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LAW UPDATE

Latest Legal News and Developments from the MENA Region

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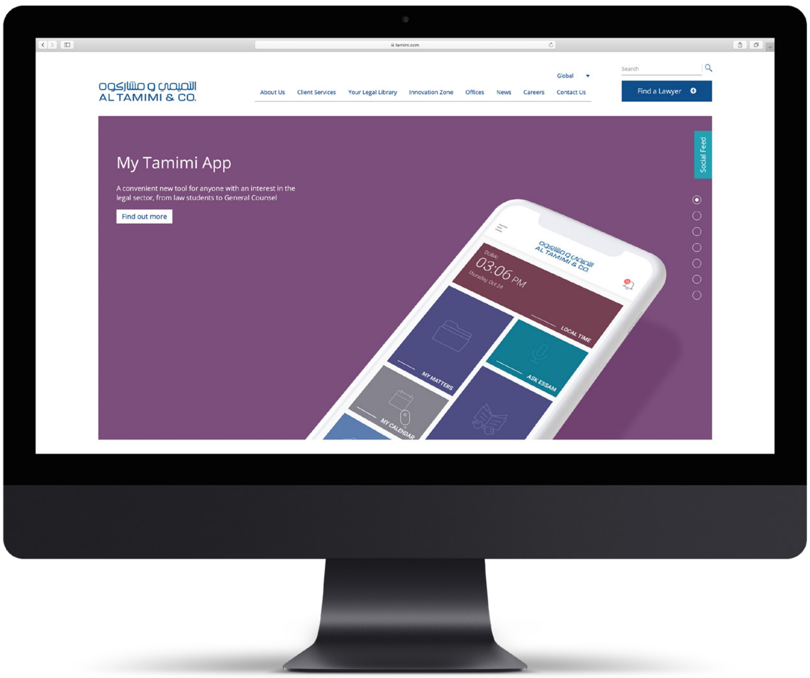

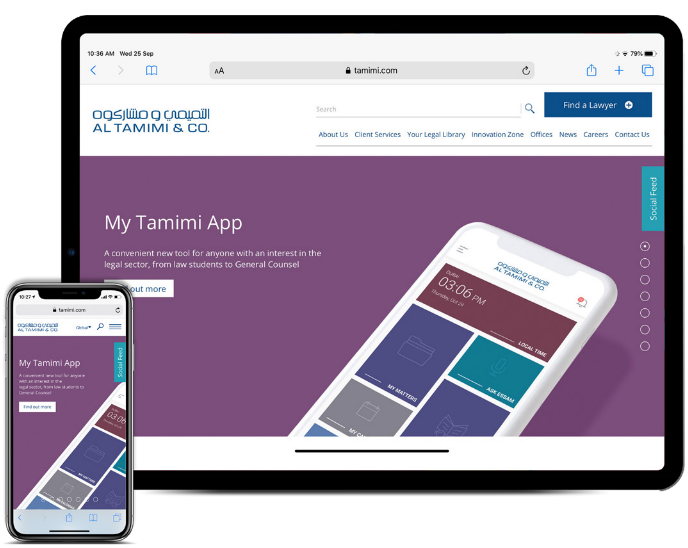

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In this Issue

Welcome to March 2020's issue of Law Update!

I hope this issue finds you and your loved ones well and that you are keeping safe in these challenging times.

This month our experts across the region offer an in depth review of the special Focus areas of Technology, Media and Telecommunications ('TMT') and Intellectual Property ('IP').

Given everything that is happening around us, a focus on technology and innovation is timely. One of the many consequences of the COVID-19 pandemic is the increased reliance on technology. In recent weeks, we have witnessed a dramatic, global shift towards remote working, online communications and e-learning. As we face up to these challenges together, it is inspiring to see that many of our clients have already adapted to these new circumstances, simultaneously addressing the immediate issues thrown up by COVID-19 whilst maintaining a focus on their longer term priorities and future business success. I am pleased to report that, at Al Tamimi & Company, we too have adapted smoothly to this new way of working and that we continue to offer the same, uninterrupted quality of service to our clients - assisted by technology, of course.

This month's TMT articles highlight the balancing act faced by clients and lawyers alike. How to achieve the balance between adequate regulation (which can give stakeholders a certain amount of comfort) and over-regulation (which may be perceived as suppressing and discouraging innovation), in an industry where participants thrive on pushing the boundaries?

Our TMT and IP experts Martin Hayward and Stephen Jiew address a frequently asked question from clients: 'how do I make money from my data?' Their article analyses how to gain value from data whilst ensuring compliance with the ever-increasing web of data protection and IP laws (page 20).

Haroun Khwaja of our TMT team takes us on a journey through the UAE's approach to Artificial Intelligence ('AI'); should it be regulated and, if so, how? Examining the pros and cons of the available options, the ultimate concern revolves around mitigating risks associated with the deployment of AI (page 60).

One of our strengths, as a firm, is the way in which we constantly strive to identify new and innovative solutions for the benefit of our clients. Allison Hosking, our Director of Knowledge and Legal Transformation, talks us through how Al Tamimi & Company's system of document automation maximises accuracy and efficiency in drafting (page 46).

In Riyadh, our TMT expert, Nick O'Connell looks at recent amendments to the Cloud Framework and discusses the restrictions on the use of cloud services outside of the Kingdom. It is interesting to learn that cloud customers, rather than cloud service providers, are responsible for key aspects of cloud services (page 38).

Turning to our acclaimed IP practice, our experts consider the way in which IP laws and regulations collaborate to protect inventions and technological advancements.

Our Partner and Head of Patents and Designs (R&D and Innovations), Ahmad Saleh, and his team take a close look at how best to protect one's intellectual property rights; be it using copyright, patents or trade secrets, often noting that a 'belt and braces' approach (i.e. using more than one option) is likely to enhance protection (page 30). Keeping their finger on the pulse, Ahmad goes on to explore the windows of opportunity opened to potential 'market disrupters' in these testing times, and highlights how established as well as emerging companies can use patents as a sword and a shield to achieve their goals (page 24). In Dubai, Fiona Robertson and Mariam Sabet remind us of the ten basic things that a creator in the Middle East should know when venturing into the exciting work of content production (page 50).

Moving away from our TMT/IP Focus, our Banking & Finance team looks at the significance of establishing capacity and authority of directors and managers, an area that can be more complicated than it looks, and advise clients 'there's more to this than meets the eye' (page 12).

Staying in the UAE, a point of interest to many businesses in Dubai is the fact that offshore companies can now convert to free zone companies through a process known as 'conversion'. For many businesses, conversion offers a greater level of flexibility, opening doors to new possibilities including the ease of doing business in one of the busiest free zones in Dubai, the Jebel Ali Free Zone (page 16).

In the Judgment section, our Qatari litigators discuss the impact of a decision which was overturned by the Court of Cassation in favour of a bank which sought a refund of taxes which it believed were overpaid. Our experts believe this decision highlights the importance of stringently applying procedural law and evidence to the facts at hand (page 8).

Finally, a key development in the courts is that of a much welcomed decision that allows for the reciprocal enforcement of judgments and decisions between the ADGM Courts and the Emirates of Sharjah, Ajman, Umm Al Quwain and Fujairah. This reciprocity will influence the streamlining of the system whilst offering advisors and clients alike a focal point from which to work and plan (where or if necessary), all the while providing assurance that the predicted outcome will be reliable and enforceable in multiple jurisdictions (page 10).

I hope you enjoy this information packed issue. If you would like any further information on any of the topics, please do get in contact.

