Issue 324 | November 2019

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LAW UPDATE

Latest Legal News and Developments from the MENA Region

The Federal Law regulating the Use of Information and Communication Technology in the UAE Healthcare Sector

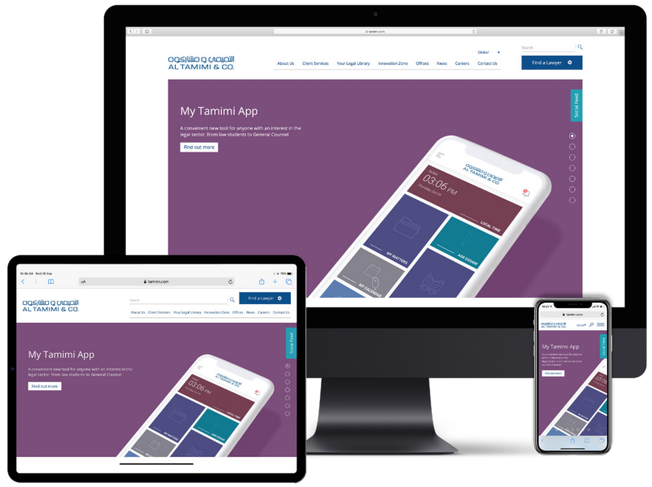
Dispelling the Taboo: Kuwait's First Mental Health Law

Pharmaceutical Registration in Oman: An Overview

Opting to Arbitrate in the ADGM: A Recent Judgment of the ADGM Court of First Instance

Another Milestone for Saudi Arabia: First Premium Residencies Issued to Foreigners

LAW UPDATE *Online*



Editing Representatives

Arbitration
John Gaffney
j.gaffney@tamimi.com

Banking & Finance
Arina Gidwani
a.gidwani@tamimi.com

Construction & Infrastructure
Euan Lloyd
e.lloyd@tamimi.com

Education
Ivor McGettigan
i.mcgettigan@tamimi.com

Employment & Incentives
Gordon Barr
g.barr@tamimi.com

Financial Crime
Florence Jerome-Ball
f.ball@tamimi.com

Healthcare
Christina Sochaki
c.sochaki@tamimi.com

Intellectual Property
Stephen Jiew
s.jiew@tamimi.com

Litigation
Peter Smith
p.smith@tamimi.com

Projects
Mark Brown
m.brown@tamimi.com

Real Estate
Andrew Balfe
a.balfe@tamimi.com

Jeremy Scott
j.scott@tamimi.com

Sports & Events Management
Steve Bainbridge
s.bainbridge@tamimi.com

Technology, Media & Telecommunications
Nick O'Connell
n.oconnell@tamimi.com

Transport & Insurance
James Newdigate
j.newdigate@tamimi.com

Judgments
Zane Anani
z.anani@tamimi.com

Bahrain
Siddharth Goud
s.goud@tamimi.com

Egypt
Youssef Sallam
y.sallam@tamimi.com

Oman
Richard Baxter
r.baxter@tamimi.com

@AlTamimiCompany

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

In this Issue

Welcome to the November 2019 issue of Law Update!

This month we focus on Healthcare across the region; a burgeoning practice area which is increasingly attracting investment from within and beyond the Middle East. Interestingly, it is not only the Corporate world that has witnessed developments in the Healthcare industry this past year; inroads have also been made in the specialist areas of Employment, Insurance and Arbitration.

Our UAE Healthcare experts offer valuable insights into the recent regulatory contribution regarding information communication technology (page 45) as well as into the long-awaited regulations which provide much needed clarification of the concept of 'gross negligence' (page 51).

Our Employment Team analyses the impact of the UAE's and the Kingdom of Saudi Arabia's nationalisation policies on recruitment in the Healthcare Industry (page 95) whilst highlighting the employment opportunities for the local workforce.

In recent times the UAE has been successful in establishing and marketing itself as a 'go-to' destination for the treatment of sports injuries, effective recovery and rehabilitation. There are numerous examples of cutting-edge clinics opening in the UAE which demonstrate the potential of the local sports science industry which has treated the likes of professionals such as Frank Lampard (former England football international), Kieron Pollard (cricket) and MMA fighter Mohammed Yahya (page 91).

Elsewhere in the region our Egyptian colleagues consider how the new universal insurance policy has impacted what is described as an 'outdated' health insurance system (page 65). It is anticipated that an injection and correct allocation of public funding will revamp the insurance system and ultimately improve the quality and standard of healthcare.

In Kuwait, our experienced advisors discuss the much-welcomed Mental Health Law and applaud the government's willingness to tackle the stigma surrounding mental health issues with a view to protecting those who may be afflicted (page 103).

In our General section, our experienced UAE arbitrators discuss the landmark arbitration-related judgment of the ADGM courts (page 9). Crucially the judgment serves as a reminder of the importance of simplifying the drafting of arbitration clauses insofar as possible, while at the same time re-assuring parties of the authority of the ADGM courts to address complex drafting issues where they may arise.

Staying with our Dispute Resolution experts, our UAE Litigators consider the circumstances in which a person has the power to bind a company to an arbitration clause and whether the situation has changed in light of the introduction of the new UAE Arbitration of 2018 as well as recent case law (page 13).

I hope you find this month's issue engaging and thought provoking. Should you wish to know more about the content covered, feel free to reach out.

Season's greetings and all the best for a prosperous and healthy 2020.

Best regards,

Husam Hourani

h.hourani@tamimi.com

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Opting to Arbitrate in the ADGM: A Recent Judgment of the ADGM Court of First Instance

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

Malak Nasreddine
Trainee Lawyer
Abu Dhabi, UAE
m.nasreddine@tamimi.com

Introduction

On 4 July 2019, the Abu Dhabi Global Market Court of First Instance ('ADGM Court') issued its first arbitration-related judgment since its enactment in 2016 (*A3 v B3 [2019] ADGMCFI 0004*). The ADGM Court considered an application for a declaration that an arbitration agreement was valid and binding on the parties. The Claimant applied to the ADGM Court after it had initiated arbitral proceedings before the International Chamber of Commerce ('ICC'), and the ICC Court had decided not to proceed with the arbitration.

Background

The parties entered into a lease agreement on 25 October 2017 (the 'Lease'). The Claimant leased a property on Al Maryah Island, Abu Dhabi to the Defendant for a period of five years. Less than a year later, the Defendant sought to terminate the Lease. The Claimant disputed the Defendant's right to do so and, on 12 November 2018, purported to terminate the Lease on the basis that the Defendant was in breach of its terms.

The Claimant sought to initiate arbitration proceedings against the Defendant, and relied on the dispute resolution terms of the Lease, as follows:

- clause 33 of the Lease provides that the agreement is governed by and construed in accordance with Applicable Law, which the Lease defines as "*any Abu Dhabi Global Market enactment and Applicable Abu Dhabi Law ... for the time being*";
- clause 32 of the Lease is titled "*Dispute Resolution*". Clause 32.1 provides that, in the event of a dispute, the parties shall amicably settle the dispute;
- clause 32.2 of the Lease is titled "*Arbitration*". Clause 32.2.1 provides that "*to the extent permitted by Applicable Law, they [should] adopt the dispute resolution procedures set out in [the other provisions of clause 32.2]; however, otherwise, they [should] accede to the dispute resolution forum with competent jurisdiction*";
- clause 32.2.2 states that "*[the parties] further agree that should Abu Dhabi Global Market establish an arbitration centre, in advance of the formal commencement of any relevant proceedings, [the Claimant] may notify [the Defendant] that the arbitration provisions set out in this clause 32 shall be replaced by reasonable alternative provisions in order to provide for jurisdiction by such newly established centre within Abu Dhabi Global Market...*";
- clause 32.2.3 provides that, if the parties do not reach a solution as provided for in clause 32.1, the dispute should be "*finally settled under the Arbitration Rules set out in the Proceedings Regulation of the Abu Dhabi Commercial Conciliation and Arbitration Centre*"; and
- clause 32.2.6 provides for the seat of the arbitration to be Abu Dhabi.

On 25 November 2018, the Claimant notified the Defendant that the ADGM Arbitration Centre was established and became fully operational on 17 October 2018 and exercised its right to replace the contractual arbitration provisions in accordance with Clause 32.2.2 ('Notice'). The Claimant replaced Clauses 32.2.2 and 32.2.3 with a provision that stated:

> If the parties do not reach a solution as provided for in clause 32.1 within 20 days of the date of the Dispute Notice, then "*the Dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce*".

The Claimant also amended other provisions of the Lease, notably changing the seat of the arbitration from Abu Dhabi to the ADGM (hereinafter referred to as 'Amended Provisions').

The Defendant did not object to the Claimant's Notice. The Defendant also did not respond or return a signed copy of the Notice, notwithstanding the Claimant's request in the Notice to sign and return "*a copy of the letter... to confirm your acceptance of and agreement to its terms*".

International Chamber of Commerce Proceedings

On 9 December 2018, the Claimant initiated arbitration proceedings before the ICC, in which it sought, *inter alia*, a declaration that the Defendant was in breach of the Lease, and that the Claimant had validly terminated the Lease.

The ICC accepted the Claimant's request for arbitration. The Defendant, however, did not submit a reply nor did it participate in the proceedings. The ICC referred the matter to the ICC Court to determine whether the arbitration would proceed pursuant to Articles 6.3 and 6.4 of the ICC Rules. On 18 April 2019, the ICC Court decided that the arbitration would not proceed.

Article 6.6 of the ICC rules provides that, where the ICC Court decides not to proceed with the arbitration, the Claimant may request "*any court having jurisdiction*" to determine whether the arbitration agreement is valid and binding. The Claimant thus referred the matter to the ADGM Court pursuant to Clause 33 of the Lease.

ADGM Court Proceedings

On 16 May 2019, the Claimant initiated a claim before the ADGM Court to confirm the validity of the arbitration agreement, pursuant to Article 6.6 of the ICC Rules and Rule 231 of the ADGM Court Procedure Rules 2016.

The Claimant sought a declaration "*that there is a valid and binding arbitration agreement providing that disputes arising under a Lease dated 25 October 2017... be subject to arbitration in the ADGM Arbitration Centre under the ICC Arbitration Rules*". In the alternative, the Claimant sought a declaration that "*such disputes be referred to ad hoc arbitration in the ADGM Arbitration Centre*".

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.

The ADGM Court determined that it has jurisdiction to determine the dispute. The Defendant did not participate in the ADGM Court proceedings.

In determining the dispute, the ADGM Court considered seven questions:

First, the ADGM Court considered whether Clause 32.2, as a whole, has a binding contractual effect. Clause 32.2 purports to provide for arbitration, but does not specify which disputes the parties agreed to arbitrate. The court stated that this should not prevent the clause from having a binding contractual effect. The court stated that an arbitration agreement could be valid without expressly identifying the disputes that it covers. The court also determined that Clause 32 must be read as a whole, which makes clear that Clause 32.2 was intended to apply to the disputes covered by Clause 32.1 (i.e., "*disputes and differences arising between [the Claimant and the Defendant] out of or relating to the Lease or any breach of the Lease*".).

Second, the ADGM Court considered the validity of Clause 32.2.2, which provides for one of two options to resolve disputes. The court stated that the English common law recognises options in contractual clauses. While Clause 32.2.2 of the Lease is rather unusual, the court stated that there could be no objection, in principle, to the option it stipulated, even if it *"imports an unilateral aspect and in that sense an element of imbalance into the dispute resolution provisions"*, with the court noting that:

> *"...the notion, once current, that mutuality is a requirement of a valid arbitration agreement was rejected by the English Court of Appeal in Pittalis v Sherefettin, [1988] 2 All ER 227."*

Third, the ADGM Court considered whether Clause 32.2.2 provides the Claimant with a "*legally enforceable option*". Clause 32.2.2 provides that the Claimant may replace the initial terms of Clause 32 with "*reasonable alternative provisions*", but there is no express guidance on how to assess reasonableness. The court determined that Clause 32.2.2 does not entitle the Claimant to replace the initial provisions with "*reasonable*" provisions of any kind, but only with reasonable provisions that: (a) are alternative to the initial term; and (b) provide for the jurisdiction of the newly established arbitration centre. The court thus stated that:

> *"[it does] not need to consider whether an option to make reasonable changes simpliciter would be sufficiently certain to have legal effect: here the wording of clause 32.2.2 and the context provide sufficient guidance as to what provisions will satisfy the requirement."*

Fourth, the ADGM Court considered whether the condition precedent for the exercise of the option in Clause 32.2.2 was satisfied. Clause 32.2.2 operates only if "*Abu Dhabi Global Market establish an arbitration centre, in advance of the formal commencement of any relevant proceedings*", that is to say, in this case, before 9 December 2018 (i.e., the date of the commencement of the ICC proceedings). The court determined that the notion of an arbitral centre does not refer to a physical or geographical location, but an institution. This interpretation is dictated both by commercial sense and by the wording of the clause, which refers to "*alternative provisions in order to provide for jurisdiction by such newly established centre*", and not "*at such newly established centre*". In addition, on 17 October 2018, before the date of the commencement of the ICC proceedings, the ADGM Arbitration Centre became fully operational, together with an ICC representative office. The court thus determined that the condition precedent for the exercise of the option in Clause 32.2.2 was satisfied.

Fifth, the ADGM Court considered the validity of the Notice. This question arose because the Claimant requested that the Defendant confirm its agreement to the terms of the Notice by counter-signing a copy of the Notice. The court considered whether the Claimant's request for the Defendant's consent could mean that the Claimant was not purporting to exercise the option unilaterally. The court's answer to this question was two-fold.

- the court determined that the Claimant's request could not reasonably be taken to have compromised its right unilaterally to stipulate the Amended Provisions, considering that it was already in dispute with the Defendant about the termination of the Lease. This is also supported by the wording of the Notice, which stated "*the following changes are hereby made to the Lease with effect from the date of this letter*". The court stated that the intent of the Claimant's request could have been for the sole purpose of a record of an already complete and binding agreement;
- the court determined that the Defendant was obliged under the terms of Clause 32.2.2 to sign documentation as might be reasonably required by the Claimant. A counter-signed copy of the Notice was thus reasonably required by the Claimant. The Defendant breached its contractual obligation, and therefore is not entitled to take advantage of its own breach.

"The judgment marks an auspicious start by the ADGM courts in their supervisory role over arbitrations seated in the ADGM – it is well reasoned, cogent, and practical in its treatment of the rather novel situation presented by the wording of the arbitration clause, its amendments, and the facts of the case.

Sixth, the ADGM Court considered whether the Amended Provisions in the Notice were: (a) reasonable; and (b) within the limits of what Clause 32.2 permitted. The court determined that the Amended Provisions satisfy the requirement of reasonableness, and "*serves the commercial purpose of the clause*". The court highlighted that the Claimant also purported to amend the seat of the arbitration from Abu Dhabi to Abu Dhabi Global Market. The court determined that, while this change was not necessary, it was reasonably incidental to the other changes, and within the scope of the power of the Claimant to require the reasonable Amended Provisions.

Seventh, the ADGM Court considered whether the arbitration agreement is "*in writing*" within the scope of Section 13 of the ADGM Arbitration Regulations. The Claimant argued that Clause 32.2.2 of the Lease, together with the Notice dated 25 November 2018, constitute a written arbitration agreement. The court considered that, while the arbitration agreement is in fact in writing, the arbitration agreement is, notwithstanding the Amended Provisions, simply contained in the Lease.

The court further determined that the "*proper legal analysis is that an option constitutes an offer to enter into a contract, which may be accepted by exercising the option, here the option was exercised in writing*". The applicable law does not require that each party to the agreement

sign a document containing its terms. The court thus determined that the arbitration agreement was in writing, whether the writing was only the Lease, or the Lease and the Notice together.

ADGM Court Judgment

The ADGM Court thus held that the Claimant was entitled to a declaration, namely that:

> *"[t]here is a valid and binding arbitration agreement between the Claimant and the Defendant that disputes arising under a lease between them dated 25 October 2017 be subject to arbitration under the Rules of Arbitration of the International Chamber of Commerce and that the seat or legal place of arbitration is the Abu Dhabi Global Market".*

The court however reflected on two points in its decision. In considering the precise terms of the declaration, the court determined that Clause 32.2 actually provides for arbitration for all disputes arising between the parties out of or relating to the Lease or any breach of the Lease. The court's determination is wider in scope than the Claimant's request for a declaration that only "*disputes arising under [the] lease … be subject to arbitration*". The court stated that:

> *"the wording is wider than that in the proposed declaration, but that does not seem to me a reason to refuse permission for a declaration with the narrower wording as sought by [the Claimant]. The greater includes the lesser."*

The court also determined that the Claimant's wording of the declaration that it sought is different from the relief in its original claim form. The court highlighted that the Defendant probably did not have notice of the proposed declaration given its failure to engage in the court proceedings. In the interest of the Defendant, the court ordered the Claimant not to enforce the declaration or seek to take any steps with regard to arbitral proceedings in reliance upon it before 14 days have elapsed after the service of the judgment on the Defendant.

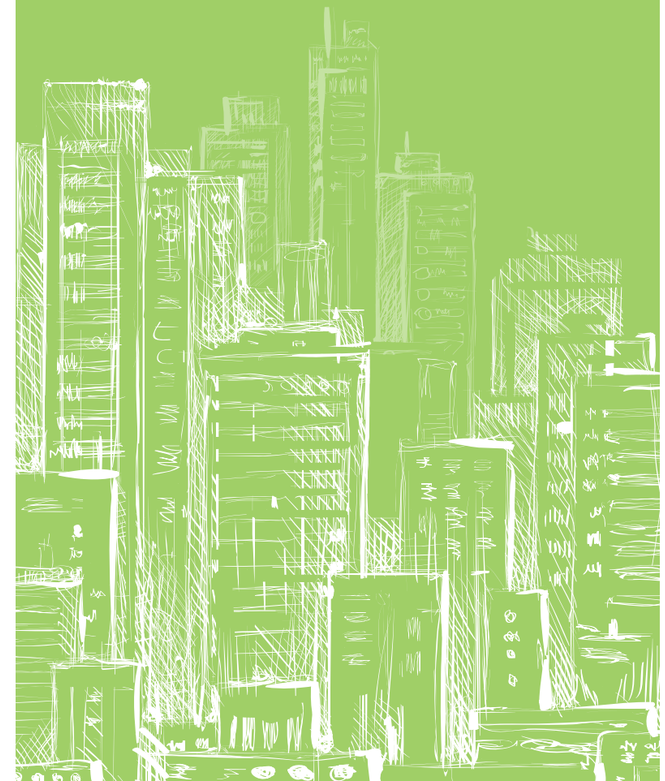
Commentary

The judgment marks an auspicious start by the ADGM courts in their supervisory role over arbitrations seated in the ADGM – it is well reasoned, cogent, and practical in its treatment of the rather novel situation presented by the wording of the arbitration clause, its amendments, and the facts of the case.

The judgment serves as a reminder to simplify the drafting of arbitration clauses as far as possible, while at the same time assuring parties of the authority of the ADGM courts to address complex drafting issues where they arise.

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

The Contract is the Law binding the Contracting Parties as long as its Clause do not breach the Law



Ahmed El Sha'er
Senior Associate
Sharjah, UAE
a.elshaer@tamimi.com

N.B. *This judgment is final and already executed.*

A recent judgment issued by the Dubai Court of Cassation, under Appeals number 334 and 344 of 2018 Real Estate, sheds light on the nature of duties and obligations owed under an assignment agreement in the context of an underlying Istisna'a loan. The judgment confirms that an assignee financier under an assignment agreement may be liable to the assignor purchaser for actual damages in the event of default on the part of the third party to the assignment agreement – the developer.

Background

The dispute arose between a financial services company (the 'Company') which purchased off-plan residential units from a developer (the 'Developer') by virtue of an Istisna'a loan granted by a bank (the 'Bank').

Istisna'a is a Sharia compliant mode of financing whereby a lender agrees to buy an asset from a manufacturer and/or developer, which is thereafter sold to the buyer upon the completion of its manufacturing and/or construction. The lender pays the purchase price of the asset to the developer in accordance with the progress of the asset's construction and once construction is complete, the lender would have obtained title to the property, which is then sold to the buyer with a pre-agreed profit margin.

The Developer and the Company entered into a sale and purchase agreement whereby the Company purchased several off-plan units

in a tower and completed a down payment of AED 8.5 million (equivalent to approximately US$2,322,404) . Thereafter, and in order to finance the purchase, the Company procured an Istisna'a loan from the Bank. Consequently, all three parties entered into a tripartite assignment agreement whereby the Bank would replace the Company as a party to the original sale purchase agreement, effectively stepping into the Company's shoes. Thereafter, the Bank signed a separate agreement with the Developer to ensure the payment of the finance instalments against completion.

The Developer cancelled the project and in so doing was alleged to have breached its obligations.

The Claim

The Bank filed a claim in the Dubai Courts against both the Developer and the Company, seeking to terminate the tripartite assignment agreement, as well as the separate agreement signed between itself and the Developer, and in addition to seeking a court order obliging both parties to refund AED 38.5 million , the total sum advanced towards the purchase/funding of the units. Of the AED 38.5 million that had been advanced to the Developer, AED 8.5 million (equivalent to approximately US$2,322,404) had been paid by the Purchaser as an initial downpayment (prior to the execution of the assignment agreement), with the remaining AED 30 million (equivalent to approximately US$8,196,721) being paid by the Bank (post-execution of the assignment agreement).

The Company, represented by Al Tamimi & Company, filed a counterclaim against the Bank and the Developer, claiming the AED 8.5 million downpayment, explaining to the Court that the amount claimed by the Bank included the AED 8.5 million paid by the Company by way of a downpayment.

Throughout the main proceedings and the counterclaim proceedings, the Bank disputed the Company's right to claim any amount, let alone the entirety of the AED 8.5 million it advanced to the Developer. The Bank argued that the Company must raise its claim if it had one at all, against the Developer, with whom it had entered into the original sale and purchase agreement, and not the Bank.

The Company argued the true legal position under the tripartite assignment agreement, and explained to the Court that the Bank would be unjustly enriched if it succeeded in claiming the full amount of AED 38.5 million, as AED 8.5 million of that amount was advanced by the Company

The Company pointed out to the Court that the total amount claimed by the Bank exceeded the amount paid by it to the Developer, and this point was established by the expert opinion rendered in the case. Further, during an investigatory hearing, the Bank's legal representative was on record as to the amount actually paid by the Bank, which was significantly less than the amount originally claimed; the difference, of course, being the amount paid by the Company to the Developer.

Accordingly, the Dubai Court of Cassation issued a final judgment as to the main proceedings and the counterclaim proceedings. The judgment ordered the Developer to pay to the Bank the amount of AED 38.5 million in the main proceedings and, in turn, under the counterclaim proceedings, the Bank was to pay to the Company the AED 8.5 million it paid to the Developer by way of a downpayment. This judgment was rendered on the basis that the Bank was the assignee of the rights of the Company by virtue of the tripartite assignment agreement signed by all three parties.

Conclusion

This judgment confirms that the courts will uphold an agreement executed between parties (subject to its power to interpret the contract and its terms - as long as they do not violate the law). Where a contract between parties includes obligations and rights, the Court has no choice but to adhere to and render its judgment based on the content, clauses and terms of the agreement.

Al Tamimi & Company's Litigation team regularly advises on disputes. For further information, please contact Ahmed El Shaer (a.elshaer@tamimi.com).

DIFC Court Precedent Alert: Kuwait Judgment Fails Test for Recognition and Enforcement at Common Law and Under the GCC and Riyadh Conventions

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

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

Introduction

The enforcement of foreign judgments in the UAE continues to be a fast-evolving area of law. In a recent case. that is likely to stand as a leading precedent for the recognition of judgments in the DIFC and the wider GCC region, Al Tamimi's International Litigation Group acted successfully for a global bank in setting aside a DIFC Court order recognising and enforcing a Kuwait Court of Cassation judgment against the DIFC branch of the Bank.

The judgment of the Court of First Instance in the case is presently under appeal, and the appeal decision will be reported here in due course, but given the significance of the underlying issues regarding enforcement practice in the UAE and the wider GCC region it is instructive to consider the arguments advanced by the parties at first instance, and to look at how these were dealt with by the Court in its judgment.

Background and Jurisdictional Issues

In February 2005 the parties entered into a Trust Agreement whereby the Bank agreed to subscribe to shares in investment funds and hold those shares on behalf of the Customer. These arrangements were part of the banking relationship between the parties, and both the Bank's general customer terms and the Trust Agreement were the subject, in respect of claims by the Customer, to an exclusive jurisdiction clause in favour of the courts of the Bank's home jurisdiction.

The Bank is a foreign entity with branches around the world but no branch in Kuwait. The Bank's Customer is a company incorporated in Kuwait.

In 2009 the Customer brought proceedings against the Bank in Kuwait to recover sums paid by it to the Bank under certain terms within the Trust Agreement. The Kuwait litigation resulted in three judgments: the Kuwait Court of First Instance; the Kuwait Court of Appeal; and the Kuwait Court of Cassation, and at each level of jurisdiction the Bank maintained its objection to the jurisdiction of the Kuwaiti Courts.

Following the grant by the DIFC Court on an ex-parte basis of a recognition and enforcement order in respect of the Kuwaiti judgments, the Bank applied to set aside the order on the primary ground that the DIFC Court ought to refuse recognition because, notwithstanding the decisions of the Kuwaiti courts assuming jurisdiction as a matter of Kuwaiti law, the Kuwaiti courts lacked jurisdiction in the international sense, as required by the 1983 Riyadh Convention and by the equivalent provisions of the 1997 GCC Convention.

In particular, the Bank argued that the payment by the Customer of money to a Bank outside of Kuwait did not constitute performance of any contractual obligation within Kuwait so as to satisfy the requirement of court competence under Article 25 of the Riyadh Convention and Article 1A of the GCC Convention, and further that there was no other basis for Kuwaiti jurisdiction.

In response, the Customer argued that the contractual obligations which were the subject of the dispute fell to be performed and were performed in Kuwait. It also argued that the determination by the Kuwaiti Courts of their jurisdiction was binding on the DIFC Court, to the extent of being res judicata, in the absence of any valid public policy objection.

DIFC Court of First Instance Judgment

The DIFC Court set aside the Order on the principal ground that the Kuwait Court had no jurisdiction over the dispute in the international sense required by the GCC and Riyadh Conventions (the 'Conventions') or at common law.

In declining to recognise the Kuwaiti Judgment, the Court was careful to point out that it made no determination as to the Kuwait Court's jurisdiction on the basis of Kuwait civil law. Whilst there appeared to be a contradiction in the reasoning of the Kuwaiti Court as to the basis for its assumption of jurisdiction in the case, ultimately the Kuwait Court's determination of its jurisdiction, by reference to Kuwaiti law, was not the relevant focus in determining whether the case satisfied the threshold for Kuwaiti jurisdiction under the Conventions.

Rather, the DIFC Court was called upon to apply the test of competence under the Conventions, which was an autonomous and different test. In particular, under Articles 25 and 1A of the respective Conventions above, read together with Articles 28 and 29 of the Riyadh Convention and Article 4 of the GCC Convention, the DIFC Court was required to 'examine' the foreign judgment to ensure that the Kuwait Court had the jurisdiction to hear the case in accordance with the principles and rules of international jurisdiction as applicable in the UAE/the DIFC as the jurisdiction where enforcement was sought.

The Court noted that while it had jurisdiction generally to recognise the Kuwait Judgment under the Judicial Authority Law and DIFC Court Law, the DIFC Court was bound (as a Court of Dubai and the UAE) by the treaties and conventions signed by the State with regard to recognising and enforcing foreign judgments. Accordingly, the process of recognising judgments from Riyadh and GCC Convention countries had to be carried out within the parameters of those Conventions by satisfying the conditions or limitations for enforcement as set out in those treaties.

It therefore followed that the DIFC Court had the power and duty to examine and rule upon whether the Kuwaiti Courts had jurisdiction in the underlying proceedings as required by the relevant provisions of the Conventions.

As regards the argument that it was not open to the DIFC Court to re-examine the issue of jurisdiction because the Kuwait Courts had already determined this issue and, accordingly, that the issue was res judicata, the DIFC Court disagreed, preferring and adopting the argument cumulatively advanced on behalf of the Bank, as follows:

> **"The Dubai Courts are now familiar with the role of the security agent and the foreign banks' corporate lending structure based on a corporate guarantee.**

1. whilst the DIFC Court had the power and the duty in appropriate circumstances to recognise judgments of the Kuwaiti Courts reached in accordance with Kuwaiti law and regulations, in doing so it is required to comply with the Treaties and Conventions to which the UAE is a party with regard to the recognition and enforcement of foreign judgments;
2. in the case of Kuwaiti judgments, this meant that the DIFC Court had to satisfy itself, notwithstanding the assumption by the Kuwaiti Courts of jurisdiction under Kuwaiti law, that the Kuwaiti Courts had competence in the matter as understood and defined in the relevant provisions of the Conventions;
3. the test of jurisdiction was therefore a Convention or international one, and it followed that any separate determination by the Kuwaiti Courts of their jurisdiction in the matter under Kuwaiti law did not conclusively determine the issue and there could be no res judicata on the issue until the DIFC Court had ruled on the matter and declared (or refused to declare) recognition; and
4. the Court agreed with the Bank's submission that the analysis under the two Conventions equally reflected the position at common law, where the focus is on the question of whether the foreign court possessed jurisdiction in the international sense.

