com).

How can an Employer Effectively Manage its Employees?

Sabrina Saxena
Associate
Dubai, UAE
s.saxena@tamimi.com

On 3 January 2019 news broke that a football coach of one of the UK's leading clubs, Craig Bellamy, had "*temporarily removed*" himself from his coaching position in order to co-operate with the club's investigation into various allegations of bullying. It is not clear whether a temporary removal would amount to a resignation or rather a request to be placed on a period of suspension pending the outcome of an investigation. This scenario has prompted a number of questions into the steps an employer can take when it becomes aware of allegations into employee misconduct. If Craig Bellamy is found guilty of these allegations, would this justify a fair dismissal? We consider the position from a UAE perspective below.

Investigations and Disciplinary Action

In the UAE, the statutory investigatory and disciplinary processes are watered down in comparison to many other jurisdictions including the UK and Europe.

Prior to any disciplinary sanction being imposed, the UAE Labour Law requires an employer to ensure that:

1. the employee has been notified in writing of the allegations against him;
2. the employee has been given an opportunity to comment on or provide an explanation relating to the allegations; and
3. it has investigated any defence provided by the employee in respect of the allegations.

An employer must initiate this procedure within 30 calendar days of discovering the alleged misconduct, and any disciplinary sanction must be imposed within 60 calendar days of the investigation having been concluded and a decision to uphold the allegations.

Ensuring the correct procedure is followed before implementing a particular disciplinary sanction is important to avoid litigation and best protects the employer should a claim be filed by an employee.

Unlike other jurisdictions, there are no best practice guidelines detailing the conduct of any disciplinary meetings or notifications, apart from providing the employee an opportunity to comment on the allegations against him/her and to provide any relevant explanation or defence.

Irrespective of an employee's misconduct, if an employer fails to comply with the statutory procedure, any subsequent dismissal could be deemed by the Labour Courts as unfair. The Labour Law permits an employer to impose certain penalties on its employees, which include a warning, fine, or dismissal (with or without notice) subject to the employer having first followed the above disciplinary process.

Suspensions

In certain circumstances, for example, in Craig Bellamy's case and in light of the club's safeguarding concerns, an employer may be minded to temporarily suspend an employee pending the outcome of the internal investigation. But can an employer do this in the UAE?

The answer is, yes. The UAE Labour Law makes two references to suspension: one as a form of disciplinary penalty; and the other where an employee is charged with a crime. Suspension is rarely applied as a disciplinary sanction and if so, it is limited to 10 days as 'reduced' pay.

It is much more common that an employer will temporarily suspend an employee where a suspension would help to protect the integrity of its investigation. It is considered best practice to suspend the employee with pay and this is the most common approach adopted in the UAE. Whilst the Labour Law does not specify a specific timeframe for paid suspensions, practically, the employer should ensure that the investigation is completed in a timely manner, and any period of suspension is kept to a minimum.

An employee may however be suspended from work without pay where a criminal complaint has been submitted and is undergoing investigation. If the UAE public prosecution does not issue an indictment or if it does but the employee is acquitted of the crime by the criminal courts, the employee must then be reinstated and paid for the period of the suspension. However, if the employee is convicted, there is no requirement to pay the employee for the suspension period and he/she may then be summarily dismissed based on the conviction. We look at terminations below in more detail.

Terminations

In general, an unlimited term contract may either be terminated at any time on written notice, or summarily for gross misconduct. If, in this case, the allegations against Craig Bellamy were upheld, the club should consider whether the termination of his employment is warranted under the circumstances.

Where a contract is terminated on notice, this must be for a 'valid reason'. Although there is no definition of a 'valid reason' in the UAE Labour Law, an employee's employment will be deemed to have been arbitrarily terminated if the reason for the termination was 'irrelevant to the work'. In such circumstances, an employee has the ability to bring a claim for unfair/arbitrary dismissal which, if successful, would be payable in addition to his/her contractual and statutory entitlements.

The maximum compensation arising from a finding by the Labour Court of arbitrary termination is three months' total salary. The actual amount of the award, if any, is ultimately determined by the Labour Court and is generally dependent on service length. Where a detailed disciplinary procedure has been undertaken in advance of the dismissal, this assists in mitigating the risk of any award for arbitrary dismissal compensation.

In our experience, in order to successfully rely on an employee's performance or misconduct as a reason for termination, the Labour Court would expect to see that three or four warnings have been issued to an employee prior to dismissal.

In contrast to the UK position, the UAE Labour Law sets out an exhaustive list of circumstances in which an employee's employment may be terminated summarily and without end of service gratuity. The threshold for a summary dismissal for gross misconduct is extremely high and often requires a criminal conviction prior to dismissal. Where such a dismissal is not justified, it is very likely that the employee will proceed to file a claim at the Labour Court, which the employer will be unable to defend.

"The threshold for a summary dismissal for gross misconduct is extremely high.

In all circumstances, it is recommended that termination advice be sought on a case by case basis.

"Ensuring the correct procedure is followed before implementing a particular disciplinary sanction is important to avoid litigation.

What Should an Employer do in Practice?

In order to circumvent the legal consequences associated with the termination of an employee on disciplinary grounds, it is important that the employer follows a fair and reasonable process. It is recommended that employers introduce and thereafter maintain a disciplinary policy, which not only complies with the UAE Labour Law disciplinary procedure, but also provides a degree of flexibility allowing the employer to exercise its reasonable discretion. Employees should have access to the policy, which should serve as a guide throughout the disciplinary process. Where disciplinary action is taken, this should always be justifiable and considered in light of the specific and particular circumstances of the situation.

Al Tamimi & Company's Employment & Incentives team regularly advises on all employment related Sports & Events Management Practice matters. For further information please contact Sabrina Saxena (s.saxena@tamimi.com).

Investment in Egypt, Challenges and Aspirations

Our region and the world economy continue to face tumultuous times, starting with the recent rise in tensions between Iran and the US to the escalating conflict in Yemen and the raging trade war between the US and China. In spite of that, Egypt emerged from the conflict that seems to engulf the whole globe as a beacon of political stability, economic growth and social development.

Despite all the challenges we still face in education, healthcare and poverty, the government has truly made herculean efforts to limit the suffering of the population and achieve prosperity for all. We have already seen the Virus C epidemic vanishing, informal housing's near disappearance and tangible education and healthcare reforms.

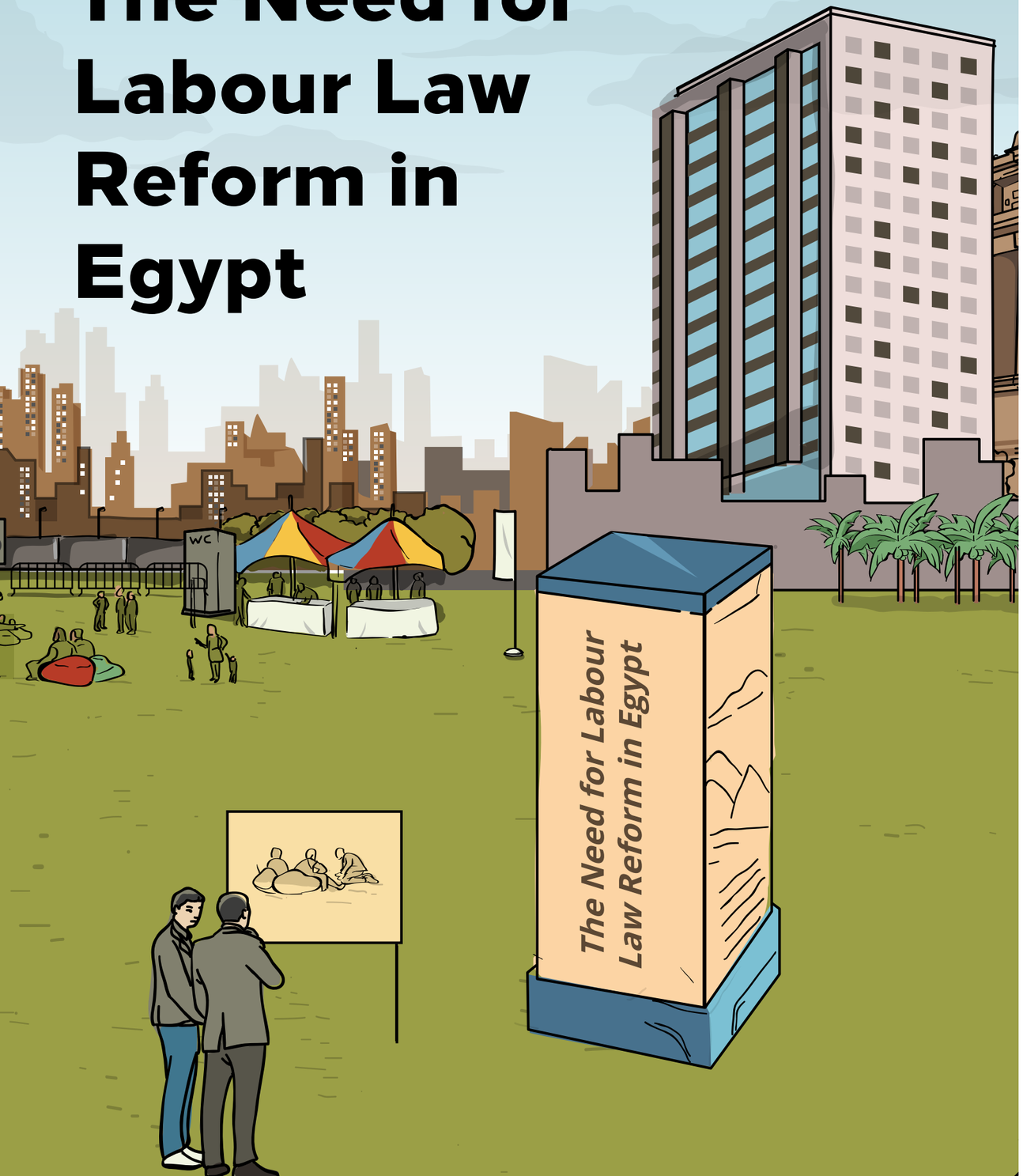
Egypt has a strategic geopolitical link to both the GCC and the African continent. It has been able to prosper and regain its leadership position in the Arab world. On the other hand, the current administration's determination to strengthen Egypt's ties with its African brethren has opened up investment avenues that thus far had remained untapped.

In this issue, we touch on recent developments including changes to capital markets regulations and incorporation procedures. We also discuss legal developments that are in the pipeline as well as the changes that we believe our clients wish to see such as the upcoming data protection law and the need for labour law reform.

We hope you find this issue insightful and thought-provoking. For any queries please feel free to get in touch with me directly at a.nour@tamimi.com.

Ayman Nour
Partner,
Head of Office - Egypt
Cairo, Egypt
a.nour@tamimi.com

The Need for Labour Law Reform in Egypt



Ayman Nour
Partner, Head of Office - Egypt
Cairo, Egypt
a.nour@tamimi.com

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

The Egyptian Labour Law needs significant changes in order to keep up with existing practices and in order to avoid exacerbating negative effects on the employer, employee and the economy at large. This is why a new Labour Law to replace the existing Labour Law is currently being discussed in the Egyptian Parliament. Though several important amendments are being discussed, the general direction in Parliament is still unclear. Moreover, the date of any promulgation is still difficult to discern given the discussions currently taking place. Therefore, instead of discussing the proposed amendments, which may or may not be included in the final version of the law, we shall address the need for reform from the perspective of companies, especially foreign entities, operating in Egypt.

The purpose of the need for reform is not to reduce the employee's rights but to provide both clarity and flexibility to companies wishing to conduct business without the need to resort to unregulated solutions. It is all the more important to seriously discuss reforms in light of governmental efforts to increase Egypt's global competitiveness in attracting foreign investment.

The current regime governing labour relations in Egypt has been in place since 2003 when Labour Law no. 12 ('Labour Law') which replaced law no. 127 of 1981 came into force. Although the Labour Law has only been in place for 13 years, its inability to deal with current market practices has been fairly obvious since its promulgation. However, in comparison to its predecessor, the Labour Law has made significant strides in the right direction, although it still remains unable to deal with some basic market trends.

One of the Labour Law's main issues requiring reform is the type of employee it envisions protecting. It tends to deal with employees as manual labourers. While a significant portion of the Egyptian population do indeed work in the field of manual labour, a significant portion of the population has desk jobs. Moreover, given the changing nature of the Egyptian economy into a more capitalistic market, it requires corresponding legislative reform to ensure that neither employer nor employee is treated unfairly.

Lack of Clarity and Flexibility in Termination Procedures

There are two main articles governing termination by the employer in the Labour Law. On one hand, Article 69 provides for the instances of gross fault under which an employee can be dismissed or fired. Such instances include where an employee:

- assumed a false identity or submitted false documents;
- acted negligently, causing the employer considerable loss, provided the employer notifies the competent authorities of the incident within 24 hours of becoming aware of it;

- failed to observe written instructions, displayed in a prominent place, compliance with which is necessary to ensure the safety of the workers and of the establishment, despite his/her receipt of a previous written warning;
- has been absent without a valid reason for more than 20 days in a year, or for more than ten consecutive days, provided that the worker is first warned in writing by registered mail with acknowledgment of receipt by the employer after ten days' absence in the former case and after five days in the latter;
- divulged confidential information of the enterprise employing him/her, which caused serious damage to the enterprise;
- has been competing with the employer in the same field of activity;
- has been found in a state of obvious intoxication or under the influence of drugs during working hours;
- assaulted the employer or the employer's representative, or has committed a serious act of violence against any of his/her superiors during or in connection with his work; and/or
- has not respected the provisions regulating the right to strike.