Best regards,

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Judgments

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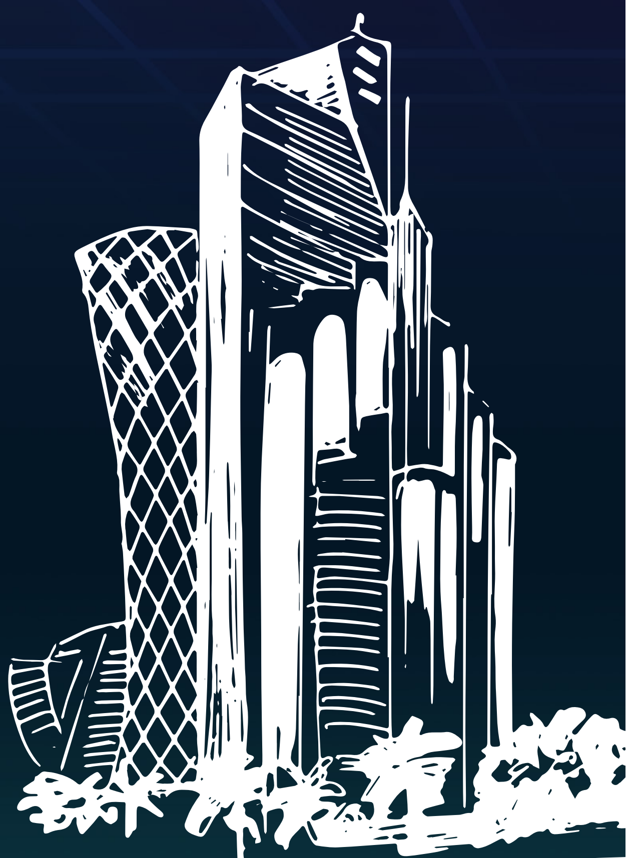
Tax appeal committee decisions: any hope for redress?



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

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Al Tamimi and Company, in association with Advocate Mohamed S. Al Marri ('Al Tamimi') represented a foreign bank branch (the 'Bank') operating in Qatar under licence by the Qatar Central Bank. The case involved an appeal to the Court of First Instance following a decision issued by the Tax Appeal Committee (the 'Committee') under the General Tax Authority of the Ministry of Finance.

The Committee ruled that taxable income of the Bank should be adjusted to include certain expenses that were considered unsubstantiated or warranted by virtue of the tax laws and regulations in Qatar. This resulted in the Bank paying an amount more than what it should have paid. The Bank took judicial recourse to correct this incorrect assessment of payment and requested a refund of the excess tax that was paid.

This Article highlights the Court of Cassation's judgment rendered in February 2020 in a case that was first filed before the First Instance Administrative Court Circuit in 2012.

Procedural history

The Bank filed a case before the Court of First Instance Administrative Circuit against the Ministry of Finance in order to contest the Committee's decision on the executive internal review that upheld the determination of the General Tax Authority and rejected the Bank's grievance in regards to its deductible expenses for the total taxable income recorded in the financial audit years 2005 until 2009. The Court of First Instance appointed an expert accountant who verified the existence of the contested expenses to be actual and proven and then submitted his report to the court. However, the Court of First Instance rejected the expert report and citing the relevant laws upheld the Committee's determination.

The Bank filed an appeal against the judgment of the Court of First Instance. The appeal proceedings continued for a period of approximately four years. Eventually, the Court of Appeal decided to uphold the judgment of the Court of First Instance and dismissed the Bank's appeal.

Thereafter, the Bank appointed Al Tamimi to act on its behalf at the Court of Cassation stage and an appeal was filed against the decision of the Court of Appeal on the basis of two legal grounds:

1. the Court of Appeal wrongly dismissed profound evidence and substantiated claims without properly addressing the arguments and evidence presented to it. Hence the decision must be declared null and void on the basis of insufficient reasoning; and
2. the Court of Appeal's judgment misinterpreted and incorrectly applied the applicable provisions of the tax laws.

Decision of the Court of Cassation

The Court of Cassation's decision applied the then applicable Tax laws (i.e. Income Tax Law promulgated by Law No. (21) of 2009, and its Executive Regulations issued under Resolution No. (10) of 2011) and ruled that the Court of Appeal had erred in dismissing the Bank's claims based on the evidence provided by the Bank and confirmed that the contested expenses would be deductible from taxable income. In its judgment, the Court of Cassation also specified the category under which the deductible expenses fall and the relevant article of the Tax laws. The Court of Cassation instructed the Court of Appeal to consider the documentary evidence presented by the Bank, as it is a matter of fact, and apply relevant provisions of the then Tax law to the established facts. The Court of Cassation granted the appeal filed by the Bank.

The effect of the judgment: empower rule of law and procedural justice in tax disputes

Qatar is adopting a one-tier system for tax review that allows taxpayers to object to a decision of the General Tax Authority and obtain an administrative review. However, the applicable Tax law in Qatar do not allow for further appeals within the tax administration.

Decisions by the Committee can however, be appealed before the courts of Qatar, and taxpayers could pursue their cases through various stages of the judicial system. In administrative disputes, practically, the administration has the upper hand with regards to facts. Nevertheless, court judgment reasoning must not neglect any evidence or facts in reaching a verdict. The Court of Cassation is unlikely to repeal a lower court judgment on a factual basis rather than on point of law. However, in this case the Court of First Instance and the Court of Appeal did not adequately address the facts and evidence that supported the Bank's claim which triggered the Court of Cassation to overturn such judgment.

The Court of Cassation ruled that appeal judgment is revoked for its flawed reasoning and thereby the court has stressed the significance of factual premises in resolving such disputes and the importance of examining the facts in order to reach a correct and fair decision.

Conclusion

The Court of Cassation judgment has effectively widened the scope and admissibility before the Qatari First Instance Court Administrative Circuit to resolve tax disputes by stressing the importance of a more stringent application of procedural laws, evidentiary burden and value of the evidence with regards to judicial redress in such disputes. This judgment comes as a precedent as the Court of Cassation reviewed the factual basis of the dispute and eased the hardline stance on admissibility of appeals on factual grounds as opposed to the grounds of merits.

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The reciprocal enforcement of judgments, orders and arbitral awards by the ADGM Courts and the Emirates of Sharjah, Ajman, Umm Al Quwain and Fujairah

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On 4 November 2019 , the Abu Dhabi Global Market Courts ('ADGM Courts') and the Ministry of Justice (the 'Ministry') signed a memorandum of understanding ('2019 MoU') to allow the mutual and reciprocal recognition and enforcement of judgments, decisions, orders and ratified arbitral awards between the ADGM Courts and the Courts of the Emirates of Sharjah, Ajman, Umm Al Quwain and Fujairah (the 'Federal Courts'), which are overseen by the Ministry, without the need for the re-examination of the substance of the dispute on which they have been issued.

The MoU was signed by HE Saaed Al Badi, UAE Minister of Justice; HE Ahmed Ali Al Sayegh, Minister of State (UAE) and Executive Chairman of the Abu Dhabi Global Market ('ADGM'); and David, Lord Hope of Craighead KT, Chief Justice of ADGM Courts. This development complements the ADGM Courts' similar enforcement frameworks with the Abu Dhabi Judicial Department and the Courts of the Emirate of Ras Al Khaimah. The 2019 MoU is a key step towards strengthening the UAE 's enforcement framework for international dispute resolution.

Background

The 2019 MoU has been signed pursuant to Article 13(11) of Abu Dhabi Law No. 4 of 2013, which provides for the enforcement of judgments, decisions and orders and arbitral awards ratified by the ADGM Courts in competent entities with jurisdiction outside the ADGM in accordance with the procedure and rules adopted by those entities. This provision extends to include agreements for memorandums of understanding between the Board of Directors of the ADGM Court and the competent entities outside the ADGM. The 2019 MoU provides further clarity on the specific processes for reciprocal enforcement, which Abu Dhabi Law No. 4 of 2013 did not cover.

In signing the 2019 MoU, the ADGM Courts and the Ministry have demonstrated their determination that litigants will have the clarity and guidance they need regarding the enforcement of judgments in the ADGM and the Federal Courts. The types of executory instrument covered by the 2019 MoU include all final judgments, judgments for expedited enforcement, and decisions and orders made by the Ministry or the ADGM Courts. In addition, the judgments also include ratified or recognised arbitral awards rendered by the Federal Courts and the ADGM Courts. Such arbitral awards are to have the same force as a judgment of either of the courts without the requirement of any further ratification or recognition by the other court. Mutual recognition and enforcement also extend to include court-approved settlement agreements (known as 'memoranda of composition') certified by either court.