With regard to whether the Conventions' requirements had been met in this case, the Customer argued that the Kuwaiti Courts had jurisdiction by reason of the place of performance of the obligation in dispute, which it contended was in Kuwait.

The DIFC Court again disagreed, preferring the argument advanced by the Bank, namely that the obligation in dispute (repayment of investment monies) was an obligation that, under DIFC law and at common law, was to be performed outside Kuwait. In addition, the parties had expressly agreed in the Trust Agreement that the place of performance was the Bank's home jurisdiction (the place of debt enforcement as defined by the domestic law of the Bank's home jurisdiction), and the Customer was subject to a contractual estoppel preventing it from contending otherwise.

Given that no other ground of jurisdiction was relied upon, it followed that the Order granting recognition and enforcement fell to be set aside.

The Bank also succeeded in its secondary case that the recognition and enforcement be set aside because it had been obtained in breach of the Customer's duty of full and frank disclosure when applying for the Order on an ex-parte basis. As is well established, this obligation extends to identifying possible defences that the judgment creditor might have to set aside the application. In the present case, no such possible defences had been identified at the ex-parte stage, including any defences along the lines of the jurisdictional objections maintained by the Bank throughout the Kuwaiti proceedings, and in the circumstances the Court found that the Customer had not complied with its obligation of full and frank disclosure. Accordingly, the Bank's application to set aside also succeeded on this alternative ground.

Conclusion and Commentary

This is a significant judgment that is likely to be viewed positively by the international business community to the extent that it fosters greater certainty in de-limiting the permissible boundaries of domestic jurisdiction under regional treaties and at common law.

By focusing on the requirement for 'jurisdiction in the international sense' the judgment should help deter forum shopping by parties seeking to bring cases in jurisdictions having no connection with the subject matter of the dispute.

The judgment is also welcome in affirming that commercial actors will be bound by exclusive jurisdiction clauses as a key autonomous element of their commercial banking arrangements.

On the issue of submission to jurisdiction the case is also of interest. In many civil law jurisdictions, as in Kuwait, the consideration of objections to jurisdiction and of the merits proceeds hand in hand, without the opportunity at first instance or on any appeal level to separate out submissions following any preliminary ruling on jurisdiction – and therefore without the opportunity to appeal and participate in the proceedings on jurisdiction alone. In the present case the continued participation of the Bank at each level in the Kuwait proceedings, whilst always maintaining its objection as to jurisdiction, was not adjudged to be a submission to jurisdiction, and this is an outcome that accords with a common sense approach to such civil procedure rules.

In respect of all the strands of argument considered, the judgment of the DIFC Court of First Instance arrived at a consistent answer based upon an harmonious interpretation of the relevant provisions of the Conventions and of the corresponding rules and principles at common law. To that extent, it is another example of the capacity and expertise of the DIFC Court, as an international commercial court, to tackle and determine common and overlapping issues of comparative law.

On a final point it may be noted that the enforcement of foreign judgments in the onshore UAE Courts has been impacted by the entry into force on 16 February 2019 of Cabinet Resolution No.57 of 2018, which includes important amendments to the provisions relating to the enforcement of foreign judgments under the UAE Civil Procedure Law. It is to be hoped that the principled judgments of the DIFC Court on the interpretation and implementation of the Conventions will prove equally influential in that context.

Note: *The Customer's appeal against the judgment of the Court of First Instance in this case has been listed for hearing later in December 2019. The judgment of the DIFC Court of Appeal will be reported in due course in Law Update.*

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

Parties' Capacity to Arbitrate: An UAE Perspective

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

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

Introduction

The Parties' capacity to arbitrate may be a key issue in an arbitration if there is a challenge to the jurisdiction of the arbitral tribunal and/or to the arbitral award. Prior to the enactment of the UAE Arbitration Law, parties raised this issue frequently as a defence to enforcement if the person who signed the arbitration agreement was not properly authorised. If not properly authorised, the arbitration agreement could be considered invalid and therefore any award made pursuant to such an agreement could be annulled.

This article considers the circumstances in which a person has the power to bind a company to an arbitration clause and whether the situation has changed in light of the introduction of the new UAE Arbitration Law 6 of 2018 ('UAE Arbitration Law') and recent case law. The article will also look at related issues such as the impact of the potential change in the court's view of arbitration as an 'exceptional' means to resolve disputes and the definition of 'special authority'.

Applicable Law

Under UAE law, each party's capacity to agree to arbitration is governed by Article 11 of the UAE Civil Code which provides: "*(1) The law of the state of which a person has the nationality shall apply to the civil status and competence of such person but nevertheless in property dispositions transacted in the State of the United Arab Emirates the results of which materialise therein, if one of the parties is an alien lacking capacity and the lack of capacity*

is attributable to a hidden cause which the other party could not easily discover, such cause shall have no effect on this capacity. (2) With regard to the legal regulation of foreign juridical persons including companies, associations, establishments and otherwise, the law of the state in which such bodies have their actual main administrative centre shall apply thereto, and if such a body carries on an activity in the State of the United Arab Emirates, the national law shall apply." In the latter respect, arbitration agreements governed by UAE law and signed after the UAE Arbitration Law came into force (16 June 2018) will be governed by the UAE Arbitration Law.

When a Person can bind a Limited Liability Company to Arbitration

Under the Civil Procedure Law

Under the former arbitration provisions of the Civil Procedure Law, an express agreement to arbitrate was essential for a dispute to be resolved by arbitration and to show that the parties had agreed to opt-out from the court's jurisdiction.

Any person signing on behalf of a company had to be authorised to sign such agreement. **In Dubai Court of Cassation judgment (Civil Appeal) 252 of 2010 dated 13 March 2011**, the court held that:

> *"The capacity necessary to constitute a valid agreement to arbitrate according to Article 216(b) of the Civil procedure Law is the capacity to dispose of rights. An agreement to arbitrate is constituted when a party expresses an intention to be bound by such agreement."*

General managers were authorised to sign on behalf of a limited liability company unless the memorandum of association stipulates otherwise. When an issue arises, it typically concerns someone other than the general manager who has signed the arbitration agreement (see also **Dubai Court of Cassation judgment 301, 303-2015 dated 28 January 2016**).

Under the UAE Arbitration Law

Under the new UAE Arbitration Law, the position has not changed with respect to authority to sign an arbitration agreement. Article 4 (1) sets out the requirement for arbitration agreements to be signed by persons with authority to do so. For an UAE incorporated limited liability company, the manager that is named in the constitutional documents has authority to sign.

Article 4 (1) of the UAE Arbitration Law provides *"Only the natural person, who has the capacity to dispose of rights, or the representative of the legal person, who is authorized to conclude the agreement on arbitration, may enter into an agreement on arbitration, otherwise the agreement shall be null and void."* This article distinguishes between a legal person from a natural person by providing a different test for each. The current test for natural persons will be the capacity to dispose of the right while the test for a legal person's representative will be 'the authority to arbitrate'. With respect to legal persons, it is yet to be seen whether the court of cassation will adopt the approach of (good faith) or the approach of (special authorisation) in its application to Article 4 of the UAE Arbitration Law, given that this Article should, in principle, only govern arbitration agreements signed after the UAE Arbitration Law came into force.

"If not properly authorised, the arbitration agreement could be considered invalid and therefore any award made pursuant to such an agreement could be annulled.

Article 203 (4) of the Civil Procedure Law (which was repealed by the UAE Arbitration Law) provides that *"An agreement to arbitrate shall not be valid unless made by a person having the legal capacity to dispose of the right in dispute."* This article provided a single rule for both legal and natural persons.

This leads us to discuss two approaches adopted by the court with respect to the issue relating to the capacity to agree to arbitration on behalf of companies. Some courts apply the principle of good faith (if a person seeks to set aside what he/she has conclusively performed, his/her attempt shall be rejected) while other courts hold that the principle of ostensible authority is not recognised in arbitration agreements and that special authorisation is required from a general manager to an officer/employee of a company.

First Approach: Principle of Good Faith

With respect to the first approach (good faith), the Dubai Court of Cassation recently ruled in one case (**Dubai Court of Cassation judgment 1225 of 2018 dated 17 March 2019**) that where the name of a company is set out in the preamble of an agreement, without the name and capacity of its legal representative, and is signed with an illegible or legible signature (and the contract contains an arbitration clause), a conclusive legal presumption arises that the signature is that of the legal representative of the corporate entity and that he or she has the authority to agree to arbitration.

It cannot then be argued that the signature is not that of the person legally authorised by the corporate entity to make dispositions and agree to arbitration as this will be contrary to the principles of good faith. Article 70 of the UAE Civil Code forbids a person to set aside what he or she has performed. Further, in accordance with the rules of evidence, no person may rely upon his/her own faults or his/her employee's faults as proof of the validity of his/her allegations against a third party (**Dubai Court of Cassation judgment 1225 of 2018 dated 17 March 2019**).

The 2019 judgment is consistent with the position under the Civil Procedure Law, prior to the enactment of the Federal Arbitration Law. Thus, in Dubai Court of Cassation judgment 301, 303-2015 dated 28 January 2016, the court held that the *"Partners' General Assembly may place restrictions on the manager's powers if they are absolute under the memorandum of association and add further restrictions to those under the memorandum of association. Restrictions on the manager's powers are only effective with respect to internal relations between the manager and the partners and may not be relied upon against third parties."* This decision acts as a safeguard against those who sign on behalf of a company prohibiting them from then claiming they had no authority.

Second Approach: the Requirement for Special Authorisation

With respect to this approach, some courts, based on the general view that arbitration is an exceptional means for resolving disputes, confirm that special authorisation is required for any person, other than the general manager, to bind a limited liability company.

In **Dubai Court of Cassation Judgment No. 946-2018 dated 11 November 2018**, the court held that:

> *"It is settled in the Court of Cassation that an agreement to arbitrate shall not be valid unless made by persons having the legal capacity to make a disposition over the right, subject matter of the dispute and that the manager of a limited liability company has full powers to manage the company and the legal capacity to make dispositions over the rights relating to its activities, including an agreement to arbitrate in contracts made between the limited liability company and third parties, unless the manager has delegated his authority to arbitrate under a special power of attorney."*

In this case, it was clear from the Appellant's trade licence that it was a limited liability company with a general manager who was named on the licence. It was also clear from the construction agreement, which was the subject of the claim that it was signed, on the Appellant's behalf, by its CEO. There was nothing on record to indicate that this CEO had delegated authority from the Appellant's manager to enter into an arbitration agreement. The arbitration clause was therefore considered void due to the absence of a 'special power of attorney' from the company's general manager to the company's CEO.

According to the second approach applied by the courts, the so-called 'apparent authority' rule did not apply. As the Dubai Court of Cassation in Decision 182 of 2018 dated 20 May 2018 noted:

> *"The doctrine of apparent authority is inapplicable in the context of an agreement to arbitrate whose parties must verify each other's capacity and competence to enter into such agreement which entails a waiver of filing the case to the courts, including related guarantees."*

Arbitration: Alternative v Exceptional means of Dispute Resolution

The Courts' view of arbitration may change in view of the enactment of an arbitration friendly new law and a desire to not impede arbitration proceedings in the UAE. In **Dubai Court of Appeal Judgment 8 of 2018**, which considered a grievance against enforcement or challenge of an award, the court held that:

> *"Arbitration is not an exceptional means of resolving disputes but an alternative means that shall be followed once its conditions are satisfied. Arbitration is a matter of the parties' intent and giving expression to their intent in a written agreement, whether in the form of a separate agreement or as a clause within a contract. In all cases, the law requires that such agreement be evidenced in writing."*

Should the Courts of Cassation in Dubai and Abu Dhabi and other UAE courts affirm this new approach, the impact on the interpretation of arbitration agreements and their validity could be significant. In the above case, the court highlighted the principle that contracts must be performed in accordance with the requirements of good faith. As a result, issues relating to the authority of the signatory to an arbitration agreement may not be subject to such a strict interpretation as it has been in the past.

Conclusion

The judgments above highlight the importance of a legal representative to be explicitly authorised to sign arbitration agreements. However, in practice, we are witnessing a change in the courts' approach in their interpretation of what binds a company to arbitration based on the principles of good faith and the courts' evolving view of arbitration as a means of resolving disputes.

Al Tamimi & Company's Litigation and Arbitration teams regularly advise on arbitration related issues. For further information, please contact Mosaab Aly (m.aly@tamimi.com).

Transforming Sole Establishment to LLC: Is It Limitation of Liabilities or Exposure to Further Liabilities?

Ali Bachrouch
Partner, Head of Corporate Structuring - Northern Emirates
Sharjah, UAE
a.bachrouch@tamimi.com

Odai Mismar
Associate
Sharjah, UAE
o.mismar@tamimi.com

Introduction

The 'change of legal status' from sole establishment to limited liability company ('LLC') is a common 'licence' transaction introduced by various relevant licensing authorities in the UAE. There are two major situations where the concept of the change of legal status is implemented: the first is the sale of a business (sole establishment) to third parties who intend to continue the business under limited liability form; and the second is when the owner aims to continue the business under limited liability status. It is purported to be a practical solution to ensure the continuity of the licence's 'existence' at the commercial register.

Notwithstanding the concerns regarding the validity of the terminology and the legal basis of the concept, this article will focus on the implementation of 'change of legal status from sole establishment to LLC, with special consideration given to the general liabilities associated with the transaction. The first section of this article will tackle the practical application of the concept, and the second section will focus on the liability implications.

Practical Application

This section will discuss the main legal provisions that govern the concept of change of legal status from sole establishment to LLC, and the purpose of introducing such a procedure by the licensing authorities.

The transformation from sole establishment to LLC is not an established concept under a specific regulation in UAE, however it is a practical procedure that was introduced by the concerned licensing authorities in the various Emirates, with the ultimate purpose of keeping the same trade licence number for the business entity once the change of legal status from sole establishment to LLC is effected. The benefit of keeping the same trade licence number is to maintain a practical continuity for the business in its relationships with third parties, and in particular with governmental authorities, as the licence number constitutes the principal means by which businesses are identified. Accordingly, the establishment's cards, establishment's accounts, etc. with the various authorities (such as immigration, labour office, Etisalat) do not need to be closed upon the conversion transaction. Instead only a simple amendment is required in order to reflect the change in the trade name and the status. Actually, the conversion transaction can be considered as a combination between two legal procedures as explained below:

1. **creating a LLC as an independent corporate entity** in accordance with the provisions of the Federal Law No. 2 of 2015 on Commercial Companies ('2015 law'). The 2015 law provides for an exclusive list of the forms of corporate entities, among which is the LLC;
2. **transferring the ownership of the sole establishment**, in accordance with the provisions of the Federal Law No. 18 of 1993 on the Commercial Transaction Law (the '1993 law'). The concept of the sole establishment (business premises, also referred to as a sole proprietorship) is found in Article (39) of 1993 law, titled 'business premises'.

Article (39) provides that:

> *"business premises constitute a group of tangible and intangible assets allocated for the practice of Commercial Activities"*

Furthermore, Article (40) provides that:

> *"The main elements in the sole establishment are divided in two different categories which are as follows:*
>
> 1. ***tangible elements:*** *such as the goods, equipment, machines, tools ;and*
> 2. ***intangible elements:*** *such as the clientele (customer contacts), goodwill, trade name, right to let, industrial, literary and artistic patents and licenses."*

Thus, compliance with the provisions of 1993 law that govern the transfer of ownership of the sole establishment (represented by its tangible and intangible elements) constitutes a major requirement in the process of converting a sole establishment to a LLC. The essential consequence for not complying with the provisions of 1993 law is the exposure of the owners to additional liability towards third parties.

Liability Implications

The transfer of ownership of the sole establishment involves two main steps: namely the registration of the disposal transaction in the commercial register; and the notification of the disposal (publication).

Registration of the Disposal Transaction in the Commercial Register

Pursuant to Article (42) of 1993 law, in order to be valid, any agreement related to the transfer of ownership of a sole establishment must be legalised and registered in the commercial register.

The registration of the disposal in the commercial register shall be deemed completed upon performing the following procedures, as specified under Article (45) of 1993 law:

1. *"The officer in charge at the Commercial Register shall, at the request and expense of the purchaser, publish a summary of the sale agreement in two Arabic local newspapers with an interval of one week between the two publications.*
2. *The summary published shall include the names of the contracting parties, their nationalities and places of residence, specification of the subject, total price and grant the creditors the right to submit their objections within ten days from the date of the last publication.*
3. *Objections specifying the amount of the debit and its cause shall be submitted to the competent Civil Court in the jurisdiction where the business premises is located.*
4. *The purchaser shall refrain from paying the price until the competent Civil Court makes a ruling on the objection. However, the seller may make a request for the summary judge to authorize him to cash the price even before the objections are looked into, if he provides sufficient guarantees for the settlement of the creditors' rights.*
5. *Any objecting creditor or mortgagor may offer to purchase the business premises for himself or for a third party for a price exceeding by at least one fifth the price agreed upon.*
6. *Any person objecting to the price shall deposit at the court treasury a sum equal to at least one third of the original price in addition to the increase offered by him.*
7. *The competent Civil Court shall notify the offers of increase to the contracting parties for the sale of the business premises and twenty days after such notification the specialized Civil Court shall decide the sole of the business premises shall be sold to the person having offered the highest price."*

The essential consequence for not complying with the provisions of 1993 law is the exposure of the owners to additional liability towards third parties.

Hence, in the case of a failure to fulfil the requirements of the registration as mentioned above, including the publication of the summary of the transfer of ownership agreement in two Arabic local newspapers with an interval of one week between the two publications, the transfer of ownership shall be considered invalid. The invalidity in this case will be applicable among the contracting parties and in relation to third parties, in accordance with the provision of Article (44) of Law 1993.

Notification of Disposal

Following the registration of the disposal in the commercial register, the person to whom the title to the business premises has devolved (the purchaser of the sole establishment) shall perform additional obligations in accordance with Article (47) of 1993 law as follows:

- the purchaser shall fix a period for the creditors holding debts prior to the notification of the disposal, in order to submit a statement of their debts for settlement. Such period shall be published in two local newspapers issued, one of which is in Arabic and with an interval of one week between the two publications. The period fixed to the creditors shall not be less than ninety days from the date of publication. The purchaser shall remain liable for the debts, if the creditors of such debts submit a statement thereof within the said prescribed period and if such debts are not settled within such period;
- however, the purchaser shall be released of any debts in circumstances where the creditors do not produce a statement within the prescribed period as set out in the previous paragraph;

- furthermore, the disposing party shall remain liable for the debts related to the business premises which arose prior to the notification of the disposal unless he is discharged therefrom by the creditors.

Therefore, in the case of the failure to fulfil the notification of disposal by the purchaser, both the disposing party and the purchaser will remain jointly liable for any debts. It is worth mentioning that, in practice, it is possible to complete the conversion of a sole establishment to a LLC without completing the notification of disposal requirement, however, a question as to joint liability on the part of the disposing party and the purchaser (the shareholders in the newly formed LLC) may arise.

Conclusion

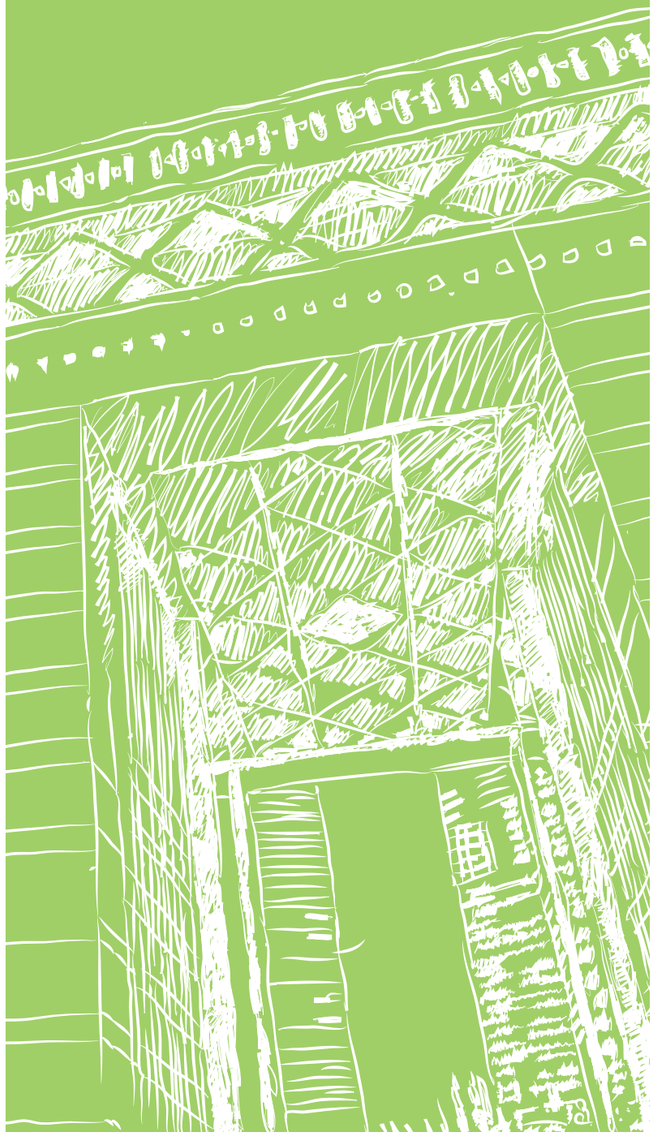
The change of legal status from sole establishment to a LLC originated from a procedural practice adopted by various licensing authorities in the UAE, and can be viewed as a combination between two legal procedures creating a limited liability company as well as transferring the ownership of a sole establishment.

Conceptually, the aim of introducing the change of legal status from sole establishment to a LLC is to move from the position of unlimited liability to the status of limited liability. It is worth mentioning that the 'change of legal status' transaction involves essential provisions regarding the transfer of ownership of the elements of the sole establishment, with specific requirements related to the notification of creditors and publication. Therefore, special consideration should be given to the accurate fulfilment of the notification and publication requirements during the transaction; otherwise, the parties (seller/purchaser) may remain jointly liable for any debts related to the business. It is worth noting that such notification and publication requirements amount to, in general, an obligation on the part of the purchaser, hence, in practice, the licence of the sole establishment can be amended to reflect the new LLC status, even before the completion of the notification and publication requirements.

Moreover, in any event the Seller shall be liable for any debts related to the sole establishment and which may have arisen prior to the notification of the disposal unless it is discharged from such debts by the creditors.

Al Tamimi & Company's Corporate Structuring team regularly advises on liabilities related to corporate structuring. For further information, please contact Ali Bachrouch (a.bachrouch@tamimi.com) or Odai Mismar (o.mismar@tamimi.com).

New DIFC Prescribed Company Regulations



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

Noff Al Khafaji
Senior Associate
Dubai, UAE
n.alkhafaji@tamimi.com

Having revised the overall companies regime under DIFC Companies Law No. 5 of 2018 ('Companies Law'), and having considered the Special Purpose Companies ('SPCs') and Intermediate Special Purpose Vehicles ('ISPVs') that used to form part of the offering of the DIFC, on 31 October 2019, the DIFC Authority enacted new Prescribed Company Regulations ('New Regulations').

The initiative to introduce the New Regulations was driven by the objective to make sure the secondary legislation, i.e. regulations, under DIFC law, naturally complement the Companies Law and encourage a relaxed, cost efficient and flexible regime for lighter company structures within the DIFC.

The Prescribed Companies, in addition to the New Regulations, are subject to the Companies Law, Operating Law DIFC Law No 7 of 2019, Operating Regulations and the Ultimate Beneficial Ownership Regulations.

What is a Prescribed Company?

Under the New Regulations, a Prescribed Company is a private company limited by shares that falls under the regime of a Small Private Company, as per the Companies Law. The existing SPCs as well as the ISPVs shall automatically become Prescribed Companies whilst certain other entities can be formed as a Prescribed Company.

Eligibility

A Small Private Company will be considered a Prescribed Company if it has been established:

1. by a qualifying applicant; or
2. for a qualified purpose.

1. Qualifying Applicants are:

- Authorised Firm, being a firm regulated by: (i) the Dubai Financial Services Authority ('DFSA'); or (ii) a recognised financial services regulator in Australia, Austria, Belgium, Canada, Denmark, European Member States, Finland, France, Germany, Greece, Guernsey, Hong Kong, Iceland, India, Ireland, Isle of Man, Italy, Japan, Jersey, Luxembourg, Malaysia, Netherlands, Norway, Portugal, Singapore, South Africa, Spain, Sweden, Switzerland, United Kingdom, United States of America;
- Fund: a DFSA-regulated fund or a fund domiciled in Australia, Austria, Belgium, Canada, Denmark, European Member States, Finland, France, Germany, Greece, Guernsey, Hong Kong, Iceland, India, Ireland, Isle of Man, Italy, Japan, Jersey, Luxembourg, Malaysia, Netherlands, Norway, Portugal, Singapore, South Africa, Spain, Sweden, Switzerland, United Kingdom, United States of America;
- Family Office formed in the DIFC under DIFC Family Office Regulations and physically present in the DIFC;
- FinTech Entity: an entity licensed to conduct financial technology activities in the DIFC;
- Foundation: a foundation formed in the DIFC;
- Government Entity: (a) the Federal Government, the government of Dubai or the government of any Emirates; (b) a person who has powers or is associated with any government entities in (a) above; or (c) a person who owns (directly or indirectly) a significant interest in a government entity stated in (a) above;
- Holding Company: a holding company formed in the DIFC;
- Private Trust Company: a private trust entity registered in the DIFC;
- Proprietary Investment Company: a proprietary investment company registered in the DIFC; and
- a DIFC Prescribed Company controlled by one or more of the above applicants, ('Qualifying Applicant').

2. Qualifying Purposes are:

- Aviation Structure: a structure involving one or more persons that have a sole purpose of facilitating the owning, financing, securing, leasing or operating of one or more aircraft;
- Crowdfunding Structure: a structure involving one or more persons established for the purpose of holding asset(s) invested into through a crowdfunding platform;
- Family Holding Structure: a structure involving one or more persons established for the sole purpose of consolidating the holdings of a specific family member, their spouse and/or, bloodline descendants in a DIFC family office, holding company or a proprietary investment company; or
- Structure Financing: a structure involving one or more persons having the sole purpose of holding assets to leverage, and/or manage risk in one or more financial transactions, including: (a) complex lending or security arrangements; (b) derivative transactions; (c) hybrid securities; or (d) securitised and collateralised debt instruments, (whether done in an Islamic or conventional financing manner), ('Qualifying Purpose').

Former Regime and the New Regulations

Under the former SPC framework, a SPC could be formed to conduct a prescribed type of functions, e.g. activities involving acquisitions (by leasing, title transfer, risk transfer or otherwise), the disposal of any assets (tangible or intangible, including but not limited to receivables and shares) for the purpose of a transaction, obtaining any type of financing, granting any type of security interest over assets, providing any indemnity/support for the benefit of shareholders, entering into any type of hedging arrangements and acting as trustee or agent for any participant in a transaction. The SPC had to appoint a corporate service provider as a company secretary and the majority of directors of the SPC were required to be employees of the corporate service provider.

The ISPV regime, on the other hand, focused on Qualifying Applicants who already had operations within the DIFC and wished to extend theses operations to further entities such as, fund vehicles, collective investment schemes, holding entities, proprietary investment entities, or, single family offices. The ISPV regime can be seen to be more tailored towards structuring investments for existing DIFC businesses. However, the scope of eligible businesses that could establish ISPVs in the DIFC was restricted to company limited by shares carrying out the eligible activities from the DIFC.

It follows, the former regimes for establishing special purpose companies were catered towards structured financial related transactions.

However, the Prescribed Company framework is more flexible and as such, better suited for a wider group of businesses.

New Regulations - Benefits

In general, the key benefit of the New Regulations when compared to the former regime is that this new framework offers competitive licensing and registration fees whilst also providing business friendly legalisation that accommodates commercial initiatives that do not require heavy or onerous governance framework.

Corporate Service Provider

In particular, a Prescribed Company can engage and maintain a Corporate Service Provider which would then carry out certain functions (instead of those having to be conducted by the employees of the Prescribed Company). These functions include providing a registered address, carrying out all assessments and checks to ensure the Prescribed Company complies with the relevant requirements such as AML compliance, annual reporting requirements and Ultimate Beneficial Ownership registration requirements.

Flexibility

What is more, Prescribed Companies are not required to file accounts or have accounts audited, and there is no requirement for a Prescribed Company to maintain its own separate registered office. Under the New Regulations, a Prescribed Company can either share the registered address of their Qualifying Applicant, which is registered within the DIFC, or maintain the registered address of its corporate service provider (as explained above).

Cost

Finally, the fees for incorporating a Prescribed Company are much lower in comparison to a typical private company limited by shares in the DIFC, with the registration fee (one-off) being US$100 (as opposed to US$8,000) and the annual license fee reduced to US$1,000 instead of US$12,000.

Economic Substance

In April 2019, the Cabinet of Minister Resolution No 31 of 2019 introduced the Economic Substance Regulations, which enforced businesses in the UAE to have evidential economic presence in the UAE. The Economic Substance Regulations apply to all onshore and free zone companies carrying out "relevant activity". Therefore, the Prescribed Company should assess whether the Economic Substance Regulations apply to its operations. It shall not assume the Prescribed Company status automatically exempts it from the application of the economic substance regime.