Moreover, such termination must be issued by the competent labour court.

On the other hand, Article 110 provides that that the employer can terminate the employment agreement for incompetence in accordance with the approved work regulations or in accordance with the violations mentioned in article 69, provided notice of at least two months is served.

The aforementioned articles trigger two issues. The first is the jurisdiction of the labour court to rule on the termination of the employee. The second is whether the employer has the right to terminate for incompetence after providing sufficient notice and without the need to resort to obtaining a court order.

The general academic consensus has been that termination cannot occur unless a gross fault, on par with those mentioned in article 69, occurs and that such termination must be effected by a court order. In addition, appropriate investigation procedures must be conducted.

It is worth noting that Article 122 stipulates that in the case of unfair dismissal, the labour court must award at least two months' salary per year of service.

It is important to highlight the difficulties faced by employers who are forced to resort to court for an order to effect the dismissal of an employee. One of the most significant issues is the prohibitive duration and cost of court proceedings in Egypt. A simple dismissal case can take up to two years in court before a judgment is reached, not to mention the legal fees which are often more costly than the compensation itself. Labour courts are also often employee biased. Therefore, the court is likely to grant compensation to dismissed employees unless there was a clear and gross violation on their part.

"The Egyptian Labour Law needs significant changes in order to keep up with existing practices and in order to avoid exacerbating negative effects on the employer, employee and the economy at large.

Market Practice

As a result of such confusion, as well as the inhibiting conditions under which a termination can occur, employers often resort to one of two methods of dismissal that are not explicitly mentioned in the law. The first is to obtain the employee's resignation through negotiation. This negotiation process can lead to a range of results depending on the severity of the violation starting with providing no compensation in case of a gross violation and ending with providing compensation equal to or exceeding the court-ordered compensation.

A second, more unjust method some employers use in order to avoid any potential termination issues is to have the employees sign an undated resignation letter when they are being hired. This obviously creates a great imbalance in the power dynamic between the employer and the employee and goes against the very spirit of the Labour Law.

Potential Reforms

The complications relating to employee termination may be resolved to the mutual benefit of both employer and employee through the implementation of a double-pronged solution.

On one hand, the violations that allow the employer to dismiss the employee should be expanded to include negligence without loss, persistent incompetence, workplace harassment and other violations that are more suited to modern work life.

The employer should also be allowed to dismiss the employee without a court order but only after taking appropriate measures to warn the employee after conducting a thorough written investigation. However, the employee would also have the right to appeal any such decision before the labour court. In order for this solution to benefit the employee, court proceedings should be expedited and streamlined in order to grant the employee an effective right of appeal. The court-ordered compensation should also not fall below two months' salary per year of service in order to provide the employer with the incentive to not unfairly dismiss the employee.

On the other hand, the employer should have the right to dismiss the employee for any reason whether by way of lay-offs, redundancies and general incompetence, provided a notice of at least two months and a compensation of two months' salary per year of service.

This solution would effectively remove the need for the employer to litigate while also protecting the employee by affording the employer the option of termination with compensation. At the same time, it provides much needed flexibility to the employer while retaining the employee's financial entitlements.

Overtime Compensation

Article 85 of the Labour Law stipulates that working overtime must be with the explicit agreement of the employer while the total working hours during a day must not exceed 10 hours. This usually means that the employee is only entitled to two hours of overtime pay. In terms of compensation, the employee is entitled to 35 percent additional pay per hour if the overtime is during the day and 70 percent additional pay per hour if the overtime is during the night.

While this provision may have seemed beneficial to the employee at the time of promulgation, in practice, it tends to be more restrictive on both the employer and the employee. As there is no appropriate oversight of overtime work, it is very difficult to measure the amount of time employees actually spend in the workplace. The nature of work has changed quite drastically in the last few decades and it is not uncommon for employees to stay in the office for more than 12 hours per day. Therefore, the implementation of this provision does not necessarily benefit the employee because, more often than not, overtime is not compensated; and when it is compensated, it does not reflect the actual time spent as the employer must abide by the '10 hour' maximum.

Provisions governing overtime tend to view the employee from the point of view of a shift worker who is being exploited by the employer and is overworked. While that view may have been prudent and accurate at a certain point

in time, it has now become outdated with the current labour economy where employees are consistently asked to stay at work for no additional compensation.

Accordingly, it seems reasonable to conclude that the maximum working hours should be increased in order to afford employees a chance to increase their compensation, whilst also allowing the employer to respond to work demands as well as being cognisant of the fact that overtime must be fairly compensated. This solution will likely keep employers in check and employees comfortable in the knowledge they will be compensated for additional work.

Transfer of Employees

Given the changing nature of the business world allowing for more mergers, acquisitions and restructurings to take place in Egypt, the Egyptian Labour Law should respond to such developments by creating a mechanism for the transfer of employees from one entity to another. Under the current Labour Law, there are no provisions regulating the transfer of employees. This has once again created unregulated solutions that are taken by employers in order to fill the gap in the existing legislation.

The current market practice treats the transfer of employees as a manual process of resignation from one entity and appointment by another. In addition to creating ambiguities as to how transferred employees should be dealt with, the lack of regulation creates additional steps to execute employee transfers, especially where they occur on a large scale.

Because resignations must occur in order to allow for the transfer of employees, some employees wish to cash out on compensation that may not necessarily be deserved since they are being offered another job and employers are left with no choice but to acquiesce to or provide further benefits to the employees in order to continue the transfer process. At the same time, employees who are not aware of their rights can be exploited by the employers as the latter can offer fewer benefits after the transfer is complete. This is made possible by the fact that the employees sign new employment contracts with new employers who are not technically obliged to keep the same benefits.

To avoid such issues, legislative intervention is required to retain the same benefits for employees and to count the previous employment period as part of the new contracts. Further, employees should not be entitled to compensation simply because the entity is changing in addition to maintaining the same rights and benefits.

Work Permits for Foreign Employees

Another issue that stands in the way of Egypt becoming an economic powerhouse in the region are the stringent rules on hiring foreign employees which often causes employers to resort to unorthodox and often illegal ways of hiring foreign employees. The current regime does not allow an employer to hire a foreign employee except in the capacity of a manager or an expert. Moreover, current regulations generally require companies hiring foreign employees (except foreign managers) to follow a ratio of nine Egyptians to one foreign expert. Furthermore, the process of obtaining a work permit for foreign employees is quite difficult and time-consuming, even for foreign managers.

The restrictive process of hiring foreign employees often leads to illegal actions by employers who may decide to hire foreigners without work permits and without paying the appropriate taxes or social insurance contributions. This means that not only is the process restrictive for foreign investors but it is also often ineffective in achieving the desired results. The solution to this issue is simple and could possibly have far-reaching effects on Egypt's global competitiveness and productivity. By allowing foreign employees easier access to the Egyptian labour market through streamlining the work permit process as well as reducing the ratio or doing away with it altogether, we could see real and positive changes that could see tax revenues increase and companies hiring high calibre candidates that could enhance the quality of Egyptian labour.

"This solution would effectively remove the need for the employer to litigate while also protecting the employee by affording the employer the option of termination with compensation. In our experience, employers have no desire to limit the rights of employees. Instead, we have seen that our clients need more clarity and flexibility in dealing with employees without feeling the need to resort to unregulated solutions that may expose them to legal liability.

Conclusion

The Egyptian government has taken serious and tangible steps in improving the conditions of doing business in and opening up the Egyptian market. These steps include legislative and administrative developments that have had a real and measurable impact on economic growth and the competitiveness of the Egyptian economy. However, there are still more improvements that need to be made in areas such as modernising the Labour Law.

In our experience, employers have no desire to limit the rights of employees. Instead, we have seen that our clients need more clarity and flexibility in dealing with employees without feeling the need to resort to unregulated solutions that may expose them to legal liability.

Consequently, we believe the need to reform the Egyptian Labour Law is paramount to Egypt's continued economic success.

Al Tamimi & Company's Corporate Structuring team regularly advises on incorporations, restructuring and regulatory compliance. For further information please contact Ayman Nour (a.nour@tamimi.com) or Youssef Sallam (y.sallam@tamimi.com).

The Egyptian Competition Authority: A New Approach in Light of a New Economic Strategy

Khaled Attia
Partner, Head of Dispute Resolution - Egypt
Cairo, Egypt
k.attia@tamimi.com

Nada Abouelseoud
Associate
Cairo, Egypt
n.abouelseoud@tamimi.com

Today Egypt is experiencing a critical transitional phase in its economic history. The Egyptian government is seeking to promote market security and best international business practices. Several administrative bodies are collaborating to execute the same economic strategy, aiming at attracting national and foreign investors. In order to establish this strategy, the political leadership realised that free competition in the market is key. Competition encourages innovation and production efficiency as well as simultaneously helping to promote consumer welfare through inter-firm rivalry.

However, because fierce rivalry may possibly lead to anti-competitive practices, the competition authority should play an integral role in ensuring that economic activities are properly carried out and free and fair competition in the marketplace are safeguarded.

The Egyptian Competition Authority ('ECA') was created by virtue of Law No. 3 of 2005 regarding the Protection of Competition and Prohibition of Monopolistic Practices (the Egyptian Competition Law ('ECL')) as an independent body affiliated with the Prime Minister. The ECA is mandated to act as the administrative body responsible for safeguarding a climate in which competitors have equal opportunities to compete in all economic sectors.

The ECL was amended several times by Law No.190/2008, Law No. 193/2008, and Law No. 56/2014 granting the ECA additional powers to investigate anti-competitive practices. A Mergers and Acquisitions ('M&A') control is yet to be introduced and debate is still ongoing regarding further proposed amendments to the ECL.

The Country's New Economic Strategy

The new strategy focuses predominantly on the economy. Saying that competition is key, the actual presidential speeches, as well as a number of ministerial interventions consistently refer to the ECL and the ECA's role of safeguarding market stability as one of the main factors in achieving the new economic strategy. The country's new economic strategy confirms that the ECL's aim should be to focus on the behaviour of those doing business in the market, and not restrict growth or development.

Recent years show an effective and determined enforcement policy from the ECA, which is a reflection of the country's new economic strategy. The ECA continues to pursue its strategic mission, being the key instrument for ensuring free competition in the market whilst prohibiting anti-competitive practices, serving a healthy business environment with a view to enhancing the efficiency of the national economy.

The following points demonstrate the enforcement policy focused on markets of major strategic importance for both the consumers and the overall economy. The ECA enforcement strategy covers different aspects including: cartels; abuse of dominance; and M&A control. The ECL recognises all types of anti-competitive agreements and practices. The ECL deals

with hardcore cartels (Article 6), with vertical agreements that restrain or limit competition in the market (Article 7) as well as abuse of dominant position in the marketplace (Article 8).

Cartels

Article 6 of the ECL provides an exhaustive list of the prohibited agreements between competitors in any relevant market. This list includes the following;

i. price fixing;
ii. market allocation;
iii. collusive tendering or bid-rigging; and
iv. limitation on production or distribution of products.

The ECL adopted a per se approach in cartel cases whereby the agreement itself is considered in breach of the law regardless of its effect.

In 2014, the ECL was amended to introduce a pre-exemption mechanism to cartel agreements in case an agreement leads to achieving economic efficiency, provided that the benefits to the consumer outweigh the restriction of competition.

It is worth mentioning that anti-competitive practices, including cartels, are criminal in nature and are subject to fines that are decided by a criminal court judge. According to Article 22.1 of the ECL, cartel violations are subject to fines ranging between a minimum of 2 percent and a maximum of 12 percent from the total revenues of the value of the alleged violating subject matter, or a minimum of EGP 500,000 (estimated at USD 31,000) and a maximum of EGP 500 million (estimated at USD 31 million).

In 2018, the ECA successfully prosecuted its first bid-rigging case in the market of medical supplies. The case came as part of the ECA's strategic plan to prioritise its focus on bid-rigging and enforcement in government procurements. In this case, it was revealed that eight of the suppliers of heart valves and other medical equipment to public hospitals had been engaging in a bid-rigging cartel whereby they submitted identical offers so that each of the companies gets to supply a share of the bid. In this case, the Economic Court upheld the ECA's finding, and rendered its decision and fined the suppliers with the maximum fine of EGP 500 million each. The case was then dismissed due to conciliation that took place between the offending companies and the ECA.

This case attracted considerable attention due to its proximity to public healthcare. In this case, the ECA targeted the cartel's practice of price fixing even though no actual harm had been proven.

In order to detect cartels and encourage market players to report cartels in the market, the ECL provides in Article 26 for a leniency programme whereby the first whistleblower is fully exempt from any sanctions stated in the ECL. To benefit from the leniency programme, the ECL requires the person to report the violation and provide any supporting evidence s/he may have that helps in proving the violation or leading to its detection. Afterwards, the court, in its discretion, may grant a partial leniency to the second or any subsequent reporter of the violation.