Proceeding for enforcement under the 2019 MOU

For the enforcement of an ADGM Court-rendered judgment by the Federal Courts, where the subject of enforcement is situated outside the ADGM but within the Federal Courts, an executory formula from the ADGM Courts must be affixed to the judgment in Arabic. Mirroring the process outlined above, the judgment creditor must submit an application to the Federal Courts subject to the applicable Federal Courts' rules and procedures. The enforcement judge in the Federal Courts will then apply the enforcement procedures set out in Federal Law No. 11 of 1992 without re-examining the merits of the original judgment of the ADGM Courts.

The 2019 MoU also provides for deputising an enforcement judge from the respective Courts in instances where a judgment creditor registers a judgment issued in one Court for enforcement and where it requires actions or measures to be taken by the other Court. The Courts have agreed to assign an officer at each Court to assist judgment creditors and to collaborate and liaise with the other Court's officers so as to avoid any duplication of enforcement actions. Collaboration between the Ministry and ADGM Courts extends further to an agreement to keep, provide and publish all information and statistics in relation to any referrals and direct applications made under the 2019 MoU.

Enforcement of foreign judgments

The question arises whether the 2019 MoU will enable the enforcement of foreign judgments by the Federal Courts, without reopening the merits of the underlying dispute, where they have already been recognised by the ADGM Courts.

Articles 170, 171 and 180 of chapter 10 of the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointment Regulations 2015 allow for the enforcement of foreign judgments and foreign arbitral awards to be recognised by the ADGM Courts provided that the UAE has entered into an applicable treaty with the country in which the foreign award was rendered. In the absence of such a treaty, only if the Chief Justice of the ADGM Courts is satisfied that the foreign courts which rendered the foreign judgment have agreed to provide reciprocal treatment of recognition and enforcement for ADGM judgments, and after consulting the Chairman of the Board, he may direct that the courts of that foreign country be recognised foreign courts.

The onshore Federal Courts have been generally reluctant to enforce foreign judgments in the absence of an applicable international treaty for the reciprocal recognition and enforcement of judgments.

The ADGM Courts, like the DIFC Courts, have strong and developing international links, including with courts in England and Wales, Hong Kong, Australia and Singapore. The ADGM Courts have previously signed five international MoUs with the Commercial Court, Queens Bench Division, England and Wales; Supreme Court of the Republic

The 2019 MOU represents yet another link in the chains of connectivity linking substantive judgments and orders and their enforcement in the jurisdictions of the UAE. It is a welcome step towards a wholly coherent legal system that fully recognises and promotes the seamless enforcement of judgments.

of Singapore; Federal Court of Australia; Supreme Court of New South Wales; and High Court of the Hong Kong special administrative region of the People's Republic of China. These international MoUs provide for enforcement of judgments of the relevant courts without re-examining the merits of their judgments when recognition suits relating to such judgments are filed before the ADGM Courts.

As a result, for a number of years various paths have existed for the recognition of foreign judgments and arbitral awards by the ADGM Courts based on international treaties, agreements of reciprocity with recognised foreign courts or non-binding international MoUs without any re-examination of the merits of the dispute. However, the question remains whether the 2019 MoU will enable foreign judgments so recognised by the ADGM Courts to be enforced by the Abu Dhabi Courts, without re-examining the merits of the dispute, solely pursuant to the framework provided by the 2019 MoU (since foreign judgments are not expressly included in the definition of 'ADGM judgments' in the 2019 MoU).

Advances at the ADGM Courts

The 2019 MOU represents yet another link in the chains of connectivity linking substantive judgments and orders and their enforcement in the jurisdictions of the UAE. It is a welcome step towards a wholly coherent legal system that fully recognises and promotes the seamless enforcement of judgments.

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Capacity? Check!

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In commercial financing transactions, a formal legal opinion is usually sought by the lender to give them certainty on the legality of the financing transaction (and its related aspects which may include security being provided for the purposes of the financing) together with ensuring that the commercial intent is achieved. More often, a thorough view on the enforceability of the financing and security aspects of the transaction are sought, together with capacity and authority checks. This article considers particular issues relating to capacity and authority in the UAE.

Express versus implied powers

It is not uncommon in the UAE for directors or managers to be granted general powers under the company's memorandum and articles of association. Such powers are expressed in generic terms, referring to the power to 'do all acts and deeds for and on behalf of the company' or to 'manage the company and do all things necessary to achieve its objects'. While useful for the management of the day-to-day operations of the company, relying on such generic powers when borrowing money, granting security or providing a guarantee can be risky.

In general, the UAE courts will usually need to see explicit authority where the company has provided a certain representative (be it a manager, director or otherwise) to do that specific act for and on behalf of the company. General management powers granted to the directors or managers in the articles of association are unlikely to be sufficient for the purposes of establishing the capacity of a company to enter into finance transactions.

Another important aspect of the capacity check in the UAE is the ability to rely on the authorisations granted as per the Arabic text of the constitutional documents of the company. In a situation where the English text may give the particular authority that is being sought, but the Arabic translation does not, then such authority should not be relied upon as at the time of enforcement the Arabic text will prevail.

Legal analysis

Certain relevant provisions of law applicable for lending and security creation transactions include:

1. Article 22 of the Federal Law No. 2 of 2015 on Commercial Companies ('Companies Law') states that a person who is authorised to manage a company must carry out all acts in accordance with the company's objectives and powers granted to that person in accordance with an authorisation issued by the company. Article 23 of the same law states that all acts carried out by an authorised person in the context of the ordinary management of the company is binding on the company (to the extent such person is authorised to represent the company and third parties have relied on this fact in dealing with the company).

   From the above, an authorised person's acts within the ordinary management of a company would be binding on the company if there are specific powers in the company's constitutional documents authorising one or more persons (e.g. directors, managers) to carry out all management activities.

   Article 929 of the Civil Transactions Law Federal Law No. 5 of 1985 ('Civil Transactions Law') also requires a special authorisation in relation to acts which do not fall within the 'management' or 'custody' activities of a company. Article 935 also specifies certain acts which would not be valid if not expressly mentioned in the relevant authorisation. The acts specified under Article 935 include lending and mortgages. Therefore, lending and mortgages must be expressly stated in the powers of the authorised signatory of the company in order to be able to legally enter into such transactions. It is also worth noting that scholars and courts in the region have, on several occasions, ruled that taking a loan, providing a guarantee or security is not an 'ordinary' act of a business and such acts require express authorisation in the company's documents.

2. The above position is supported by 154 of the Companies Law which states as follows:

   'The Board of Directors shall have all the required powers to do such acts as required for the object of the company, other than as reserved by this Law or the Articles of Association of the company to the General Assembly. However, the Board of Directors may not enter into loans for periods in excess of three years, sell or pledge the property of the company or the store, mortgage the company's movable and immovable properties, discharge the debtors of the company from their obligations, make compromise or agree on arbitration, unless such acts are authorised under the Articles of Association of the company or are within the object of the company by nature. In other than these two events, such acts require to issue a special decision by the General Assembly

   .

"There's more to this than meets the eye" is the mantra that should always be followed when reviewing constitutional documents of a company.

The importance of Arabic text

Article 1057 of the Civil Transactions Law states that a guarantee can be expressed as a guarantee (*kafalah*) or security (*damaan*). However, the courts in the region have time and again ruled that the provisions of the constitutional documents of a company providing a guarantee must expressly give the power to the authorised person of the company to enter into and execute a *kafalah*, in order to validate the obligations of the guarantor company. It is worth noting that the Commercial Transactions Law (Law No. 18 of 1993) ('Commercial Law') refers to the term 'guarantees' as '*kafalah*' in the Arabic text. The Commercial Law is the specific law that applies to banking transactions. In the absence of specific provisions in the Commercial Law, the Civil Transactions Law would apply.

Further, the power of providing security generally (even if such power is stipulated in the constitutional documents of a company) is unlikely to cover the power to provide a guarantee for third party obligations. Guaranteeing third party obligations (such as guaranteeing the debt of subsidiaries) is defined in the Civil Transactions Law as 'a suretyship with the joining of the liability of a person called the surety (the guarantor) with the liability of the obligor (the principal debtor) in the performance of his obligations.' Therefore, guarantees are generally not a form of security as guarantees do not provide any priority or secured rights in relation to a guarantor's assets (unlike other types of security such as pledges and/or mortgages). Therefore, in the case of guarantees, it is important to look for the express powers of a company's authorised signatory(ies) and ensure the necessary powers are granted in the Arabic text.