Conclusion

In conclusion, the New Regulations have introduced a more flexible, less burdensome compliance-wise and certainly less costly alternative to Qualifying Applicants or those who intend to form a business for a Qualifying Purpose. The ability to conduct business without the need to appoint an auditor or rent its own office space in the DIFC are key examples of how the DIFC wish to accommodate businesses' needs and stay competitive as a free zone.

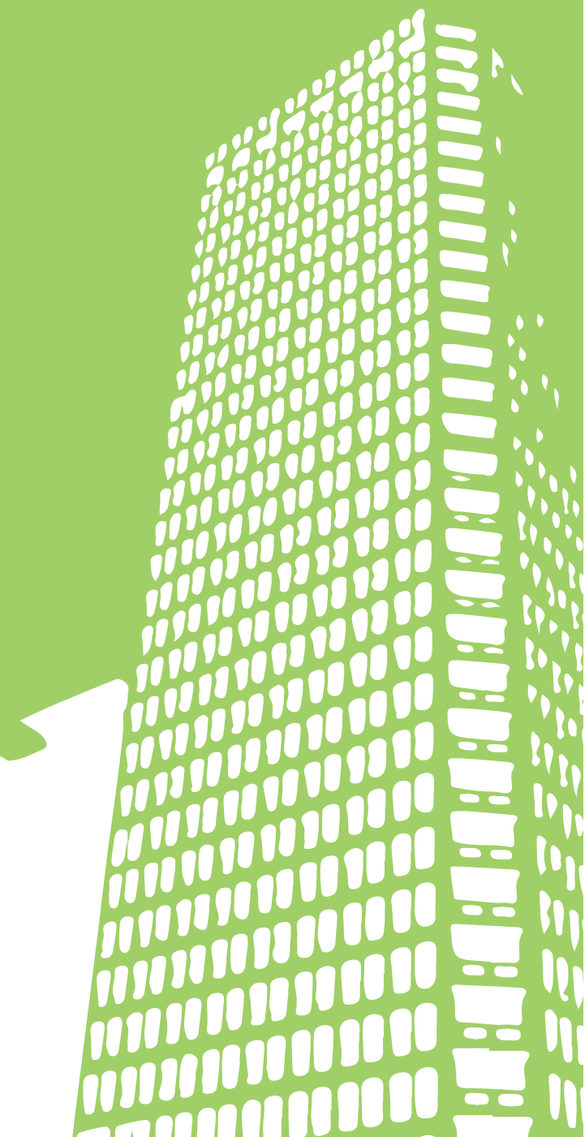
Also, with the much anticipated global event of Dubai Expo 2020, and Dubai being a strategic location for businesses to provide services in the MEASA region, we could witness an increase of companies operating in the DIFC and the utilisation of Prescribed Companies.

Whether the future will bring a number of Prescribed Companies' begin formed - only time will tell.

One thing is for sure: the DIFC has made a move in the right direction with the introduction of the New Regulations.

Al Tamimi & Company's Corporate Structuring team regularly advises clients on the impact of legislative changes. For further information, please contact Izabella Szadkowska (i.szadkowska@tamimi.com) or Noff Al Khafaji (n.alkafaji@tamimi.com).

The Rising Free Zone: Dubai World Trade Centre



Sherif Rahman
Partner
Dubai, UAE
s.rahman@tamimi.com

Khadija Hussain
Associate
Dubai, UAE
k.hussain@tamimi.com

His Highness Sheikh Mohammed Bin Rashid Al Maktoum UAE President and Prime Minister, Ruler of Dubai established the Dubai World Trade Centre ('DWTC') free zone in May 2015. The primary aim of DWTC is to further diversify and attract foreign investors in order to boost economic capabilities of the Dubai Trade Centre by capitalising on its networking platform which is frequently used for hosting international events and exhibitions such as Cityscape Global, Arab Health and GulfFood.

The key feature of DWTC is its location. Situated in the prime business district of Dubai with easy access to public transport and a short drive from Dubai International Airport, it is attractive for foreign investors wanting to establish a corporate presence in the region, especially for representative or marketing offices, holding companies and IT related services, which do not require extensive office space or a large number of staff. That said, if a foreign investor does need extensive office space to house a large number of staff, DWTC also offers office and visa facilities to cater to such requirements. Therefore, DWTC can serve clients and businesses with multiple needs.

Benefits of DWTC

Like other free zones in the United Arab Emirates, DWTC offers 100 percent foreign ownership and other benefits generally offered by free zones across the UAE, such as a simplified and a straightforward incorporation process, and a single point of contact for all services, from registration and licensing to leasing and immigration.

DWTC regulations permit foreign companies to migrate to the DWTC. This is very attractive for companies incorporated in international jurisdictions that wish to migrate into a free zone in Dubai in order to take advantage of its tax-free environment, and yet still wishing to maintain their operational and accounting legacy. The procedure for migration is subject to the fulfilment of certain requirements and can be completed seamlessly as long as the jurisdiction from where the foreign company intends to migrate also recognises the concept of migration.

Type of Companies

The DWTC allows for three types of companies to be established:

1. Free Zone Establishment ('FZE'): a single shareholder company with limited liability;
2. Free Zone Company ('FZCO'): a company with limited lability with minimum of two and a maximum of 10 shareholders; and
3. a branch of a limited liability company registered in UAE mainland or a foreign company.

> **The location and accessibility of DWTC makes it attractive for foreign investors wanting to establish a corporate presence in the region.**

Business Activities

DWTC mirrors most of the activities licenced by the Dubai Economy ('DE') under various categories such as commercial, trading consultancy and/or event management. This allows for a business to conduct up to 10 similar activities as well as obtain a business-operating permit for entities already licensed by the DE that require an additional presence in a free zone.

Setting-up

The incorporation process begins with the submission of the application form which contains a business plan and a brief summary of the proposed business activities, supported by documents of the shareholder and officers to be appointed for the DWTC entity.

There are no minimum capital requirements. The paid-up capital is only mandatory if the intended share capital is more than AED 300,000 (US$82,000) or in case where issuance of a share certificate is required.

After receiving a pre-approval for the application, DWTC authority requires submission of final documents inclusive of a signed office lease. DWTC offers the following options for office space:

1. hot desk;
2. executive office.;
3. standard and flexible offices/shell and core offices in One Central; and
4. various serviced business centres located at One Central.

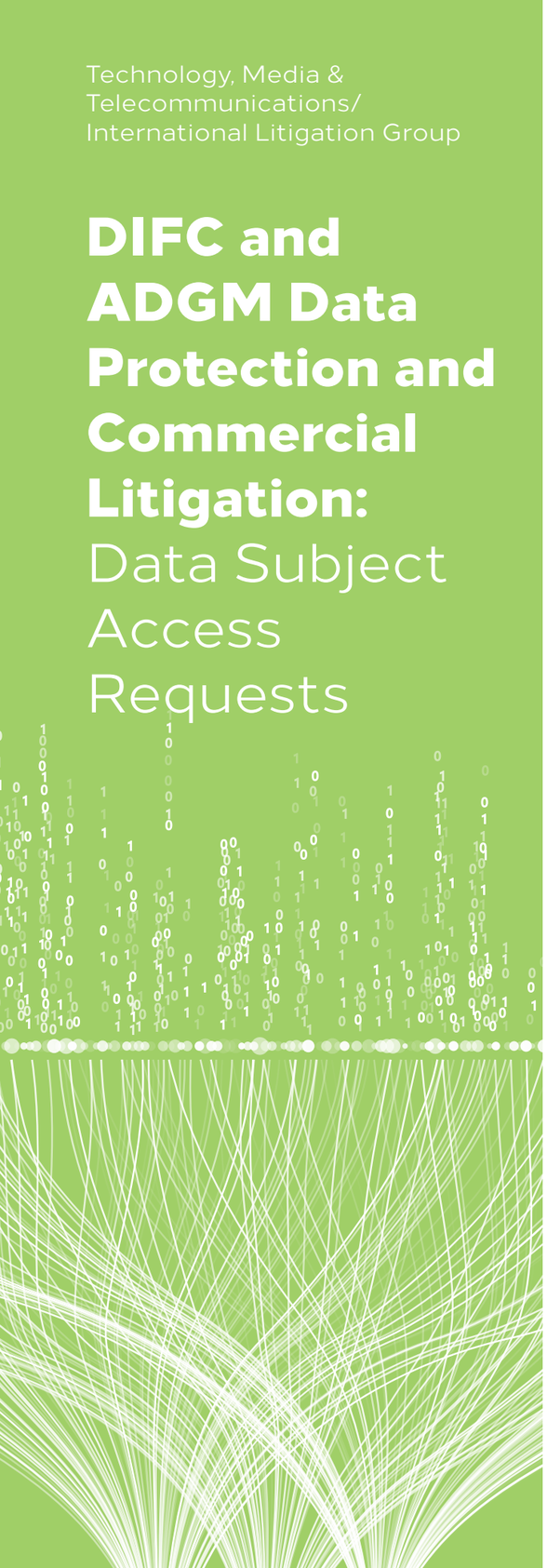
Conclusion

DWTC is an important inclusion in the list of free zones in the UAE, offering quick, economical and effective setting up options.

Al Tamimi & Company's Corporate Structuring team regularly advises on setting up companies in DWTC free zone. For further information, please contact Sherif Rahman (s.rahman@tamimi.com) or Khadija Hussain (k.hussain@tamimi.com).

Technology, Media & Telecommunications/ International Litigation Group

DIFC and ADGM Data Protection and Commercial Litigation: Data Subject Access Requests



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

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

Dispute resolution rarely runs in a straight line, from the raising of a pre-action complaint, to a substantive hearing on the claim, and a final judgment disposing of the action. Interim applications often disrupt this linear process, and issues such as disclosure and security for costs can spawn satellite dispute resolution processes that divert the parties from the main, underlying conflict.

Some ancillary measures are more useful than others in advancing the substantive dispute, however. A good example is the use of data protection law in commercial disputes. This phenomenon has been common in a number of jurisdictions for many years. The development of data protection legislation in the DIFC and ADGM and the maturation of the UAE's common law courts means that parties in commercial disputes are increasingly using data protection laws to further their position, primarily to flush out documents that would aid their case or undermine their opponent's. A similar trend is showing in relation to DIFC employment disputes.

This article is the first in a series that looks at two measures, data subject access requests and regulatory investigations, in that context.

What Is A Data Subject Access Request Under DIFC and ADGM Law?

The DIFC Data Protection Law (Law No. 1 of 2007 as amended) governs data protection law in the jurisdiction of the DIFC. As a recap:

- the DIFC Data Protection Law focuses on information that allows the identification, directly or indirectly, of any natural living person, whether by reference to an identification number or to one or more factors specific to his/her biological, physical, biometric, physiological, mental, economic, cultural or social identity ('Personal Data');
- Personal Data identifies a natural person and is information which is processed by means of equipment operating automatically in response to instructions given for that purpose, is recorded with the intention that it should be processed by means of such equipment, or is otherwise recorded as part of a 'Relevant Filing System';
- the DIFC Data Protection Law provides that natural persons ('Data Subjects') have rights of access to Personal Data being held, processed or otherwise relating to them;
- Article 17 creates the right to a Data Subject access request ('DSAR'). It obliges a person (including a legal person) who controls such Personal Data ('the Data Controller') to provide, upon request, confirmation in writing as to whether or not Personal Data relating to that person is being processed and information at least to the purposes of the processing, the categories of Personal Data concerned, and the recipients or categories of recipients to whom the Personal Data are disclosed;
- the Data Controller should communicate to the Data Subject in an intelligible form the Personal Data undergoing processing including any available information as to the source of the Personal Data;
- the Data Controller should, as appropriate, rectify, erase or block the processing of Personal Data that is not processed in accordance with the DIFC Data Protection Law. All of this should be done within a "reasonable interval" and "without excessive delay or expense" by the Data Controller; and
- Article 18 of the DIFC Data Protection Law additionally provides the Data Subject with the right to object to the processing of his/her Personal Data on reasonable grounds relating to his/her personal situation Where there is a justified objection, the Data Controller may not process the material Personal Data in that way.

Similar provisions exist in ADGM law under the ADGM Data Protection Regulations 2015 , Articles 10 and 11.

How Can a DSAR be Used in Commercial Litigation?

It is important to note that a DSAR can only be made on behalf of a natural person and not a company. However, given that every company must have one or more humans at its heart, it is not usually difficult to see how a request based on Personal Data relating to a person can be usefully demanded from a prospective or actual counterparty in a dispute.

Parties in disputes usually want more information, particularly in the form of documents or other data and especially documents possessed by their adversary to which they do not have access. The Rules of the DIFC Courts and the ADGM Court Procedure Rules each have processes permitting parties to request documents before and during litigation, as do arbitral rules such as the DIFC-LCIA and ICC. However, DSARs may force the disclosure of documents, including hard copies and emails, which are relevant to a dispute but not captured within the dispute resolution process. This could be for a number of reasons, such as because the parties have not asked for them, because they do not fall within the scope of disclosure ordered by the court or tribunal, or because the Personal Data provide search terms which cast a wider net for searches.

Cost is a big issue as litigation and arbitration can be very expensive, particularly when fees for lawyers and IT disclosure platform providers are taken into account. DSARs can therefore provide a cheap and low risk form of pre-action disclosure or third party disclosure. The only real risk in a DSAR is if the Data Controller rejects or truncates the disclosure made in response to the request, in which case the Data Subject may need to engage the DIFC Commissioner for Data Protection ('CDP') or the ADGM Office of Data Protection ('ODP') for assistance. Even then, the statutory regulators may intervene on behalf of the Data Subject and make orders against the Data Controller. Ultimately, the Data Subject may need to apply to Court for an order, with or without the assistance of the statutory regulator. At all stages prior to an application to Court, the Data Subject's expended cost and his/her potential liability for the Data Controller's costs are low.

DSARs do not require an order from a court or tribunal, nor do they require Data Controllers to be added to litigation or arbitration for the purposes of a search and disclosure. They are freestanding rights of action that can be exercised at any time, whether or not proceedings are on footing. They are also easy to make and can be made in a number of formats. Both the DIFC and ADGM rules adopt European rules on data protection prior to the General Data Protection Regulation 2018, and particularly the scheme set out in the UK Data Protection Act 1998, but with variations. The DIFC Data Protection Policy Guidance published by the CDP notes that a DSAR must normally be in writing, but there is no specific format required. Unlike in the UK, DSARs in the DIFC should usually be free of charge unless the request results in high administrative costs or additional copies are required. DSARs generally oblige Data Controllers to respond in a timely fashion.

How Should a DSAR be Responded to?

As a rule, a Data Controller receiving a DSAR should respond promptly and efficiently upon receiving a DSAR. As the DIFC's Guidance notes, "Generally, controllers that hold or process personal data about an individual must confirm whether or not personal data concerning him or her are being processed, and, where that is the case, the controller must give the individual access to the personal data, with very few and limited exceptions." As such, large Data Controllers would be well advised to investigate appropriate information management technology that allows rapid searching across all of the organisation's functions captured by the DSAR scope. Data Controllers may wish to have information barriers in place so that data within the jurisdiction of the DIFC or ADGM is easily identifiable and searchable. If the DSAR is made for dispute resolution purposes, the litigation or arbitration team may not be aware that it has been made, and so good internal communications are necessary. External counsel should be advised if a DSAR has been made as it may have a bearing on the dispute.

There are a number of principle grounds for resisting the scope of a DSAR:

First, objections to the scope of search including proportionality of searching for material data. English case law (which is persuasive in the DIFC and ADGM) has established that a Data Controller is obliged only to carry out a reasonable and proportionate search in response to a DSAR. The ground of proportionality alone will rarely be a sufficient reason to justify the recipient of a DSAR failing to attempt even to carry out a search. However, if a Data Controller believes that a search would be genuinely disproportionate, a clear record should be kept of the basis upon which this conclusion was reached, including estimates of the time the search would take and the costs it would incur. Data Controllers can engage with the Data Subject to reduce and clarify the scope of DSARs as far as possible, such as by requesting further information about when the data was processed and for what it was processed.

Second, objections on the grounds of privilege and confidentiality. Under European data protection law (the General Data Protection Regulation ('GDPR') and the related UK 2018 Data Protection Act) legal professional privilege and confidentiality are exemptions to the Data Controller's transparency requirements, allowing a Data Controller to refuse to provide Personal Data if it were legally privileged or if it were

"The development of data protection legislation in the DIFC and ADGM and the maturation of the UAE's common law courts means that parties in commercial disputes are increasingly using data protection laws to further their position, primarily to flush out documents that would aid their case or undermine their opponent's.

information in respect of which a duty of confidentiality was owed by a professional legal adviser to a client. However, neither the DIFC Data Protection Law nor the ADGM Data Protection Regulations contain these explicit exemptions. Given the logic of both exemptions, and the closeness with which the DIFC and ADGM schemes follow English law, it is likely that, upon invitation, the DIFC Courts and ADGM Courts could develop their own jurisprudence on the issues. As a result, Data Controllers should generally satisfy themselves that the relevant documents really are legally privileged or confidential in the traditional sense because, if they not, they will need to be disclosed. Even if the legal privilege and confidentiality exemptions apply, a search cannot be completely avoided, and suitable processes should be in place to identify potentially privileged and confidential material and separate it for further consideration. If in doubt, a Data Controller should apply a presumption of non-disclosure and seek the views of the appropriate statutory regulator.

Finally, the Data Subject's motive in making the DSAR, and particularly his/her timing in so doing. An early English Court of Appeal decision (*Durant v Financial Services Authority* [2003] EWCA Civ 1746) established the principle that a DSAR is not an automatic right, such as for employees to access all personal data held about them by their employer for the purposes of litigation. The purpose of the request could be considered too. However, in *Dawson-Damer v Taylor Wessing LLP* [2017] EWCA Civ 74, the Court of Appeal rowed back from that position, holding that the motive behind the making of the DSAR was irrelevant to whether or not the employer should comply with it. The individual was entitled to make a DSAR even if the collateral purpose in doing so was to aid litigation. There is nothing in the DPA that limits the purpose of a DSAR or places a requirement on an individual to explain what they want the information for, and the existence of an ulterior motive did not vitiate the rights of the Data Subject. The DIFC and ADGM regulators and Courts respectively may develop an analysis of the Data Subject's motivation in future, when considering whether to order a Data Controller to respond to a DSAR.

Large Data Controllers would be well advised to investigate appropriate information management technology that allows rapid searching across all of the organisation's functions captured by the DSAR scope.

What Is the Future of the DSAR?

Given the advent of the GDPR, regulators around the world are re-thinking their data protection regimes. In the DIFC, the CDP published Consultation Paper No. 6 in June 2019 with a proposed new data protection law for the DIFC. Similar changes are expected in the ADGM. The proposed new DIFC data protection law contains provisions that require Data Subjects to be provided with information and specify the required information and conditions of the presentation and delivery of the information. The proposed right of access to Personal Data remains an absolute right, subject to limited exceptions created by the law. The list of individual remedies suggested is an increase on the existing rights under the current DIFC Data Protection Law.

Perhaps, in both the ADGM and the DIFC, the biggest change to the DSAR regime will be a widening in the scope of information that a Data Controller must provide. Pre-GDPR, the Data Controller had to provide a copy of the Personal Data and confirm whether it is processing them. Now, the Data Controller must also provide additional information including the purposes of processing, the categories of Personal Data concerned, the recipients or categories of recipients of the Personal Data, notice of the existence of the right to request rectification, erasure or restriction, information about the source of the data when not obtained directly from the Data Subject, and the existence of automated decision-making such as profiling. This has the potential for greatly increasing the time and cost for a Data Controller in managing a DSAR and, as a result, may well make the use of DSARs a more potent litigation tool.

Al Tamimi & Company's TMT team and International Litigation Group are experienced in advising data subjects and data controllers alike on making and responding to data subject access requests, and adversarial proceedings before the statutory regulators and Courts in the DIFC and ADGM. For further information, please contact Martin Hayward (m.hayward@tamimi.com) or Peter Smith (p.smith@tamimi.com).

Oman Courts freeze a Performance Bond Liquidation worth more than US$17 million in Construction Mega-Project

Ahmad Ghoneim
Partner
Abu Dhabi, UAE
a.ghoneim@tamimi.com

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

An Omani Urgent Matters Court ('OUMC') issued a decision to prevent the liquidation of an unconditional performance bond with a value in excess of US$17 million in respect of a mega-project in Oman. The employer called the performance bond during the execution of the project based on allegations that the contractor was in delay.

Case Background

A contractor and a project developer contracted under the 1987 FIDIC conditions of contract, with particular conditions ('Contract'), for the construction of a mega-project in Oman. The total project value exceeded US$100 million and covered an area of approximately 80,000 square metres. The project offered residential and hotel accommodation.

Prior to beginning construction, the main contractor issued multiple unconditional bonds, including performance bonds with an aggregate value in excess of US$17 million. The contractor commenced construction, and made significant progress on site; however, severe weather conditions caused by storm Mekunu adversely affected the construction site in the summer of 2018. Consequently, the project experienced delays in meeting milestones. The employer took the view that the project delays were not attributable to weather conditions and therefore, delayed project payments.

The employer notified the contractor that the latter was in breach of the Contract, an allegation that the contractor denied. Subsequently, the employer served a notice of termination to the contractor, followed by a request to liquidate the performance bonds.

As a result, the contractor issued civil proceedings against the employer. Simultaneously, the contractor also filed a case before the competent OUMC to, including but not limited to, record the status of the site, work done, materials on site, and equipment. The contractor also requested that the OUMC freeze the performance bond liquidation, pending the issuance of the judgment in the parties' civil case. The contractor highlighted to the OUMC that a liquidation of the bonds would result in significant cash flow problems for the contractor and its value significantly exceeded the value of the remaining works. Furthermore, any breach by the contractor resulted from a force majeure event.

In support of its requests, the contractor cited the following articles from the Omani Civil Procedures Law:

1. under Article 190, an urgent matters court has the requisite jurisdiction to issue injunctions where permitted by statute. Such an application should include the reasons and evidence necessary to warrant an injunction;
2. under Article 371 of the same law, a party may apply for an injunction in transactions relating to a bond liquidation where the borrower's rights may be prejudiced.

The contractor was successful in its application – the OUMC ordered an injunction on the bond liquidation pending a court decision in the civil proceedings between the parties.

Significance

This case highlights a useful and practical approach to performance bonds and injunctions. Contractors generally have been willing to provide employers with unconditional performance bonds, which provide employers with a safety net in the event the contractor defaults on its contractual obligations. Should a contractor fail to comply with the related contractual obligations, employers may 'call' the bond, which means that the issuing bank is not entitled to reject the liquidation of the bond, except where ordered to do so by a court of competent jurisdiction. Therefore, a party wishing to prevent the liquidation of a performance must seek court intervention. This can be challenging. Currently, Omani law does not specify the circumstances in which a court can issue an injunction over a bond liquidation. As a result, applicants must present compelling grounds to persuade the OUMC to order an injunction to temporarily freeze the liquidation of the unconditional bond. Thereafter, the OUMC will determine, in its sole discretion, whether such grounds warrant freezing of the bond.

Al Tamimi & Company's Construction & Litigation team regularly advises on construction related disputes in Oman. For further information, please contact Ahmad Ghoneim (a.ghoneim@tamimi.com) or Ahmed Al Barwani (a.albarwani@tamimi.com).

Jurisdiction Update
Saudi Arabia

Another Milestone for Saudi Arabia: First Premium Residencies Issued to Foreigners

Mohsin Khan
Senior Associate
Jeddah, Saudi Arabia
mohsin.khan@tamimi.com

Zahir Qayum
Senior Counsel
Al Khobar, Saudi Arabia
Manama, Bahrain
z.qayum@tamimi.com

Introduction

On 11 November 2019, the Kingdom of Saudi Arabic ('KSA') issued Premium Residency status to non-Saudi nationals for the first time in its history, marking another milestone in its progress towards Vision 2030. In total, 73 Premium Residencies were issued to individuals with 19 different nationalities. The Saudi Premium Residency Centre announced that applications were received from thousands of applicants representing over 50 nationalities from within and outside of KSA. The Premium Residencies were issued to individuals from a broad spectrum of professions including investors, doctors, engineers and financiers.

In this article, we look at the background to the new Premium Residency status, as well as the eligibility requirements for applicants and benefits of holding Premium Residency in KSA.

Background

The immigration status of non-Saudi nationals has traditionally been based on employment status where an individual's employer would act as their sponsor for residency purposes. Under this employment-based immigration system, non-Saudi residents are subject to certain restrictions; for example, non-Saudi nationals can only work for their employer and sponsor and cannot freely move to another employer without the existing sponsor's consent to transfer their sponsorship. Non-Saudi residents are also unable to establish their own businesses within KSA whilst being

employed by their sponsor. Similarly, non-Saudi nationals residing in KSA under their employer's sponsorship are unable to easily own real estate in their own name. Importantly, if a non-Saudi national's employment ends, they are required to leave KSA unless they are able to transfer their sponsorship to a new employer. Although it is possible for foreign companies to invest in KSA in compliance with the Foreign Investment Law, foreign individual investors cannot do so directly, thereby limiting the potential scope of foreign investment within KSA.

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Premium Residencies awarded

New Premium Residency

Following the announcement first made in April 2016 by Crown Prince Mohammed Bin Salman of a 'green card' for expats, the KSA government passed the Privileged Iqama Law by Royal Decree No. M/106 dated 10/9/1440H (corresponding to 15 May 2019) (the 'Law').

The Law allows a non-Saudi national to apply for the Premium Residency either on a permanent basis or for a one-year period that is renewable. The cost of the permanent Premium Residency is SAR 800,000 (equivalent to US$213,333) and the cost of the one-year renewable Premium Residency is SAR 100,000 (equivalent to US$26,666). An applicant for the one-year Premium Residency will obtain a reduction of two percent per year on a cumulative basis if they pay the fees for more than one year in advance.

Eligibility Requirements for new Premium Residency

All applicants for Premium Residency in KSA must satisfy the following conditions:

- be at least 21 years old and have a valid passport;
- provide evidence of their solvency (i.e. proof of financial income, investments or other financial resources);
- provide a police clearance certificate;
- provide a health certificate within six months of the application date confirming that the applicant is free of infectious diseases; and
- have a valid Iqama (i.e. work and residence status) if the application is made at a time when the individual is already residing in KSA.

Rights and Benefits of Premium Residency

The Premium Residency gives the holder the following rights and benefits:

- ability to reside in the KSA with immediate family members and obtain visit visas for relatives;
- right to work in any establishment and to change employment at will;
- right to own property for residential, commercial and industrial purposes in all Saudi cities and towns with the exception of the holy cities of Makkah and Madinah, and some border areas;
- ability to undertake commercial activities in the KSA in accordance with Foreign Investment Law;
- right to enter and exit the KSA without restriction;
- ability to invest in securities listed in the Saudi Stock Market;
- right to make use of property in Makkah and Madinah for a period not exceeding 99 years;
- right to own private transport without restriction; and
- ability to recruit domestic workers.

"The large number of applications received for the Premium Residency shows that individual investors are attracted by the range of opportunities available in KSA as the country broadens its economy into new sectors.

Comment

The Premium Residency is a welcome step towards opening up investment opportunities in the KSA to non-Saudi nationals and its introduction comes at a time when the KSA is continuing to implement a number of reforms with a view to facilitating more foreign investment as the government looks to diversify the country's economy away from the oil sector. The high costs associated with both types of Premium Residency suggest that it is targeted mainly at entrepreneurs, who will be in a position to invest in the KSA and create job opportunities, or highly skilled workers.

Individuals awarded Premium Residency come from 19 different countries

However, notwithstanding the significant costs of the Premium Residency, the large number of applications received from individuals around the world for the Premium Residency since the scheme was opened in June 2019 shows that individual investors are attracted by the range of opportunities available in KSA as the country broadens its economy into new sectors. The government hopes that the Premium Residency scheme will boost the economy through the establishment of new businesses by foreign investors and thereby create employment opportunities for Saudi nationals. We expect to see increased commercial activity by foreign entrepreneurs that have been granted Premium Residency which is likely to increase competition within the private sector in KSA and, ultimately result in a more diverse economy.

Al Tamimi & Company's Employment & Incentives team advises on a range of business immigration issues, including the new Premium Residency scheme. For further information please contact Mohsin Khan (mohsin.khan@tamimi.com) or Zahir Qayum (z.qayum@tamimi.com).

The Heartbeat of Healthcare in the Middle East

Welcome to the 6th annual healthcare edition of Law Update.

Our Healthcare Practice provides a full suite of services to the entire healthcare sector through our 17 offices in nine countries across the Middle East. We have long served as trusted advisors to an array of healthcare service providers, third-party payors, as well as in the life sciences, biotechnology, and med-tech sectors. Consequently, our highly experienced healthcare lawyers have a comprehensive view of the healthcare ecosystems across the region, whether from the perspective of regulatory trends, corporate and commercial transactions, employment and talent retention, or with regard to protecting intellectual property, privacy and security compliance, and litigation.

In this month's Law Update we take a look at healthcare regulation developments in 2019, and continue to observe the regional growth in healthcare spending, and increased focus on telehealth, digital health, and all things 'tech'.