After the introduction of the leniency programme in July 2014, the ECA received, in early 2015, the first leniency application in a pharmaceuticals distribution cartel case. In that case, the ECA was able to prove that four pharmaceutical distribution companies in Egypt had been engaged in a marketing limitation cartel. This was identified by a written agreement as well as the confessions made by the leniency applicants.

In February 2018, the Economic Court upheld the ECA's finding in a landmark decision and fined the four pharmaceutical distribution companies with a record-breaking fine of EGP 500 Million each. This marked an important development in the Egyptian Competition Law enforcement policy as it was the first leniency case where several factors were tested and put into practice, paving the way for further leniency applications to be submitted.

Abuse of Dominance

As a rule, a firm's market-share should not constitute a violation. It is not the size of the firm or its share of the market that counts, but rather its behaviour in the market that might lead to potential infringements. In this sense, the law addresses restrictive practices resulting in the abuse of dominance, as opposed to market dominance itself.

Article 4 of the ECL defines dominance. Being in a dominant position in a relevant market is the ability of a market-player, holding a market share exceeding 25 percent to have an effective impact on prices or on the product volume in the said relevant market, without its competitors having the ability to limit it.

The ECL regulates the behaviour of a market-player having a dominant position. Article 8 of the ECL provides an exhaustive list of prohibited acts regarding dominant market-players. The list includes the following:

i. undertaking an act that leads to the non-manufacturing, non-production or the non-distribution of a product for a certain period or certain periods;
ii. refraining to enter into sale or purchase transactions regarding a product with any person or totally ceasing to deal with him in a manner that results in restricting that person's freedom to access or exit the market at any time;
iii. undertaking an act that limits distribution of a specific product, based on geographic areas, distribution centres, clients, seasons or periods among persons with vertical relationships;
iv. imposing as a condition, for the conclusion of a sale or purchase contract or agreement of a product, the acceptance of obligations or products unrelated by their very nature or by commercial custom to the original transaction or agreement;
v. discriminating in sale or purchase prices or in terms of transaction between sellers or buyers whose contractual positions are similar;
vi. refusing to produce or provide a product that is circumstantially scarce when its production or provision is economically possible;
vii. dictating to persons dealing with a dominant person not to allow a competing person to have access to their utilities or services, despite this being economically viable;
viii. selling products below their marginal cost or average variable cost; and/or
ix. obliging a supplier not to deal with a competitor.

An important area of focus is that of broadcasting sports events. In this regard, the ECA received complaints that BeIN Sports channels are abusing their dominant position in the market of broadcasting soccer tournaments and, in particular coverage of the EURO 2016 Cup and other tournaments. The ECA referred BeIN Sports, as the exclusive broadcaster of various football events in Egypt, to the prosecution office for two cases of alleged abuse of dominance. The Economic Court upheld the ECA's findings in both cases of alleged abuse and fined BeIN Sports approximately USD 50 million.

The ECA also referred the Confederation of African Football ('CAF') to the prosecution office for abuse of its apparent dominant position. According to the ECA, the CAF committed a violation by selling the exclusive broadcasting rights of African football tournaments for the years 2017 – 2028 to a specific company, in spite of the several official correspondences sent by the ECA to the CAF requesting for co-operation and compliance with the provisions of the ECL. In view of that, the ECA rendered a decision nullifying the exclusive broadcasting contract signed by CAF in Egypt, and required the CAF to sign a broadcasting contract with other designated broadcasting companies, with a view to executing its policy of ensuring a level playing field for all current and potential competitors.

The effect of these two decisions on the consumer have been deemed positive, since the consumer had easier access to the said product (i.e. football tournaments) as a result. The question remains whether these decisions impact the market-players involved and/or their businesses.

Arguments were raised about the actual nature of the practice; whether it was normal business practice, or an anti-competitive practice. The facts had shown that the choice of a broadcasting company in following a successful bid offer, which is considered a normal business practice is beyond the scope of the ECL and therefore beyond the scope of the ECA.

Besides, the CAF has the right to market and obtain maximum returns in its broadcast agreements. Compelling the conclusion of a broadcasting contract with some designated broadcasting companies, on the CAF, could be seen as an intervention by a public entity in its business, which may lead to negative effects on conducting business in the Egyptian market.

Another important ECA decision was rendered in December 2018, targeting Apple Corp. After looking into its contracts and sales strategy, the ECA determined that Apple barred its regional distributors from marketing and selling Apple products to Egypt-based distributors. Apple barred its Egyptian distributors from soliciting orders from regional distributors. This behaviour has resulted in the

rise of the prices of Apple products in Egypt, compared with the regional market. The ECA's position is that the company's monopolistic activities have led to a hike in the prices of Apple products in Egypt beyond the prices in neighbouring Gulf and African States.

In light of its findings, ECA decided to invalidate standard contracts between Apple and its distributors, stating that these contracts isolate the Egyptian market geographically from inter-competition including the prohibition of parallel imports and exclusive distribution agreements, which violates Article 7 of the ECL.

This decision had a strong impact in the market. Firstly, the barriers to distribution were removed, making access to this market easier. Secondly, the ECA's interventionist power and the enforcement power would have a direct effect on the future distributorship agreements in the Egyptian market.

Again, the ECA decision in this case was largely debated. The extent of powers of the ECA under the ECL and the type of interim measures it may take under Article 20 of the ECL came under scrutiny, especially given the ECA did not prove the dominant position of Apple.

ECA's Approach to Merger and Acquisition (M&A) Control

Egypt's approach to M&A regulation is unusual. Apart from the provision requiring post-deal notification, the ECL does not encompass mergers control, whereas M&A control is generally a part of competition law. The ECL does not grant the ECA the power to approve a merger or acquisition either in advance or subsequent thereto. In other words, the ECL does not provide for either a pre-merger or post-merger control regime.

The Law, however, provides for a binding post-merger notification regime. Article 11.2 of the ECL empowers the ECA to receive M&A notifications. According to Article 19.2 of the ECL, the notification procedure is obligatory if the annual turnover in Egypt of each of or the combined relevant parties in the last approved financial statement exceeds EGP 100 million (estimated at USD 5.9 million).

The Executive Regulations of the ECL specify such details as the notification date; data; documents attached thereto; and submission procedures. Article 44 of the Executive Regulations determines that ECA shall receive notifications from persons involved in the transaction within 30 days from the completion of the legal act concluding the transaction.

According to Article 22 bis of the ECL, failure to notify or delayed notification increases the risk of being fined between a minimum of EGP 20,000 (estimated at USD 1250) and a maximum of EGP 500,000 (estimated at USD 30,000).

The ECA has introduced a M&A notification form and has issued guidelines for submitting a M&A notification that is effective as of the beginning of September 2018. Both the form and the guidelines are available on the ECA website (www.eca.org.eg).

Concerning the notification form, ECA guidelines require detailed information about a transaction, including;

i. names of the merging parties, their nationalities, headquarters and related parties;
ii. the transaction nature and the date of its conclusion;
iii. approximate market shares of the relevant parties and their competitors in each of the relevant markets;
iv. information regarding approximate period for a new competitor to enter any of the relevant markets; and
v. information about the most important clients, distributors, and agents of the relevant parties that relate to their activities in Egypt.

The guidelines include an important clarification relating to foreign investors in Egypt. The guidelines provide that a foreign-to-foreign transaction will now be notified to ECA if at least one of the relevant parties has a turnover in Egypt as per its last approved financial statement, which meets the reporting threshold (i.e. EGP 100 million, estimated at USD 5.9 million). This applies regardless of whether or not such party has assets or subsidiaries in Egypt.

The ECA stepped up its efforts in enforcing the post-merger notification obligation, particularly since 2017. A noticeable illustration of enforcing the post-merger notification obligation is in the ECA's decision of October 2018 relating to the merger of Uber and Careem in Egypt. The ECA received information about the potential merger between the two Companies, and the acquisition of the assets of Careem by Uber, which, according to ECA, would lead to the creation of a monopoly and thereby put an end to competition in the market of ride-sharing in Egypt.

The ECA rendered the decision under article 20 of the ECL, obliging Uber and Careem to notify ECA about any attempt at a merger, and required prior consent of ECA before the effective execution of a merger. The ECA decision stated that ECA may have the power to impose interim reliefs in case of facing potential negative impacts on competition. ECA added that the companies are bound to co-operate with ECA, by providing information concerning market shares, capital, and other relevant information. ECA in this decision reserved the right to take "*any action guaranteeing the competition in the relevant market*" in case of a violation of the obligation to notify.

Another recent ECA decision concerning the M&A control was issued a couple of months ago, in May 2019, targeting the online food delivery service market in Egypt. The ECA predicted an arrangement between two companies working in this relevant market, Delivery Hero and Glovo, leading Glovo to exit Egypt's market, in violation of the ECL. In its decision, ECA ordered Glovo to return to the Egyptian market and to reverse its agreement with Delivery Hero within 30 days. ECA's reasoning was that "*The concentration of market power with Delivery Hero could lead to practices that constrain competition and have a negative impact on all players in this market whether users, drivers or restaurants*".

The ECA's position towards these transactions was very argumentative. Indeed the ECL provides the ECA with the power to intervene in case of harmful effects attributed to anti-competitive practices as stipulated under Articles 6, 7 and 8 of the ECL but this is not the case in mergers and acquisition notifications.

After the ECA's decision, Glovo re-started its services in Egypt, a positive sign of the enforcement of ECA decisions, and also a positive impact on the market, guaranteeing the consumer freedom of choice of service providers. However, the ECA's intervention may have a negative effect from an economic perspective, since it may be seen as an obstacle challenging economies of scale as well as preventing a reduction in cost correlating with increasing scale.

Correlation between Competition, Trade and Investment

Generally, with the increase of globalisation and liberasation, developing countries are becoming increasingly aware of the need to adopt and enforce national competition laws. Article 2 of the Egyptian Investment Law no.72/2017 draws the link between competition and investment, stating that every investor has to respect freedom of competition and refrain from monopolistic practices.

The establishment of a strong competitive market would attract foreign direct investment ('FDI'), since investors would be reassured that they will not encounter anti-competitive practices in the host country market. However, this should be balanced out with a proper enforcement regime that is efficient, transparent, and predictable.

Investors do not want to be held up by bureaucracy or arbitrary decisions. A fair and effectively enforced competition law is indispensable to developing countries seeking to attract FDI because it signals these countries' willingness to eliminate exclusionary practices by domestic firms on the one hand, whilst allowing developing countries the opportunity to remedy the potential negative effects of FDI on consumers on the other hand.

Over the last five years, the ECA's decisions have been a real incarnation of the new economic strategy, aiming to refrain from any monopolistic positions whilst guaranteeing easy entry to the Egyptian Market, in order to ensure the economic development and support of small businesses. An important aspect of the enforcement of the new strategy is that while inspecting any market, the ECA screens the whole supply chain. It is mandated to safeguard a climate in which competitors have equal opportunities to compete in all economic sectors. The execution of this mandate however, should be sensitive to business, in order to avoid any over-enforcement that may limit the growth of the market.

Al Tamimi & Company's Dispute Resolution Team regularly advises on Competition matters. For further information please contact Khaled Attia (k.attia@tamimi.com) or Nada Abouelseoud (n.abouelseoud@tamimi.com).

Amendment of Egyptian Takeover Rules

Ahmed Adib
Senior Associate
Cairo, Egypt
a.adib@tamimi.com

Mariam El Alaily
Trainee Lawyer
Cairo, Egypt
m.elalaily@tamimi.com

In Egypt, the acquisition of the shares of a listed company is governed by the Capital Markets Law No. 95 of 1992 (the 'CML'), and its Executive Regulations No. 139 of 1993, as amended (the 'CML ER'), as well as the Egyptian Exchange Listing and Delisting Rules issued by the Financial Regulatory Authority (the 'FRA') Decree No. 11 of 2014, as amended (the 'EGX Listing Rules'). The acquisition of the shares of a listed company is either undertaken by way of a tender offer or through open market transactions. Chapter 12 of the CML ER regulates both mandatory and voluntary tender offers. In an effort to uphold the contemporary nature of the legislation, Chapter 12 of the CML ER was recently restated in November of 2018 to accommodate the dynamic nature of the market and to bridge the gaps between the original Chapter 12 and market and regulator practices in order to enhance the protection of minority rights and interests.

The focal point of this article is the fundamental conceptual changes prompted by the restated Chapter 12 of the CML ER (the 'Restated Chapter 12'), and the implication of such amendments on mandatory tender offers ('MTOs').