Are there exceptions to the rule?

In a very recent case, the Dubai Court of Cassation applied the rule of the good faith principle with regards to the capacity of a company's representative to arbitrate. The respondents in the case brought an action to set aside an arbitral award on the grounds that the arbitration clause was void because the signatories to the agreement containing the arbitration clause lacked the capacity to agree to arbitration (arbitration requires a special authority under the Civil Transactions Law).

The Court of Cassation held that if the name of a particular company is included in the preamble of a contract without the name of its legal representative and the contract is signed or the signature is legible at the bottom, this establishes a legal presumption that whoever signed the contract was the company's legal representative and has the capacity to arbitrate on behalf of the company. The same presumption arises if an illegible signature appears at the bottom. In such cases, a challenge may not be entertained if the person who signed on its behalf did not have the capacity to agree to arbitration. This is to ensure the obligation of good faith is complied with in all business dealings, practices and procedures. Despite the positive outcome of the above ruling in favour of establishing capacity, this outcome is not guaranteed in future cases that may come before the UAE courts.

Conclusion

Interpreting constitutional documents and establishing capacity and authority can often be more complicated than one would expect.

"There's more to this than meets the eye" is the mantra that should always be followed when reviewing constitutional documents of a company.

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Conversion of JAFZ offshore company to operating entity

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Whilst amending its offshore company regulations ('Regulations') in 2018, the Jebel Ali Free Zone Authority ('JAZFA') introduced new provisions in Part 17 of the Regulations that enable existing offshore companies in the Jebel Ali Free Zone ('JAFZ') to convert their legal status from such 'offshore companies' to an operating 'free zone company' ('Conversion').

Although, introduced in 2018, in practice, JAFZA only recently began accepting applications for this process of Conversion.

The purpose of permitting Conversion is to allow offshore companies the option to operate as any other free zone company, which includes the ability to rent an office in JAFZ and sponsor expatriate visas as well as obtain a tax residency certificate which is not possible through an offshore company structure. On Conversion the offshore company continues its commercial legacy in a different corporate form without having to wind up and set up a new free zone company.

Who would be interested?

This option of Conversion will interest offshore companies in JAFZ that:

1. wish to switch to operating entities, hire employees, rent physical office space in JAFZ without losing their commercial legacy; and
2. wish to obtain a tax resident certificate from the UAE Ministry of Finance which currently cannot be obtained by offshore companies.

Matters to be considered as part of the process of Conversion

1. Change in regulatory framework

Conversion of an offshore company to an operating entity will result in the company being regulated by a different legal framework i.e. JAFZA Companies Implementing Regulations 2016 instead of the current JAFZA Offshore Companies Regulations 2018. Importantly, this requires leasing a physical office space in JAFZ as well as the appointment of a manager to the converted entity who should be on the converted entity's residency visa.

2. Change in name of the company

JAFZA reserves the suffix of 'limited' only for JAFZ offshore companies. Similarly, the suffix of 'FZCO' or 'FZE' are reserved for its operating entities. Therefore, on Conversion, the suffix attached to the company name will change depending on the number of shareholders in the company. The Suffix 'FZE' will be used in case of single shareholder companies, whereas 'FZCO' will be used in case there is more than one shareholder.

3. Appointment of manager

An offshore company does not require a manager to be appointed however, on Conversion JAFZA mandatorily requires the appointment of a manager for the day-to-day operations of the converted entity and the manager's residency should be sponsored by the converted entity and salary be paid through the WPS system.

4. Activity

An offshore company is not permitted to conduct any type of commercial activity in the UAE: such companies are generally incorporated as holding companies. As part of the process of Conversion, the converted entity must select an appropriate activity that fits the commercial activities proposed for the converted entity. We note that such activity must be selected from the JAFZA list of approved activities. The proposed activity will be reflected on the converted entity's commercial licence.

5. Lease of office premises

An offshore company uses the office address of its registered agent. As part of the process of Conversion JAFZA will expect the converted entity to have a physical office in JAFZ.

6. New memorandum and articles of association

On Conversion the converted entity will need to adopt memorandum and articles of association to be in line with the JAFZA Companies implementing Regulations 2016.

Effects of Conversion

On Conversion JAFZA will issue a certificate of incorporation, commercial licence, a new memorandum and articles of association and share certificate (as applicable) in favour of the converted entity. Upon request, JAFZA will additionally issue a letter confirming the Conversion of the offshore company.

All rights and obligations of the offshore company, arising prior to the Conversion, will continue 'as is' thus enabling it to continue with its existing commercial relationships with third parties.

Process of Conversion

The process of Conversion is similar to that of incorporating a new operating company in JAFZ with the added requirement of returning the original offshore company documents to JAFZA and a 14 day publication period to all interested parties in the local newspaper notifying the change in legal form of the offshore company. In practice it can take up to eight weeks for the Conversion to be completed.

Conclusion

The process of Conversion is certainly an interesting step by JAFZA. We expect this to gain traction with clients wishing to expand their commercial activities in the region and avail of the benefits provided by this option.

For further information, please contact Khadija Hussain (k.hussain@tamimi.com).

Harnessing cutting edge MENA IP and TMT expertise for the next generation

At the end of 2019, seven out of the world's top ten largest companies, by market value, were technology based companies. Central to the success of many of these companies is their intellectual property ('IP') assets and their ability to both protect and exploit these assets to deliver new technology products and services.

Technology and IP have always been closely intertwined and never more so than now as new disruptive technologies emerge and never more so than in the Middle East & North Africa ('MENA') where new technology companies are establishing themselves and an ever increasing number of international technology companies are entering the MENA market.

As more companies adopt new technologies as part of digital transformation efforts critical to their future growth and success, there is an ever-greater need for lawyers who understand these technologies and the IP that underpins it.

Al Tamimi & Company's IP and Technology, Media and Telecommunications ('TMT') teams work closely together supporting both technology companies as they develop and grow their MENA businesses and their customers as they license and use technology. This issue of the Law Update demonstrates the depth and breadth of expertise within these teams with articles ranging from the basics of IP protection of software innovations to the UAE approach of regulating AI and what Data Monetisation means for organisations. Our Patent Team also prepared an article on insights into legal concepts of Inventorship vs Ownership.

We also cover developments in the region and look at the new legal framework offered for Cloud Computing in Bahrain and in Saudi Arabia. We explore the Diplomatic immunity it offers for Data stored in Bahrain and the Cyber Security control and challenges in Saudi Arabia.

Our Team also gives a refresher on traditional topics such as an Insight into protection and enforcement of IP rights in Egypt, as well as 10 quick short notes on copyright claims in the Middle East.

Our experts also look at the newly issued DIFC Intellectual Property Law and its implications for UAE businesses.

We also touch base on the transformation of our industry and the advantage of Document Automation.

We hope you will enjoy reading this issue and find it interesting as much as we did preparing it; if you have any queries related to Intellectual Property matters or Technology, Media & Telecommunications, please do not hesitate to contact our experts.

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Unlocking the value in data: successfully implementing compliant data monetisation strategies

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Introduction

More and more, the question from our clients is: 'How do I make money from my data?' Organisations are increasingly data-heavy businesses and as they seek to grow and explore new revenue streams or even new business models, they are exploring ways in which they can realise new and greater value in their data. In the world of Big Data, data has become both a key asset and a strategic differentiator.

In this article, we explore the ways in which organisations are looking to generate this value whilst ensuring they stay compliant with an ever-changing and increasingly complex web of Middle East data protection laws and continue to protect the intellectual property rights in their data.

In particular, data has become very relevant to many people in Middle East organisations who have not, traditionally, handled or been involved in data. With that comes both opportunity and risk. Whilst bundling value added data services with existing solutions may make complete sense from a sales point of view, it may, though, raise legal and regulatory challenges that need to be carefully thought through and a robust, and compliant, strategy built to ensure effective data monetisation.