In the United Arab Emirates ('UAE'), we have observed a busy period of regulatory output from the regulators, including the Ministry of Health and Prevention's federal law on information communication technology (page 45), and executive regulations governing the interpretation of 'gross negligence' for medical malpractice (page 51), as well as regulations issued at the local health authority levels. A full summary of UAE developments is on page 73. The flurry of new Dubai Health Authority legislation this year included a much-anticipated new telehealth standard, to supplement its 2017 law (page 81). We also take a look at some of the more unique projects for services delivery, where the UAE positions itself as a destination and hub for sports injury rehabilitation (page 91).

The importance of pharmaceutical supply and distribution remains critical for the assurance of supply of good quality medicines at an affordable cost. Our feature on 'good manufacturing practices and distribution agreements' is on page 57.

In the Kingdom of Saudi Arabia, the regulatory re-carpet of the healthcare transformation plan continues to roll out. Our Saudi team examines a number of critical regulations, including privatisation, corporatisation, and public-private-partnership schemes on page 87 and the telehealth regulations on page 99.

In both the UAE and Saudi, we look at nationalisation strategies and their impact on the workforce (page 95). In light of the expected global workforce shortage looming on the horizon, this article highlights a ticking time-bomb of a problem for these powerhouses of the region, unless major efforts are made to train national citizens.

In Bahrain, we return to the topic of e-health and examine the new personal data protection law and impacts on patient privacy (page 61).

Pharmaceutical regulation and registration requirements in Oman are highlighted on page 69.

The State of Kuwait is leading the way on the topic of mental health with its very first mental health law (page 103), a subject high on the agenda of other GCC states as we see much more openness regarding the importance of mental health and overall well-being.

Meanwhile, the implementation of the first steps under Egypt's universal health insurance law became operational during the summer, and we will continue to see this universal programme coming on-line in phases over the next 10 years for the benefit of all Egyptian national citizens (page 65). With funding support from the World Bank running into billions of dollars, this is a colossal project on which to keep an eye for all involved in the sector.

...and finally... our healthcare lawyers will be attending Arab Health in Dubai in January 2020 and have a packed schedule of events and engagements. We will send announcements and invitations shortly, and look forward to seeing all of our clients and friends there.

Andrea Tithecott
Partner, Head of Healthcare and Regulatory
Abu Dhabi, UAE
a.tithecott@tamimi.com

The Federal Law regulating the Use of Information and Communication Technology in the UAE Healthcare Sector

Andrea Tithecott
Partner, Head of Healthcare and Regulatory
Abu Dhabi, UAE
a.tithecott@tamimi.com

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

Information and communication technology ('ICT') plays a critical role in supporting the delivery of quality healthcare service through the provision of new and efficient ways of accessing, communicating, using and storing health data.

The Federal Law No. 2 of 2019 on the Use of Information and Communications Technology in Healthcare ('ICT Health Law') regulates the use of ICT in the healthcare sector throughout the United Arab Emirates ('UAE') including in free zones with the following four aims of:

- ensuring the optimal use of information and communications technology in the health sector;
- ensuring that the bases, standards and practices adopted are in line with their internationally adopted counterparts;
- enabling the Ministry of Health and Prevention ('Ministry') to collect, analyse and maintain health information at the country level; and
- ensuring the security and safety of health data and information.

The ICT Health Law came into force in May 2019 and is fully effective, although not yet fully supplemented by implementing regulations, which are expected to be issued imminently.

Key features of the ICT Health Law

Definition of Health Data'

Health Data in the ICT Health Law is broadly defined as *"health data processed and made apparent and evident whether visible, audible or readable, and which are of a health nature whether related to health facilities, health or insurance facilities or beneficiaries of health services"*.

Central Electronic Health Data And Information Exchange

The new law contemplates the establishment of a centralised health data exchange ('HIE' or 'Central System') which is to be controlled by the Ministry. The HIE will keep the health data collected by health service providers and will enable them to access and exchange this data in an uniform and secure way, subject to any controls determined by government.

The implementing regulations (which, as of the authoring of this article, are yet to be issued) will set out the professional guides, the details as to which businesses are allowed to use the Central System, and any necessary administrative steps that need to be followed.

The requirement to establish health information systems and to centralise the hosting of Health Data will benefit patients, and should not be too burdensome for regulated operators.

The local Emirate health authorities are empowered to establish the rules, standards and controls for their own electronic data and health information exchange systems, such as the methods of operation, exchange of data and information and their protection, as well as access to and copying of data and information. In Abu Dhabi, the Department of Health ('DOH') has launched the Abu Dhabi Health information exchange 'Malaffi'. In Dubai, the 'Salama' health information exchange is used.

National ICT Strategy

The Ministry, in co-ordination with the local Emirate health authorities, is to develop and implement a national strategic plan concerning the use of ICT in healthcare, as well as setting mandatory procedures for using ICT.

Data Security

The ICT Health Law requires all health service providers that use ICT for health data to make certain that such information is kept confidential and is not shared without authorisation. The law also requires health service providers to ensure that the health data is available to the authorised parties and access given when needed.

In adherence with international data protection best practices, the ICT Health Law requires businesses to introduce technical, organisational, and operational procedures to ensure the security and integrity of Health Data.

Exceptions to Disclosure Restrictions

Under the ICT Health Law, health service providers may use or disclose Health Data without the consent of the patient:

- for scientific research, provided that the identity of the patient is not disclosed and applicable scientific research standards and guidelines are complied with;
- to allow insurance companies and other businesses funding the medical services to verify financial entitlements;
- when in accordance with a request from a competent judicial authority;
- when in accordance with a request from the relevant health authority for public health purposes including inspections; or
- for public health preventive and treatment measures.

Data Processing

The law regulates the processing of electronic health data originating in the UAE, including patient names, diagnosis, consultation and treatment data, and other such health data.

The law also introduces data privacy and protection concepts which include

- **purpose limitation:** except with the prior consent of the patient, health data should not be used other than for the purpose of the provision of health services;
- **consent to disclosure:** without the prior consent of the patient, or as permitted by law, health service providers cannot disclose patient data to any third party; and
- **accuracy:** healthcare service providers must make sure that the Health Data they process is accurate and reliable.

Data Localisation

The ICT Health Law states that Health Data cannot be stored, processed, generated, or transferred outside of the UAE, unless the activity has been approved by a resolution of a health authority or the Ministry. To our knowledge, no such resolutions have yet been issued.

There is a penalty of no less than AED 500,000 and no more than AED 700,000 (approx. US$136,147 to US$ 190,605) for breach of this prohibition.

While there is some expectation that the local health authorities will accommodate requests where Health Data may be needed to be transferred outside of the UAE, early indications are that the scope for approvals will be very limited.

Going forwards, to comply with the ICT Health Law, it will be necessary for local operators to host data on local servers and to control access and processing activity in accordance with the law. In addition to the ICT Heath Law, there are also additional pieces of legislation that support this:

ICT Health Law regulates the use of information technology and communications in the healthcare sector throughout the UAE.

- the executive regulations to the medical liability law, Cabinet Resolution No. 40 of 2019, include an appendix that issues controls and terms for providing 'Remote Health Services'. Article 2.1(f) of the resolution requires "a server within the country for showing and keeping the information and back-up";
- Section CM 4.2 of the Abu Dhabi DOH Healthcare Information and Cyber Security Standard ('ADHICS') (which was issued prior to the ICT Health Law) states:

"The healthcare entity shall not use cloud services or infrastructure to store, process or share information that contains health information. The healthcare entity shall:

- *ensure that healthcare information is not transmitted outside the UAE;*
- *identify and disconnect integration of systems that process, store or utilise health information with any of the entity's systems that connect or utilise cloud services; and*
- *not share identified or de-identified health information with third parties, inclusive of counterparts and partners, unless authorised by the health sector regulator of Abu Dhabi."*

As it cannot be the intention of the Ministry that data localisation requirements should have a detrimental effect on the provision of healthcare to UAE residents, we recommend that any healthcare provider affected by localisation requirements should engage with the relevant local health authority (or Ministry) that has licensed its services to explain how the restrictions are affecting the delivery of services and seek approval for the management of its data. Of particular importance is the effect on the delivery of telehealth services, and the transfer of data to physicians and laboratories outside the country for very specialist clinical opinions, and to support telehealth providers already licensed in Abu Dhabi and Dubai under other regulations to continue being able to support local communities.

Data Retention

The ICT Health Law requires that Health Data must be kept for a minimum of 25 years from the date on which the last health procedure was performed on the patient. This period may be extended if it is proportionate with the need to keep such data.

Sanctions

For non-compliance, the law contains sanctions, including monetary fines and disciplinary actions, which may be imposed by a disciplinary committee within each health authority.

Specifically, sanctions include:

- cancellation of the authorisation to use the Central System;
- temporary suspension (not exceeding five months) from the Central System;
- an oral and/or written warning; and/or
- additional fines between AED 1,000 and AED 1,000,000 (approx. US$270 and US$270,000).

Conclusion

The most contentious point of the ICT Health Law are the data localisation requirements. The Ministry has mandated that data must remain onshore. This, in itself, creates difficulties because, until recently, there were so few data centre services based in the country. We understand that there may be some softening to the requirement to host data on local servers, and that the use of local cloud-based systems will be permitted, if those services providers are licensed in the UAE (noting that this currently breaches the DOH requirement, with no indication of cloud approvals in Abu Dhabi). The Ministry indicated that approvals for the movement of data offshore would be permitted, but then delegated this responsibility to each of the established health authorities to issue resolutions, neither of which have yet done. It is understood that each health authority in Abu Dhabi and Dubai is waiting for the Ministry to issue its executive regulations before issuing resolutions of its own. Meanwhile, any operator sending data outside the country will remain in breach of the ICT Health Law. It is difficult to predict when the executive regulations will be issued. Strictly speaking, they should be issued six months after the law came into effect (which would mean November 2019). However, in practice, it is not unusual to take longer for example, the Ministry did not issue executive regulations to the medical liability law until earlier this year even though the medical liability law was passed in 2016. On the critical topic of data localisation in the healthcare context, which has the potential to affect patients' access to overseas expertise, it is hoped that the executive regulations to the ICT Health Data Law are published imminently in order to prevent operators being left in limbo and potentially in breach of data localisation restrictions.

For the most part, the ICT Health Law is a welcome introduction. The requirement to establish health information systems and to centralise the hosting of Health Data will benefit patients, and should not be too burdensome for regulated operators to align information technology systems with those of the Ministry's HIE, Malaffi, and Salama, so as to enable data to be uploaded on a continuous 'as is' basis. The data is then available to the Ministry and health authorities for use in research and population health management which, in turn, will feed into patient health plans being developed on a country-wide basis and eventually better control of the introduction of new services, specialities and sub-specialities that are fully aligned with population health needs. In parallel with this, the health regulators are working on wellness and prevention programmes, with the aim of keeping the population fit and healthy rather than only treating people when they are sick.

Al Tamimi & Company's Healthcare Practice and Technology, Media & Telecommunications team regularly advise on laws and regulations impacting the healthcare sector. For further information please contact healthcare@tamimi.com.

Significant Developments: UAE Medical Liability Law

Ahmed Allouz
Partner, Head of Litigation - Dubai
Dubai, UAE
a.allouz@tamimi.com

Omar Khodeir
Senior Associate
Dubai, UAE
o.khodeir@tamimi.com

Introduction

The awaited Cabinet Resolution No. 40 of 2019 ('Resolution') was recently issued to expand upon the provisions of the Federal law No. 4 of 2016, concerning Medical Liability ('Medical Liability Law'). This article considers the key considerations arising from this important development.

Background

The Medical Liability Law referred to the issuance of a resolution, which would elaborate upon different points addressed in the Medical Liability Law, including the definition of 'gross medical error' . The Resolution has now been issued, which provides this important clarity.

To provide the necessary context, Article 6 of the Medical Liability Law states that:

"A medical error is an error committed by the practitioner of the profession (practitioners of any of the medical professions or related professions set by a Ministerial Resolution as defined by the Medical Liability Law) ("Practitioner(s)") for any of the following reasons:

1. *His ignorance of the technical issues that every practitioner of the profession of the same degree and specialization is supposed to be aware of.*
2. *Failure to follow the recognized professional and medical standards.*
3. *Failure to act with necessary due diligence.*
4. *Negligence and failure to act carefully and with precaution.*

The Executive Regulations of this Decree-Law shall set the standards of gross medical errors."

Prior to the issuance of the Medical Liability Law, Practitioners who committed any medical error were also potentially criminally liable.

After the issuance of the Medical Liability Law and Resolution, which includes the definition of 'gross medical error', only those Practitioners who are determined to have committed 'gross medical error', and not merely an 'error', can be held criminally liable.

Defining 'Gross Error''

The Resolution came into force to clarify any ambiguity around the definition of 'gross medical error'. An English translation of Article 5 sets out scenarios and criteria wherein medical malpractice shall be considered as 'gross medical error', as follows:

1. Medical malpractice shall be deemed of a gross nature if it leads to the death of the patient or fotus, eradication of a human organ by mistake, loss of organ function, or any other serious damage, in addition to the availability of any of the following criteria from which the medical malpractice results:

a. Unpardonable unfamiliarity with the well-established medical standards according to the level and specialization of professional practitioner.

b. Adopting a medically unrecognized method.

c. Unjustified deviation from medical standards and rules for practicing the profession.

d. The doctor is under the influence of alcohol, drugs or psychotropic substances.

e. Gross negligence or clear lack of perception upon taking well-established medical actions; e.g. leaving medical equipment in the patient's body, giving him/her an overdose of medicine, failure to operate a medical device during or after the surgical operations, resuscitation or childbirth, failure to give the patient medically appropriate medicine, or any other act classified as gross negligence.

f. Practicing the profession deliberately beyond the scope of specialization or clinical privileges conferred upon the doctor under the professional license.

g. The doctor's use of diagnostic or therapeutic means, with no prior practice or training, and without medical supervision.'

2. The Committee and the Supreme Committee, each within the area of its competence, shall consider the complaints and grievances relating to the medical malpractice, and determine the following:

   a. The criterion relied upon to classify the occurring medical malpractice of gross nature.

   b. Identifying the elements contained in the file and confirming the existence of a gross medical malpractice.

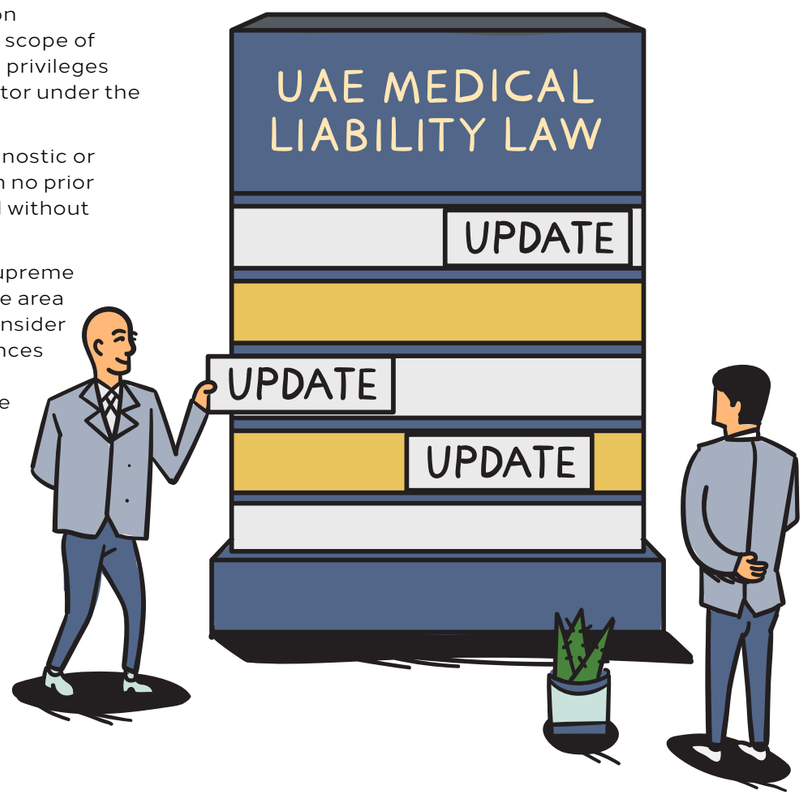
   c. Identifying the type of damage and error.

Moreover, the above Article notes that the Medical Liability Committee ('Committee') and the Supreme Committee of Medical Liability (as referred to in the Resolution and Medical Liability Law), within its functions, shall examine all complaints and grievances related to the alleged medical error and identify the following:

a. the criterion relied upon to classify the occurring medical malpractice of gross nature;

b. identifying the elements contained in the file and confirming the existence of a gross medical malpractice; and

c. identifying the type of damage and error.



"The Resolution is welcomed as it provides the necessary details to elaborate on the implementation of the Medical Liability Law.

Medical Liability Committee

Additionally, Articles 9 to 15 of the Resolution provide detail regarding the formation of the Committee along with the rules and procedures that the Committee must follow.

Formation & Membership

Article 9 of the Resolution provides that at each health authority being the Ministry of Health & Prevention ('Ministry'), or any federal or local government authority concerned with health affairs in the UAE) ('Health Authority'), the Committee shall be established by way of a resolution issued by the Minister or the Head of the Health Authority. The membership of the Committee shall include physicians and specialists as determined by the Health Authority. The resolution issued in this respect shall appoint a chairman of the Committee, his deputy, members, rapporteur, and also specify the term of membership.

Technical Committee(s) and Administrative Tasks

It is provided also under Article 9 of the Resolution that the Committee may establish one or more technical committees which shall consist of specialist physicians to seek their opinion on the file, without having counted votes on the Committee decision. Additionally, the Health Authority shall assign or establish an organisational unit for the purpose of assuming administrative tasks related to the Committee's activities.

Meetings and Quorums

Article 11 of the Resolution regulates how the meetings of the Committee are convened and how opinions are issued. It provides that the Committee is convened by an invitation from its chairman, or his deputy in the event that the chairman is absent, so as to examine the cases referred thereto The quorum of a Committee meeting is achieved when two thirds of the members are in attendance, and provided the chairman or his deputy is among them. The Committee's opinion based on the majority vote of members who are present. In the event of a deadlock, the Chairman will have the casting vote. Agreement of two thirds of the present is required if the medical error is to be categorised as 'gross'.

Some Restrictions on Members of the Committee

Article 12 of the Resolution is an important addition as it imposes some restrictions on members of the Committee. It states that none of the members of the Committee may attend its meetings and give an opinion on any subject presented thereto in any of the following cases: (i) if the member is a relative (up to the fourth degree) of any of the parties to the complaint; (ii) if he/she works under the management or supervision of one of the parties to the complaint ;(iii) if he/she previously consulted with or treated the patient for the same medical condition which forms the subject matter of the complaint; or (v) if there is another relationship that constitutes a conflict of interest and questions the ability of the Committee member to be impartial when considering the complaint.

The foregoing prohibition shall also apply to anyone of whom the Committee seeks assistance in performing its functions.

By defining 'gross medical error', the Resolution provides more clarity on the risk of criminal liability that practitioners might face.

Delivery of Reports

Article 15 of the Resolution regulates the delivery of the report prepared by the Committee in a given complaint. It provides that the Health Authority shall submit a copy of the Committee report to all parties to the complaint by any of the following means:

1. personal delivery, provided that the recipient shall sign an acknowledgment of receipt, with mention of the date of receipt and capacity of the recipient;
2. ordinary or t registered mail with receipt acknowledgment requested; or
3. fax or e-mail if either is available at the Health Authority.

Obligations and Rules in Providing Medical Services

Article 2 of the Resolution expands on the obligations and rules to be followed by whoever practises the profession during the course of his/her work, without prejudice to the duties provided for in the Medical Liability Law, such as:

1. To perform his / her work in strict compliance with the principles of professional practice in general, and with the scientific and practical principles of the specialisation practiced in particular, in accordance with the protocols and rules approved by the Health Authority;
2. To exercise the necessary care for providing and following up on the health service vigilantly and watchfully, in accordance with the standard of practice of his/her average colleagues in terms of experience and qualification, and to carefully review the patient's medical history, unless he / she fails to do the same for circumstances beyond his / her control or due to the patient's own act;
3. To document in the patient's medical file each action taken, including its type, date and time; and
4. Not to discriminate between patients or colleagues on the basis of religion, ethnicity, social standing, gender or nationality.

Surgical Operations

Article 3 of the Resolution further elaborates on the rules and procedures that need to be satisfied before conducting surgical operations such as:

1. to follow a certain process in taking written consent after informing the patient, or the person whose approval on his/her behalf is acceptable, of the nature of the operation, success percentage and potential complications (as further detailed in paragraph 3 of Article 3 of the Resolution);
2. the health facility conducting the surgery must be sufficiently equipped in a manner that is suitable to the type of surgery, in terms of the medical and nursing staff, medical equipment and its necessary items, their quality and safety and all the requirements for conducting such surgery and that would deal with any other complications or repercussions.
3. evaluate the medical condition by employing the necessary diagnostic checks to ensure that the patient's health condition allows the surgical operation to be conducted.

The Medical Liability Law had previously provided that cases of treatment of special nature (to be outlined in the Resolution) shall be treated as surgical operations. Article 3 of the Resolution now provides that the rules and procedures in the preceding paragraph would apply to cases of treatment of a special nature, which include:

a. chemotherapy;
b. radiotherapy; and
c. any other therapy named by the Minister in co-ordination with the competent Health Authorities.

Disciplinary Actions

Article 18 of the Resolution addresses disciplinary actions. It notes that in the event of violations of the Resolution, and without prejudice to any provision in the Resolution or civil and criminal liability (and unless there is a specific provision in the laws related to the disciplinary regulations of the Health Authority), the disciplinary actions of the following laws shall apply:

1. for private health facilities, disciplinary penalties provided in the Federal Law No. 4 of 2015 Concerning the Private Health Facilities;
2. for professional practitioners at private health facilities; and more precisely doctors, disciplinary penalties provided in the Federal Law No. 5 of 2019 concerning the Practice of Human Medicine;
3. for professional practitioners at private health facilities, other than doctors and pharmacists, disciplinary penalties provided for in the Federal Law No. 5 of 1984 regarding the practice of some medical professions by pharmacists and non-physicians;
4. for pharmacists and assistant pharmacists, the provisions of Federal Law No. 4 of 1983 concerning the Profession of Pharmacy and Pharmaceutical Institutions;
5. for the professional practitioners at the Health Authorities, disciplinary penalties prescribed by such authorities shall be applied in a manner that does not contradict the provisions of the Decree law and this Resolution; and
6. as for Professional Practitioners at the Federal Government, the provisions of Federal Decree Law No. 11 of 2008 on Human Resources in the Federal Government.

Conclusion

The Resolution is welcomed as it provides the necessary details to allow effective interpretation of the Medical Liability Law and assessing and implementing the rules and procedures that need to be adhered to by health facilities, Practitioners and by the Committee in determining whether these standards have been met.

In particular, by defining 'gross medical error', the Resolution provides more clarity on the risk of criminal liability that Practitioners may face. Consequently, there may potentially be a reduction in the number of malpractice criminal complaints brought before the courts as the legal parameters are now much more clearly laid out.

Al Tamimi & Company's Healthcare Practice and Litigation team regularly advise on criminal and civil liability in connection with medical malpractice. For further information, please contact healthcare@tamimi.com.

Current Good Manufacturing Practices and Distribution Agreements

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

cGMP: Introduction

The main regulatory standard for ensuring pharmaceutical quality is the Current Good Manufacturing Practice ('cGMP') regulation for human pharmaceuticals. In the United States of America, the Food and Drug Administration (the 'FDA'), and in the European Union ('EU'), the European Medicine Agency (the 'EMA'), regulate pharmaceuticals that are manufactured or sold in each of these jurisdictions. Consumers expect that each medicine they take is safe and effective, regardless from which batch of medicines or manufacturer it originates.

The importance of regulating the manufacture and distribution of pharmaceutical products cannot be overstated.

However, an array of laws, regulations, directives, and guidelines surrounding cGMP have been issued by regulatory authorities throughout the world, which seek to govern, and develop, the production, storage, distribution, and supply of pharmaceutical products. Often, there is no mutual recognition agreement in place between jurisdictions thus, a manufacturer may be required to meet the cGMP regulations in its country of manufacture, but also in the country into which the products are distributed, as local cGMP compliance is often a pre-condition for obtaining product marketing authorisation ('MA') within a jurisdiction.

WHO and Quality Assurance Principles

The World Health Organisation (the 'WHO') has a duty to develop, establish and promote international standards in relation to pharmaceutical products (Article 2(u) of the Constitution of the WHO). Consequently, its version of good manufacturing practice guidelines is used by pharmaceutical regulators in over 100 countries however, sometimes it is only applied in part.

The WHO promotes Quality Assurance to the production and control of pharmaceutical products on the basis of the core principles of Quality Management and Quality Controls. The WHO stipulates that cGMP is part of the Quality Assurance, and as set out in Annex 3, WHO Good Management Practices for Pharmaceutical Products: main principles, such practices include that:

1. *'manufacturing processes must be clearly defined, systematically reviewed in the light of experience, and shown to be capable of consistently manufacturing pharmaceutical products of the required quality that comply with their specifications;*
2. *qualification and validation are performed;*
3. *all necessary resources are provided, including:*

cGMP should be followed as part of a pre-condition for obtaining product marketing authorisation within a jurisdiction, to ensure the products are fit for sale and free from any cross-contamination.

a. *appropriately qualified and trained personnel;*
b. *adequate premises and space;*
c. *suitable equipment and services;*
d. *appropriate materials, containers and labels;*
e. *approved procedures and instructions;*
f. *suitable storage and transport; and*
g. *adequate personnel, laboratories and equipment for in-process controls;*

8. *instructions and procedures are written in clear and unambiguous language, specifically applicable to the facilities provided;*
9. *operators are trained to carry out procedures correctly;*
10. *records are made (manually and/or by recording instruments) during manufacture to show that all the steps required by the defined procedures and instructions have in fact been taken and that the quantity and quality of the product are as expected; any significant deviations are fully recorded and investigated;*
11. *records covering manufacture and distribution, which enable the complete history of a batch to be traced, are retained in a comprehensible and accessible form;*
12. *the proper storage and distribution of the products minimises any risk to their quality;*
13. *a system is available to re-call any batch of product from sale or supply; and*
14. *complaints about marketed products are examined, the causes of quality defects investigated, and appropriate measures taken in respect of the defective products to prevent recurrence.'*

United Arab Emirates ('UAE')

In the UAE, a manufacturer may apply for a 'Certificate of Compliance with cGMP' with the Drug Control Department of the Ministry of Health and Prevention, for which Gulf Co-operation Council ('GCC') and WHO Standards apply.

Any industry player clearly requires an in-depth knowledge of the relevant regulations and standards, including all developments, in order to manufacture and distribute its products within the GCC.

Agency and Distribution Network

Manufacturers will rely upon an agency and distribution network to market, promote and sell its products.

These arrangements, whilst common in practice, can be complex and require careful and regular monitoring and review so as to ensure that the parties do not fall foul of applicable laws and regulations in relation to the marketing and sale of its products.

Products will be transported, stored and sold, in various jurisdictions, by third parties along the supply chain. Therefore, there are numerous opportunities and possibilities for products to become 'cross-contaminated' under cGMP and, in such circumstances, manufacturers and/or distributors may find themselves liable to pay damages and/or penalties. In addition, in some cases, criminal liability may arise.

Further, an agent or distributor may be responsible, whether under contract or law, to ensure that the pharmaceutical products being marketed in its territory are registered with the local health authority (or a similar agency), and such registration will be contingent upon the products being manufactured under cGMP applicable in that jurisdiction.

Supply network agreements should specifically deal with and provide for, in so far as possible, requirements under cGMP.

Therefore, these supply network agreements should specifically deal with and provide for, as far as possible, requirements under cGMP, including provision to deal with complaints and re-call of products, storage requirements and standards and the sharing of general information and records of sales.