1. *Takeover Triggering Events*

(a) Triggering Events

One of the chief amendments effected by the Restated Chapter 12, are the amendments made to the MTO triggering events. The Restated Chapter 12 stipulates that an MTO is triggered where a person, whether directly or through its related parties: (i) acquires one third (33 percent) or more of the share capital or voting rights of the target company; (ii) if the acquirer holds more than one third (33 percent) and does not exceed half (50 percent) of the share capital or the voting rights of the target company, and within 12 consecutive months, the acquirer's ownership exceeds five percent above its existing stake; (iii) exceeds half (50 percent) of the share capital or the voting rights of the target company at any given time; (iv) if the acquirer holds more than half (50 percent) and does not exceed two thirds (66 percent) of the share capital or the voting rights of the target company, and within 12 consecutive months, the acquirer's ownership exceeds five percent above its existing stake; (v) if the acquirer holds more than two thirds (66 percent) and does not exceed three quarters (75percet) of the share capital or the voting rights of the target company, and within 12 consecutive months, the offeror's ownership exceeds five percent above its existing stake; and (vi) exceeds three quarters (75 percent) of the share capital or voting rights of the target company at any given time.

It is worth noting that the Restated Chapter 12 introduced the two-thirds (66 percent) threshold and that the five percent referred to above used to be two percent in the original Chapter 12.

(b) Exceptions

Furthermore, the Restated Chapter 12 now includes additional events in which a MTO obligation is not triggered. Those are, in the event:

i. of a decrease in the share capital of the target company through the cancellation of treasury shares, since the former event will increase a shareholders' ownership, without such increase being the result of an acquisition;

ii. the offeror obtains the approval of all of the target company's shareholders (this is relevant to non-listed companies which offered their shares to the public for subscription, as they are included in the scope of application of Chapter 12); and

iii. the target company increases its share capital, save for in the case of a shareholder whose ownership increases due to his acquisition of another shareholder's subscription right.

It is interesting to note that under the original Chapter 12, the FRA was entitled to introduce exceptions to the submission of the MTO subject to its discretion. However, the Restated Chapter 12 came to limit those exceptions to the ones stipulated in the Restated Chapter 12.

(c) Minority Exit Rights

The Restated Chapter 12 also amended the provision pertaining to minority exit rights. Minority shareholders holding three percent of the target company's share capital (which had this right under the original Chapter 12) or voting rights or minority shareholders representing a minimum of 100 shareholders which represent no less than two percent of the free float (which now have this right under the Restated Chapter 12), may request the FRA to oblige the majority shareholder to submit a MTO during the 12 months following the majority shareholder's acquisition of the target company's shares, where such majority shareholder owns 90 percent or more of either the share capital or the voting rights of the target company.

The above amendment is a further attempt by the FRA to encourage the protection of minority interests by empowering the minority shareholders with an exit strategy in the event the majority shareholder's control over the target company increases.

2. MTO and Listing

The MTO is submitted for the acquisition of securities representing 100 percent of the share capital or the voting rights of the target company. However, the restated Chapter 12 introduced a new concept where, in the event an offeror intends to maintain the securities of the target company listed, such offeror may submit a MTO for 100 percent of the share capital or the voting rights of the company less the minimum free float requirement. The result of this amendment treats and circumvents a fundamental procedural issue faced by acquirers in the past. Under the original Chapter 12, once an offeror submits a MTO for 100 percent of the share capital or voting rights of a target company, such acquirer must either de-list the target company or rectify its situation within a certain period, in the event the free float requirement is no longer fulfilled, as per the EGX Listing Rules.

Accordingly, the Restated Chapter 12 allows acquirers post-acquisition to maintain the listing of the target company by removing certain procedural inhibitors, by also allowing the target company to remain in compliance with the EGX Listing Rules.

3. Method of Acquisition

Under the original Chapter 12, the acquisition method of the tender offer may be undertaken through cash or a mixed offer (i.e. cash or share swap at the option of the shareholder). The Restated Chapter 12 introduced a provision allowing offerors who intend to maintain the securities of the target company listed to submit the MTO through a pure share swap.

The benefit of this amendment is to allow M&A transactions involving listed companies, where the listing is maintained, to occur more easily, as the requirement of a mixed offer with confirmation of funding for a 100 percent cash option created a significant bottleneck.

4. Expansions and Further Clarifications

(a) Obligations on Majority Shareholders

The Restated Chapter 12 introduced a new obligation on majority shareholders owning one third (33 percent) the target company's share capital or voting rights. The Restated Chapter 12 requires such majority shareholder to notify the FRA once they receive an offer from a potential acquirer who has an intention to submit a MTO, in particular where the target company is unaware. Additionally, the majority shareholder may not trade its shares in the period between the announcement of the MTO and the execution of the MTO.

Prior to the promulgation of the Restated Chapter 12, in practice, and in an effort to avoid disclosure, target companies used to abuse the original Chapter 12 in order to make it seem like the target company w unaware of a potential takeover.

(b) Expansion of the FRA's refusal to accept an MTO

The Restated Chapter 12 elaborated on the reasons that the FRA may employ to refuse the submission of the MTO. Under the original Chapter 12, the refusal of the MTO was subject to the FRA's discretion, however, the Restated Chapter 12 now limits those reasons to the ones stipulated in the newly promulgated provision, thus limiting the powers of the FRA, and thereby making the process more transparent.

Al Tamimi & Company's Corporate Commercial team regularly advises on raising capital, and merger and acquisition transactions, in Egypt. For further information please contact Mohamed Gabr (m.gabr@tamimi.com).

"[...] Under the original Chapter 12, the FRA was entitled to introduce exceptions to the submission of the MTO subject to its discretion. However, the Restated Chapter 12 came to limit those exceptions to the ones stipulated in the Restated Chapter 12.

Recent Regulatory Changes to Bolster Egypt's Economy

Amr Hamdy
Senior Associate
Cairo, Egypt
a.hamdy@tamimi.com

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

The last few years have witnessed a noticeable and tangible improvement in the business conditions in Egypt due to legislative and procedural overhauls that have made Egypt a competitive, emerging market. Such developments include the issuance of the new Investment Law no. 72 of 2017 ('Investment Law') and the recent amendments to the Companies Law no. 159 of 1981 ('Companies Law'). Driven by such developments, the General Authority for Investments ('GAFI') has taken measures to improve business conditions and streamline bureaucratic processes by creating new regulations and activating existing provisions in the Investment Law and the Companies Law.

Joint Stock Companies

Among the existing provisions that GAFI activated was the requirement to register the shares of a joint stock company in a central depository company even if the joint stock company is not publicly listed. If a company does not register its shares, GAFI will not ratify any of its decisions until it does so.

Although this requirement has been burdensome to existing joint stock companies due to the difficulty of the process, GAFI has been postponing the registration deadline to keep the registration from becoming prohibitive to the operations of joint stock companies.

This requirement is also quite beneficial to minority shareholders who can obtain their dividends directly through the depository. Otherwise, they would have to go through the company's board of directors. Moreover, it allows for easier and more transparent tax collection as the Central Depository is tasked with deducting the dividend taxes before distributing the dividends.

Limited Liability Companies

Among the most important regulatory developments that have taken place in the last year or so has been in relation to limited liability companies.

One of the main impediments to establishing a limited liability company, which is the most common corporate entity in Egypt, was the requirement to deposit the capital of the company prior its establishment. This necessitated opening a pre-establishment bank account for the prospective company which could take weeks, depositing the capital into the account, and issuing a bank certificate to that effect. This obviously created many delays, especially for non-Egyptian and corporate shareholders. Instead of the process taking two - three weeks from start to finish, the process was extended to five - six weeks.

Following recent regulations, issuing a bank certificate before establishment is no longer required. In practice, we note, this has had the impact of expediting the process.

Another important development has been the removal of the requirement on limited liability companies to have at least one Egyptian manager at all times. This requirement was an impediment for foreign companies that do not have local managers on its payroll. Usually, foreign companies appointed a manager from outside its organisation and provided them with limited management and signatory powers. As such, the requirement was both unnecessarily onerous and futile. This amendment has proven to be a positive step towards modernising the Egyptian corporate environment.

Representative Offices

Representative offices in Egypt are legal vehicles designed to encourage investment by allowing foreign companies to study the market on the ground without the need to register as a company or branch. The status of representative offices allows them to obtain several tax exemptions as they are not meant to make profits. They are also meant to exist for a finite amount of time before deciding whether to finally invest in Egypt. However, on more than one occasion, foreign companies have used representative offices to establish a presence in Egypt and operate commercially, while also being able to obtain visas for their employees.

Driven by such developments, the General Authority for Investments ('GAFI') has taken measures to improve business conditions and streamline bureaucratic processes by creating new regulations and activating existing provisions in the Investment Law and the Companies Law.

As such, the Egyptian government, through ministerial decree, has resolved to regulate some of the governance challenges in relation to representative offices.

The decree requires representative offices to submit a detailed list of its employees, details of the work conducted and send to the parent company as well as a timeline of the market studies. These documents must be submitted annually for GAFI's review of the representative office in order to renew the representative office's licence.

The representative office is also given a deadline of three years from its registration to establish a company or open a branch, subject to renewal from GAFI or its Chairman. This provision comes in stark contrast to previous legislation that allowed representative offices to function with no time limit.

Representative offices that violate the purpose of studying the market and engage in commercial activities will be required to open a branch or incorporate a company within six months; otherwise, they will be de-listed.

It is worth noting that this decree does not apply to representative offices of foreign banks which fall under the jurisdiction of the Central Bank of Egypt.

Standard Articles of Incorporation

In light of recent legislative amendments, the Ministry of Investment has issued a decree with new standard articles of incorporation for joint stock companies, limited liability companies, and single member companies in order to match the amendments made to the Investment Law and the Companies Law.

Application Issues in the Investment Law

Despite the paradigm shift that the Investment Law has created in Egypt in terms of its impact on investment, it also presents some issues in its application that GAFI is currently trying to resolve. For example, the Investment Law has stipulated that a Notary Public fee of 0.25 percent of the capital of a company will be applied on companies seeking to ratify its articles of association or any further amendments. The fact that the Investment Law did not set a maximum fee raised issues which, according to the Chairman of GAFI, led to a situation whereby, in one instance, a company was forced to pay EGP 44 million to change its address.

However, GAFI has been consistently working to resolve this issue. To this end, it has been pushing parliament for an amendment to the Investment Law that will see the fee capped at EGP 10,000. It is hoped GAFI will be able to present the draft amendment to parliament and obtain the approval of the economic committee which will then put the amendment to a general vote.

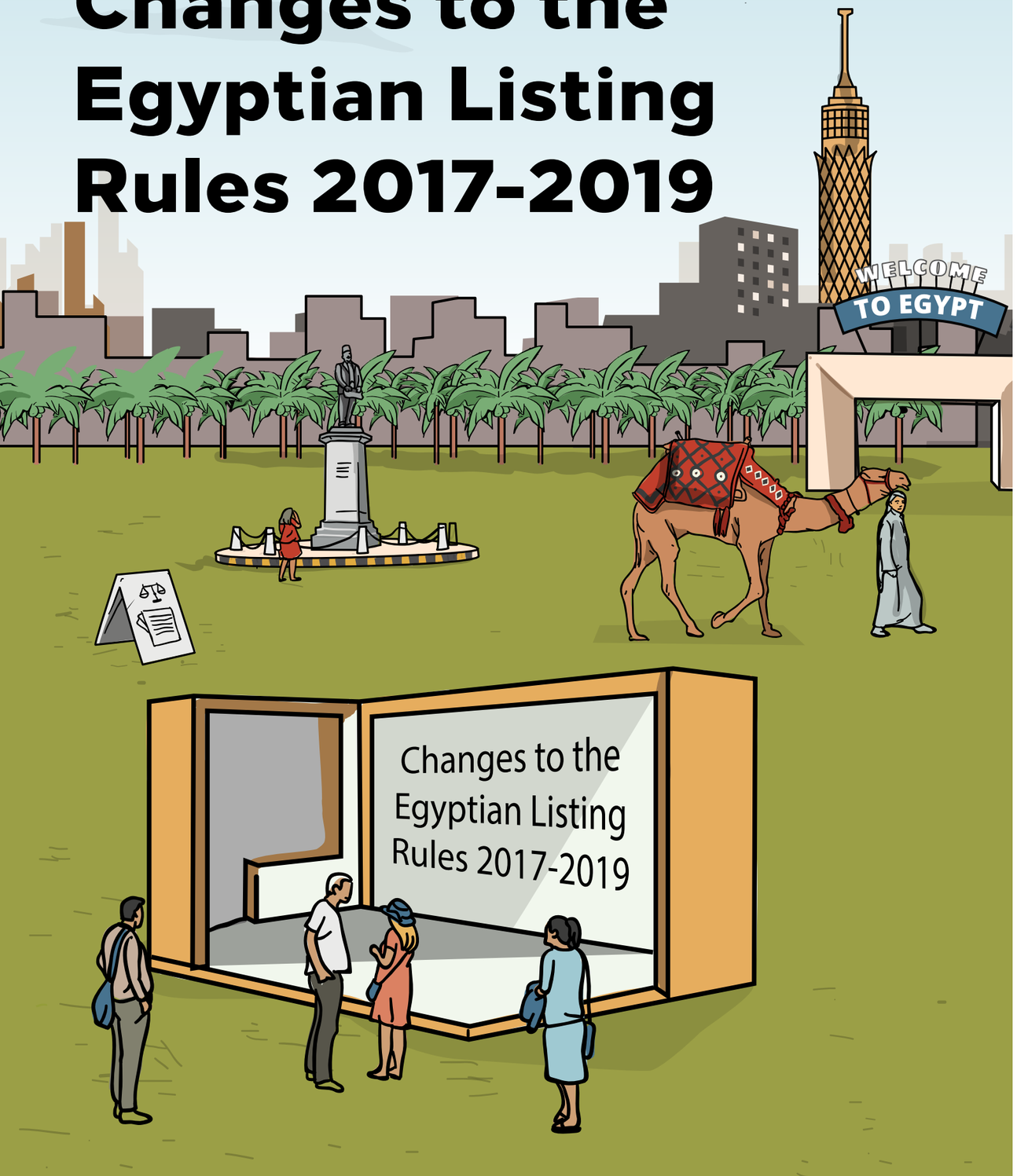
As such, the Egyptian government, through ministerial decree, has resolved to regulate some of the governance challenges in relation to representative offices.