What is going on with the data inside organisations?

As Middle East businesses go through a rapid process of digital transformation, they are increasingly looking for insight and advantage from the large datasets they hold and have access to in order to improve and change the way they work internally. A great deal of value is being realised internally as organisations put their data to use to drive efficiencies, reduce costs, improve quality and strengthen customer experiences.

As organisations share data across the organisation; often moving it between business units in different countries and centralising (or regionalising) the storage of data, for example. they need to ensure that they have the necessary legal rights and permissions in place (whether express or implied consent, or otherwise) under applicable laws and regulations based on the type of data they are moving and where they are moving it to. With the increasing use of emerging technologies within organisations, there is greater data mobility. An example of this is moving datasets to be mined by AI programmes for new business insights. Just because that data is moving through an organisation's internal network does not mean that it is not an international transfer that could, potentially, be subject to data protection laws and regulations.

Key to any data monetisation exercise is understanding what data you are seeking to use and share. Is it machine data from a manufacturing facility or personal data from a customer relationship management system or an employee database? If it is personal data, what types of data are involved? Personal data covering biometrics or health information, perhaps? Mapping what data it is and where it goes to is an essential, starting point for any risk analysis. Only once that risk analysis has been done can organisations consider rolling out internal data monetisation strategies and exploring external data monetisation opportunities.

What happens when the data leaves the organisation?

Data monetisation comes in many different forms. It can come directly through revenues earned from selling or licensing data to third parties (such as credit bureaus or data exchanges). Sometimes that can be exchanging data for data to enable organisations to access new and valuable data. It can come from additional revenues earned by bundling data with other products and services and selling on to customers. Increasingly, it comes from vendors offering discounts or premiums in exchange for access to key customer data. There is increasing demand from third parties for data, and increasing interest within organisations to share data with third parties for data analytics but releasing any data externally needs to be carefully considered and organisations need to review what data is being released, whether it can legally be released (in addition to whether it is, commercially, a good idea), where it is going, to whom and for what purpose(s).

Once again, the first question organisations need to ask is a simple one: 'Do I have all the necessary rights to share the data?' As noted above, this requires a comprehensive understanding of the data in question (and what that data comprises). Depending on the data, organisations need to understand whether they have the necessary legal rights and permissions in place specifically allowing the planned data sharing. Do they need to aggregate and anonymise the data? If so, can they technically do it and if so, and if they do, will this meet the requirements of applicable laws. For example, will this remove the need for consent to share the data? One challenge of data aggregation and anonymisation is the fact that the more a dataset is aggregated and anonymised, the more value it may lose.

Once the organisation has determined that it has the necessary legal rights and permissions to share the data, it needs to confirm if it can transfer that data internationally. Middle East data localisation or residency restrictions are increasing; focusing on particular types of data and particular industries. Organisations need to understand the type of data that could be affected by these localisation restrictions and where they can (and cannot) send the data. Organisations need to investigate what steps they need to take to ensure they can take advantage of the data monetisation opportunities available through international data transfers.

If data is being sent to a third party, organisations need to ensure that they have the right contract terms in place with that third party before they share the data. This is important to meet legal obligations and to mitigate risk. Contracts need to include detailed data protection, data security and IT security provisions. They need to cover what the third parties are allowed to do with the data, who they can share it with (and on what terms), and how the data owner can get the data back (or deleted).

A critical area to cover is the organisation's IP rights in the data as the value in data, and particularly large datasets (otherwise known as 'Big Data'), is increasingly identified by organisations. Organisations will normally license rather than pass ownership in their data, usually on a non-exclusive basis, to ensure they can maximise the use and value in that data. They avoid licensing on an exclusive basis as it would result in the rights holder giving up their rights to use the IP more widely in exchange for compensation. At a time when data is increasingly valuable, rights' holders want to have control over their works. Before they can do that, organisations need to ensure that they own all necessary rights in such data.

The three probable IP categories that data can be protected under are: patents; copyrights; and trade secrets/confidential information. When patenting data, it is the algorithms that are mainly able to be protected. For copyright, individual data or collection of data (databases) can be protected if they meet the requirements. With regards to trade secret protection, it is that of confidentiality of a large, undisclosed compilation of data. Access to data can be controlled. Allowing controlled access to a third party in conformance to a licence increases the value of the data and contract law can provide a legal basis for the data rights' holder to seek rewards for its investment and control over the data. The issue with that is competitors or unauthorised third parties, that are not part of the licence agreement, may try free-riding, therefore despite licence agreements helping the rights' holder control their rights in and the access to data, trade secret protection should also be considered to ensure further rights over data. To allow a party to use your IP protection under trade secrets would be with the use of some form of confidentiality or non-disclosure agreement that allows the reuse of the IP while preserving the trade secret. In regard to patent and copyright protected data, it is through the granting of a non-exclusive licence or via a public statement to a certain group of people allowing the use of the patent. Of course, the issue with not being able to more freely exchange data or have wider access to it is that it leads to less innovation. However, everyone wants to protect their data especially in an age where Big Data and artificial intelligence are becoming more popular despite the challenges they face under IP law. It seems that Big Data will most likely drive changes in our current IP laws which are increasingly seen as inadequate for protecting the vast amounts of data available.

Some organisations are not looking to directly monetise their data but make their datasets available as open datasets for developers to work on, free of charge, gaining benefit and value from the work those developers do and the innovations they generate from the datasets. Open data programmes are becoming a more common sight, particularly for government entities. The more data that is combined, the more benefit and value that can be extracted. For that reason, we see organisations teaming up to share and pool data and make it available. The contract terms governing these open data arrangements need to be carefully considered to ensure that developers can gain the full access to and use of the open datasets whilst the organisations making the datasets available can take full advantage of the work the developers do and meet their legal and regulatory obligations in relation to the data they are sharing.

Lastly, data monetisation is a particular challenge for SMEs and start-ups. For many of these organisations, data sharing could prove a key differentiator, and accelerator, in their growth but there is a lack of data awareness, or data maturity, amongst smaller (and early stage) companies. Many may also underestimate the opportunities data sharing and data monetisation offer.

With the growing trend for Middle East countries adopting European data protection legal principles which focus on regulating a previously under-regulated data economy and providing rights to individual data subjects to better control the use of their data, Middle East organisations need to ensure that their data monetisation strategies are in place, tested and future-proofed to ensure that they can continue to secure value from the data they hold.

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Digital innovation and disruption in the wake of the COVID-19 outbreak: have you prepared your patent weapons?

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The global pandemic of the Coronavirus (also known as COVID-19) is not only affecting the safety and security of people around the globe, but is most likely to have a substantial economic impact worldwide. Due to the medical properties of the virus and the speed at which it spreads, physical distancing between people and self-quarantine have been recommended by the World Health Organization ('WHO') as necessary precautionary measures and in some countries, have been imposed as mandatory measures. The characteristics of the virus and the measures taken to limit its transmission are almost certain to lead to a slow-down in general economic activity across a number of industries including hotel and leisure, airlines, health etc. However, for some sectors the slow-down may offer an unexpected opportunity to develop, grow and expand fledgling businesses that, on any other given day, might struggle to compete with the established, successful giants in their respective fields.

COVID-19: a wave of digital change and disruption

Indeed, COVID-19 is likely to provoke a very strong wave of change and disruption. Among the companies likely to benefit from this wave are digital innovation-driven enterprises. Such companies are already actively pivoting at the core of the 4th industrial revolution, and are optimally positioned to take advantage of the potential opportunities presented by COVID-19 and is effectively acting as a catalyst for their business operations. Against this background, we anticipate the emergence of two types of companies: Type A; and Type B. Where a big part of Type A companies will be market established companies profiting from the new digital market needs to expand their operations, many Type B companies will be outsiders and entrepreneurs and start-ups coming with disruptive innovations leading to business disruption in various industries. Disruption is a business concept and occurs when a 'disruptive innovation' once introduced leads to the creation of a new market by overtaking an existing one displacing related established market leading businesses, services and products.