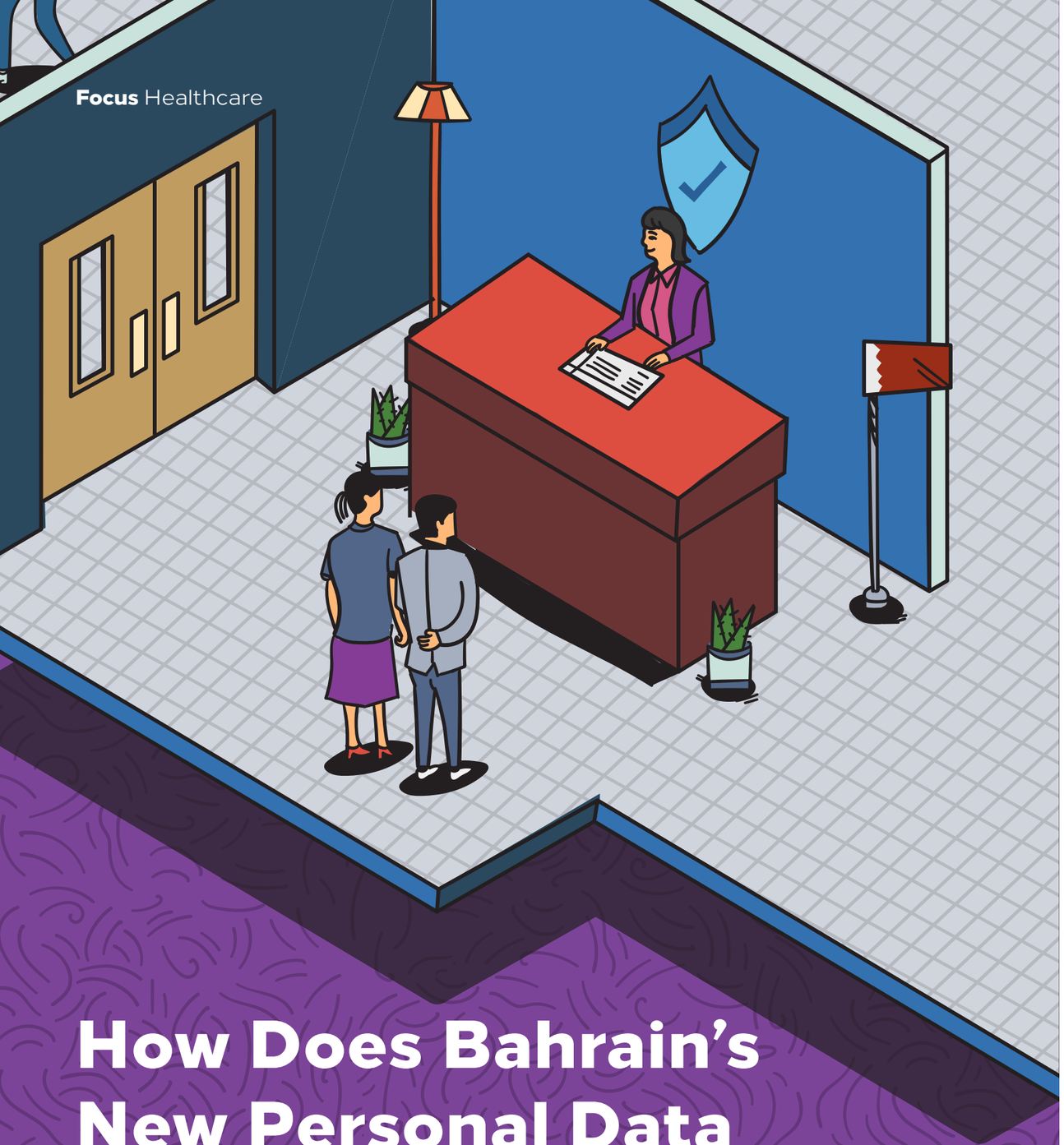
Each party will also seek to protect itself against the other's acts or omissions by way of indemnification (if possible in the relevant jurisdiction) and insurance.

Conclusion

The manufacture, marketing and sale of pharmaceutical products is, understandably, highly regulated and safe distribution requires careful consideration and implementation of Good Manufacturing Practice.

cGMP requires implementation along the entire supply chain and, therefore, it is important that manufacturers, agents, and distributors of these products provide for compliance, in so far as possible, within contractual arrangements.

Al Tamimi & Company's Healthcare Practice in Ras Al Khaimah regularly advises on laws and regulations impacting the healthcare sector. For further information please contact healthcare@tamimi.com.



How Does Bahrain's New Personal Data Protection Law Impact Patient Privacy?

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

How patient data is processed in the Kingdom of Bahrain has been altered by Law No. 30 of 2018 promulgating the Personal Data Protection Law ('PDPL'), which came into effect on 1, August 2019.

While the PDPL affects almost all businesses in the Kingdom, the health sector will be particularly impacted as, by its very nature, healthcare involves the collection of significant amounts of personal data to deliver services to patients.

Our Law Update article entitled "Catching the wave: New Data Protection Law in Bahrain" regarding the PDPL's general applicability can be found in the 2018 June/July Law Update edition. In this article, we focus on the healthcare sector.

We understand that Bahrain's National Health Regulatory Authority ('NHRA') expects that the general framework on data processing provided for in the PDPL be followed in relation to patient data.

Patient Data is Sensitive Personal Data

Under PDPL any data related to a person's health is categorised as 'sensitive personal data' and is subject to specific processing conditions.

The PDPL expressly allows sensitive personal data to be processed without the consent of the data subject where the processing is necessary for:

> *"preventive medicine, medical diagnosis, provision of healthcare or treatment, or for the management of healthcare services which is carried out by a licensed member of a medical profession, or by any other person who is bound by a duty of confidentiality as imposed by law".*

However, this exception is not a complete exemption from the PDPL's requirements. Here are some examples of PDPL's requirements with which health organisations in Bahrain now need to comply.

Rights of Patients as Data Subjects

The PDPL includes provisions that require a data controller to, amongst other things, notify data subjects of certain information, including the purpose and location of any data that is collected. Further, the data subject now has a statutory right to access their personal information and to object to processing of their data in certain circumstances.

With patient health data collected at points ranging from doctors' offices to specialised healthcare facilities, the data footprint of an individual patient can be highly fragmented. Under the PDPL, healthcare organisations must better understand how their patient information is collected and where it is stored.

Explicit Consent

Under the PDPL, even where a data subject has consented to the processing of their personal data, for consent of the data subject to be considered to be valid, the consent has to meet certain perquisites including that:

- it must be written, explicit, clear, and specific; and
- it must be issued based on the patient's free will and consent after he/she is fully informed about the purpose or purposes of the processing of the data, and informed, when necessary, of the consequences that will arise from his/her failure to grant approval.

Security Measures

Data controllers are legally compelled to have in place appropriate technical and organisational measures to protect patient data against unauthorised or unlawful processing and against accidental loss, destruction of, or damage. Such measures have to be commensurate with the harm that might result and the nature of the data to be protected, whilst having regard to the state of technological development and the cost of implementing any measures.

Data Processing Agreements

Where the healthcare organisation is a data controller and uses a third party service provider to act as a 'data processor' to process data on their behalf, the processing must be subject to a written contract that stipulates that the data processor will:

- only engage in processing in accordance with the data controller's instructions; and
- comply with the same security and confidentiality requirements prescribed for the data controller.

In addition, the healthcare organisation needs to ensure that the data processor gives sufficient guarantees regarding the technical and organisational measures it applies to protect the patient data it is processing.

Further the healthcare organisation needs to take reasonable steps to verify the data processor's compliance with those measures (e.g. conducting an audit).

Transfer of Data outside of the Kingdom

Healthcare organisations will need to comply with Articles 12 and 13 concerning the transfer of personal data outside of Bahrain. It is a criminal offence to breach these provisions. It needs to be understood that the intent of the law is not to require that patient data is localised in Bahrain, rather that patient data is not to be sent to another country, the laws of which do not provide sufficient protection for that personal information.

Currently, healthcare organisations sending patient data outside of Bahrain would need to fall within an exception in Article 13 (e.g. the transfer is with consent of the data subject or the transfer is needed to perform a contract that the data subject is either a party to or beneficiary of). Importantly, one can transfer data outside of Bahrain if it is in the patient's vital interests (and it is assumed that such provision of healthcare and treatment will be in the patient's vital interest).

The need to fall within an Article 13 exception will change once the implementing regulation is issued; it will identify the names of countries deemed to offer adequate protection of personal data, so that that transfer can be made to such countries under Article 12 without needing any exception.

Clarifying the Current Status of the Law

Some clarification is needed regarding the status of the PDPL as currently not all provisions of the PDPL have come into effect. This is because, under the resolution issuing the PDPL, it is provided that Board of Directors of the Personal Data Protection Authority ('Authority'), will issue the necessary decisions for the implementation of the provisions of the PDPL.

However, as it currently stands no implementing regulations have been issued as the Authority had not yet been established. We expect that this position will change in the near future, as it was recently announced, under Decree No. 78 of 2019 that the Ministry of Justice, Islamic Affairs and Awqaf will assume the responsibility of the duties and powers of the Authority, until such time as the financial budget for the Authority has been allocated within the overall budget of the State, and a Decree forming the Board of Directors of the Authority is issued.

Consequently, at present there are many provisions of the PDPL including, importantly, the need to notify/register with the Authority before processing personal data under Article 14, have not actually been implemented and cannot be complied with immediately (as there have been no decisions on the necessary rules and procedures).

Nevertheless, this does not mean the PDPL does not have legal effect right now. There are provisions of the PDPL that affect healthcare providers that do not require the implementing regulations to be effective. These include all the requirements referred to above.

Although there may not be criminal liability for breaching these provisions, anyone who suffers damages/harm arising from the processing of their personal data in breach of the PDPL is entitled to compensation in order to make reparation for the damage/harm, under Article 57 of the PDPL. This right to compensation appears to have come into effect on 1, August of this year.

There are also criminal penalties under Article 58 of the PDPL that do not require implementing regulations. These are:

- processing sensitive information in violation of Article 5;
- transferring personal data outside of the Kingdom of Bahrain in violation of either Article 12 or 13; and
- unnecessarily disclosing data in violation of the provisions PDPL.

The penalty in each case is imprisonment for a period not exceeding one year and/or a fine of not less than BHD1,000 (approximately US$2,650) and not exceeding BHD20,000 (approximately US$195,000). As these are criminal matters, the public prosecutor can take action in the absence of the Authority.

What Needs to be Done?

If it has not already been done, health organisations in Bahrain must review their policies, procedures, and practices with regard to how they process patient data so as to ensure compliance with the PDPL.

In particular, as it now stands, the PDPL requires that health organisations should:

- have a privacy notice notifying patients of information, as required by Chapter V of the PDPL, including the patient's right to access their personal information and to object to the processing of their data in certain circumstances;
- ensure their patient consent processes meet the requirements of the PDPL;
- have data processing agreements with data processors that contain the stipulations prescribed by the PDPL; and
- currently, only transfer patient data outside of Bahrain if the transfer falls within one or more of the exceptions set out in Article 13 of the PDPL that permit such a transfer.

Once the implementing regulations have been issued there will be additional actions (including making notifications to the Authority) that will likely be required.

Al Tamimi & Company's Technology Media & Telecommunications team and its Healthcare Practice in Bahrain regularly advise on laws and regulations impacting the healthcare sector. For further information please contact healthcare@tamimi.com.

Egypt: Universal Health Insurance Law

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

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

On 11 January 2018, the much anticipated Universal Health Insurance Law No. 2 of the year 2018 (the 'Universal Health Insurance Law') was promulgated. The promulgation of the Universal Health Insurance Law comes as part of the Egyptian government's recent attempts to restructure and reform the healthcare sector by introducing improved and effective policies, refining subsidy reallocation, and launching various healthcare initiatives, such as the nationwide screening that took place earlier this year. It is expected that the universal insurance programme brought forth by the Universal Health Insurance Law will revamp the ineffective and outdated health insurance system currently in place, by way of generating and properly injecting and allocating public funds in the healthcare sector. The most prominent changes to expect from the new health insurance programme are universal inclusion and access to affordable health care services. The primary aim of the Universal Health Insurance Law is to provide universal coverage and to grant access to Egyptians who had limited access to healthcare, or none at all, under the previous health insurance scheme. Accordingly, the Universal Health Insurance Law provides for the compulsory enrolment of all Egyptian citizens residing in Egypt in the universal health insurance programme.

1. Implementation

The Universal Health Insurance Law will be progressively implemented across Egypt, with the aim of covering all Egyptian governorates by 2032. The implementation process will take place over six phases, each phase focusing on a different geographic area (i.e. a cluster of governorates). The first phase includes Port Said, and the last phase of the implementation process will cover Cairo, Giza, and Qalyoubeya. The first phase has already been launched in Port Said, where the trial programme started on 1 July of this year. The purpose of implementing the programme gradually is to allow ample time for each governorate to prepare and improve the quality of healthcare services provided to Egyptian citizens, and in order to allow the regulatory authorities overseeing the implementation of the programme time to assess and rectify the shortcomings of such implementation, so as to enhance such implementation during the subsequent phases. The implementation of the programme will be funded from various sources by way of imposing taxes and fees on different industries and sectors.

2. Regulatory Authorities

The Universal Health Insurance Law introduced three new independent regulatory authorities, which will oversee the effective implementation of the universal health insurance programme. Those regulatory authorities are as follows: (i) the General Authority for Accreditation and Health Control (the 'GAAHC'); (ii) the General Authority for Healthcare (the 'GAHC'); and (iii) the General Authority for Universal Health Insurance (the 'GAUHI'). Those regulatory entities are subject to the supervision of the Ministry of Finance and the Central Auditing Organization.

1. The GAAHC is a public services authority, which is subject to the supervision of the President. The primary role of GAAHC is to monitor transparency, set healthcare quality standards, and to supervise the compliance of healthcare service providers with national and international standards. Additionally, the GAAHC will also select the service providers to include within the programme's network. Private and public healthcare providers are under an obligation to obtain an accreditation certificate from GAAHC within three years from the effective implementation of the universal healthcare program in their respective governorate.
2. The GAHC is a public services authority with an independent budget, which is subject to the supervision of the Ministry of Health and Population (the 'MOHP'). The main role of the GAHC is to regulate the healthcare service providers and supervise the provision of healthcare services.
3. The GAUHI is an economic authority with an independent budget, which is subject to the supervision of the Prime Minister. The main role of the GAUHI is to finance the universal health insurance scheme through the collected funds and to manage such funds. The GAUHI will invest such funds based on a pre-determined investment strategy. The GAUHI will also be involved in financing medical services and pricing medical services.

3. Funding

The Universal Health Insurance Law imposes fees and contributions on various sectors and industries, as well as on natural persons and corporate entities, in order to finance the universal health insurance programme. The GAUHI will co-ordinate with and solicit the assistance of different authorities, including the MOHP, the tax authorities, the Ministry of Transport, and the Ministry of Interior to collect such taxes and fees on its behalf.

The Universal Health Insurance Law determined nine sources of funding, and the most significant sources are the following:

a. Corporate Social Contribution

The most prominent change brought about by the Universal Health Insurance Law is the introduction of a new corporate tax imposed on all Egyptian corporate entities. Such corporate tax amounts to 0.25 percent of revenues, payable by all Egyptian companies, calculated based on the tax returns presented to the competent tax authority. It is worth noting that such corporate social contribution is not deductible from a corporate entity's income tax. Unlike other taxes and fees, companies in all governorates (irrespective of the Universal Health Insurance Law implementation phase under which the company's location falls) will start paying such corporate tax based on the tax returns submitted as of April 2019.

b. Individuals

Under the Universal Health Insurance Law, individuals subject to the provisions of the legislation will pay their contribution in accordance with brackets determined by the law, irrespective of whether such individuals are subject to the provisions of any other applicable social insurance laws. Such contribution applies to, amongst others, all employees, members of the liberal professions (i.e. independent professionals such as physicians and lawyers), and their family members (i.e. spouses, children, dependants). As for unemployed individuals or those deemed unable to afford payment of such contribution, the government will cover their contribution by paying five percent of the minimum monthly wage on their behalf. Employers, on the other hand, will pay a monthly contribution amounting to four percent of the employee's insured salary.

c. Additional Sources of Funding

The Universal Health Insurance Law will also derive funding by imposing: (a) an EGP 0.75 (approximately US$0.043) fee on each cigarette packet, subject to an EGP 0.25 (approximately US$0.015) increase every three years; (b) a 10 percent tax on tobacco products (save for cigarettes); (c) a fee amounting to EGP 1.00 (approximately US$0.058) on each vehicle passing through a highway toll station; (d) an annual fee amounting to EGP 20.00 (approximately US$1.16) from individuals extracting or renewing their driver's licence; (e) an annual fee ranging between EGP 50.00 (approximately US$2.9) and EGP 300.00 (approximately US$17.4) on individuals/entities extracting or renewing vehicle licences, depending on the vehicle's engine capacity; (f) a fee varying between EGP 1,000 (approximately US$58) and EGP 15,000 (approximately US$87) from clinics, healthcare centres, pharmacies and pharmaceutical companies subscribing to the universal healthcare scheme; and (g) a fee amounting to EGP 1,000 (approximately US$58) on each bed upon issuance of a licence to open a hospital or a medical centre.

4. Beneficiaries

With respect to beneficiaries, the Universal Health Insurance Law seeks an all-encompassing reach and implementation, making enrolment mandatory for all Egyptian nationals residing in Egypt (excluding military personnel); while enrolment remains optional for Egyptians nationals residing abroad.

5. Implications of the Universal Health Insurance Law

The introduction of the Universal Health Insurance Law is a significant stride forward for the healthcare sector in Egypt. The Egyptian healthcare sector is characterised by an ever-growing gap between public and private funding; such a gap also highlights the discrepancy between the quality of healthcare services and healthcare providers in both sectors. It is expected that the inclusive nature of the Universal Health Insurance Law will grant access to better healthcare services to the wider population when compared to the previous ineffective regime. However, the implementation of such an ambitious programme will not be without its challenges, which will hopefully be overcome during the prolonged implementation process. Moreover, although the implementation of the programme is still in its early stages, it is undeniable that the new universal health insurance scheme will have a significant impact on the private healthcare sector, given the involvement of the new regulatory authorities in pricing and regulating healthcare services. Such involvement by the regulatory authorities may decrease the profitability of the healthcare services provided by the private sector. On the other hand, well-prepared private service providers may benefit from more stable contracts and an increase in the volume of patients. Investors will be closely monitoring the implementation of the universal health insurance regime and assessing its implications on the private sector.

Al Tamimi & Company's Healthcare Practice in Egypt regularly advises on laws and regulations impacting the healthcare sector. For further information please contact healthcare@tamimi.com.

Pharmaceutical Registration in Oman: An Overview

Arif Mawany
Senior Associate
Muscat, Oman
a.mawany@tamimi.com

The distribution of pharmaceutical products in Oman is subject to the supervision of the Ministry of Health of Oman ('MOH'). As a consequence of its membership of the World Health Organisation ('WHO'), the availability of a pharmaceutical product is determined by whether that product has been registered with the MOH. Registration is routinely conducted by the MOH's Directorate General for Pharmaceutical Products and involves an assessment of the purpose of the product, the country of origin, likely demand of that product, and whether a similar product is already available in the market and elsewhere across the GCC.

Registration

Pharmaceutical registration is commonly carried out by the product manufacturer's registered agent/distributor licensed in Oman. The reason for the manufacturer's registered agent undertaking the registration process relates mainly to the requirements of Oman's foreign capital investment legislation, which requires any foreign entity that proposes to conduct business in Oman to incorporate a legal entity or appoint a local entity to import the products into Oman on its behalf. While the local agent submits the application to the MOH and is considered the applicant and local sponsor for the registration, the foreign manufacturer/marketing authorisation holder in the country of origin is considered the marketing authorisation holder in Oman, once registration is approved. The requirements for registration of a pharmaceutical in Oman include the completion of an application and product dossier containing such things as the certificate of Good Manufacturing Practices ('GMP') and certificate of pharmaceutical product ('CPP'), pricing related data, as well as quality, non-clinical, and clinical data.

In Oman, there are regulations to protect test data and other data concerning safety and efficacy submitted to government authorities at the time of seeking approval of pharmaceutical and/or agricultural products.

'Named Patient' Supply

The MOH maintains a list of product registrations that specifies the name of the product manufacturer and registered distributor of that product in Oman. If a product is not so listed, it will not be permitted for distribution in Oman. In exceptional circumstances, however, a manufacturer can obtain special permission to import a pharmaceutical product into Oman if the MOH is made aware of a specific demand to treat a certain category of patients and there are no other appropriate pharmaceutical

products in the local market to treat those patients. In essence, this is an approval to import the product on a 'named patient' basis. Before the product can be permitted for importation under such a scheme, the product must have been prescribed for the treatment of rare or exceptional medical conditions; importation into Oman is generally made easier if that product has already been approved for use by other WHO members including UK, USA, and countries in Western Europe.

"In Oman, there are regulations to protect test data and other data concerning safety and efficacy submitted to government authorities at the time of seeking approval of pharmaceutical and/or agricultural products.

Pricing

Pricing of pharmaceutical drugs is governed by the Law Regulating the Practice of the Pharmacy Profession and Pharmaceutical Establishments, as well as a series of Ministerial decisions (together, the 'Price Control Regulations'). The Technical Committee within the Department of the Directorate General of Pharmaceutical Affairs and Drug Control determines the pricing of pharmaceuticals in accordance with such regulations. The registration process involves providing the following pricing information:

1. price of manufacture in country of origin;
2. wholesale price in country of origin;
3. selling price in country of origin;
4. suggested import price to Oman in currency of the country of origin and United States Dollars; and
5. suggested import price of the distribution to other GCC countries at the time of registration or copy of the official price list in the relevant GCC country

Discretion is afforded to the Technical Committee to approve or reject the price put forward at the time of registration. In particular, the Technical Committee will review the sale price of the drugs in light of its guidance, which states that the sale price shall be based on the port price of arrival (cost, insurance and price), which has been approved by the Technical Committee, plus a profit margin.

Advertising

Media content that is disseminated in Oman is subject to various laws and regulations. Omani laws prohibit the publication of advertisements concerning medicines and pharmaceutical products except with approval from the MOH. The definition of 'advertising' under the applicable law includes newspaper advertisements or other printed advertisements. The concept of digital advertising was not in the minds of the draftsman and policymakers when the relevant law was issued in 1984, but it is recognised and accepted that the permission required from the MOH will extend to any form of healthcare/pharmaceutical advertising, including digital form.

"Pharmaceutical registration is commonly carried out by the product manufacturer's registered agent/ distributor licensed in Oman.

Public Tenders

Pharmaceuticals offered through public tenders in Oman are selected based on multiple factors, including whether the product is registered with the MOH, previous experience, and the prices offered. While the Omani procurement procedures favour pharmaceuticals registered with the MOH, non-registered medicine may be accepted in public tenders if the price of the non-registered medicine is more favourable.

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In Case You Missed It: Key UAE Healthcare Laws and Regulatory Developments of 2019

Christina Sochacki
Senior Associate
Dubai, UAE
c.sochacki@tamimi.com

It is generally considered that healthcare laws and regulations in the Middle East are, on the whole, underdeveloped. In recent years, we have witnessed a dramatic shift, with regional governments adding healthcare as one of the top priorities for reform.

The UAE, in particular the Dubai Health Authority ('DHA'), has made significant strides in 2019. Herein, we highlight by quick summary the new laws and regulations on which we have been monitoring the pulse. Many of these will require healthcare facilities to update their internal policies to reflect the provisions of the law or regulation.

Federal 'Positive List' for Foreign Direct Investment - 2019

Pursuant to the Federal Decree Law No. 19 of 2018 ('Foreign Direct Investment Decree'), a 'Positive List' was released in July 2019 permitting 100 percent foreign ownership in the UAE mainland for various activities, including: 'medical and dental clinics'; 'hospital activities'; 'veterinary activities'; 'research and development in the scientific field'; and other 'health related activities', under certain conditions.

Our Client Alert on this topic, entitled "Healthcare – UAE Foreign Direct Investment Developments" can be found on the Al Tamimi & Company website under the News section.

Federal Law No. 5 of 2019 Regulating the Practice of the Medical Profession

This law repeals and replaces Federal Law No. 7 of 1975 on the Practice of the Medical Profession and offers a refresh to a dated law.

As echoed in other pieces of legislation, it remains that: no person may conduct medical practices in the UAE without a licence from one of the applicable health authorities; no physician may sell medicines or medicine samples to patients nor advertise specific medicines or direct patients to buy medicines from a certain pharmacy; and it is prohibited for a physician to receive a percentage from the income of any pharmacy, laboratory, another physician or another facility for referring a patient thereto to benefit from their services or to receive any financial or in-kind consideration in this regard.

A number of points critical to implementing the law are left to the executive regulations, which have not yet been issued but are expected within the coming months.

Federal Law No. 2 of 2019 Concerning the Use of the Information and Communication Technology in the Area of Health

The ICT Health Law applies to all methods and uses of information and communication technology ('ICT') in the UAE healthcare

sector, including in free zones. The ICT Health Law expressly prohibits the processing, generating, transferring, or storing of medical records and health information outside the UAE, in relation to health services carried out in the UAE, except where a resolution to do so has been passed by the relevant authorities.

The ICT Health Law is to be supplemented by executive regulations, which are expected to provide clarity on many of the open queries concerning the data localisation requirements under this law.

We further discuss this law in our November 2019 Law Update entitled "The Federal Law regulating the Use of Information and Communication Technology in the UAE Healthcare Sector", which can be read on page 45.

Federal Cabinet Resolution No. 40 of 2019 – Regarding Federal Law Decree No. 4 of 2016 Concerning Medical Liability

The Resolution provides necessary additional details to implement the provisions of the Medical Liability Law (Federal Law Decree No. 4 of 2016 concerning medical liability). Of key importance is that the Resolution includes the long awaiting definition for 'gross' medical errors.

The Resolution also sets out the terms and conditions for the provision of remote health services, solidifying at the federal level the permissibility and parameters for providing telehealth services in the UAE.

We further discuss this resolution in our November 2019 Law Update entitled "Significant Developments: UAE Medical Liability Law", which can be read on page 51.

DHCC Teleconsultation Policy - 2019

The Dubai Healthcare City Authority ('DHCA') issued a policy, which supplements DHCA's Standard for Telehealth Services, to govern 'remote telecommunications, generally for the purpose of diagnosis or treatment and may include services enabled by a range of secured telecommunications media such as, telephone, internet based video, email and other similar electronic-based communications provided by a DHCA Licensed Service Provider'. The policy applies to both physician-to-physician and patient-to-physician consultations, for 'current and established patient populations'.

"The healthcare sector is witnessing a rapid and significant overhaul of its regulatory frameworks.

The prescription of medications, including over the counter, as a result of a teleconsultation visit is limited to DHCA licensed healthcare professional with prescribing privileges.

DHCC Tele-radiology Policy - 2019

The DHCA issued a policy to govern 'the electronic transmission of diagnostic radiological images in digital form between locations for diagnosis and reporting by a clinical radiologist'. The policy also applies to both physician-to-physician and patient-to-physician consultations.

All healthcare professionals utilising tele-radiology platforms must be licensed by DHCA as radiology specialists. Patient consent must be obtained before any transfer of data is initiated and such data transfers must be in compliance with the ICT Health Law.

The same DHCA licensed healthcare professional should interpret the examination and issue the report to the referring clinician, and results must be communicated and integrated into the base hospital's radiology information system or an external system such as, picture archiving and communications system ('PACS'), in addition to the patient's medical record.

Finally, the medico-legal responsibilities of the referring hospital or provider and those of the reporting tele-radiology service must be clearly defined and maintained by the healthcare facility, explicitly detailing who retains responsibility for the care of the patient for not only organisations contracting out tele-radiology services, but also for the patients within the organisations receiving tele-radiology services.

This policy is to be read in conjunction with the DHCA Teleconsultation Policy, mentioned above, and supplements DHCA's Standard for Telehealth Services.

DHA Medical Display Screens Circular – 20 May 2019

The DHA recently issued a circular highlighting that, by the end of December 2019, all medical images must be read only in a DHA licensed healthcare facility on a medical display screen meeting the following minimum requirements:

- liquid crystal display ('LCD') or organic light emitting diose ('OLED') flat panels with medically qualified diagnostic screens;
- pixel pitch and display size should be consistent with the devices used, with a minimum requirement of two megapixel;
- twisted nematic LCD devices should not be used for medical image viewing; and
- the equipment should have a closed-loop control circuit.

This circular is likely to be aimed at the various unauthorised telemedicine activities being conducted in the emirate, including doctors using generic smart phones to receive and review medical images.

DHA Patient Referral Policy – 1 April 2019

DHA's new referral policy defines a referral as "*a process in which a healthcare professional at one level of the health system, having insufficient resources (drugs, equipment, skills) to manage a clinical condition, seeks the assistance of a better or differently resourced professional at the same or higher level to assist in or take over the management of the patient; this includes community referral, primary care referral, post-acute referral, and referral for all levels of hospital settings*".

We often see providers seeking to transfer patients for various reasons, including for the lack of payment of medical bills. The policy clarifies the referral criteria/process, minimum requirements to be set out in a referral form, responsible healthcare professionals' communications, and minimum equipment required to refer the patient as per their acuity.

DHA Code of Conduct for Healthcare Professionals – 1 April 2019

In general, this code reflects provisions set out in various other pieces of law and regulations. A few key prohibitions focus on healthcare professional financial dealings and the avoidance of kickbacks, including:

- kickbacks are strictly prohibited. These include payments given or received by other healthcare professionals, health facilities, or institutions for referring or prescribing tests and/or medications and treatment to patients;
- healthcare professionals are prohibited from offering financial incentives or other valuable incentives to online bloggers to falsify information or mislead the public;
- healthcare professionals may not accept any incentive, gift, or hospitality from patients that may affect or be seen to affect the way they prescribe or treat patients. This includes, but is not limited to, discounts, free purchases, cash, credit, or the like; and

- healthcare professionals are prohibited from basing their decisions, such as admitting, referring, or prescribing tests and/or medications, for the sole purpose of financial gain.

DHA Guidelines for Patient Consent – 2019

Consent before treatment is a legal requirement across the UAE. Consent requirements are set out in various federal and local emirate laws, regulations, and policies.

For healthcare professionals regulated by the DHA, consent must be obtained before undertaking any examination or investigation, providing interventions or treatment, or initiating telehealth services. Further, electronic versions of informed consent forms are considered by the DHA as acceptable, as are electronic signatures if the health facility is using electronic health records.