Conclusion

Recent developments in reducing bureaucracy, either driven by legislative changes or regulatory initiatives, have been central to the continuation of Egypt's economic revival. However, bolder steps are required to further streamline the bureaucracy that has long plagued the Egyptian administration and overshadowed many legal developments.

Al Tamimi & Company's Corporate Structuring team regularly advises on incorporations, restructuring and regulatory compliance. For further information please contact Ayman Nour (a.nour@tamimi.com) or Amr Hamdy (a.hamdy@tamimi.com).

Changes to the Egyptian Listing Rules 2017-2019



Samih A. Talaat
Trainee Lawyer
Cairo, Egypt
s.talaat@tamimi.com

In the past few years, the Egyptian business scene has undergone radical changes on the regulatory, economic and political fronts that have enabled the development of the Egyptian market and opened the door to a myriad of potential investements. As a result of these dynamic changes and the evolving economic landscape, the Egyptian Exchange (the 'EGX'), one of the oldest and most prominent stock exchanges in the region, has been one of the institutions most affected by such developments. Consequently, and in order to cater for the increased appetite for regulation, the Egyptian authorities introduced the EGX listing and de-listing rules (the 'Listing Rules') and assigned the Financial Regulatory Authority (the 'FRA') to oversee and monitor the effectiveness of the Listing Rules. That being said, the FRA has been constantly updating the Listing Rules to ensure their conformity with regional and global trends. Throughout this article, we will provide an overview of the most important amendments introduced by the FRA to the Listing Rules from late 2017 to date.

A. The Listing Process

In 2017, the FRA introduced radical changes to the listing process that enabled the FRA to become the key authority throughout the process. As per the amendments, any company that wishes to list its shares on the EGX shall register before the FRA and obtain its prior approval to such listing. Additionally, any entity that wishes to list on the EGX shall register first with the FRA. The 2017 amendments also introduced a mechanism by which listed companies can de-merge. In fact, if a listed company undergoes a de-merger, the newly-formed entities shall remain listed on the EGX, provided that they maintain the minimum requirements for capital, shareholding, number of shares, and percentage of free float shares.

B. Free Float Requirement

While the FRA usually focuses on updating the methodology and processes that are applied by the Listing Rules, it recently took the initiative to start analysing the rules that regulate the maintenance of the listing and ways to preserve it. As a result of such initiative, in March 2018, the FRA introduced amendments to the free float requirement. Firstly, the number of shares that are intended to be listed should not fall below 25 percent or 0.0025 percent of the total EGX free float and in all cases no less than 10 percent of the company's capital. Secondly, the FRA mandated that, in order for a company to maintain its listing, the amount of free floating shares shall not fall below 10 percent or 0.00125 percent of the total EGX free float representing at least five percent of the company's capital. The FRA introduced such changes to enable large companies to preserve and maintain their listing on the EGX.

C. Board Membership of Listed Companies

In an effort to form boards of directors that are strong and are characterised by their integrity, the FRA decided that any person that assumes a membership on the board of a listed company should not, within the five years preceding his/her appointment, have been found guilty of any financial or criminal crime. It is worth noting that, by adopting such requirement, the FRA is introducing a very high threshold, that supersedes the threshold required by law for regular companies.

D. Listing of Foreign Holding Companies

Recently, many Egyptian businesses, especially those that are run by families, decided to undergo restructuring processes that involved off-shoring their companies within foreign jurisdictions, with the aim of seeking better corporate governance, estate planning as well as trying to benefit from the dual tax treaties entered into between Egypt and many tax-friendly jurisdictions. However, such businesses always faced an issue when it came to listing the shares of the holding entity since the Listing Rules mandated that for a foreign entity to be listed on the EGX, it must be simultaneously listed on another recgonised foreign stock exchange. Evidently, the issue of dual listing posed many problems and challenges to such businesses, impeding them from listing their holding companies and resulting, instead, in significant group restructuring or abortion of the planned IPO. As a result of such complications, the FRA allowed foreign entities to be able to be listed on the EGX, even if they are not listed on any other stock exchange, on the condition that: (i) more than 50 percent of its revenues, profits and assets are generated and/or located in Egypt; and (ii) it presents consolidated financial statements for the two years preceding the listing request. The introduction of such a change will allow for more foreign holding entities of Egyptian businesses to list on EGX more swiftly.

E. Voluntary De-listing

Among the FRA's core objectives is the desire to ensure that the Listing Rules offer ample protection to minority shareholders of listed companies and guarantee that majority shareholders do not take any action that would hinder minority shareholders' rights that are preserved by law. In light of the aforementioned, the FRA introduced further requirements to the process of voluntary de-listing that would enable it to fulfil such mandate. Firstly, in the event of a presence of a conflict of interest, the FRA may oblige the majority shareholder and its affiliates to waive their voting rights at the general assembly meeting discussing the de-listing of the company. Secondly, if the FRA resolves that material events or transactions have occurred prior to the date of the board meeting of the target company calling for its extraordinary general assembly meeting to consider the de-listing (the date which is used in identifying the period during which the average price of the stock is determined, that being the price payable to the minority shareholders in normal circumstances) that would affect said company's value at the time of de-listing, the FRA may require that the shares of those minority shareholders opposed to the de-listing be bought at a price determined by an independent financial advisor. Such changes shall guarantee the utmost levels of fairness, integrity and transparency throughout the de-listing process.

While the FRA constantly seeks to update the Listing Rules in a manner that is consistent with the ever-evolving financial trends as well as the rules of other stock markets that are considered to be trendsetters at regional and international levels, the FRA needs to further address the areas of the Listing Rules that, despite ongoing efforts, remain an obstacle to companies entering the Egyptian market as well as close existing loopholes which currently could enable circumvention of the laws.

"The FRA is introducing a very high threshold, that supersedes the threshold required by law for regular companies."

"The FRA has been constantly updating the Listing Rules to ensure their conformity with regional and global trends."

Al Tamimi & Company's Corporate Commercial team regularly advises on capital markets. For further information please contact Mohamed Gabr (m.gabr@tamimi.com).

A Step in the Right Direction: Draft Data Protection Law in Egypt

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

The Egyptian Cabinet of Ministers has recently approved a draft data protection law in Egypt (the 'Draft Law') which is currently being reviewed by Parliament. While the Draft Law may witness changes in Parliament, it is likely that many of its core tenets will not change. The Draft Law attempts to mimic the EU's General Data Protection Regulation ('GDPR') in more ways than one. The reason for that is twofold: the first reason being that the GDPR offers a good regulatory framework to apply; while the second reason is that it is much easier to interact with the EU on a technological level when data protection is comparable to that of the EU. One of the many ways in which the Draft Law is similar to the GDPR is in the former's definition of personal data.

Definitions

The Draft Law defines personal data as "*any data relating to an identifiable natural person, or is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, voice, picture, an identification number, an online identifier or to one or more factors specific to the physical, mental, economic, cultural or social identity of that natural person.*" ('Personal Data') This definition is taken almost verbatim from the GDPR.

The Draft Law further identifies sensitive personal data, similarly to the GDPR, as "*data which reveal the mental health, physical health, genetic health, biometric data, financial data, religious beliefs, political opinions, security status relating to the natural person. In all cases, data relating to children are considered sensitive personal data.*" ('Sensitive Personal Data').

Scope of Application

The Draft Law applies to partially or fully electronically processed data with any holder, controller, and processer of data related to all natural Egyptian persons as well as non-Egyptians residing in Egypt.

The crimes committed under the Draft Law can also apply to non-Egyptians if the act committed is punishable where it occurred and relates to the data of Egyptians or non-Egyptian residents.

The Draft Law does not apply to the following:

1. Personal Data held by natural persons for others and that is processed for personal use;
2. Personal Data processed for official statistics or in the application of a legal provision;
3. Personal Data processed for media purposes, provided the data is correct, accurate and not used for other purposes;

4. Personal Data related to judicial reports, investigations and claims; and
5. Personal Data in the possession of national security entities (defined as the Presidency, the Ministry of Defence, the Ministry of Interior, General Intelligence, and the Administrative Control Authority).

The Personal Data Protection Centre (as defined below) must, upon the request of the national security entities, notify the controller or processer to amend, delete, not show, make available, or circulate Personal Data for a defined period of time. Controllers and processers are obliged to execute the request.

The Draft Law will become effective three months from the date of publication and relevant parties will be required to reconcile their status within one year from the issuance of the executive regulations, which should be issued within six months from the date of promulgation of the Draft Law.

Personal Data Protection Centre

The Draft Law establishes a personal data protection centre which is tasked with regulating data protection, issuing licences, creating regulations and mechanisms to ensure data protection, and receiving complaints ('Personal Data Protection Centre' or 'Centre')

Licences and Permits

The Centre is tasked with issuing licences or permits for: controllers, processers, consultants, direct marketing activities, organisations, unions, or clubs; controlling and processing sensitive Personal Data; visual surveillance of public spaces as well as cross-border transfers.

It is worth noting that an entity may hold more than one licence or permit.

Rights of Data Subjects

The Draft Law grants a set of rights to the data subject, who is any natural person whose Personal Data is processed ('Data Subject'), in order to protect their data from controllers and processors.

Most importantly, Personal Data may not be collected, processed or disclosed, without the explicit and rescindable consent of the Data Subject.

The Data Subject also has the right to know, inspect, access, correct, and determine the degree of processing of their Personal Data possessed by any holder, controller or processer. Though the aforementioned rights can be exercised in exchange for a fee not exceeding EGP 20,000, the right to know of any breach of Personal Data is free of charge. Such access requests must be met or rejected within six working days, provided that, in the case of rejection, the decision indicates the reasons for rejection.

In order to collect and process data, the Personal Data must be

- used for legitimate, specific and public purposes;
- correct and accurate; and
- held only for the period of time required to fulfil its specified purpose.

Complaints

The Data Subject is also entitled to lodge a complaint to the Personal Data Protection Centre against the controller of the processer for a breach of data protection and for the denial of access to Personal Data. Such complaints must be decided upon within 30 working days and the controller or processer of data must comply with the Centre's decision within seven working days.

Obligations of the Controller and Processer

The Draft Law imposes a number of obligations on the controller and processer of Personal Data in order to protect the Data Subject and ensure compliance with the Draft Law.

The controller of Personal Data is obliged to:

- obtain Personal Data upon the explicit consent of the Data Subject;
- ensure that the Personal Data is accurate and sufficient for its intended purpose;
- design and implement methods and standards for processing Personal Data, unless the controller has delegated a processer;
- ensure that the processing of Personal Data is in line with the purpose of Personal Data collection;
- ensure access to Data Subjects;
- take all necessary security and protection measures and implement relevant standards to ensure that Personal Data is not breached or tampered with;
- delete Personal Data after its stated objective is met and, in the case of legitimately retaining Personal Data, ensure that the Personal Data is kept in a way that cannot identify the Data Subject;
- correct any mistake in Personal Data upon knowledge or notification;
- hold a Personal Data log including the Personal Data categories, those allowed access and their capacity, time periods, restrictions, scope, deletion and amendment mechanisms, and any information related to cross-border transfers as well as technical and regulatory procedures to maintain the security of the data; and
- obtain the necessary licence or permit from the Centre to control the Personal Data.

The processer of Personal Data is obliged to:

- comply with the Draft Law's requirements (and its executive regulations) for processing along with the written instructions from the Centre and the controller;
- ensure that the objectives of the Personal Data processing are legitimate and are not in contravention with public order or morality;
- remain within the parameters and time limits of stated objectives of the processing;
- delete the Personal Data after the lapse of the processing period;
- ensure access to Data Subjects;
- not engage in any process in contravention of the controller's objectives unless for statistical or educational purposes that are not for profit, while not infringing on the sanctity of private life;
- secure the processing of data and the equipment used;
- not directly or indirectly inflict harm on the Data Subjects;
- hold a process operation log that includes the processing categories, time periods, restrictions, scope, deletion and amendment mechanisms, and any information related to cross border transfers as well as technical and regulatory procedures to maintain the security of processing operations;
- ensure the capabilities to prove compliance with the Draft Law; and
- obtain the necessary licence or permit from the Centre to control the Personal Data.

Processing Conditions

Processing Personal Data is considered legitimate in any of the following cases:

- to obtain the consent of the Data Subject;
- where processing is necessary and required, in compliance with a contractual obligation, or to enter into a contract with a Data Subject;
- in compliance with a legal obligation (court order or investigation);
- to allow the controller to fulfil its obligations, insofar as it does not contravene with the Data Subject's rights.