Type A Companies: the wave surfers

This type of company is considered a 'friend' to established companies and generally focusses on providing the required ICT support to established businesses across various industries. They are part of the supply chain of and will support those businesses in overcoming existing challenges by means of digitalisation and virtualisation. This may include developing online platforms, remote access systems, mobile applications, cybersecurity systems, business and supply chain management systems, and so on. At the core of Type A companies are software developers and other ICT related businesses. These companies are likely to see unprecedented growth in their operations because businesses will increasingly turn towards digitalisation and the integration of new, innovative digital technologies into their operations and supply chains in order to avoid disruption and ultimately find ways to survive and continue their business operations during this type of crisis.

Although this type of innovative technology can be very valuable from a business perspective, from a legal perspective however, IP protection is the answer and should, be sought where possible in order to secure investments made in the technology whilst restricting others from exploiting it without official authorisation. Failure to do so can lead to disastrous business and financial consequences including bankruptcy. It is important to understand which form of IP protection is the most effective and appropriate in any one case.

Copyright or Patent?

Whilst software is protectable under 'copyright', it is recommended that this type of protection be supported by other types of legal protection, where possible, so as to provide an enhanced level of protection. Copyright protection will protect a computer code in itself however, it falls short of protecting the technical concept or process underlying the software code. This is important when the value of software revolves around a new innovative 'technical solution' to a 'technical problem' (a new 'technical concept' or 'technical process'). In order to protect a new technical concept, one must look to patent protection. Unfortunately, patent protection may prove to be more difficult to obtain in this instance because patent laws normally require the application of a high threshold of novelty, inventiveness and practical application for the innovation to be eligible for protection.

The 'work around'

Fortunately, some countries have developed a more simplified type of patent sometimes referred to as a 'utility model' or 'petty patent'. This type of patent sets a lower threshold in order to guarantee protection and has the added bonus of being comparatively simple, cheap and more efficient to obtain. China is at the forefront of adopting less stringent standards when it comes to applying for patent protection. The Chinese experience is that the utility model has resulted in the grant of millions of dollars' worth of utility models every year. This type of protection is also available in the UAE and some other countries in the MENA region. Consideration of protection under a patent or utility model would require a thorough consideration by a patent attorney from both a technical and legal perspective, When applying for patents for innovations, it is advisable to steer clear of descriptions relating to 'software' or 'business related method' as the patent laws of most countries prohibit protection in such instances.

Type B Companies: the "disrupters"

This type of enterprise could be considered a 'threat' to established companies as they focus on finding ways of developing new. innovative digital technologies that completely disrupt the 'traditional' way of doing business. These innovation-driven companies can either be completely new start-ups or existing companies currently serving secondary markets which may benefit from the current health crisis.

It is our view, at the time of writing, that we are currently in a very fertile period for 'potential disrupters' to take on these large established companies (which lack the necessary business agility required to survive) by surprise, leaving them incapable of reacting quickly enough to disruptive attacks. In order to gain a foothold in their preferred market(s), they will continue to push and challenge the status quo and the traditional ways of doing business until they impose new markets servicing them and displace existing market-leading companies and their related business operations.

In fact, due to the COVID-19 outbreak, the vulnerable financial and competitive positions of a large number of established companies and the increasing market need for new innovative substitutes to respond to the changing consumers' needs and behaviour makes the current time ideal for innovation-driven companies having innovative technologies to launch their disruption attacks. There is no doubt that the technological advancements in the digital arena, from computing power to Big Data and 5G connectivity will be important enabling factors. This will likely lead to business disruption in a number of industries.

> **Patents are among the most powerful weapons (and in most cases the only weapon) which emerging companies can use to fight against large established companies which have the money, influence and resources small emerging companies normally do not have.**

Netflix, Amazon and Uber are very good examples of companies which started small and targeted secondary markets and moved upstream to take over the main markets and disrupt the then established companies. Disruption in these cases was without doubt enabled partially by the underlying innovative platforms developed by these companies. However this, in and of itself, was not enough to disrupt established markets in the absence of additional favourable external factors which existed at that time including: (a) technological advancements in the digital space (i.e. the proliferation of smart phones, higher connectivity, computing and video streaming capabilities at lower costs) which supported the deployment and use of these platforms by global users on a wide scale; and (b) the users' appetite for a change of behaviour and readiness to adopt new ways of doing things.

Without any doubt, disruption is highly demanding and difficult to achieve and requires tremendous internal preparation and business skills including a formalised vision and market assessment, innovative technology supporting that vision, and a targeted disruption strategy. While some companies will make it through, many others will try and fail. Patents can be used as an important weapon to enhance the odds.

Patent weapons

This type of "disruptive innovation" generally leads to the development of new, innovative and revolutionary technologies, products, business processes and services. IP protection, mainly patents, should be sought by these emerging companies whenever possible and used as a sword and as a shield against competition depending on their needs at any given time.

A patent can offer a business a monopoly and act as a barrier to competition to enter the market. Patent protection is one of the most powerful weapons (and in most cases the only weapon) that innovation-driven emerging companies can use to fight large, established companies which have the money, influence and resources, all of which emerging companies are generally deprived. Patents can also be used to leverage the position of an emerging company during business negotiations for a potential joint venture with an emerging company or a cross-licence agreement. It can be used as a sword to sue a competitor for infringement in case of a breach on the one hand, and on the other profit from a potential settlement or court award. It can also be used as a shield to protect against a potential attack.

David vs Goliath

Smartflash vs Apple (2015) is a good example in which a small US company (Smartflash) won an award exceeding US$ 500 million in damages against the US giant (Apple) for the infringement of its patents related to iTunes. Apple's business suppliers also offer a good example on how patents can be monetised and used as complementary products to an existing company. In fact, Apple's suppliers, including Qualcomm, Texas Instruments and many other smaller companies, have thousands of patent licenses as part of their products supplied to Apple which is considered to have one of the most sophisticated and efficient supply chain management systems in the world involving thousands of underlying patent licenses.

New Superpowers: Patents and the war of the giants

Of course, just as patents are available to emerging companies, they are also available to established companies that are generally active in the arena of patent protection. Established companies also use these tools to gain more territories and put their competition under pressure within the confines of the laws in question. Patents provide a very powerful tool to established companies as they can act as a barrier to new entrants into (established) markets as well as defend against disruption, by restricting or slowing down any potential, attempted disruptive attack from taking over their main business stream.

> **We are currently in a very fertile period for 'potential disrupters' to take these large, established companies (which lack the required necessary business agility required to survive) by surprise leaving them incapable of reacting quickly enough to disruption attacks in this difficult, challenging period.**

Huawei certainly falls into this category, and it is considered that this Chinese giant will have the chance to grow and spread at an unprecedented pace against the backdrop of the COVID-19 pandemic. It would not be surprising if Huawei achieves the pinnacle of the world's corporate superpowers because it has the capacity to use the IP rights' weapon as both a sword and a shield (it already has over fifty thousand patents in the field of 5G and IoT). From another perspective American companies such as Qualcomm and Apple are not new to the game, and they also come prepared with tens of thousands of patents in readiness for any future patent war.

With all the power conveyed through patents and the high business stakes they involve, it is crucial that private business interests acknowledge and comply with national security and public health interests particularly in a climate where human lives are at stake. A recent example involved the US patent troll Labrador Diagnostics LLC which used a portfolio of old patents to sue BioFire, a US company that makes and distributes COVID-19 tests. Fortunately, Labrador Diagnostics later agreed to provide royalty free licenses for COVID-19 testing. The law also provides legal mechanisms for such situations.

Conclusion: a powerful tool for emerging and established companies

The wave of digital change and disruption provoked by the COVID-19 outbreak will certainly lead to important business wars which will likely lead to a complete change of business dynamics and demographics. Patent war strategies are among the most frequent and crucial important business wars, all of which start the moment patent protection of business assets (in particular innovation) is sought. The magic of patents is that they can provide a very powerful weapon to emerging companies and established giant companies alike. They offer emerging companies the ability to leverage their positions against the business interests of larger companies that may have a more established and dominant business presence than them. On the other hand, they provide existing companies with the means to act as market barriers and defend against market penetration by future competition, as well as slowing down possible disruption attacks. Patent protection should be considered very early on in the process and treated as a priority by businesses that rely on a business strategy based on technological innovation or distinctiveness with a view to achieving success. Securing patents as part of a company's portfolio is in the interests of both business owners and investors alike.