DHA Guideline for Managing Health Records – 2019

The guideline revises the 2012 Health Record Guidelines and is not obligatory nor exhaustive. It encourages the adoption of best practice for managing health records by all DHA licensed health facilities.

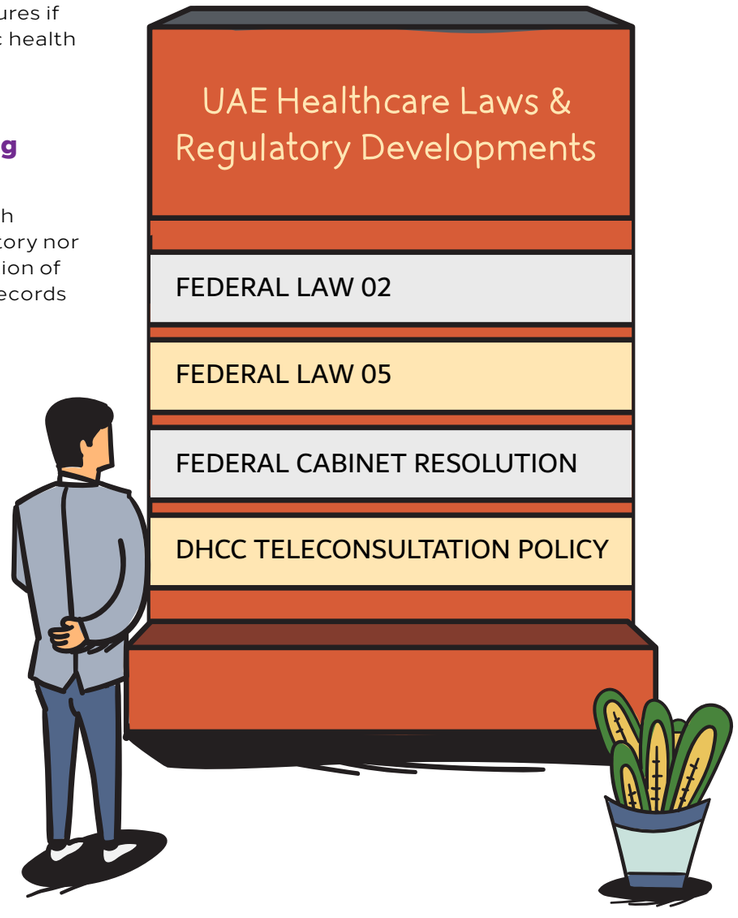
Details concerning method of documentation, management of health records as part of business continuity, transfer of paper based health records to electronic health records, and data protection and confidentiality are the key amendments and updates incorporated in this version.

DHA Standards for Telehealth Services - 2019

In 2017, DHA issued Administrative Decision Number 30 of 2017 to regulate the practice of telehealth services in the Emirate of Dubai, which has now been repealed. This 2019 standard sets out the minimum requirements for the provision of telehealth services, focused on ensuring high quality care delivery, and ensuring protection of patient data and confidentiality.

The standard divides telehealth into six key areas:

- teleconsultation;
- telediagnosis;
- telemonitoring (remote patient monitoring);
- mHealth (mobile health);
- telerobotics and robot-assisted services; and
- telepharmacy.



We further discuss this standard in our November 2019 Law Update entitled "DHA Issues New Standard for Telehealth Services", which can be read on page 81.

DHA Purchasing Emergency Medications Policy – 23 July 2019

DHA licensed healthcare facilities are required to stock the minimum emergency medicines set out in this policy. The policy also addresses the purchase of emergency medications that are not registered by the Ministry of Health & Prevention ('MOHAP') but are required based on a patient's need.

DHA Clinical Privileging Policy – 1 April 2019

Each DHA licensed healthcare facility must have in place a Clinical Privileging Committee ('CPC') that meets the membership composition set out in the policy.

Clinical privileges are to be granted according to the titles detailed in the UAE's Professional Qualification Requirements (the 'PQR'). Clinical privileging is to be reviewed every three years, to include the review of clinical competence, malpractice, incident reporting, and patient outcomes.

DHA - Transfer of Controlled and Semi-Controlled Drugs – 22 July 2019

Transfer of Registered Controlled Drugs ('CD') and Semi-Controlled Drugs ('SCD') between pharmacies and other health facilities is prohibited and is considered an illegal practice. Conditions where transfer is permitted includes:

1. closure of a health facility that is owned by the same owner;
2. emergency cases, transfer of registered CD and SCD within a group of health facilities with the same owner;
3. all transfers of registered CD and SCD must be authorised by the pharmacists in charge of both pharmacies and documented as per DHA requirements; and
4. the transfer process must be completed in two working days, and is subject to DHA inspection.

In line with the DHA Purchasing Emergency Medications Policy of 2019, health facilities with an ongoing drug shortage may seek DHA approval to have in place an agreement with another facility of different ownership to transfer registered CD and SCD for emergency cases.

Narcotics are not permitted to be transferred between health facilities; any such transfer is considered an illegal supply.

DHA Fitness to Practice Policy – 24 July 2019

All healthcare professional applicants (whether for new, renewal, or transfer of a licence) are required to provide a medical fitness document if they are above 65 years of age or have a physical, mental or emotional condition that may impair their ability to render professional services.

The medical director of the health facility is responsible to report to the DHA any healthcare professional identified as unfit to practise.

The DHA will address medical fitness related concerns as per its Medical Complaint Management Policy. The medical related areas of concern include:

1. dealing, possessing, or misusing drugs;
2. working beyond 65 years of age without DHA approval;
3. misleading patients about their care or treatment;
4. failure to obtain proper consent from a patient, where applicable;
5. failure to keep knowledge and skills up-to-date;
6. lack of ability to work within the boundaries of the scope of practice defined by the professional category licence;
7. failure to adhere to the DHA patients' charter; and

8. non-compliance regarding communicable disease testing and restrictions related to professional practice.

All non-medical related areas of concern, such as fraud, criminal offences, and complaints related to conduct are received by DHA, classified, and referred to the concerned department and/or authorities, as appropriate, for action.

DHA Standards for Day Surgery Centres - 2019

The standard includes updates and obligations concerning: healthcare professional and staffing requirements; permitted sedation levels; permitted patient acuity; emergency management and transfer of patients; sedation and procedure requirements; various aspects of patient care and safety including set up; pre-assessment; diagnostics; informed consent; equipment use and maintenance; medication management; records management; infection control; quality control; reporting of key performance data; and patient rights and responsibilities.

All Day Surgical Centres ('DSC') must be accredited by a member of the International Society for Quality in Healthcare ('ISQua'), such as:

- Joint Commission International ('JCI') Ambulatory Care;
- Accreditation Canada International;
- Australian Council of Healthcare Standards International ('ACHSI'); or
- American Association for Accreditation of Ambulatory Surgery Facilities.

A series of annexures provide example documentations, including a surgical safety checklist, DSC care pathway, and minimum requirements for informed consent, amongst others.

DHA Health Facility Guidelines – 2019

DHA issued new planning and design guidelines for healthcare facilities. These guidelines establish the minimum acceptable standards that must be met prior to the approval of a health facility licence, and maintained throughout the terms of the licence. Minor deviations from these guidelines may be proposed to DHA, by briefly describing the reasoning for the deviation based on models of care and unique circumstances.

DHA Guidelines for Medical Advertisement Content on Social Media - 2019

This DHA guidelines set out the requirements for managing medical advertisement content on social media relative to DHA licensed health facilities and healthcare professionals. The guidelines focus on the provision of accurate information that is not misleading.

All social media advertisements should be substantiated, particularly when it relates to the outcome(s) of treatment, whether implied or explicitly stated, and should always include any associated risks. Health facilities and healthcare professionals receiving financial or other material benefit for promoting healthcare or non-healthcare related products or services should disclose such relationships to their healthcare facilities and patients.

The use of any patient information or individual likeness should be accompanied by documented consent, in accordance with the guidelines and DHA consent standards. It is expressly prohibited to video or live stream on any social media platform, any surgery or situation where a patient is induced under general anaesthesia.

Clinical Laboratory Accreditation Policy – 1 April 2019

All new and licensed clinical laboratories under the DHA must be accredited by one of the internationally recognised accreditation organisations mentioned in the policy, including the following types of laboratories:

- free standing clinical laboratories;
- clinical laboratories within diagnostic centres;
- hospital based and ambulatory care services clinical laboratories; and
- blood banks.

DHA licensed clinical laboratories are required to obtain accreditation within 18 months from the issuing date of the health facility licence for all of the tests conducted in the clinical laboratory.

Clinical laboratories are permitted to outsource tests to an accredited clinical laboratory meeting the requirements of the policy, if it does not have the infrastructure/ resources itself.

Conclusion

Across the Middle East, the sector is witnessing a rapid and significant overhaul of its regulatory frameworks as governments in the region issue new or enhanced laws and regulations, increase enforcement, and implement programmes to attract private sector investment.

This year, in the UAE, DHA has had the biggest push for healthcare regulatory overhaul. This has been, in part, driven by the 2018 Dubai law that shifted a number of additional functions to the DHA.

Stay tuned; we expect the pace of reform to keep up into 2020.

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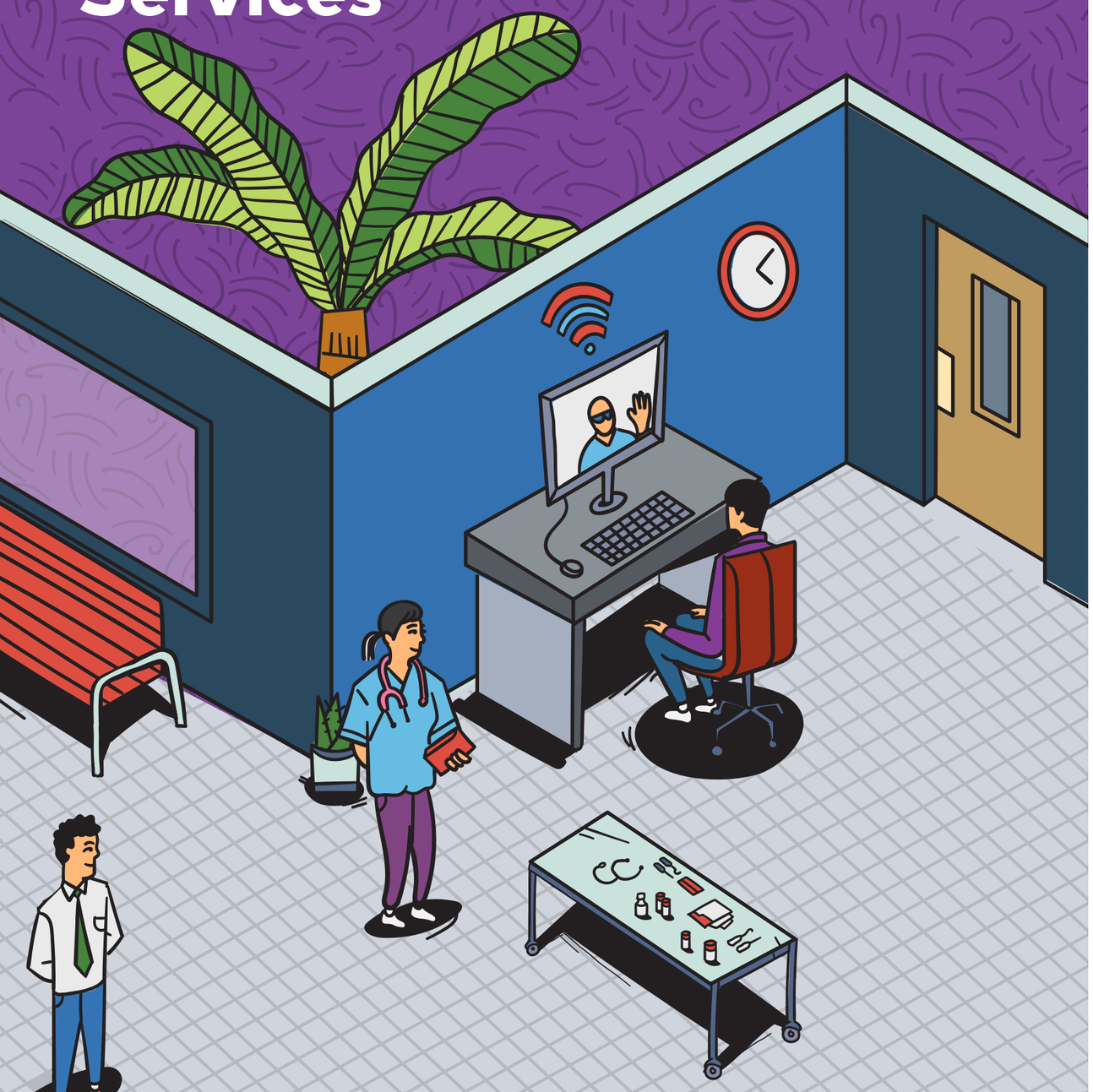
DHA Issues New Standard for Telehealth Services



Christina Sochacki
Senior Associate
Dubai, UAE
c.sochacki@tamimi.com

This article focuses on the recent telehealth standard issued by the Dubai Health Authority ('DHA'), but also provides a summary of the most recent developments regarding telehealth regulations in the United Arab Emirates ('UAE'), and includes reference to the historical legal framework for background and context.

Background

It seems that 2019 has been the year of telehealth for UAE regulators.

This summer, the long awaited executive regulations to the federal medical liability law of 2016 ('Medical Liability Law') were issued, setting out, amongst other things, the terms and conditions for providing telehealth services in the UAE, solidifying at the federal level the permissibility and parameters for providing such services.

For historical context, federal laws concerning the practice of human medicine and the medical liability law of 2008 contained an obligation for a physician to see patients face-to-face and to conduct a physical, in person clinical examination. The Medical Liability Law paved the way for the health authorities in the UAE to establish a system that would permit the provision of distance health services; however, the law required that such systems developed by the regulators be subject to the terms and conditions set by the executive regulations of the Medical Liability Law. While the executive regulations were issued only this summer, seeing the value in providing a pathway for telehealth, each of the DHA, the Department of Health in Abu Dhabi ('DOH'), and the Dubai Healthcare City Authority – Regulatory ('DHCR') had already issued telehealth regulations in respect of healthcare services provided in their respective jurisdictions.

Telehealth – A Priority for Dubai

In 2017, DHA issued Administrative Decision Number 30 of 2017 to regulate the practice of telehealth services in the Emirate of Dubai (the 2017 regulation has recently been repealed). Since then, Dubai has seen a surge in the provision of telehealth services.

Dubai's 'Fifty-year Charter', declared in 2019 by H. H. Sheikh Mohammed bin Rashid Al Maktoum, Vice President and Prime Minister of the UAE and Ruler of Dubai, lists nine articles to shape the future of Dubai. Article 5 is titled "A Doctor to Every Citizen", stating:

'We aim to provide citizens with medical consultations 24/7 through hundreds of thousands of doctors, specialists and medical consultants across the globe. This will be facilitated by smart government application. Our goal is to transform the medical system to bring doctors closer to individuals, enhance awareness and utilize top medical minds globally to serve the health of our citizens'.

To fulfil this article, the DHA has placed a high priority on enabling telehealth, and adopted seven main components aimed at providing a distinctive model for telehealth services, including:

1. providing medical consultations using telehealth services;
2. using electronic medical files to access patient's family history;
3. prescribing medications via telemedicine based on an approved list of medication, which is allowed to be prescribed via telehealth services;
4. raising awareness on how to use medical devices for initial diagnosis such as thermometer, blood glucose monitoring devices, devices for self-measurement of blood pressure and other essential biomarkers;
5. studying the optimal options for the application of the model to provide the telehealth services for free;
6. developing packages that incentivise the use of telemedicine services; and
7. developing the appropriate legislative framework for the provision of telemedicine services in the Emirate of Dubai.

DHA – 2019 Telehealth Standard

In September 2019, DHA issued the Standards for Telehealth Services ('Standards'). These Standards set out the minimum requirements for the provision of telehealth services, focused on ensuring high quality care delivery and ensuring protection of patient data and confidentiality.

Telehealth services include, but are not limited to, scheduling appointments, assessment, providing medical advice, treatment, therapy, laboratory testing, diagnostics, surgery, monitoring chronic conditions, counselling, and prescribing and dispensing of medication.

The Standard divides telehealth into six key areas:

- teleconsultation;
- telediagnosis;
- telemonitoring (remote patient monitoring);
- mHealth (mobile health);
- telerobotics and robot-assisted services; and
- telepharmacy.

All health facilities or standalone telehealth platforms seeking to provide telehealth service(s) must be licensed by DHA, with specific approval to conduct telehealth. Telehealth service licence categories include:

- adding telehealth services to an existing DHA licensed health facility category;
- standalone telehealth centre;
- telehealth booth at a specific location; or
- telehealth platform.

Specifically excluded from telehealth services are:

- emergency cases where immediate life threating intervention or referral is required;
- the prescribing of of narcotic, controlled or semi-controlled medication;
- platforms used for face-to-face in person consultation; and
- video recording during patient consultation and storage of patient video files.

The Standard permits providers to obtain an exemption to the video recording prohibition by submitting a written request to record video on an ad hoc or time limited basis for physician education and quality improvement purposes.

Consent to access telehealth services must be obtained and documented for each encounter. Such consents may be signed electronically or in person, prior to the initiation of telehealth services.

Telehealth services must be physician led and DHA licensed physicians, nurses, and allied health professionals must be privileged in accordance with DHA regulations to provide telehealth services.

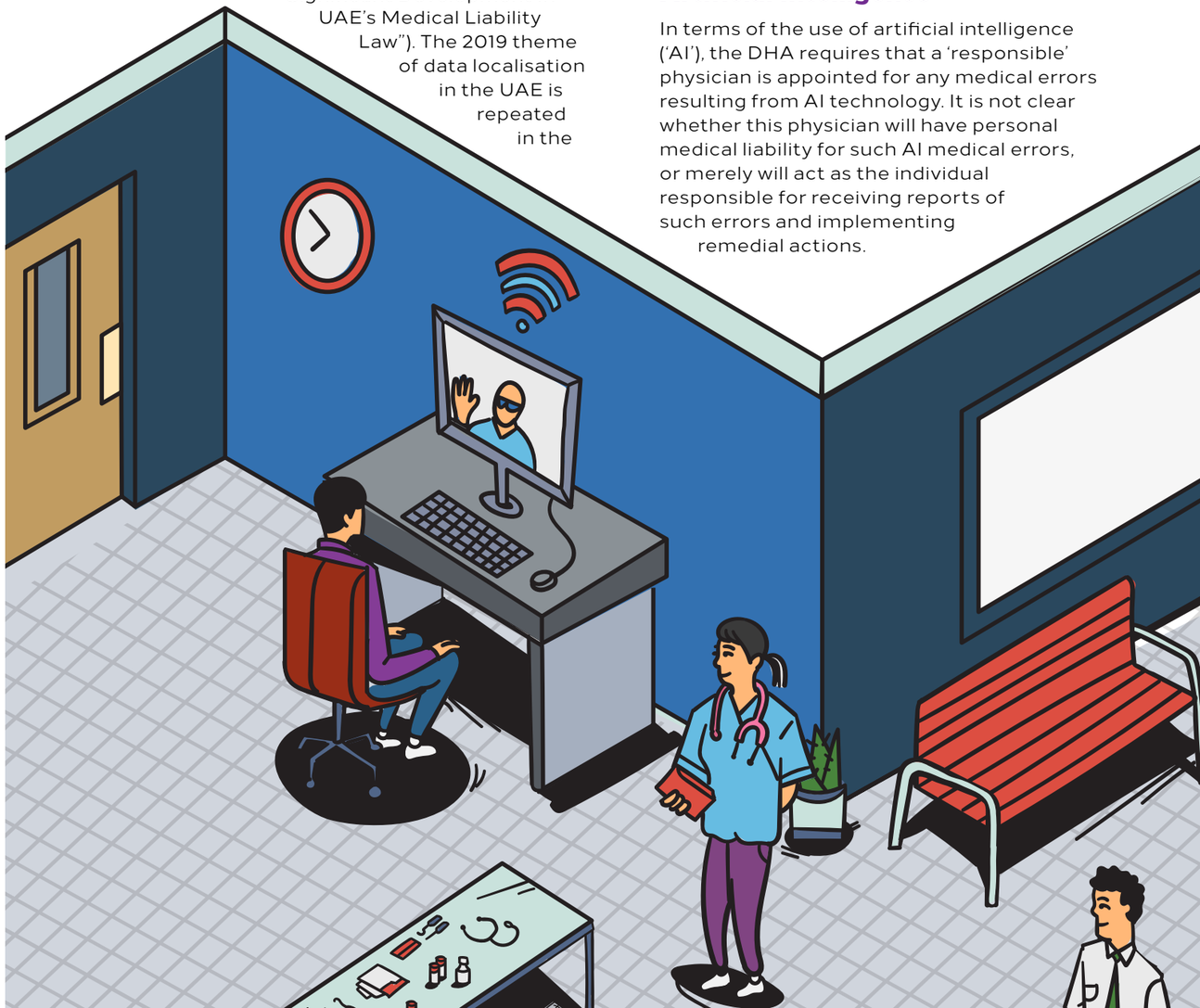
Data, Privacy & Telehealth Devices

The Standard echoes that when it comes to data transmission and storage, compliance is required with Federal Law No. 2 of 2019 Concerning the Use of the Information and Communication Technology in the Area of Health ('ICT Health Law') (For a further discussion regarding this resolution, see our November 2019 Law Update article entitled "Significant Development In UAE's Medical Liability Law"). The 2019 theme of data localisation in the UAE is repeated in the 18 months from the date of issuance of the Standard or licensure, whichever is later, from an internationally recognised accreditation body for telehealth services.

The Standard highlights that certain telehealth equipment will need to be approved by the Telecommunications Regulatory Authority ('TRA'). In all cases, any devices used in the provision of telehealth must be evaluated to ensure compliance with the applicable authorities and regulations, such as the Ministry of Health & Prevention ('MOHAP') for medical devices, and DHA for medical display screens, for example.

Artificial Intelligence

In terms of the use of artificial intelligence ('AI'), the DHA requires that a 'responsible' physician is appointed for any medical errors resulting from AI technology. It is not clear whether this physician will have personal medical liability for such AI medical errors, or merely will act as the individual responsible for receiving reports of such errors and implementing remedial actions.



2019 has been the year of telehealth for UAE regulators

Telehealth Booth

A telehealth booth must seek approval from the DHA at least two weeks prior to the allocation or relocation of the telehealth booth. It is required that the booth includes a waiting area, as per the minimum requirements for a healthcare clinic, in addition to allowing for patient privacy during the provision of telehealth services.

Telehealth booths will not be permitted to be self-sufficient. At least one registered nurse ('RN') must be present at the booth during operating hours and there must be at least one accountable DHA licensed physician responsible for the services provided at the booth.

Telemonitoring & Patient Remote Monitoring

Telemonitoring and patient remote monitoring ('PRM') may be provided after an in person assessment in the healthcare facility or through a teleconsultation. PRM providers are required to only procure and provide ICT technologies that comply with TRA requirements, the ICT Health Law, and DHA interoperability standards. Contracts and memoranda of understanding are to be in place where support services are used.

Physicians offering PRM services must ensure that patients are made aware of and consent to the use of monitoring devices that collect information related to patient location or other non-health patient data.

PRM service providers must ensure that there is in place a written policy for data collection, use and storage, including that such data be reliable, valid, accurate and timely, and form part of the electronic health record.

mHealth

mHealth devices must comply with the requirements set out by the UAE's National Electronic Security Authority ('NESA'), TRA, the ICT Health Law, and MOHAP regulation for the use of medical devices. Further, DHA sets out certain other requirements for mobile medical applications, including that such applications must be submitted for DHA review and approval.

Telerobotics & Robot Assisted Services

Certified compliance for use of medical devices for telesurgery is required with the United States Food and Drug Administration's Quality System Regulation, or the European Union's CE Marking, and ISO 9001 and ISO 9002 Standards.

Physicians must be trained on telesurgery, to include competencies for force (haptic) feedback, time delay, and depth perception management systems.

The mechanical design classification of robots and robotic systems must be suitable for the type of telesurgery being undertaken. Medical equipment and devices appropriate for the type of telesurgery (general, thoracic, cardiac, gastrointestinal and colorectal, gynaecology/echography and ultrasonography, urological, neurosurgery, spinal, ophthalmology, and ear neck and throat) must be used, to include robot assisted arm (and arm cart).

Telepharmacy and Vending Machines

Telepharmacy service providers must have in place an electronic pharmacy system to manage transaction information and track movement of medications. Controlled, semi-controlled, and narcotic medication are not permitted to be prescribed or dispensed through telehealth services. Prescriptions must be issued through an online prescription system that includes the electronic transfer of the prescription to the pharmacist by the treating physician or the prescription being uploaded online by the patient. The tele-dispensing pharmacy must be licensed by DHA to operate as a pharmacy as well as carry out tele-dispensing. Patients may access tele-dispensing services for:

- prescription only medicines ('POM');
- over the counter ('OTC') medicines;
- nutrition and supplements;
- herbal medications;
- skin and hair care products;
- baby and mother care products;
- personal care, foot care and eye care;
- beauty supplements and accessories;
- medical equipment;
- rehabilitation products;
- first aid; and
- orthopedic support products.

Medication vending machines must be approved by the MOHAP and may provide OTC and general sale list products. If the vending machine is located near and affiliated with a DHA licensed pharmacy, pharmacy only medicine and POMs may be dispensed.

Conclusion

Telehealth providers are required to report to DHA on specific key performance indicators each quarter. Backed by the ruler of Dubai, we envision that the DHA will use these reports to closely monitor telehealth providers and continue to examine the scope of telehealth services, the uses thereof, and the future of telehealth in the UAE. This Standard provides significant amounts of clarity and welcomed new elements to telehealth in Dubai.

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KSA Privatisation, Corporatisation and PPP Schemes in Healthcare

Francis Patalong
Senior Associate
Riyadh, Saudi Arabia
f.patalong@tamimi.com

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Privatisation

In April 2018, Saudi Arabia announced an ambitious privatisation plan, which includes 14 public-private-partnership ('PPP') investments to be completed across 10 sectors, including healthcare, by 2020.

The key targets of the privatisation plan in relation to healthcare include:

1. updating and expanding primary care across Saudi Arabia;
2. providing additional rehabilitation and long-term care beds across the Kingdom through the creation of PPP structures;
3. planning for the establishment of additional medical cities;
4. preparing King Faisal Specialist Hospital & Research Center for privatisation and help it in achieving its leadership position by focusing on innovation; and
5. updating and expanding laboratory and radiology services across the country in partnership with the private sector.

Privatisation is also seen as a key focus area in the Saudi Vision 2030 and the National Transformation Program ('NTP'). The strategic objectives stated for healthcare in the NTP include:

1. privatisation of one of the medical cities through a PPP scheme; and
2. increasing private sector share of spending in healthcare through alternative financing methods and service providers.

Pursuant to Vision 2030, the Ministry of Health is also undergoing profound change. The institutional transformation process will separate service provider functions from the regulatory functions.

Under the new system, state-owned enterprises would provide the services once the organisational structures have been completed. Meanwhile, the institutional transformation programme will continue to support service providers to launch continuous improvement projects, in order to boost transparent monitoring of health facilities, in terms of speed and quality access to services, ensure efficient professional development and accountability based on practical and therapeutic outputs, without any disruption to the current health services during the institutional transformation phase.

The ultimate objective behind assigning healthcare services to state-owned enterprises is to provide top-quality services to Saudi citizens, while allowing for the Ministry to focus on its major role, that is to supervise, monitor, and design health policies.

The immediate focus for the Ministry is to:

- adopt the future operational model and organisational structure of state-owned healthcare enterprises;
- set up a holding company and five health enterprises covering the Kingdom;
- initiate health consortia of service providers;
- increase operational capacity by 25 percent by 2021;
- transform 37 percent of hospitals and healthcare centres into healthcare enterprises by 2020.

Corporatisation

The change from provider/regulator to regulator is perhaps the biggest single change and challenge presented to the Ministry through Vision 2030 and the NTP. Corporatisation is a key element of that paradigm shift.

The government intends to transfer responsibility for healthcare provision to a network of new companies that compete both against each other and against private sector operators. Under this structure, hospitals and health centres will be detached from the Ministry and made into standalone companies (or groups of companies – "clusters"), competing with each other as regards quality, competence, and productivity. The Ministry will gradually relinquish its role as a service provider and adopt a more regulatory and supervisory profile.

The key steps in this programme include for each of the new companies and the holding company to:

- develop the bylaws and processes of the holding company; and
- develop the governance framework of the holding company and subsidiary institutions.

Under the new system, state-owned enterprises would provide the services once the organisational structures had been completed. Such enterprises will be at liberty (subject to rigorous compliance with procurement rules) to enter into contracts for service provision with the private sector, some of which will be PPPs.

The corporatisation of existing service provision is thus a key plank in healthcare policy over the next period, and, within that overall framework, PPPs will have a fundamental role (both in terms of providing services and also perhaps in monitoring outcomes). The advent of corporatisation is further intended to promote and prioritise specialisation in health care services and, over time, will enable citizens to choose their preferred service provider.