Reporting Requirements

The controller and processer are required to notify the Centre of any breach of Personal Data within 24 hours from the time of the breach. They are also required to submit a detailed report of the breach within 72 hours. The Centre, in turn, shall immediately notify

national security entities. The controller and/or processer is also required to notify the Data Subject of the breach within 10 working days from notifying the Centre.

Data Protection Officer

According to the Draft Law, the controller and/or processer of Personal Data is required to appoint a data protection officer who shall be placed in charge of complying with the Draft Law, conducting regular inspections, receiving and responding to requests from Data Subjects and the Centre.

Cross Border Transfers

The Draft Law also stipulates that transferring or sharing Personal Data abroad shall only occur by obtaining a permit from Centre, provided that the state to which the Personal Data is being transferred has equal or greater data protection regulations. The processer or controller may provide access to Personal Data to another controller or processer provided the objectives are similar or in case of a legitimate benefit to the controller, processer or Data Subject.

Provided explicit consent from the Data Subject is obtained, Personal Data can be transferred to a state with lesser degrees of data protection in the following cases:

- protecting the life of the Data Subject and to provide medical care;
- in order to prove, claim, or defend a right before the judiciary;
- in fulfilment of a contract for the benefit of the Data Subject;
- making monetary transfers; and
- in order to fulfil a treaty of which Egypt is a member.

Direct Marketing

The Draft Law sets out conditions for direct marketing to Data Subjects which includes obtaining a licence, prior consent from the Data Subject, stating the sender, and creating a clear opt-out mechanism

Sanctions

Sanctions for violating any of the provisions of the Draft Law range from administrative penalties such as warnings and suspension or revocation of licences to fines not exceeding EGP 2 million and/or jail sentences.

However, the Draft Law does permit reconciliation or settlements outside of court with the Data Subjects or the Centre.

Conclusion

The Draft Law helps regulate an area of law that had thus far remained woefully unregulated by the government. Provisions governing data protection have been scattered across several laws and regulations with no clear or definitive protection. In order to keep in line with global data protection trends as well as the internal need for a regulatory framework, it became clear that a comprehensive data protection law was necessary. Most importantly, the GDPR has created a framework to which we aspire.

Al Tamimi & Company's Corporate Structuring team regularly advises on Data Protection issues in Egypt. For further information please contact Ayman Nour (a.nour@tamimi.com) or Mohamed Khodeir (m.khodeir@tamimi.com).

"The Data Subject also has the right to know, inspect, access, correct, and determine the degree of processing of their Personal Data possessed by any holder, controller or processer.

Recent Labour Law Amendments in Jordan

Hala Qutteineh
Associate
Amman, Jordan
h.qutteineh@tamimi.com

The Jordanian Labour Law No. (8) of 1996 ('Labour Law') is the primary piece of legislation governing the employment relationship as amended by Law No. (14) of 2019 issued in the Official Gazette mid May 2019 ('Amended Law'). The Amended Law introduces new provisions that will have a significant impact on the employment relationship, which this article considers in further detail.

The Amended Law imposes amendments that impact no less than 40 articles of the Labour Law, the most important of which are as follows:

Wages

The Amended Law introduces the concept of 'discrimination in wages'; which is defined as the inequality in payment of wages between employees based on gender. The Amended Law imposes a penalty on the employer ranging between 500 - 1,000 Jordanian Dinars (approximately US$ 700 - 1400) in the event the employer discriminates in payment of wages between employees because of gender. This represents a significant change given the global movement towards equal pay in other developed jurisdictions.

Overtime

Subject to Article 57 of the Labour Law, obligatory overtime was capped at 20 days per year; this limit has now been increased, subject to the Amended Law, to 30 days per year.

Paternity Leave

The Amended Law grants new fathers three days leave from work with full pay after the birth of a child whereas the Labour Law previously made no provision for paternity leave. Again, this is an interesting and progressive development on the part of the Jordanian legislators.

Annual Leave

Although annual leave has not been increased, the Amended Law enables an employee to avail of payment in lieu of leave, in the event that the employer fails to approve the employee's annual leave for a consecutive period of two years.

Childcare

Article 72 of the Labour Law required an employer to establish a nursery in the workplace, subject to specific conditions, which were modified by the Amended Law. Previously this obligation was triggered when 20 or more female employees were employed in the workplace. However, the Amended Law removes this condition. Instead of focusing on the number of working mothers with children, the Amended Law requires an employer to offer childcare facilities where, amongst the female employees in a company, there are 15 or more children under five years of age.

Retirement

The Amended Law emphasises the right to extend the enforceability of the employment contract even after the age of retirement. Previously automatic termination of employment relationships was triggered upon the employee reaching the age of retirement. Further to the Amended Law, it is now subject to the employee satisfying all retirement conditions mentioned under applicable laws which are not solely limited to age, but also to payment of required subscriptions.

Disputes

Any dispute regarding wages was previously resolved by the Wage Authority as long as the employee, in question, was still under the umbrella of employment. Under the Amended Law, the Wage Authority is now entitled to resolve disputes regarding wages including late payment, discrimination in payment, unjustified deductions and other elements, not only while the employee is employed but also for a period of six months after termination should the contract be unilaterally terminated by the employee.

The Amended Law allows employees to represent themselves before the Magistrates Courts should the dispute relate to wages. This provision was contentious as, in the opinion of several law practitioners, it potentially breached the general principle obliging all claimants to seek legal representation before courts for claims exceeding JOD 1,000 (approximately US$ 1400). The Amended Law includes a stand-alone provision imposing certain procedures that should be followed (and potentially compensation that should be paid) by the employer in the event that the court determines that the employee's claim is lawful.

In a nutshell, we have summarised the most significant changes to the Labour Law. The Amended Law has generally been welcomed and well received by the press, media, employers and employees albeit many had hoped it would introduce an increase in the minimum annual leave entitlement.

Al Tamimi & Company's Corporate structuring team regularly advises on employment matters in Jordan. For further information, please contact Hala Qutteineh (h.qutteineh@tamimi.com).

Jurisdiction Update
Saudi Arabia

Add to Cart: New E-Commerce Law in Saudi Arabia

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

In the April 2018 edition of Law Update (*The Riyal Deal: Regulation of e-Commerce in Saudi Arabia*), we wrote about draft e-commerce regulations in Saudi Arabia. We are now able to report that Saudi Arabia's *E-Commerce Law 2019* (Royal Decree No. M/126 dated 07/11/1440H; 10 July 2019) has recently been published.

The Law, which will be administered by the Ministry of Commerce & Investment ('MOCI'), comes into effect in late October 2019, 90 days following its publication in the Official Gazette on 24 July 2019. The associated Regulations are expected to follow shortly thereafter. Where the Law and its Regulations make no special provision, the Electronic Transactions Law, and other laws and regulations, will be relevant.

The Law applies to e-commerce service providers, being merchants/traders registered in the Saudi Commercial Register, as well as other e-commerce practitioners (both in the Kingdom and elsewhere), who are not registered in the Saudi Commercial Register. Specifically, e-commerce practitioners who are located outside the Kingdom, but who offer goods and services to customers based in the Kingdom, are subject to the Law.

The Law focusses on customer-protection related considerations. Pursuant to the Law, consumers can be natural persons or corporate entities, so the Law should be understood as applying to 'customers' in both B2C and B2B e-commerce transactions.

Minimum Details

The Law anticipates that the Regulations will set out specific information on the details that e-stores must display to customers. (An e-store is not necessarily a platform through which a transaction can be concluded; the term extends to platforms that offer or advertise goods and services). At a minimum, an e-store must display the name and address of the e-commerce service provider, and, if applicable, its Commercial Registration number. The e-store must also display means of contacting the e-commerce service provider, such as an email address and contact number.

The Law requires e-commerce service providers to provide customers with clear contractual terms and conditions. At a minimum, and subject to any further details required to be specified pursuant to the Regulations, the following must be addressed:

- information on the e-commerce service provider (presumably including the name and address of the e-commerce service provider, and, if applicable, its Commercial Registration number);
- the basic characteristics of the subject goods or services, and information on any warranties;
- total price, including all fees, taxes or additional amounts relating to delivery, if any; and
- the procedure by which the contract will be concluded, as well as information on payment and delivery/performance.

Where an e-commerce service provider practises a regulated activity/profession, the service provider is required to provide further information, including the identity of the relevant regulator, and details of its licence/permit under that regulator.

E-commerce service providers are required to submit to the customer an invoice showing the itemised cost of the purchase of the goods / services, fees, taxes, additional costs related to delivery (if any), and the total cost. The invoice should also show the date and time of delivery, and any other details that may be required (e.g. to comply with tax law or regulations). Further details may also be required pursuant to the Regulations.

Advertising

The Law provides that digital advertising by e-commerce service providers will constitute supplementary contractual terms that are binding on the parties. It will be interesting to see what this means in practice.

The Law contemplates certain minimum requirements for digital advertising by e-commerce service providers. At a minimum, and subject to any further details required to be specified pursuant to the Regulations, the following must be addressed:

- information on the e-commerce service provider (presumably including the name and address of the e-commerce service provider, and, if applicable, its Commercial Registration number);
- name of the subject goods or services; and
- means of contacting the e-commerce service provider.

Where an e-commerce provider fails to include such information in a digital advertisement, and MOCI directs the e-commerce service provider to reflect such information, then - without prejudice to other penalties that may be applied, this request must be addressed within one day of such notification.

Digital advertising by e-commerce service providers cannot include misleading or deceptive statements, or statements that may mislead or deceive customers. It is not permitted to use third party trade marks without authorisation of the trade mark owner. (Both these restrictions are obvious, and can also be found in other laws.) If MOCI directs an e-commerce service provider to amend or remove such content, and without prejudice to other penalties that may be applied, this must be addressed within one day of such notification.

Customer Rights to Correct Errors and to Terminate

The Law contemplates the Regulations specifying a period in which customers will be entitled to correct any error that may have occurred in the course of an electronic transaction.

Customers will have typical rights to terminate contracts in an e-commerce transaction, such as where the goods are faulty, etc. Additionally, there are two general scenarios in which customers have a right to terminate a contract concluded with an e-commerce service provider. These can be understood broadly as a 'cooling off period' right to terminate 'without cause'; and a right to terminate in the event of a delay in delivery of the goods or services.

The 'cooling off period' right to terminate provides customers with a right to terminate within seven days from the date the subject goods are delivered, or the date of contracting to provide the subject service. This right to terminate is without prejudice to any statutory or contractual warranties, and is subject to the customer not having used the goods or benefitted from the services.

There are certain circumstances in which a customer cannot avail themselves of this right to terminate. These include:

- where the transaction relates to goods subject to the customers own specifications (except where there is a defect or non-conformity with such specifications);
- the transaction relates to physical media (e.g. videotapes, disks, CDs) that the customer has used;
- the transaction relates to newspapers, magazines, publications and books;
- the transaction relates to services for accommodation, transportation or catering;
- the goods the subject of the transaction are damaged as a result of the customer's own acts or inaction;
- the transaction relates to purchase of software online (except where there is a defect or non-conformity in the software that affects its ability to be downloaded).

The right to terminate in the event of delayed delivery of goods or services can be understood as a right to terminate the contract if delivery or performance is delayed by more than fifteen days from the agreed date for such performance or delivery. This right does not apply in cases of failure to deliver in time due to 'force majeure' (which is not defined), or where the parties have subsequently agreed on a different delivery timeline. The Law also requires e-commerce service providers to notify customers of anticipated delays or difficulties that may affect delivery or performance.

"The Law applies to e-commerce service providers, being merchants/ traders registered in the Saudi Commercial Register, as well as other e-commerce practitioners (both in the Kingdom and elsewhere), who are not registered in the Saudi Commercial Register.

Personal Data Protection in an E-commerce Context

Each E-Commerce service provider is required to take necessary actions and measures to protect customers' personal data and electronic communications in its control, including in the control of its agents/ processors.

Subject to other legal requirements, e-commerce service providers can only retain such personal data and electronic communications for such period as is required given the nature of the transaction, or such other period as the parties may agree.

E-commerce service providers may only use such personal data and electronic communications for authorised/permitted purposes. The consent of the customer, or some other legal basis, is required in order for the e-commerce service provider to disclose such personal data or communications to any third party.

Enforcement and Penalties

The Law permits MOCI to block access to an e-store in the event of violation of the Law or Regulations, and to refer the matter to a Committee that will be established under the Law to consider violations and impose penalties. The Law specifies timeframes in which MOCI and the Committee are required to take action, including (as applicable) issuing decisions on the alleged violation.

Besides blocking access to the e-store, in whole or in part, either temporarily or permanently, the following penalties are available, without prejudice to any more severe penalties specified in any other law:

- a warning;
- publication of the details of the violation in an appropriate local newspaper at the violator's expense;
- temporary or permanent suspension of the violator's Commercial Registration; and
- a fine of not more than SAR1,000,000 (about USD 270,000).

When considering the appropriate penalty, the Committee will consider the seriousness of the violation (including any damage to others), whether the violation is a recurrence, and the size of the violator's enterprise. The Law provides a right of appeal to the Administrative Court.