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IP protection of software innovations



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Digital transformation is at the core of the 4th industrial revolution which goes hand in hand with software development. Therefore, it is expected that the software industry and the development of new software based technologies will be growing exponentially to support the transformation. Software will certainly play an essential role in the transformation of all types of industries including healthcare, education, transportation, services, and so on (to name but a few) and will take part on a wider range of platforms and technologies including blockchain, artificial intelligence, virtual and augmented reality, telecommunications and computer networks etc.

Software innovations may seek protection of their intellectual property rights via a number of routes depending on the nature of the innovation underlying the software. Generally, copyright, patents and trade secrets are the main three types of intellectual property vehicles available for the protection of software related innovations.

Patent protection should be distinguished from copyright protection which is the easy route to protect computer programmes and software. Copyright protection is generally available for software developers in most countries and secured under several international conventions as well as local laws. However, although copyright protects the 'literal expression' of computer programmes; to say the source code against misappropriation or reproductions by non authorised parties, copyright does not protect the innovative concepts, features and processes underlying the software which often rely upon the core innovative and commercial valuable aspects of the software. This part, the innovative concepts, features and processes underlying the software, should be considered for protection under the patent route, where possible, and available in order to secure an appropriate level of protection for software developers. Absent patent protection of software related innovations, the legal protection of software will remain weak and vulnerable to misappropriation by others. Trade secret protection is normally available for confidential algorithms, data, models and formulas underlying the software without a requirement for registration however, they lose protection in case of reverse engineering or independent discovery by others and therefore trade secret protection should be considered with care.

Although hardware and other physical, tangible tangible inventions are patentable subject matter when they meet the patentability conditions of novelty and inventiveness, this is not always the case for software related innovations which follow a more complex legal scheme which varies from one country to another. The availability of patent protection of software related innovations follows a more complex scheme and should be assessed on a case by case basis depending on the technology in question and the laws of the country where protection is sought.

Which protection to choose? Copyright, Patent or Trade Secrets?

In deciding whether to apply for a patent or a copyright, or both together, to protect a software, it is crucial to understand the scope of protection each one of these vehicles provides.

Copyright generally protects the expression of the software source code which restricts non authorised third parties from using or reproducing the code (or a substantial part thereof) without permission. The copyright protection term generally lasts for the lifetime of the owner plus an additional term of up to 50 to 70 years after the death of the author (depending on the country in question). The major advantage of copyright protection lies in its simplicity; as it accrues automatically without the requirement for registration (as provided under certain international agreements), and where the process of obtaining a registration (which is desirable for evidentiary reasons in many countries) is quick and inexpensive. However, one of the main limitations with the copyright protection of software is that it does not protect the innovative concept, features or processes underlying the software but only the expression of the code itself. If the software embodies a new and inventive concept or process, copyright protection will, in most cases, not protect these elements. Therefore, copyright can be useful only if someone copies the exact same source code of software or programme (or a substantial part thereof).

Patents, on the other hand, protect inventions which extend to innovative concepts, features and processes. When a patent protection is sought in relation to software, the patent normally covers the technical features related to the software such as the data processes and other technical concepts and features underlying the software particularly when these interact with hardware or other tangible or physical assets or produces a tangible, physical outcome or results in a transformation of an object. Patent protection prohibits other parties from reproducing the protected concepts, features and processes underlying the software (called computer implemented inventions) even if the source code was not reproduced and a new source code was developed independently. The patent's term is shorter than copyright and generally lasts 20 years from the filing date. The process of gaining a patent is more expensive than copyrighting and generally takes longer than acquiring copyright in the long-term. However, having a patent is much more beneficial and provides exclusivity for making, using, selling, offering for sale or importing an invention. The protection will provide the applicant with a legal monopoly of the market in terms of excluding others from exploiting the patented invention without authorisation, therefore substantially contributing to attracting investors, generating revenues and increasing the value of the business.

Trade secrets are generally recommended to be used to protect certain secret parts of a code such as specific mathematic formulas, models, or secret recipes of the software which are not likely to be discovered by third parties through reverse engineering or independent discovery. The term of protection of trade secrets is perpetual as long as it is kept secret and has an economic value, but it automatically loses protection when it enters the public domain. Google is known to have kept many of its computer algorithms secret.

Protecting software innovation requires a technical understanding of the various aspects of the software and a strategic approach on how best to protect the various aspects thereof through the available intellectual property vehicles. An holistic protection of software innovation normally requires a combination of copyright, patents and trade secrets strategically designed to cover the various aspects of the software.

What do various jurisdictions say?

USA

In the US, patenting of software related inventions is not evolving. The test (called the two step Alice test in reference to the famous Alice Case) was defined by the US Courts to ease the process. The first element of the two step test requires determining whether the claims of the patent application are directed to an abstract idea. If the answer is 'no' then the claimed subject matter is patent eligible. However, if the answer is 'yes', then to be patent eligible, the claims must satisfy the second part of the test. The second element of the test requires determining whether the subject matter in question includes elements that highlight the fact that the invention is more than an abstract idea; hence, the subject matter in question should be more than just a basic, conventional and generic function and should show improvements in the functionality of the technology. If it does, the claims are patent eligible. This two step test has been adopted by the United States Patent and Trademark Office ('USPTO') and is applied when examining patent applications in various areas of technology, including software.

To be a patent eligible subject matter, the invention underlying the software should have a technical character with a technical contribution and not a merely be an abstract idea.

For a software patent developer to overcome the 'abstract idea' rule the invention needs, in general, to carry out at least one automated decision made by the software, that could not be performed by a human otherwise, the patent office will perceive it to be a different approach and not an invention. Further, the more the software is linked with hardware or physical articles or machines such as a computer, the more likely it is to be considered by the USPTO as having a technical character.

Europe

The European Patent Office ('EPO') recently amended their guidelines for assessing patents pertaining to software related technologies. As per the 2018 edition of the Guidelines, algorithms 'which are considered computational and abstract in nature' may become eligible for patent protection once applied to a technical problem. The EPO also applies a two step test to determine the patentability of a software application. The first step is the 'eligibility test', which assesses the subject matter based on its technical character. So, in order to pass the first step technical means should be introduced; for example, by amending the subject matter from 'a method of performing an algorithm' to a 'computer implemented method of performing an algorithm'. The second step of the test requires a technical contribution to the inventive step. This technical contribution should be non obvious over the prior art. For the assessment of the inventive step, where a claim includes a mix of technical and non technical features, all features that contribute to the technical character shall be taken into account.

China

China revised the patent office guidelines for the examination of software related inventions in 2017 where it now distinguishes between computer programmes per se, which are excluded from patentability, and computer programme related inventions, which are patentable. Hence to show patentability, the claimed solution should at least solve a technical problem and achieve a technical effect.

The China National Intellectual Property Administration ('CNIPA') recently announced amended Patent Examination Guidelines effective February 1, 2020. The amended guidelines add Section 6 to Chapter IX of Part Two of the Patent Examination Guidelines, which cover provisions for the examination of patent applications that claim abstract features such as algorithm features or business method features. The amendments were introduced to cater for the special nature of examination of patent applications related to AI, internet, big data, and blockchain. The amended guidelines state that a claim, as a whole, should be examined and an examiner should not separate features directed to a business or algorithmic method. Instead, all the limitations recited in the claims should be taken as a whole in order to analyse any potential technical problems, the applied technical means, and the achieved technical effects, as a test for patentability.

GCC

Under the Gulf Cooperation Council Patent Law, computer programmes or source codes by themselves are considered as not patentable unless they are linked to hardware and presented as a technical solution to a technical problem. There are no clear guidelines in the GCC however, computer implemented inventions are normally protectable provided they relate to a technical solution aimed at solving a technical problem. The more they are related to hardware or machines for conducting physical or tangible actions, the more chance it has of being considered eligible if the technical aspects are novel and inventive. As a rule of thumb, software related inventions which are eligible in Europe and the US have increased chances of being eligible in the GCC.