In conjunction with the corporatisation process, the Ministry is creating a sole and exclusive entity to formulate health policies, including over health insurance services, amongst others (such as operating the recently established Health Services Council) in order to separate the service provider from the regulator.

It should, therefore, be no surprise that Saudi Arabia intends to establish an entity to monitor, inspect, and regulate the provision of care services to make sure that national standards are established and achieved. The entity so established will offer a specialised quality monitoring system to oversee care provision in public and private hospitals, manage PPP outcomes, and will be responsible for defining standards, for reporting quality outcomes at the hospital level, accrediting hospital reporting systems, overseeing PPP projects, gathering outcome data, and publishing comparative performance reports. In an era of increasing fuel prices and decreasing fuel subsidies, the carbon footprint and sustainability of new assets and services will, increasingly, become determining factors for measuring success.

Public Private Partnerships

The old procurement law (the Government Tenders and Procurement Law or GTPL) has served well as a method of procuring input-based, client specified assets and some limited ancillary service provision. It was, however, unsuited to the procurement of complex outputs or outcome-based services where the costs of assets and services are bundled into a "*unitary charge*" delivered against attainment of key performance indicators over a long-term concession period. The old GTPL has since been replaced by a revised (and highly innovative) new GTPL which comes into force in early 2020. Some of the innovations in that new law (such as the ability to have framework agreements, tendering through an electronic portal, and reverse auction tendering) remain to be fleshed out in the Implementing Regulations but will be directly relevant to conventional healthcare procurement.

"The institutional and regulatory architecture to enable private sector investment has also made significant progress."

Parallel to the new regime for conventional procurement, the regulatory framework in respect of PPP is developing quickly.

The National Center for Privatization ('NCP') was established to regulate privatisation in KSA. Article 3 of the Statute for the NCP states explicitly that PPPs shall be deemed privatisation. The NCP is tasked with establishing the frameworks under which privatisations occur.

Council of Ministers Resolution No. 665 (dated 8/11/1438H (1/8/2017G)) establishes the institutional framework under which the NCP will operate. Pursuant to that resolution, NCP has promoted a system of sectoral/supervisory committees relating to sectors targeted for privatisation – this includes healthcare. The Ministry has established a Vision Realization Office, which in effect, operates as the secretariat for this committee in the healthcare space.

The NCP published a Privatisation Projects Manual (the 'Manual') in May 2018. The Manual sets out a methodology for procurement, which is mandatory. However, there do remain some regulatory gaps – many of these were addressed in the draft Private Sector Participation ('PSP') Law published in June 2018. That draft law is very much a companion piece to the Manual however, the law is not yet in force and may be further reviewed and amended following the public consultation exercise.

Royal Decree No. 101 of 2018 was officially published in the Official Gazette on 18 July 2018. That decree disapplied the old GTPL from privatisation projects and was a welcome clarification in that regard, pending formal adoption of the draft PSP Law (which has yet to occur). Therefore, the precise extent to which the new GTPL applies to such projects will become apparent once its own Implementing Regulations are published. The enacting decree for the new GTPL does however, confer discretion in this regard on the Minister of Finance.

The draft PSP Law was subject to public consultation until 29 July 2018 – hence there may be changes in both the draft law and the Manual consequent to that consultation exercise. The interplay between the Royal Decree, the draft PSP Law, the Manual and the new GTPL are yet to be fully determined and tested, and will likely develop further.

Conclusion

Huge strides have been made in healthcare reform in KSA over a very short period. Likewise, the institutional and regulatory architecture to enable private sector investment has also made significant progress. The next 18 months will see a steady increase in the number and scale of opportunities coming to the market.

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Development of the UAE as a Sports Injury Rehabilitation Destination and Sports Science Hub

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

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

Background

The proliferation of cutting-edge technology in the fields of sports science and sports injury prevention/rehabilitation has increased substantially in recent years. Embracing such technology has, in turn, significantly boosted the sports medicine market, which is expected to surpass US$9 billion by 2025, with an annual compound growth rate of six percent from 2019-2025 .

This increased demand for sports medicine related services can be attributed to a host of factors, such as:

1. increased incidence of sports injuries caused by growing participation in sports and physical activities;
2. growing trend towards healthy lifestyles and public health campaigns promoting the importance of sports and physical exercise in combatting and reversing cardiovascular diseases, diabetes, obesity etc.;
3. increased adoption of computer assisted robotic surgeries and sports medicine products, which reduce recovery times and hospital stays;
4. technological advancements in medical implants and increased R&D in the field of regenerative medicine; and
5. increased demand for minimally invasive surgical procedures, such as arthroscopy, resulting in reduced complications and shorter hospital stays.

The Global Sports Medicine Market

North America dominates the global sports medicine market, accounting for almost 50.5 percent of the market. This is primarily due to the high incidence of sports participation and related injuries, which has created a demand for innovative sports science products and technologies, prompting increased government investment and funding in regenerative medicine.

The European sports medicine market is the second largest market, followed by the Asia Pacific region. The MENA sports medicine market is currently smaller; however, it is set to grow at an accelerated pace.

Technological Advancements in Sports Science

Continual advancements in sports science research and development has resulted in numerous innovative technologies. Such technologies help maximise the ability of athletes to train and perform at a high-level, thereby reducing the otherwise vast costs incurred by sports teams and athletes on injuries alone. Some examples of theses technological developments are:

1. **Analytics:** The use of sensors to observe an athlete's body and performance in real time to analyse metrics such as sprints, landings, speed, impact forces, torque,and other movement dynamics to better understand an athlete's performance and technique;

2. **Cryotherapy:** The deliberate exposure of parts of the body to freezing or near-freezing temperatures in a cryotherapy chamber. This technique helps athletes deal with muscle pain, joint pain, or soreness, and it promotes faster healing of injuries;
3. **Hyperbaric Oxygen Therapy:** The inhalation of pure oxygen in a pressurised chamber, or through a tube. Inside a chamber, it is possible to set the air pressure to three times the regular levels. The increase in air pressure causes the lungs to receive more pure oxygen than is otherwise possible under normal atmospheric pressure. The pure oxygen is then carried by the blood throughout the body, where it can help muscles, stimulate growth factors, promote healing, and enhance the speed of recovery;
4. **Sweat Analysis:** The use of smart patches to analyse an athlete's sweat as they train and compete. These patches can monitor key health signs and ultimately improve athletic performance and boost recovery by collecting data regarding the various solutes in an athlete's body, such as sodium, chloride, potassium, ammonium, lactate, proteins, or peptides; and
5. **Wearable technology:** Most professional football, rugby, and NFL players routinely wear small GPS trackers on the back of their training tops to track, in real time, athlete acceleration, positioning, collision impact, volume, intensity, explosiveness, and other metrics both during games and training sessions.

The benefits of real time player data collection are that it gives coaches extra information on which to base their decisions, such as the optimal time to make substitutions or changes in strategy.

Why is the United Arab Emirates (UAE) an Attractive Destination for Sports Science/Rehabilitation?

One major obstacle for clinics considering whether to offer state-of-the-art sports science diagnostics and technologies is the current high cost of the equipment. The UAE has emerged as a go-to sports science/rehabilitation destination by prioritising investment in such equipment and the provision of treatment.

The UAE government has played a significant role in proactively driving medical tourism by introducing new initiatives and incentives such as:

1. the introduction of the 10-year visa for highly specialised professionals, such as doctors and researchers, which has attracted some of the best global medical talent;
2. the launch by the Dubai Health Authority ('DHA') of the Dubai Health Experience ('DXH'), the first medical tourism portal in the region enabling tourists to book their entire medical holiday online;
3. the establishment of a centre of excellence for sports medicine under the DHA Health Strategy 2016-2021; and
4. increased healthcare spending, with the UAE projected to have the highest projected compound growth rate in healthcare spending in the GCC of 9.6 percent between 2017 and 2022.

Such initiatives have helped the UAE medical tourism industry grow at a healthy annual rate of 5.5 percent to reach a staggering AED 12.1 billion in 2018 . This rate of growth is showing no signs of slowing down and is set to reach AED 19.5 billion by 2023.

Recently Opened UAE-based Sports Science and Rehabilitation Establishments

There are numerous examples of cutting-edge clinics opening in the UAE in recent years, which demonstrates the burgeoning potential of the local sports science industry, such as:

1. Emirates Sportsmed which opened in Dubai in 2017 and offers comprehensive sports science and technology driven health assessments and full body healthcare services for amateur and professional sports athletes participating in football, cricket, and other sports. With football legend Frank Lampard as its ambassador and clients including cricketer Kieron Pollard and MMA Fighter Mohammed Yahya, it has already become a trusted destination for sports injury prevention and rehabilitation;
2. Dubai-based Cryo Holdings opened the first of its eight clinics in 2013 and offers comprehensive cryotherapy services. Its significant investment in R&D and efforts in creating medical certified devices have enabled it to cater to professional sports leagues such as the NFL, NBA, NCAA, and MLB;
3. Nad Al Sheba, a major sports complex in Dubai, offers sports rehabilitation services including cryotherapy, hydrotherapy, and other medical support services attracting superstar athletes, including Cristiano Ronaldo, Mo Salah, Paul Pogba, Novak Djokovic, UFC champion Khabib Nurmagomedov, and big-ticket teams such as Manchester United and Australian Cricket Team; and
4. the Dubai Camel Hospital, which opened in 2017, is a first-of-its-kind veterinarian hospital dedicated to providing medical treatment to participants in the much-cherished sport of camel racing.

Key Legal Considerations

I. Licensing Requirements

Those interested in setting up healthcare establishments and/or working as medical professionals within the UAE are required to obtain a licence to practise professionally and, additionally, a licence to set up the health establishment from the authority concerned, depending on the nature of establishment.

For example, healthcare professionals intending to carry on healthcare services and/or run a healthcare establishment in Dubai must:

1. if carrying on healthcare professional services, obtain a healthcare professional licence to practise from the DHA and must, at all times, conform to the requirements relating to eligibility to practise and general licensing requirements provided under the Unified Healthcare Professional Qualification Requirements; and
2. if setting up an healthcare facility, obtain corporate licences for the same from the DHA and Dubai Department of Economic Development, and comply with the DHA health facility guidelines.

II. Framing Certificate of Need Guidelines

In its endeavour to constantly advance health care services, the DHA is in the process of framing certificate of need policies and guidelines for facilitating needs-based investments in healthcare by not creating a situation which could result in an oversupply and therefore the possible redundancy of health facilities, which would be much to the detriment of the customers and investors alike.

Future Potential in the UAE

Overall, the growth potential of the healthcare industry in the UAE looks extremely bright due, in large part,to a government that is proactive in both its policy-making to attract medical tourists and its significant investment in the sector. The sports science and sports injury prevention/rehabilitation sectors are well set to prosper as a central part of this wider trend.

Note: *This article is co-authored with Ujjwal Ashok, Intern, Corporate Commercial.*

Al Tamimi & Company's Healthcare Practice includes lawyers from our Sports & Events Management team who regularly advise on laws and regulations impacting the healthcare sector. For further information, please contact healthcare@tamimi.com.

Impact of Nationalisation Policies in the UAE and KSA Healthcare Sector

Mohsin Khan
Senior Associate
Jeddah, Saudi Arabia
mohsin.khan@tamimi.com

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

Introduction

Both the United Arab Emirates ('UAE') and the Kingdom of Saudi Arabia ('KSA') pursue policies of nationalisation in order to create employment opportunities for local nationals. In this article, we look at how each country is implementing its nationalisation policies and how those policies are impacting the healthcare sector.

UAE

On Sunday 29 September 2019, it was announced following a cabinet meeting, that over 20,000 job opportunities would be created for UAE nationals in a variety of sectors across the UAE. The Cabinet also approved an AED 300 million (US$81,744) fund to train approximately 18,000 Emirati jobseekers. These announcements are part of the UAE's ongoing push towards Emiratisation, that is, the employment of Emiratis within the UAE workforce.

Whilst the UAE Labour Law does make provision for the priority of UAE nationals over other nationalities when employers are recruiting in the UAE, historically, this has not been enforced in practice save in certain industries and for pre-determined job titles within larger companies. Healthcare companies were not previously subject to Emiratisation requirements or quotas (unlike banks and insurance companies).

Recently, the Ministry of Human Resources and Emiratisation ('MOHRE') introduced two separate pilot projects to encourage the recruitment of UAE nationals in the private sector, which do not distinguish between company size or sector and thereby encompass the healthcare sector. These include:

- Tawteen Gate; and
- pre-determined job title restrictions.

These new projects are currently being implemented in onshore entities only, and there is no express Emiratisation requirement in free zone entities, although free zone entities are being encouraged to act in the 'spirit' of Emiratisation.

Tawteen Gate

Under the Tawteen Gate system, upon the submission of a new work permit for an expatriate through the regular MOHRE process, MOHRE will review the application and determine whether there is an UAE national registered with Tawteen as a job seeker ('Emirati Candidate'), looking for a similar title. The Tawteen process is triggered automatically upon the submission of a work permit application.

If there is Emirati Candidate in the market for a job with the job title requested, the MOHRE will put the current expatriate work permit application on hold and send the company the CV of eligible Emirati Candidate(s) for review.

The company will then be required to review these CV(s). The Emirati Candidate will also be provided with an opportunity to consider the role and determine whether or not he/she wishes to accept the position.

If the company does not consider the Emirati Candidate(s) to be suitable for the role, it will need to provide a sufficient reason(s) as to why the application will not be progressed. For example, the Emirati Candidate does not have the appropriate qualifications or experience for the advertised position.

MOHRE may also request the company to attend an 'Open Day' to meet with the Emirati Candidate(s). To emphasise, if the company does not wish to hire an Emirati Candidate(s), it will need to provide justifiable reasons as to why.

If there are no Emirati Candidates who are suitable for the role, the company may proceed with its expatriate work permit application.

Job Title Restrictions

Under this system, approximately 1,500 job titles have been classified as 1 – 5, with category 1 being the most desirable and best remunerated. Job titles classified under categories 1 and 2 are generally linked to the more senior or more qualified positions including (but not limited to) chemists, general practitioners, specialised physicians (including surgeons, cardiologists, paediatricians etc.), nurses, and laboratory technicians. These roles, amongst others, are now predominantly set aside for Emiratis in the first instance, and a company will be pro-actively blocked from hiring expatriates into these positions.

Not all companies are currently subject to this restriction and, in the case of those which are not: (i) the authorities will contact the company directly when the restriction should apply to it; or (ii) the company will only become aware of the restriction once it makes an application for a new expatriate work permit and the preferred job title is not available.

In such circumstances, a company representative will be required to approach a Tawteen Happiness Centre, and the authorities will then suggest prospective and appropriate UAE national candidates who are available. If there is no UAE national available for the role, the company may hire an expatriate. If there is an UAE national looking for a similar role, the company will be required to review the CV and potentially meet with the candidate. If the company does not wish to hire the individual, it will need to provide reasons for not hiring the individual and only once this process has been satisfied, may it go on to hire an expatriate.

During this recruitment process, the company's establishment card will be blocked. Ultimately, this process will cause some delay in the hiring process and companies should therefore factor this process into the hiring process timeline.

KSA

The concept of Saudisation has been in place for decades. Indeed, the Saudi Labour Law, issued by Royal Decree Number M/51 dated 23 Sha'ban 1426 (corresponding to 27, September 2005), as amended from time to time (the 'KSA Labour') Law, stipulates that at least 75 percent of an employer's total workforce must be Saudi nationals. However, in practice, Saudisation was not strictly implemented until the Ministry of Labour ('MoL') introduced the Nitaqat programme in 2013. The Nitaqat programme operates by classifying employers into six categories – Platinum, Green (High, Medium and Low), Yellow and Red – depending on various factors such as the size and activity of the company as well as the percentage of Saudi nationals in the workforce compared to expatriate employees. In general, an employer benefits from being in a higher category through greater incentives, such as flexibility in recruiting and managing expatriate employees, lower processing fees, and other administrative benefits. By contrast, lower graded entities will have restricted immigration and sponsorship benefits. Accordingly, under the current iteration of the Nitaqat programme, an employer's ability to recruit foreign nationals is subject to its level of compliance with its Saudisation requirements. Companies that are compliant are likely to be able to apply for visas for foreign nationals, whereas companies that are non-compliant are restricted from applying for visas for foreign nationals.

In addition to being compliant with Saudisation requirements, companies must first apply for a work permit from the MoL in order to recruit a foreign national. The MoL has a wide discretionary authority to grant work permits and will only do so if there is an insufficient number of suitably qualified Saudi nationals available to perform the role for which a company is seeking to recruit a foreign national. Previously, there was also a requirement to advertise a vacancy on the Human Resources Development Fund's online national jobs portal (Taqat) before they could recruit foreign nationals to fill that vacancy, although this requirement was removed in November 2018.

Furthermore, the MoL and, in some cases, other competent authorities such as the Saudi Food and Drug Authority, have also directed that specific sectors or professions be subject to complete Saudisation such that the roles available in those sectors or professions are reserved only for Saudi nationals.

In this context, and as part of the Vision 2030 programme to diversify the KSA economy away from its dependence on oil, it is anticipated that over 171,000 jobs in the healthcare sector will be held by Saudi nationals by 2027, up from the current level of approximately 75,000. Some roles have already been subject to complete Saudisation. For example, certain roles, including medical representatives and pharmacovigilance roles, must be undertaken by licensed pharmacists who can only be Saudi nationals. Similarly, the role of sales representatives of medical equipment or devices has been reserved exclusively for Saudi nationals as of January 2019. It is expected that other roles within the healthcare sector will also be reserved for Saudi nationals only. Even where roles may not be fully reserved for Saudi nationals only, it is likely that there will be an increase in the proportion of Saudi nationals taking up roles within the healthcare sector in the near future, as the Saudi authorities are keen to increase employment opportunities for the increasing number of Saudi graduates who are entering the labour market. Saudisation rates are expected to be particularly high in the professions of dentists and pharmacists. This is likely to result in a reduction in the number of foreign nationals within the KSA healthcare sector as Saudi nationals accumulate experience resulting in the healthcare sector becoming less reliant on foreign nationals. It also means that it will become more difficult to recruit foreign nationals into KSA as the MoL is less likely to grant work permits if there are a suitable number of Saudi nationals available to undertake a variety of roles within the healthcare sector.

> **"Increased employment opportunities for local nationals.**

Conclusion

Both the UAE and the KSA are making a noticeable push towards the employment of national locals, aiming to promote their contribution to the economy as well as development-oriented policies that support productive activities and enhanced job creation. This, therefore, directly impacts the healthcare sector, in respect of both large and small organisations. Along with the emphasis on job creation, the UAE has proposed a national programme of awareness among citizens, job seekers, students, schools, higher education institutions and parents about the value of work and the advantages offered by the private sector.

In conclusion, therefore, whilst nationalisation policies are a positive initiative that will boost growth in both the UAE and the KSA in the long-term, companies should be aware of the additional obligations being enforced, in order to effectively manage their operational requirements.

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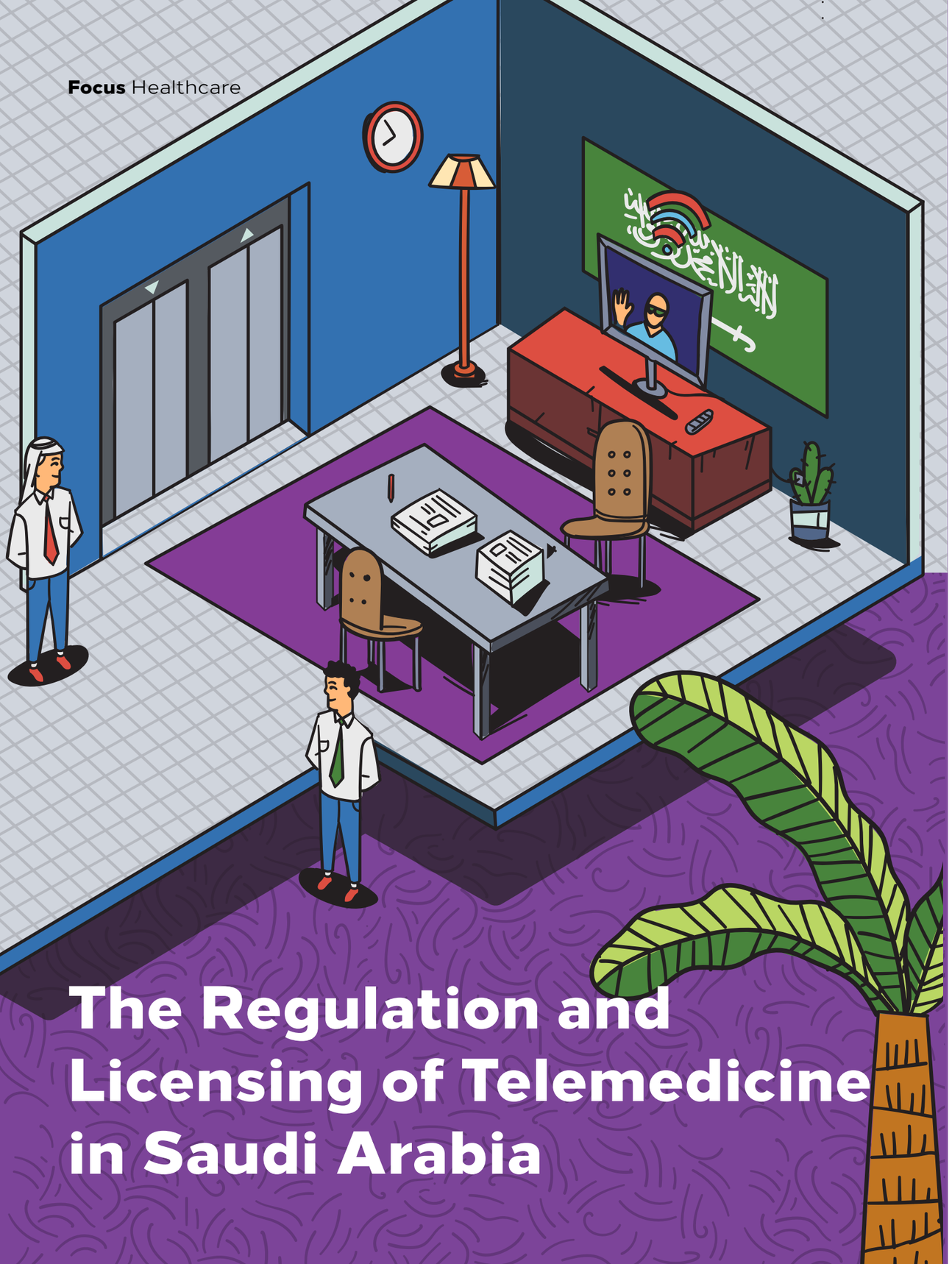


The Regulation and Licensing of Telemedicine in Saudi Arabia

Julie Bassi
Senior Associate
Jeddah, Saudi Arabia
j.bassi@tamimi.com

Somaia Bugis
Trainee Lawyer
Jeddah, Saudi Arabia
s.bugis@tamimi.com

The means of diagnosing illness has developed over the last five years and patients are no longer solely examined by a healthcare practitioner ('HCP') in an examination room with consultations to other HCPs where necessary. There are now a number of resources available to HCPs in providing a diagnosis to patients and the use of telemedicine is popular within the region.

Until recently, telemedicine was a tolerated practice within the Kingdom of Saudi Arabia ('KSA') with no licensing availability or possibility for investment domestically or through foreign investment. As telemedicine took off worldwide, KSA was in serious danger of being left behind, as the potential for development could not be realised at the time. Everything quickly changed and a telemedicine licensing regime was introduced in December 2018 and the Telemedicine Regulations were published in June 2019. Finally, KSA is able to take advantage of all the benefits that telemedicine can offer with in-country investment being a viable option for foreign investors.

Telemedicine Regulations

The Telemedicine Regulations ('Regulations') have been published and set out the specifications and requirements for telemedicine practice within KSA. The Regulations state that telemedicine is available for screening, triage, consultation, diagnostics, obtaining a medical opinion from an HCP, treatment support, and the monitoring of medical conditions.

The Regulations define telemedicine as a remote medical practice using information and communication technology, which should be utilised either as an interaction between a patient and an HCP or between two or more HCPs. The interaction shall take place between two different sites and may involve robots or artificial intelligence.

Teleconsultations can either be between a patient and an HCP or between two or more HCPs and must involve a video consultation (teleconsultations cannot be solely audio) but need not be synchronous.

Telemedicine may be practised by any KSA accredited HCP within either the public or private sector. Telemedicine undertaken by an HCP outside the jurisdiction will be undertaken under the supervision of a KSA based HCP. The Ministry of Health ('MOH') now provides a telemedicine facility for its citizens. All legal requirements and protocols that are applied to an HCP in physical practice in KSA apply equally to the practice of telemedicine.

Telemedicine services can be chargeable and HCPs may be remunerated for the services and consultations they provide. Furthermore, private healthcare insurers must provide coverage within their insurance provision and all compulsory cover provided for within the Co-operative Health Insurance Law must be offered.

Furthermore, telemedicine services can be provided to KSA citizens from outside the country (under the appropriate supervision of a Telemedicine Centre or healthcare institution within KSA).

The Regulations provide that a government agency shall be created to regulate and monitor telemedicine and shall be named the Saudi Telemedicine Unit of Excellence, which will operate within the National Health Information Centre of the Saudi Health Council.

It is a provision of the Regulations that all HCPs must be trained in telemedicine before practising telemedicine and such training must be accredited by the Saudi Commission for Health Specialties. The training programme shall include content on telemedicine practice and regulations, the application of telemedicine to the HCP's speciality, and the use of telemedicine solutions, where appropriate.

An entity providing telemedicine services that is not licensed as a healthcare facility in the KSA is capable of obtaining a licence to practise telemedicine, and we refer you to the licensing regime below. All legal requirements and protocols applied to healthcare facilities in KSA apply equally to entities providing telemedicine services, including obtaining accreditation from the Saudi Central Board for Accreditation of Healthcare Institutions.

The practice of telemedicine must be compliant with the health information exchange policy in KSA, including all appropriate data security and patient privacy requirements, and furthermore, must be compliant with interoperability frameworks.

In practising telemedicine, HCPs should have sufficient evidence to identify the patient who is seeking a consultation and should have access to all relevant patient health and medical information of the patient where available. All patients seeking a teleconsultation must sign a consent form in relation to the consultation (preferably prior to undertaking a teleconsultation).

An HCP practising telemedicine may prescribe online prescriptions or undertake medical investigations. Both actions should abide by all relevant regulations and protocols that apply to such actions in KSA.

All telemedicine activities should be formally recorded within the patient's medical records and should include information relating to the telemedicine service provider, the location of the consultation, the activities undertaken, the date and time of the consultation, and details of any prescriptions and/or medical investigation provided together with all observations made during the consultation.

Telemedicine Licensing Regime

MOH has published an annex to the Private Healthcare Institutions Law (Annex 24), which provides for a licensing regime for Telemedicine and Remote Care Centres ('Telemedicine Centres') in KSA.

The MOH has also published a Healthcare Investor Licensing Guide ('Guide') that defines a Telemedicine Centres as:

> *"private health facilities, designed to use a range of modern electronic technologies, such as multimedia, e-mail and smart applications, by health facilities or practitioners, so as to enable safe and direct communication between the patients and health practitioners to assess their medical conditions and provide necessary treatment thereto."*

Telemedicine Centres are classified as Support Health Services Centres ('SHSC') and all SHSC must have a Managing Director who is a Saudi national responsible for supervision of the Telemedicine Centre and a technical supervisor who is a telemedicine specialist. All Telemedicine Centres must have a specialised physician to provide consultations (who need not be a Saudi national).