Other

The Law goes into some detail setting out information on the deemed domicile of the various types of e-commerce service providers, although it does not include any information on the impact of the respective domicile on transactions that are subject to the Law.

There is mention of MOCI being responsible for overseeing the e-commerce sector, and issuing further regulations to enhance e-commerce in Saudi Arabia and protect the integrity of e-commerce transactions. In this context, there is specific reference to entities responsible for licensing e-stores, and to platforms that act as intermediaries between e-commerce service providers and the customers. It is unclear what MOCI has in mind in this regard.

Conclusion

The Law provides greater clarity for e-commerce service providers. Its application to both locally licensed e-commerce service providers and Saudi-based individuals acting as e-commerce service providers, as well as foreign e-commerce service providers selling into Saudi Arabia, is significant. We expect that, once the Regulations are issued, there will be greater clarity on how the Law is likely to operate in practice.

Al Tamimi & Company's Technology, Media & Telecommunication team regularly advises on e-commerce related issues in Saudi Arabia and across the Middle East. For further information, please contact Nick O'Connell (n.oconnell@tamimi.com).

United Arab Emirates
Ministry of Justice

49th Year
Issue No. 652
24 Shaban 1440H
30 April 2019

FEDERAL LAWS

4 of 2019 On consolidating the general budget of the Federation and the ancillary budgets for its independent bodies for the financial year 2019.

FEDERAL DECREES

46 of 2019 On the elevation of UAE diplomatic representation in Djibouti from Consulate General to Embassy status.

47 of 2019 Terminating the duties of the UAE Ambassador to Jordan.

48 of 2019 Terminating the duties of the UAE Ambassador to the United Kingdom.

49 of 2019 Transferring the UAE Consul General to Djibouti to the Headquarters of the Ministry of Foreign Affairs and International Cooperation.

50 of 2019 On performing the duties of the UAE Ambassador to Djibouti.

51 of 2019 Appointing the UAE Ambassador to Jordan.

52 of 2019 Appointing the UAE Ambassador to the United Kingdom.

53 of 2019 Ratifying the UAE-Romania Agreement on the Acquisition, on the Basis of Reciprocity, of Property Rights Over Land for the Well Functioning of the Diplomatic Missions and Consular Offices.

54 of 2019 Ratifying the UAE-Paraguay Agreement on Mutual Exemption of Entry Visa Requirements for Holders of Diplomatic, Special, Official/Service and Ordinary Passports.

55 of 2019 On the UAE's acceptance of observer status in the Gas Exporting Countries Forum.

56 of 2019 Ratifying the UAE-Kazakhstan Extradition Agreement.

57 of 2019 Ratifying the Cultural Cooperation Agreement between the UAE Ministry of Culture and Knowledge Development and Kazakhstan's Ministry of Culture and Sports.

REGULATORY DECISIONS OF THE CABINET

28 of 2019 Amending Cabinet Decision No. (22) of 2014 on the Regulation and Development of Services Provided by the Ministry of Interior's Citizenship, Residence and Port Affairs Sector.

29 of 2019 Repealing Cabinet Decision No. (9) of 2014 on the Unified Financial and Accounting Policies for Independent Federal Bodies.

30 of 2019 Amending Cabinet Decision No. (9) of 1995 regulating Expatriate Sponsorship of Dependents and Domestic Workers.

MINISTERIAL DECISIONS

- From the Ministry of Justice

284 of 2019 On the reconstitution of the Certified Translator Test Update and Revision Committee.

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

ADMINISTRATIVE DECISIONS

- From the Telecommunications Regulatory Authority:

11 of 2019 Approving The Consumer Protection Regulations, Version 1.4.

13 of 2019 Approving the Earth Station Regulations, Version 3.0.

- From the UAE Central Bank:

- The Registered Hawala Providers Regulation.

02/COMMEMORATIVE COIN/2019 Reissuing "Year of Zayed" commemorative silver coins.

- From the Insurance Authority

15 of 2019 Directive on the Rules for Acquiring Equity Interests In Insurance Companies.

- From the Securities & Commodities Authority:

15RM of 2019 Amending BoD Resolution 11 of 2015 on the Regulation of Clearing Operations in the Commodities Market.

- Certificate of amendment of the Articles of Association of Invest Bank PSC.

United Arab Emirates
Ministry of Justice

49th Year
Issue No. 652 Supplement
24 Sha'ban 1440H
30 April 2019

FEDERAL LAWS

5 of 2019 Regulating the practice of medicine.

United Arab Emirates
Ministry of Justice

49th Year
Issue No. 653
10 Ramadan 1440H
15 May 2019

FEDERAL DECREES

59 of 2019 Terminating the duties of the UAE Ambassador to Germany.

60 of 2019 Terminating the duties of the UAE Non-Resident Ambassador to the Bahamas.

61 of 2019 Transferring the UAE Ambassador to Poland to the Headquarters of the Ministry of Foreign Affairs and International Cooperation.

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

63 of 2019 On performing the duties of the UAE Ambassador to Mauritania.

64 of 2019 On performing the duties of the UAE Ambassador to France.

65 of 2019 On performing the duties of the UAE Ambassador to Poland.

66 of 2019 Appointing a UAE non-resident ambassador to the Bahamas.

67 of 2019 Appointing a UAE non-resident ambassador to Nicaragua.

68 of 2019 Appointing a UAE non-resident ambassador to São Tomé and Principe.

69 of 2019 Appointing a UAE non-resident ambassador to Malta.

70 of 2019 Appointing a UAE non-resident ambassador to Zambia.

REGULATORY DECISIONS OF THE CABINET

31 of 2019 Specifying the requirements for real economic activity.

32 of 2019 Reporting standards for multinational companies.

33 of 2019 Administrative penalties for breaching the procedure for applying distinctive markings to excise goods in accordance with Cabinet Decision No. (42) of 2018 on the addition of distinctive markings to tobacco and tobacco products.

MINISTERIAL DECISIONS

- From the Ministry of Climate Change and Environment

170 of 2019 Granting signatory rights on the Ministry's account with the UAE Central Bank.

ADMINISTRATIVE DECISIONS

- From the Telecommunications Regulatory Authority:

23 of 2019 From the Chairman of the Telecommunications Regulatory Authority approving amendments to Article 15 of the Articles of Association of Emirates Integrated Telecommunications Company PJSC ("du").

- From the UAE Central Bank:

03/COMMEMORATIVE COIN/2019 Issuing a commemorative gold coin and commemorative silver coin to mark the opening of the Sharjah Mosque in Al Tayy suburb.

- From the Securities & Commodities Authority:

- Certificate of amendment of the Articles of Association of First Abu Dhabi Bank PJSC.
- Certificate of amendment of the Articles of Association of First Abu Dhabi Bank PJSC.
- Certificate of amendment of the Articles of Association of Ajman Bank PJSC.
- Certificate of amendment of the Articles of Association of ALDAR Properties PJSC.
- Certificate of amendment of the Articles of Association of Al Hilal Bank PJSC.
- Certificate of Abu Dhabi Commercial Bank PJSC-Union National Bank PJSC merger and take over of Al Hilal Bank PJSC.
- Certificate of amendment of the Articles of Association of Al Ramz Corporation Investment and Development PJSC.

United Arab Emirates
Ministry of Justice

49th Year
Issue No. 654
25 Ramadan 1440H
30 May 2019

REGULATORY DECISIONS OF THE CABINET

34 of 2019 Concerning the UAE Regulations for Control of Child Care Products.

35 of 2019 Promulgating the executive regulations of Federal Law No. (14) of 2017 on the trade of petroleum products.

ADMINISTRATIVE DECISIONS

- From the Insurance Authority:

23 of 2019 From the Chairman of the Insurance Authority – The Reinsurance Directive.

- From the Securities & Commodities Authority:

21/R.M of 2019 On procedures of anti-money laundering and combating the financing of terrorism and illegal organizations.

- Certificate of incorporation of Abu Dhabi Investment Council PJSC.
- Certificate of approval of amendment of the Articles of Association of Abu Dhabi National Oil Company for Distribution PJSC.

United Arab Emirates
Ministry of Justice

49th Year
Issue No. 655
13 Shawwal 1440H
16 June 2019

DECISIONS OF THE FEDERAL SUPREME COUNCIL

1 of 2019 Amending Federal Supreme Council Decision No. (4) of 2006 on the method applied in selecting Federal National Council representatives.

FEDERAL DECREES

74 of 2019 Ratifying the UAE-Turkmenistan Agreement on Cooperation in Fighting Terrorism, Organized Crime, Illicit Trafficking in Narcotic Drugs, Psychotropic Substances and their Precursors and Other Criminal Offences.

75 of 2019 Ratifying the UAE-IHAF (International Halal Accreditation Forum) Agreement on Hosting the IHAF General Secretariat Head Office.

76 of 2019 Ratifying the UAE-Argentina Agreement on the Encouragement and Reciprocal Protection of Investments.

77 of 2019 Ratifying the UAE-Uruguay Agreement on the Encouragement and Reciprocal Protection of Investments.

78 of 2019 Ratifying the UAE-Panama Agreement on the Encouragement and Reciprocal Protection of Investments.

79 of 2019 Ratifying the UAE-San Marino Agreement on the Encouragement and Reciprocal Protection of Investments.

80 of 2019 Ratifying the UAE-Saint Vincent and the Grenadines Agreement on the Encouragement and Reciprocal Protection of Investments.

81 of 2019 Ratifying the UAE-Surinam Agreement on the Encouragement and Reciprocal Protection of Investments.

84 of 2019 On the adjournment of the 4th Session of the 16th Legislative Term of the Federal National Council.

DECISIONS OF THE PRESIDENT OF THE UAE

1 of 2019 Amending Presidential Decision No. (3) of 2006 on the method applied in selecting Federal National Council representatives.

REGULATORY DECISIONS OF THE CABINET

36 of 2019 On the implementation of UAE mandatory standards.

MINISTERIAL DECISIONS

- From the Ministry of Health and Prevention

379 of 2019 On the unified electronic platform for prescribing and dispensing narcotics and controlled/ semi controlled medications.

ADMINISTRATIVE DECISIONS

- From the Telecommunications Regulatory Authority:

24 of 2019 From the Chairman of the Telecommunications Regulatory Authority approving amendments to the Articles of Association of Emirates Telecommunications Group Company (Etisalat).

- From the Securities & Commodities Authority:

59/R.T of 2019 On the adequacy standards for investment managers and management companies.

United Arab Emirates
Ministry of Justice

49th Year
Issue No. 656
27 Shawwal 1440H
30 June 2019

MINISTERIAL DECISIONS

- From the Ministry of Health and Prevention

312 of 2019 On exclusion of certain clauses of Ministerial Decision No. (888) of 2016 on the rules and guidelines for prescribing and dispensing narcotic, controlled and semi-controlled medicines.

- From the Ministry of Climate Change and Environment

226 of 2019 On the formation of the Supreme Committee on the Exploitation, Protection, and Development of Living Aquatic Resources.

229 of 2019 Regulating the issuance of the Falcon Passport.

ADMINISTRATIVE DECISIONS

- From the General Pension and Social Security Authority:

13 of 2019 Extending an employee secondment.

- From the National Election Commission:

03/02/2019 On the executive instructions for the elections of the Federal National Council.

- From the UAE Central Bank

  - Procedures for Anti-Money Laundering and Combating the Financing of Terrorism and Illicit Organizations.

- From the Emirates Authority for Standardization and Metrology

17 of 2019 Chairman's resolution approving UAE standard specifications.

18 of 2019 Chairman's resolution regarding the regulation concerning the UAE Environment Mark and the conditions under which its use may be licensed.

- From the Securities and Commodities Authority

  - Certificate of approval of amendment of the Articles of Association of Dana Gas PJSC.
  - Certificate of approval of amendment of the Articles of Association of Mubadala Development Company PJSC.
  - Certificate of approval of amendment of the Articles of Association of Insurance House PJSC.
  - Certificate of approval of amendment of the Articles of Association of Dana Gas PJSC.
  - Certificate of approval of amendment of the Articles of Association of the National Corporation for Tourism and Hotels PJSC.
  - Certificate of approval of amendment of the Articles of Association of Arabtec Holding PJSC.
  - Certificate of approval of amendment of the Articles of Association of Mubadala Investment Company PJSC.

United Arab Emirates
Ministry of Justice

49th Year
Issue No. 657
4 Dhu al-Qidah 1440H
7 July 2019

MINISTERIAL DECISIONS

- From the Ministry of Justice

532 of 2019 On the establishment of the Anti-Money Laundering and Counter-terrorist Financing Division.

533 of 2019 On anti-money laundering and counter-terrorist financing procedures for advocates, notaries public, and independent (legal) practitioners.

534 of 2019 On the establishment of the Committee on Management of Frozen, Seized and Confiscated Assets.

535 of 2019 On the application process for persons/entities on domestic terrorist watch lists seeking to use part of frozen assets.

536 of 2019 On the grievance procedure for decisions to place persons/entities on domestic terrorist watch lists.

563 of 2019 On the procedures and conditions attached to international judicial cooperation in sharing the proceeds of crime.

News & Events

Wednesday 1st May
Dubai, UAE

Breakfast Seminar
Ship Finance
DIFC Office

Speakers:
Omar Omar
Partner, Head of Transport & Logistics - UAE

Mamoon Khan
Partner, Banking & Finance

James Newdigate
Senior Associate, Transport & Logistics

Wednesday 19th June 2019
Dubai, UAE

Client Seminar
Financial Regulation in KSA a Capital Markets Authority Perspective
DIFC Office

Speakers:
Rafiq Jaffer
Partner, Banking & Finance

Agathi Trakkidi
Associate, Banking & Finance

Tuesday 25th June 2019
Dubai, UAE

Client Seminar
Workshop on Land Settlement in Palestine
DIFC Office

Speaker:
Mohammed Kawasmi
Partner, Real Estate

---

the EAST AFRICA INTERNATIONAL ARBITRATION CONFERENCE

التميمي و مشاركوه
AL TAMIMI & CO.

7th Annual East Africa International Arbitration Conference (EAIAC) 2019

Thursday 29th and Friday 30th August 2019, Nairobi, Kenya

Al Tamimi & Company is proud to once again sponsor the 2019 Edition of the **Annual East Africa International Arbitration Conference (EAIAC)**, taking place in **Nairobi, Kenya on 29th and 30th August 2019.**

The EAIAC Conference is organised by the **EAIAC Committee**, in partnership with **GBS Africa, I-ARB Africa** and **W&Co|Law+Policy.** This year's theme is ***'Government Contracting and Investment Disputes: Lessons for States and Investors'***. The conference will explore the full spectrum of government contracting. From procurement and PPPs (public private partnerships), tender disputes, dispute mitigation in government contracts, investment arbitration and arbitrating with governments in African centres.

For more information on the program, speakers and for delegate registration, please visit www.eaarbitration.com or email info@gbsafrica.co.uk.

Standard Fee: USD 450 after 31st July 2019.

N.B. The delegate fee DOES NOT include flights, transport and accommodation.

See you in Nairobi!

The ‘Real Estate Lawyer’ Initiative – Dubai

The Dubai Land Department (‘DLD’) has announced the launch of a new initiative known as the ‘Real Estate Lawyer’, in partnership with Al Tamimi & Company (‘Al Tamimi’).

The initiative has been created to facilitate growth in the real estate market by providing greater support for real estate investors (and other stakeholders, including lenders), and encouraging further foreign investor participation in Dubai. It is designed to increase transparency, facilitate access to key information with certainty, streamline real estate transaction processes, and reduce transaction time.

Al Tamimi is proud to be the first law firm certified by DLD to provide such services to its clients.

Our Services

We have set out below details of the particular services that Al Tamimi is now able to provide as a result of the initiative. These services are available to clients of the firm, whether in their capacity as developer, seller, buyer, investor or lender.

1. Legal Due Diligence

Al Tamimi is able to remotely conduct an enquiry / search of the DLD Real Estate Register and Interim Register to access the information contained thereon in respect of a property. This will identify the status of the property, nature of title, the existence of encumbrances registered including mortgage or attachment order, together with the identity of the owner.

This enables us to access the Register directly for undertaking legal due diligence, to investigate, verify and rely upon the information recorded on the Register, and produce a more comprehensive report on the legal status of title of a property for our clients, in less time.

2. Corporate Ownership Certification

Al Tamimi is authorised to certify the ownership structure, change of shareholders and authorised signatories for companies that own or wish to purchase real estate in Dubai.

This avoids the need for the shareholding structures and ownership details to be produced directly to DLD for verification, as Al Tamimi is able to undertake such verification and certification directly on DLD’s behalf. This will save our clients time and, as there is no need for all documentation to be translated into Arabic, will reduce costs.

A certificate issued by Al Tamimi as the Real Estate Lawyer will be recognised by DLD, and a Registration Trustee shall register the disposition in reliance on the Real Estate Lawyer’s certificate directly.

3. Escrow Services

As part of the initiative, DLD will maintain and manage escrow accounts for use by the parties to a real estate transaction in respect of deposit of full or partial purchase monies.

Al Tamimi is authorised by DLD to liaise with and monitor deposit and release of funds into and out of the escrow account, in accordance with specific procedures approved by DLD, and Al Tamimi’s clients may access such services, with our support.

For more information, please contact:

- Mohammed Kawasmi, Partner, Real Estate
  Email: m.kawasmi@tamimi.com.
- Tara Marlow, Partner, Head of Real Estate, Hotels & Leisure
  Email: t.marlow@tamimi.com.

MAY - JUNE

Ramadan Special

During the holy month of Ramadan, we hosted and were a part of a number of events across the GCC region, including Abu Dhabi, Bahrain, Dubai & Ras Al Khaimah.

13th May 2019

Abu Dhabi Iftar

Held on Monday, 13 May at the stunning St Regis in Abu Dhabi in their exclusive Abu Dhabi Suite, we were delighted to be welcomed by 46 guests including key clients from across the public and private sectors such as Aldar, ADGM, Department of Finance, the TRA, Abu Dhabi Ports and clients of the Korea Group.

15th May 2019

Bahrain Ghabga 2019

Our 2nd annual client Ghabga event was a great success in Bahrain with more clients and regional Al Tamimi representatives in attendance this year. Welcoming over 130 guests at the decadent Bushido restaurant in Bahrain, Foutoun Hajjar and the Bahrain team, along with some of the key clients in attendance included, Ahli Bank, Axa, Chalhoub, CH9, Credit Suisse, Crestbridge, Diyar, Guardian Glass, Gulf Air, Habib Bank, Investcorp, Julius Baer, Mashreq Bank, Meritas, Ministry of Finance, Ministry of Health, Ministry of Transportation, MOICT, National Bank of Bahrain, Petrolink, State Bank of India, New India Assurance Co, the UK Embassy and UPS.

21st June 2019

TMT Iftar

An Iftar gathering organised for our key tech, media and telco contacts saw over 20 people get together at the Fairuz Ramadan Tent at Fairmont The Palm on Tuesday, 21 May. Key guests included Amazon, Analysys Mason, Cognizant, DIFCA, DSOA, Etisalat, DAFZA, Hewlett Packard, Image Nation, MBC, OSN, Rotana Media, Spotify, Virgin Mobile and many others.

22nd June 2019

RAK Suhoor

Held on Wednesday, 22 May, Ammar Haykal and the entire RAK team, along with Fadi Kilani (Senior Associate – Litigation, Sharjah) and Malek Al Rifai (Senior Associate – Real Estate, Dubai) were joined at a suhoor gathering by VIP guests from Al Hamra Real Estate Development LLC, Al Khaleej Sugar, Al Marjan Island L.L.C, Government of Ras Al Khaimah - Ruler's Court, Investment & Development Office - Government of Ras Al Khaimah (IDO, RAK Invest), RAK Gas LLC, RAK International Corporate Centre, RAK Properties and the Sheikh Saud Bin Saqr Al Qasimi Foundation for Policy Research.

24th June 2019

PBC Suhoor

On Friday, 24 May 2019, Al Tamimi & Company supported and sponsored the annual Suhoor event organised by the Palestinian Business Council (PBC) which was hosted at the Intercontinental Dubai Festival City. It was a very successful event and attended by businessmen from Palestine, Jordan, UAE and other countries.












20th
JUNE

ICC UAE General Assembly Meeting and Election of the BOD Members of ICC UAE

On the occasion of the close of the sixth session of the Board of Directors of the ICC - The seventh meeting of the General Assembly was held in the conference hall of the Dubai Chamber of Commerce and Industry at 11 am on Thursday, 20 June 2019.

In presence were Mr. Hamid Mohammed Bin Salem, President of the International Chambers, Dr. Hassan Arab, Chairman of the International Chamber of Commerce (ICC) - UAE Commission on Arbitration & ADR and Members of the General Assembly of the International Chamber and members of the Electoral Committee , chaired by Mr Essam Al Tamimi.

The meeting opened with a speech by HE Hamid Mohammed Bin Salem, President of the International Chamber of Commerce, in which he affirmed that the UAE is a the heart for international trade and investments. He also asserted that the UAE has made every effort to utilize all its resources over the past years to serve the community in general in an attempt to achieve economic development and create a secure environment incubator for investment and overall economic activities.

The Chairman of the Commercial Arbitration Committee, Dr. Hassan Arab, Partner, Dispute Resolution, Al Tamimi & Company reviewed the most important activities carried out by the Commission, namely the meetings and events held by the Commission during the sixth session, which consisted of 9 meetings of the Commission, as well as 12 conferences on commercial arbitration in cooperation with the International Chamber of Commerce in Paris.

At the close of the AGM, the Electoral Commission, which oversees the work of the seventh session of the General Assembly under the chairmanship of Counsellor Essam Tamimi, Senior Partner and Founder, Al Tamimi & Company and the membership of Dr. Muayad Wahib, Advisor Mohammed Yassin and Habibullah Radwan, in accordance with Resolution No. 9 of 2019, clarifying the conditions and procedures of the elections adopted Chamber of Commerce which is represented by the election of five new members representing the private sector, of the 106 members of the General Assembly.

The names of the new members of the Board of Directors of ICC were announced for the seventh session 2019-2021.

24th
JUNE

The Beirut Bar Association celebrates 100 years!

On Monday, 24th June Essam Al Tamimi had the pleasure of meeting with André Al Chidiac the president of the Bar Association, Rany Sader, Partner, Chief Legal Officer, Sader Legal and George Abou Jreich, Managing Partner, Jreich & Associates to celebrate the Associations achievements over the years and the advancement of the legal landscape in Beirut.

The Beirut Bar Association is the association encompassing the lawyers mandatorily registered in its bar roll, to whom the law restricted the right to represent and plead before courts and achieve the mission of justice by revealing legal opinion and depending the rights, pursuant to the provisions of the Law on the Organization of the Profession of Law No. 70/8 with it amendments and to the bylaws of the Bar and the Regulation of the Profession's Ethics.

The meeting provided an opportunity to discuss future initiatives for strengthening our relationship with The Association and other leading law firms in Beirut.

About Us

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

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

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

17	9	76	360	50+
Offices	Countries	Partners	Lawyers	Nationalities

Client Services

Practices

Arbitration | Banking & Finance | Capital Markets | Commercial | Competition | Construction & Infrastructure | Corporate/M&A | Corporate Services | Corporate Structuring | Employment & Incentives | Family Business & Private Wealth | Financial Crime | Insurance | Intellectual Property | International Litigation Group | 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 | Projects | Rail | Shipping | Sports & Events Management | Transport & Logistics |

Country Groups

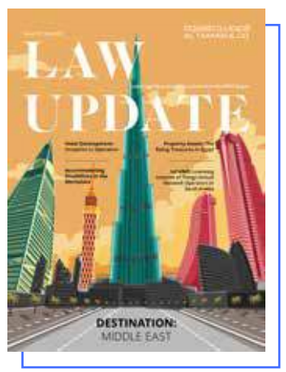
China | India | Korea |

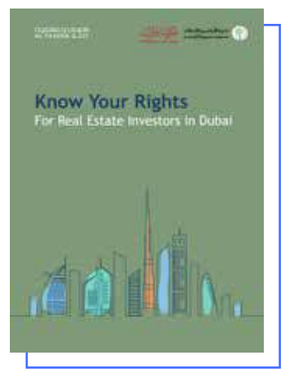
Al Tamimi & Company's key strength is providing quality service - maintaining international standards whilst providing the advantage of being a cost-effctive external provider.

Chambers Global

Publications

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





Regional Footprint

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

BAHRAIN
Manama

EGYPT
Cairo

IRAQ
Baghdad
Erbil

JORDAN
Amman

KUWAIT
Kuwait City

OMAN
Muscat

QATAR
Doha

SAUDI ARABIA
Al Khobar
Jeddah
Riyadh

Key Contacts

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

MANAGING PARTNER
Husam Hourani
h.hourani@tamimi.com

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

Offices

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

DUBAI, DIC
Ehab Morcos
e.morcos@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
Andrew Tarbuck
a.tarbuck@tamimi.com

COMMERCIAL
Willem Steenkamp
w.steenkamp@tamimi.com

COMPETITION
Omar Obeidat
o.obeidat@tamimi.com

CONSTRUCTION & INFRASTRUCTURE
Euan Lloyd
e.lloyd@tamimi.com

CORPORATE/M&A
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
Richard Catling
r.catling@tamimi.com

Nawal Abdel Hadi
n.abdelhadi@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

INTERNATIONAL LITIGATION GROUP
Rita Jaballah
r.jaballah@tamimi.com

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

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

PRIVATE CLIENT SERVICES
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

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

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

T: +971 4 391 2444 / F: +971 4 391 6864

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

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

T: +971 4 331 7161 / F: +971 4 331 3089

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

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

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

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

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

IRAQ

Baghdad Al Harithiya, Kindi St., Dist. 213 Building 106, 1st Floor, Baghdad, Iraq

T: +964 780 029 2929 / F: +964 1 542 0598

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

T: +964 780 588 7848 / F: +964 750 445 2154

Basra info@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

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

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

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

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

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

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

For any queries, please email info@tamimi.com.

@AlTamimiCompany

Al Tamimi & Company

Al Tamimi & Company

www.tamimi.com