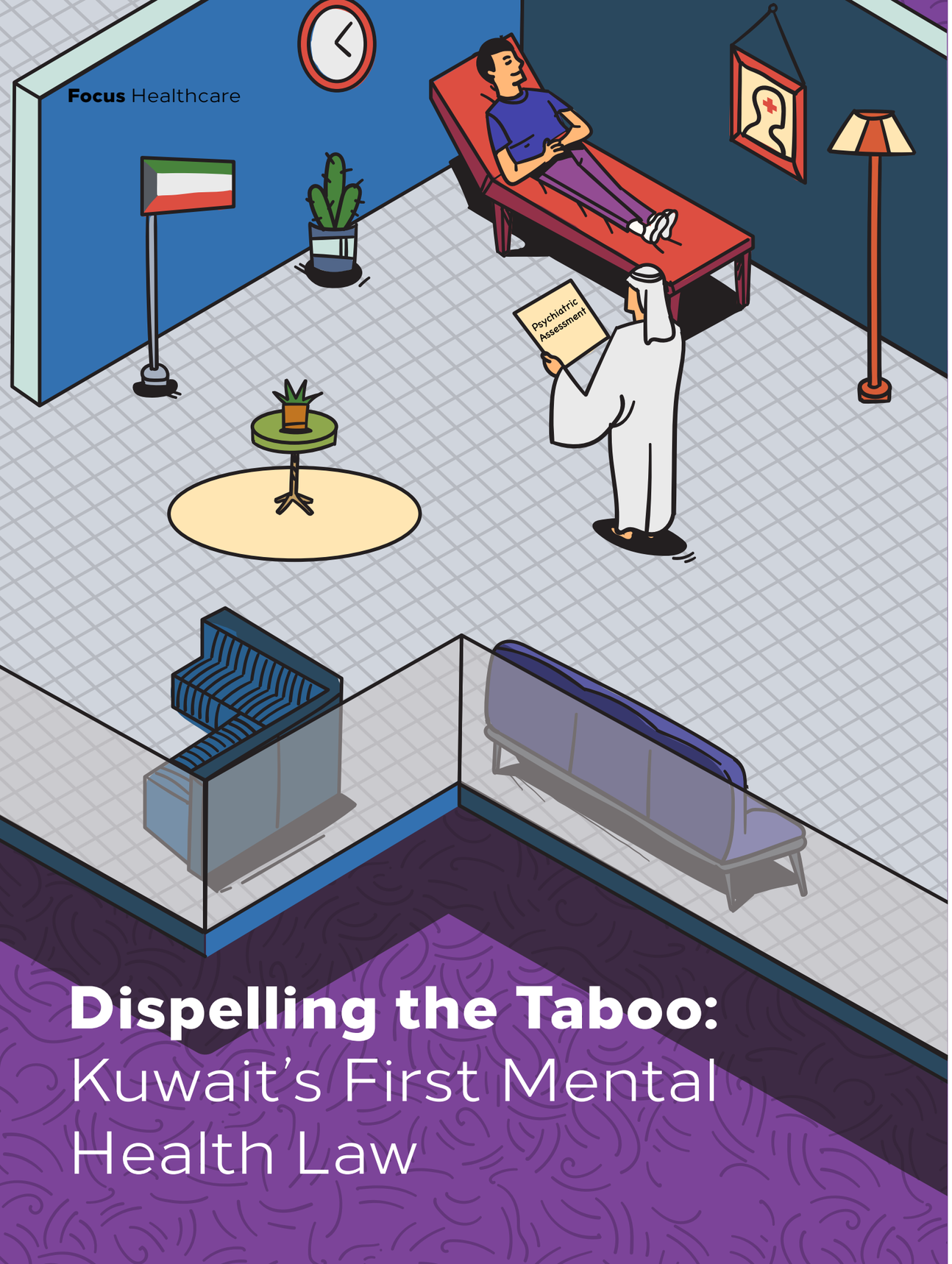
All applications for a telemedicine licence should be submitted to the Directorate of Health Affairs with supporting documentation and pre-approval from the MOH. An applicant must have a valid commercial registration certificate and further must obtain Ministry of Municipal and Rural Affairs ('MOMRA') approval for the proposed location of the Telemedicine Centre, which must be followed by an application for approval through the SEHA platform and finally a permit from MOMRA. Approval must be obtained for the Telemedicine Centre's medical personnel from the Directorate of Health Affairs and the Ministry of Labour and Social Development electronically. Finally, a telemedicine licence must be obtained before the Telemedicine Centre can operate.

Telemedicine Centres

All Telemedicine Centres will need to provide either a website or mobile application that provides comprehensive and detailed information about the services they are providing. They must also have a separate administrative head office and a separate medical facility ('Medical Facility') where remote medical examinations can be conducted by a physician. The Medical Facility need not be managed, operated or owned by the Telemedicine Centre but can be made available through a third party via a commercial arrangement. The Medical Facility must have appropriate medical equipment and the Telemedicine Centre will need an electronic health record system to record all data collected. Finally, the Telemedicine Centre will need to provide adequate training for its employees in accordance with the Regulations.

Telemedicine Centres do not need to be owned by medically qualified investors nor does the investor have to be a Saudi national or Saudi owned entity; therefore, telemedicine is open to foreign investment in KSA. Furthermore, telemedicine services can be provided to KSA citizens from outside the country (under the appropriate supervision of a Telemedicine Centre or healthcare institution within KSA). Telemedicine Centres allow for the collaboration between medical institutions to share knowledge and experience. It enables healthcare professionals within the country to have access to and assistance from experts outside the Kingdom, which will benefit patients and will enable Saudi based medical practitioners to develop expertise in their chosen field. Telemedicine practice is a growth area, which can only go from strength to strength and which offers excellent investment opportunities for domestic and foreign investors alike.

Al Tamimi & Company's Healthcare Practice in KSA regularly advises on laws and regulations impacting the healthcare sector. For further information please contact healthcare@tamimi.com.



Dispelling the Taboo: Kuwait's First Mental Health Law

Lulwa Al Hammad
Associate
Kuwait City, Kuwait
l.alhammad@tamimi.com

Margaret McKenzie
Trainee Lawyer
Kuwait City, Kuwait
m.mckenzie@tamimi.com

In February 2019, the Kuwait Government issued Law No. 14 of 2019 ('Mental Health Law'). The law endeavours to protect individuals with mental health issues. Prior to this law, there was no law governing mental health in Kuwait. Although the legislation cannot, on its own, decrease the prevalence of mental illness or the stigma surrounding mental health in Kuwaiti society, it remains a promising step towards change.

The Mental Health Law addresses enhancing mental health treatment and combating mental illness. The Mental Health Law defines mental health as *"the state of well-being in which every individual realises his or her own potential, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to her or his community."* The law further defines mental illness as *"the state of psychological or mental disorder resulting from the impairment of any psychological or mental function to the extent that limits the individual adaptation to his or her social environment. It does not include the use or addiction to alcohol, drugs, psychotropic substances, or medications without apparent mental illness."*

The law includes the creation of the Mental Health Coordinating Council ('MHCC'), which comprises 11 members who are empowered to follow up on the application of the law and its executive regulations, including developing policies in respect of the rights of mental health patients, amongst others.

The MHCC is also tasked with creating the Monitoring and Evaluation Committee, which comprises a consultant, an experienced psychiatric therapist, and a legal consultant working in the legal sector of Ministry of Health. This committee has the purview to deliver independent medical reports about a patient's case that has been referred to it, receive complaints, change a patient's status from compulsory to voluntary admission in a mental health facility, consider the validity of compulsory admission and treatment procedures being applied, consider the patient's ability to make treatment decisions, consider the continued detention of patients under judicial orders, and any other further functions assigned.

The law addresses requirements and procedures for the psychiatric assessment of mental health patients, voluntary and compulsory admission to psychiatric units or facilities, and compulsory mental health treatment. Prior to the issuance of the Mental Health Law, an individual facing mental issues could not be detained at a facility, even if leaving the facility would likely result in harm to himself or others. Article 11 of the Mental Health Law affords a physician the right to prevent a patient from leaving a facility for up to 72 hours while undergoing evaluation ('Assessment Period'), if, on the basis of a psychiatric assessment, the physician deems that the patient could cause imminent harm to himself or others, or that the patient, due to mental illness, is unable to take care of

himself/herself or to consent to voluntary assessment or treatment. Following the Assessment Period, the patient may be voluntarily or compulsorily admitted for treatment in a mental health facility.

Further, if there is a judicial order, a person may be referred without his or her consent for a psychiatric assessment. A patient may also be transferred without consent if reasonably requested by any of the following: (i) a relative of the patient, up to second kinship; (ii) a treating physician or therapist in mental health; or (iii) one of the investigators of the General Directorate of Investigation. If there is no longer a reason for compulsory admission, a therapist may cancel the Assessment Period at any time and authorise the patient to be discharged. Following the psychiatric assessment, the patient may be voluntarily or compulsorily admitted for treatment in a mental health facility.

However, it is worth noting that no person can be compulsorily admitted to a mental health facility unless a psychiatrist, who is not the same as the referrer for compulsory assessment, prepares a new psychiatric assessment, when there are clear signs of severe mental illness. The law explains that severe mental illness includes the following: (i) severe and imminent deterioration of mental or health condition because of symptoms of mental illness; or (ii) where mental illness signifies a serious and imminent threat to the safety, health, or life of the patient or others.

An exception to these compulsory admission procedures includes emergency and urgent cases. Under such cases, a patient may be compulsorily admitted and examined so long as a preliminary diagnosis report and rationale for emergency admission is submitted to the facility management and Monitoring and Evaluation Committee within 24 hours of the examination, and within 48 hours of examination to the Public Prosecution to take necessary action.

Should the patient have the capacity to understand and provide informed consent to treatment, then his consent should be obtained prior to the administration of any treatment. If the guardian of a mental patient who is incapable of making a treatment decision refuses treatment, or if there is no guardian representative, the Monitoring and Evaluation Committee must approve treatment until the court appoints a guardian.

In addition to the procedures surrounding the admission of an individual, the Mental Health Law sets forth punishments under Articles 30-34. Namely, the pro-patient law imposes stringent punishment if there is any violation of the law. Violations include, but are not limited to, financial and criminal sanctions. If a person intentionally admits a person who is suffering from mental illness to a place or under conditions other than those prescribed by law, there is a penalty of imprisonment between one to three years and a fine of 3,000 to 10,000 Kuwaiti Dinars (approx. US$10,000 – 33,000). Further, if a person enables or assists a person who is subject to compulsory treatment to escape or falsely informs a competent authority about a person who suffers from mental illness, then he or she will be subject to imprisonment for one to three years and a fine of 1,000 to 5,000 Kuwaiti Dinars (approx. US$3,000 – 16,000). Additionally, a person who discloses a patient's psychological secrets may be imprisoned for a period of three months to two years and fined 1,000 to 5,000 Kuwaiti Dinars (approx. US$3,000 – 16,000).

> **The law addresses requirements and procedures for the examination of patient(s) , psychiatric assessment of mental health patients, and voluntary and compulsory admission to psychiatric units or facilities, and compulsory mental health treatment.**

> **Namely, the pro-patient law imposes stringent punishment if there is any violation of the law.**

The law not only focuses on mental health treatment, but encourages patient rehabilitation as well. The law states that the Ministry of Health will establish shelters for patients who do not need to stay at a mental health facility and whose families refuse to provide appropriate care. Further, the law permits the Ministry of Health to grant private shelter licences for these purposes.

The law also highlights that a person treated in a mental health facility or who has a mental health condition should not be precluded from obtaining a job with a government entity. By encouraging employment of individuals with mental health conditions, the law intends to further prevent stigma and isolation for mental health patients.

The first of its kind in Kuwait, the Mental Health Law highlights the government's continuous effort to improve patient protections in a region where mental illness remains taboo. The law implements strict penalties for individuals who violate the law, as it dedicates five articles out of 40 clearly listing the consequences of violating the law. Although still in its early stages, the Mental Health Law indicates an important step in improving healthcare development as well as the rights and treatment of mental health patients and communities in Kuwait.

Al Tamimi & Company's Healthcare Practice in Kuwait regularly advises on laws and regulations impacting the healthcare sector. For further information please contact healthcare@tamimi.com.

United Arab Emirates
Ministry of Justice

49th Year
Issue No. 662 Supplement
16 Muharram 1441H
15 September 2019

FEDERAL DECREE-LAWS

21 of 2019 Regarding Emirates Post Group.

22 of 2019 Regarding Emirates General Transport and Services Corporation.

23 of 2019 Amending Federal Decree-Law No. (9) of 2016 on Bankruptcy.

24 of 2019 Amending Federal Law No. (20) of 2016 on Mortgaging of Movable Assets as Security for Debts.

United Arab Emirates
Ministry of Justice

49th Year
Issue No. 664
16 Safar 1441H
15 October 2019

MINISTERIAL DECISIONS

- From the Ministry of Justice

904 of 2019 Authorizing certain officials at the Securities & Commodities Authority to enforce the law as judicial officers.

ADMINISTRATIVE DECISIONS

- Telecommunications Regulatory Authority

51 of 2019 Chairman of the Board Resolution on the directives regulating the delivery of telecommunications services to data centers.

52 of 2019 Chairman of the Board Resolution approving the Quality of Service Regulatory Policy, Version 2.0.

53 of 2019 Chairman of the Board Resolution approving the Third Party Contribution Limits Directives, Version 1.0.

55 of 2019 Chairman of the Board Resolution approving the Spectrum Allocation and Assignment Regulations, Version 2.0.

56 of 2019 Chairman of the Board Resolution approving the Maritime Radio Systems Regulations, Version 3.0.

- From the Insurance Authority

48 of 2019 Chairman of the Board Resolution issuing the Memorandum of Association of the Emirates Insurance Association.

49 of 2019 Chairman of the Board Resolution concerning the directives on life insurance and family takaful insurance.

- From the UAE Central Bank

  - Amendments to Circular No. 31/2013 on the Mortgage Loan System.
  - Amendments to Appendix 2 of Regulation No. 29/2011 on Bank Loans and Other Services Offered to Individual Customers.

Awards

Chambers Middle East Legal Awards 2019

Essam Al Tamimi is awarded the "Lifetime Achievement" Award; Al Tamimi & Company named "UAE Employment Law Firm of the Year".

At the inaugural Chambers Middle East Legal Awards held at the Conrad Hotel in Dubai, Al Tamimi & Company's Senior Partner and Founder, Essam Al Tamimi, was awarded the "Lifetime Achievement Award". In overseeing the growth of Al Tamimi & Company from a start-up practice operating out of a single office in Sharjah to one of the powerhouses of the legal profession in the Middle East, Essam has spent three decades at the forefront of the region's legal industry. Essam has been influential in the development of key laws in the UAE and continues to help shape the legal landscape across the region. A link to Essam's acceptance speech can be found on Al Tamimi & Company's LinkedIn page.

Al Tamimi & Company were shortlisted in 6 other award categories: Kuwait Firm of the Year; Iraq Firm of the Year; UAE Disputes; UAE Employment; UAE Real Estate & Construction and UAE IP & TMT and Samir Kantaria's Employment team picked up the "UAE Employment Law Firm of the Year" Award.

16th Annual WealthBriefing MENA Region Awards

"Best Law Firm Advising High Net Worth" Award

At the annual WealthBriefing Awards at the Dusit Thani Dubai, Al Tamimi & Company won the award for "Best Law Firm Advising High Net Worth". WealthBriefing commented that "Our winner has established itself as a dominant force in this aspect of work thanks to its longstanding relationships with private clients right across the region". The event was attended by Samer Qudah (Partner, Head of Corporate Structuring), Izabella Szadkowska (Partner, Corporate Structuring), Richard Catling (Partner, Corporate Commercial), Dipali Maldonado (Senior Counsel, Private Client Services), Nawal Abdelhadi (Senior Associate, Corporate Commercial) and Ashleigh Bruce (Associate, Private Client Services). Izabella Szadkowska was also on the judging panels for the other awards.

Banker Middle East Awards 2019

"Best Law Firm - Banking and Finance" Award

Al Tamimi & Company are honoured and delighted to win 'Best Law Firm – Banking & Finance' at the Banker Middle East Industry Awards 2019 - a prestigious financial awards ceremony held at The Ritz-Carlton Hotel, DIFC. The award was to Al Tamimi & Company's entire Banking & Finance team for their exceptional contribution to the financial services industry over the past year. Mamoon Khan (Partner, Banking), Sakshi Sethi (Senior Associate, Banking) and Murtaza Hussain (Associate, Banking) were at the event to collect the award.

MEED Awards 2019

“Highly Commended Law Firm of the Year” Award

We were honored to have been named “Highly Commended Law Firm of the Year” at the MEED Awards 2019. With the awards ceremony taking place at the Ritz Carlton DIFC, Al Tamimi & Company was again a finalist amongst other international and regional law firms.

MEED Awards 2019 is a celebration of companies that are pioneering the corporate revolution in the GCC, providing a platform for business leaders and visionaries to ignite new ideas and set fresh guidelines for best practises in the GCC. The aim of the awards is also to empower and encourage companies to participate in a conversation that sets new standards for best practices in the GCC. A huge thank you to all at MEED, their panel of esteemed judges and key sponsors ACWA Power, Parsons and Grant Thornton for their appreciation.

The Oath Middle East Legal Awards 2019

It was a great honour to be recognised with multiple awards at the Oath Middle East Legal Awards 2019.

We were delighted to receive six awards this year reflecting the depth and breadth of Al Tamimi & Company’s regional practice.

Winners

- Regional Law Firm of the Year
- Employment Team of the Year
- Litigation & Dispute Resolution Team of the Year
- Law Firm of the Year - KSA
- Law Firm of the Year - Oman
- Law Firm of the Year – Qatar

Honourable mentions

- Law Firm of the Year - UAE
- Law Firm of the Year - Bahrain
- Law Firm of the Year - Kuwait

This recognition is a testament to our team’s commitment and dedication to providing the highest level of service to our clients and the community.

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

Congratulations to all the winners!

New York, USA

15th
OCT

Big Talk in the Big Apple – Ibtissem Lassoued speaks at the US Federal Reserve Bank in New York

US Federal Reserve Bank, New York

During a trip to New York last month, Ibtissem Lassoued, Partner and Head of Advisory in the Regional Financial Crime Department, spent a few days in the city carrying out a round of prestigious speaking engagements, including an appointment to a specialist panel for the Private Sector Dialogue at the US Federal Reserve Bank. Organised by the Union of Arab Banks in conjunction with the US Treasury and the IMF, the Public Sector Dialogue is a fundamentally important PPP initiative which aims to promote open dialogue about the pressures and challenges experienced by financial institutions trying to develop US-MENA interregional ties. This year's conference, which was attended by several Governors of Central Banks from across the MENA Region, was entitled 'The Challenge and Opportunities for MENA Banks – Understanding and Meeting US Regulatory Expectations and the Expectations of the Correspondents', and was centrally orientated at promoting collaboration between banks, regulators, and US authorities. The event captured a broad range of concerns raised by regulators, enforcement agencies, international organisations, and commercial businessmen, and raised issues that spanned political, economic and legal spheres. Ibtissem highlighted the importance of elevating awareness both domestically and internationally about the legislative changes that are occurring in Middle Eastern countries to prevent illicit financial flows and protect against abuse of the international financial system, which are often overlooked in the context of global financial crime issues which are present in every jurisdiction. Initiatives like the Public Sector Dialogue are essential to breaking down misconceptions about barriers to trade between countries and, from a practical perspective, are often the first step in developing effective responses to such challenges.

22nd
OCT

Making it in New York – Joint Business Trip for Financial Crime and Capital Markets

The Harvard Business Club, New York

Ibtissem Lassoued and Andrew Tarbuck, Partners in Al Tamimi's Regional Financial Crime and Capital Markets practices respectively, teamed up in New York for a week of meetings to showcase the Firm's expertise in areas that are of key interest to US businesses that play an active role in the Middle East's enterprises. Ibtissem and Andrew met with leading US law firms and global heads of major US banks to demonstrate Al Tamimi's dual-sided specialism in financial crime and capital markets, which include elements of both risk mitigation strategies and means by which businesses can capitalise on new opportunities. Ibtissem and Andrew received a generous welcome from old and new acquaintances and witnessed strong enthusiasm to develop trade interests in the Middle East's emerging markets. Particular highlights included giving an exclusive address at an Arab Bankers Association of North America (ABANA) luncheon hosted at the Harvard Business Club, where Ibtissem and Andrew both presented on their respective areas of specialism and gave the Middle Eastern flavour of the changing international financial market. Ibtissem and Andrew were also in attendance with 500 other finance professionals at the ABANA Achievement Award Gala Dinner honouring Mr Farouk Bastaki, Managing Director and Group CEO of the Kuwait Investment Authority held at Gotham Hall. Other notable moments from the week included watching the ringing of the bell at the New York Stock Exchange, and meeting with the global heads of prestigious banks.

Bahrain

30th
OCT

Al Tamimi & Company's Bahrain office celebrates its 5th anniversary!

Four Seasons, Bahrain Bay

In October the Bahrain office welcomed more than 100 guests of the office including; senior leaders in government, business and finance all of whom joined the anniversary celebrations at the Four Seasons, Bahrain Bay.

The evening commenced with a FinTech panel, that focused on Bahrain's booming FinTech ecosystem. The panel discussion was led by FinTech practitioners and related experts including: Khalid Saad, CEO, FinTech Bay; Shiraz Ali, CEO, Finzo; Gaby El Hakim, Chief Legal Officer, National Bank of Bahrain and our very own Haroun Khwaja, Senior Associate, Technology Media & Telecommunications, Al Tamimi & Company. The entire session was moderated by Geoffrey Cooke, Senior Editorial Manager, Oxford Business Group. The overarching theme of the panel focused on how FinTech and digital transformation are more broadly now occupying an important part of corporate agendas in Bahrain, the experts spoke about the measures Bahrain has taken to develop a thriving FinTech ecosystem, including enacting new laws and regulations, establishing the region's largest FinTech incubators and introducing initiatives to support start-ups.

On the night Foutoun Hajjar, Partner & Head of Office - Bahrain said, "We're delighted to have marked this important occasion amongst so many of our clients and leaders of Bahrain's community and FinTech ecosystem. In light of our role as early supporters and advisors to FinTech start-ups in Bahrain, and our mission to be leading regional law firm for innovation and technology, we're delighted to have marked our five years of success in the Kingdom by celebrating the strong partnerships we have established with a diverse group of stakeholders in Bahrain's rapidly developing FinTech and digital ecosystem."

Essam Al Tamimi, Senior Partner, pointed out during the closing speeches that one of the most crucial aspects to enable a FinTech and technological revolution in the regions is education. He explained, "All stakeholders must be prepared to learn and adapt to the changing environment guided by technological advancements." "Universities and education institutions in the region must prepare future workforce to cope with the changing practices of business. Training and education is highly prioritised at our firm and we are making efforts to improve our knowledge internally as well as partner with educational institutions in training the future workforce of the region."

Listening in the audience the office welcomed notable guests from high profile institutions such as: AFS; American Chamber of Commerce in Bahrain; AXA; Bahrain Chamber of Commerce; Bahrain Economic Board; Batelco; Crestbridge; Edamah; French Embassy; Guardian Glass; Gulf International Bank; Kuwait Finance House; Ministry of Justice; Ministry of Transport; PetroLink and Ministry of Industry, Commerce and Tourism. Internally the Bahrain team welcomed Al Tamimi & Company guests including: Essam Al Tamimi & Company, Samer Qudah, Ibtissem Lassoued, Tara Marlow, Ahmed Allouz, Ahmad Saleh, Jeremy Scott, Mamoon Khan, Mohammad Muhtaseb, Euan Lloyd, Andrew Fawcett, Rakesh Bassi, and Ban AbdulQadir.

Kuwait

Al Tamimi & Company sponsors Q8 Bball team

We are delighted to support the Al Tamimi & Company Q8 Basketball team who have slammed the competition in their very first game! The team is coached by our newest Senior Associate in Kuwait, Asad Ahmad who enjoys mentoring the local youth team on a weekly basis.

Qatar

27th OCT

Arbitration: A view from Qatar and Beyond

On the 27th October 2019, Aiman Kler and Bashayer Al Ahbabi attended a seminar titled "Arbitration: A View from Qatar and Beyond" organised by the Qatar International Center for Conciliation and Arbitration (QICCA) along with Sultan Al-Abdulla & Partners, Thani Bin Ali Al Thani, and Al Sulaiti Law Firm.

The Seminar, which was split into two different panels, focussed upon topics such as the enforcement of arbitral awards in Qatar and internationally, interim remedies, the difference in approach between civil and common law arbitrators, and the new Prague Rules.

Speakers on the First Panel included Muna Al-Mutawa (Managing Partner Al-Mutawa Law firm), Khalifa Al-Yaqout, (Chairman, Al-Yaqout Legal Group), Ahmed Ouerfelli (Attorney-at-law and arbitrator), Matheiu Faupin (Head of International Department, Al Sulaiti Law Firm) ,Ashraf Feshawi (Partner, Sultan Al-Abdulla & Partners). The Second Panel comprised of Thomas Williams (Partner, Sultan Al-Abdulla & Partners), Paul Lowenstein QC (Barrister, Twenty Essex), Ian Clarke QC (Barrister, Selborne Chambers), Reza Mohtashami QC (Partner, Three Crownes London), and Khawar Qureshi QC (Head of Chambers, McNair Chambers).

29th OCT

Implementation of VAT in Qatar

On the 29th October 2019, Al Tamimi & Company hosted a seminar run by Shiraz Khan our head of Taxation.

The introduction of VAT will have a major impact on business operations, functions, people, processes, contracts and IT systems. With VAT expected to be implemented in Qatar shortly (likely 1 January 2020), Shiraz discussed the importance of assessing the impact of VAT on organisations as well the key features of Qatar's incoming VAT regime and the steps that need to be taken to ensure our clients are VAT ready. Overall the event was a great success with over 120 attendees from various organisations across Qatar.

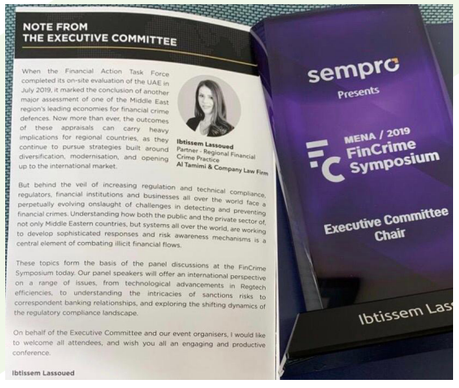
United Arab Emirates

9th
OCT

The Inaugural MENA FinCrime Symposium 2019

JW Marriott Marquis, Dubai

On 6th October, the MENA FinCrime Symposium opened to the Middle Eastern market for the first time. Ibtissem Lassoued, Partner and Head of Advisory in Al Tamimi's Regional Financial Crime Practice, was Chair of the Executive Committee and played a prominent role in curating the new event, organised by Sempro. The FinCrime Symposium was created to bring a commercial focus to compliance topics, offering delegates an opportunity to explore the wider business implications of the bold reform efforts of regional countries. Ibtissem also moderated the Regulatory 2020 panel, which offered a preview of each speakers' insights into some of the key regulatory trends and developments that are expected to shape the financial crime landscape over the next 12 months. Prominent topics that came up in discussion included the implications of digital transformation for compliance functions, growing awareness of sanctions risks in the UAE and the implications of ongoing Financial Action Task Force (FATF) evaluations around the Middle East Region.



16th
OCT

Legal 500 GC Powerlist Middle East 2019

Waldorf Astoria DIFC, Dubai

The annual Legal 500 GC power list returned on Wednesday 16th October to celebrate and recognize the top GC's who are driving business forward in the region. Al Tamimi & Company sponsored this initiative driven by the Legal 500 team in London which culminated in a evening reception hosted at the Waldorf Astoria in DIFC - Samir Kantaria, Partner, Head of Employment, Al Tamimi & Company gave one of the opening and welcome speeches to this year's winners. The night was a success and we look forward to the 2020 edition!

10th
OCT

Higher Education Conference 2019

Four Seasons Jumeriah Beach, Dubai

From listening to our clients and contacts operating in the Higher Education industry, we were delighted to host our inaugural Higher Education Conference, which was specifically designed for those dealing with legal issues in the sector.

On Thursday, 10 October 2019, at the Four Seasons Jumeirah Beach Conference Centre, we were delighted to welcome over 100 attendees from leading higher education institutions, regulatory and government entities, investment houses and consultancies.

30+ key industry experts joined our panel sessions throughout the day and delved into topics such as the current higher education landscape and recent developments, international trends and regional investment opportunities, real estate, HR & employment considerations, Innovation, Data Protection, Social Media and EdTech. Great insights were shared and a Higher Education Report will be released in early 2020 highlighting some of those key opinion pieces.

We also opened up an "EdTech Corner" exhibition space for some providers of EdTech solutions to exhibit their products, and were delighted to be joined by leading education publications, Edarabia and HigherEducation.ae.

With feedback from participants, such as "It was brilliant in so many ways, both in content and in delivery", "Great program and networking" and "the whole event was run seamlessly!", we are already underway with organising the 2020 conference to ensure it is even better than this year! If you would like to be invited to our Higher Education Conference in 2020, or would like any further information, please email edsector@tamimi.com.

We would like to take this opportunity to thank everyone involved, especially our top class panellists, some of which travelled from afar to be there on the day.

Other Events

Tuesday, 1st October
Insurance in the Construction sector: What you need to know
Abu Dhabi office

Speakers:
Euan Lloyd, Senior Counsel, Construction & Infrastructure

Justin Carroll, Senior Associate, Transport & Insurance

Wednesday, 9th October
Healthcare in Abu Dhabi: the Future is here
Abu Dhabi Office

Speakers:
Andrea Tithecott, Partner, Head of Healthcare & Regulatory

Neil Clark, Acting Director Investment & Capacity Management Division, Department of Health

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Monday, 14th October
Intellectual Property: A Driver for Investment
DIFC Office

Speakers:
Omar Obeidat, Partner, Head of Intellectual Property

Rasha Al Ardah, Senior Associate, Intellectual Property

Tuesday, 22nd October
Healthcare Sector Legal Update
Sharjah Office

Speakers:
Andrea Tithecott, Partner, Head of Healthcare & Regulatory

Ali Bachrouch, Partner, Head of Corporate Structuring - Nothern Emirates

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About Us

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

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

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

17	9	75	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 | 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
Grahame Nelson
g.nelson@tamimi.com

JEDDAH
Rakesh Bassi
r.bassi@tamimi.com

RIYADH
Babul Parikh
b.parikh@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
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 & INSURANCE
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

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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

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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.


Al Tamimi & Company
@AlTamimiCompany
www.tamimi.com
EGYPT
INSURANCE HEALTHCARE
PHARMACY
M.O.H
UAE Healthcare Laws & Regulatory Developments
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FEDERAL CABINET RESOLUTION
DHCC TELECONSULTATION POLICY
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