Conclusion

IP protection of software related innovations requires a very thorough understanding of the technical aspects of the software and underlying innovations which may include data processes, simulation models, hardware interactions, signal processing and any other underlying aspects. The different innovative aspects should be considered for protection under the available intellectual property vehicles and the best holistic protection approach is to consider patent protection and trade secret protection in addition to copyright protection. Each one of these IP vehicles should be used very strategically depending on the nature of the underlying innovation features. IP protection strategy should also be considered based on the commercial objectives of the company in question as well as the applicable laws in the countries where the software is sought to be commercialised and exploited. The protection scheme can seem demanding however, it is certainly rewarding for software developers as it would allow them to secure their investments and boost the value of their businesses.

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Patents: inventorship vs ownership

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Inventorship and ownership of inventions are key legal principles in patent law and practice which are still however, misunderstood by many thereby leading to tensions between various parties (including colleagues at the same establishment) and sometimes legal disputes. In this article, we look at some basic but important questions about inventorship and ownership with a view to helping inventors and patent owners to better understand the importance of forward planning with regard to their rights and obligations.

Is inventorship the same as ownership?

No, inventorship and ownership refer to different legal concepts and should not be confused. The exact definition of these legal principles may vary from one country to the next. Overall, inventorship generally relates to the individual(s) who have contributed to the creation of an invention, whereas ownership is associated with the parties (individuals or entities) who own the proprietary rights of the invention.

What legal rights does a patent offer?

Patent rights related to an invention comprise both moral rights and economic rights. Moral rights are personal rights provided to the inventors, i.e. those who have contributed to the conception of the inventive concept of an invention.

Economic rights are proprietary rights provided to the owner(s) of the invention. The economic rights comprise the right to restrict others from exploiting the invention without authorisation including the right to make, use, offer for sale or import the patented invention inside the country where the patent has been granted.

Who can apply for a patent?

A patent can only be applied for by the legal owner of the invention ('patent applicant'). The inventor is the legal owner of the invention unless this has been assigned to another party under a contract or by applicable law (see below).

What benefits do inventors get from moral rights?

An inventor owns the moral rights related to the invention which include the right to have his or her name associated with the invention. This gives the inventor the right to be named as 'inventor' of the invention and to be mentioned on the patent certificate as such, regardless of whether the invention is owned or not by the inventor.

Can an inventor sell or transfer inventorship to another person?

No, moral rights are personal rights and cannot be transferred or assigned to another. Therefore, any agreement between an inventor and another person selling or otherwise assigning their inventorship (to say that person Y is the inventor instead of person X) is illegal and any assignment void in most countries.

Can multiple persons be co-inventors?

Yes, most inventions resulting from research activities in corporations and academia are the fruit of joint efforts between a number of individuals.

When two or more individuals contribute to the conception of an invention, they are considered to be co-inventors and they are all entitled to be cited as inventors on the patent.

What are the requirements for inventorship?

The legal requirements may vary from one jurisdiction to another. Overall however, it is generally recognised that an inventor is a person who has contributed to at least one inventive concept of the invention as defined by at least one of the claims of the patent. Therefore, the claims of the patent generally define who should be named as the inventor(s). Generally, the contribution must be substantial at the conception stage (and not merely limited to testing, building the prototype or executing certain parts under the directions of others for example).

To determine who is an inventor in a group of individuals who have jointly worked on an invention, their respective contributions should be determined and assessed in view of the claimed inventive concepts as defined under the patent application.

Inventorship and ownership of inventions are very important legal principles which need to be understood by all parties involved in the creation of innovations...

What happens if an inventor is omitted from a patent application?

All inventors of a patent application should be included at the time of filing a patent application. If the patent application mistakenly omits an inventor (who should have been listed) or includes an inventor (who should not have been included), rectification action can be taken in the attempt to correct the error. The requirements of such actions may vary depending on the country in question and respective patent office practices. Where a mistake is made (in the absence of bad faith), it is generally possible to rectify. In terms of requirements, it is generally easier to add a new inventor than remove an existing one.

What if the inventorship has been altered deliberately and in bad faith?

Intentionally providing wrong information to the patent office concerning inventorship may have serious legal consequences depending on the jurisdiction. In general, such an action may be considered to be 'fraud' and may leave the patent vulnerable to cancellation or invalidation. In addition, penal or criminal repercussions such as fines or even imprisonment may apply in some countries. An inventor who may have been intentionally omitted from being included in a patent may not have any interest in having the patent invalidated (particularly if he or she is also the owner), but may require his or her name to be added as an inventor and, in case he or she is also an owner, pursue other legal remedies such as monetary damages in order to recover loss of profits depending on the case and the applicable laws.

Can an inventor become an owner?

The general rule is that the inventor is the owner of the invention unless:

1. the inventor has assigned ownership to a third party under an assignment agreement before the conception of the invention; in this case, ownership passes to the assignee at the date of conception of the invention. This is common practice in work-for-hire relationships and employee-employer relationships;
2. the inventor assigns ownership of the invention after the conception of the invention; in this case, ownership passes to the assignee at the date of the assignment of the invention. This is common when the assignment is made in consideration of a financial sum;
3. the law provides that ownership of the invention shall be vested in another party (and not the inventor); the assignment, in this case, takes place according to the law at the time the invention was conceived. This is often the case in many countries in employee-employer relationships (where employers would own inventions rather than the employee inventors) and work-for-hire relationships (to a lesser extent).

In the case of multiple inventors, ownership must be separately assessed for each inventor. If all the inventors are also owners, then the general rule is that they are joint owners to an equal share in the invention unless agreed otherwise. This is also subject to local laws.

What is the employee or employer situation in the UAE?

Article 9 of the UAE Patent Law essentially provides for three scenarios (which will be briefly discussed below):

1. Invention falls within the employee's scope of employment

In this case, the invention shall be vested in the employer. The core question is to determine whether the invention's conception falls within the employee's 'scope of employment'. This is subject to some complex factual and legal considerations. There are several precautionary measures both employees and employers can take to avoid grey areas;

2. Invention falls outside the employee's scope of employment and the invention does not relate to the employer's domain

Where the invention falls outside the employee's scope of employment, the invention clearly belongs to the employee.

3. Invention relates to the employer's domain and has been achieved using the employer's resources

In this scenario the law provides that in the event an employee conceives of an invention, he or she must notify the employer (in writing) and give the employer the opportunity to acquire the invention. Generally, there is a sophisticated process involved however, the key question is to determine whether the invention's conception falls outside the 'scope of employment' and relates to the employer's business. This can often be subject to some complex factual and legal considerations.

According to Article 9(6) of the UAE Patent Law, any agreement giving the employee benefits less than those stated in the provisions of Article 9 (stated above as default rules) is deemed to be invalid.

Can a machine be considered to be an inventor?

Artificial Intelligence ('AI') and blockchain are the most observed and rapidly growing areas of technology with a limitless range of applications. Companies in the future will continue filing patent applications relating to these technologies in order to protect their investments. It is inevitable that technology and software will continue to be at the future's core.

However, there is currently a legal grey area for any new inventions created by an AI System. The primary question is 'should an AI System have the legal right to be a patent owner?' The current (and dominant) view on this topic is that AI Systems are merely tools to achieve an invention and may not be considered to be inventors. This is in addition to the fact that systems do not have the legal capacity to which individuals or legal entities are entitled (and capable). We agree with this school of thought however, many others believe that AI is more than merely a tool and is the ultimate creator of the invention.

The most relevant update on this issue is the European Patent Office ('EPO') recent decision on AI which could impact the future of patent law as a whole. The decision related to the AI – DABUS system ('Device for the Autonomous Bootstrapping of Unified Sentience') created by Dr Stephen Thaler, a Doctor in Physics.

This decision supersedes the rejection of two patent applications (EP 18275163 and EP 18275174) by the EPO, which designated the inventor as a non human entity. EP 18275163 deals with a fractal beverage container and EP182751 74 deals with fractal light signals to attract attention during search and rescue operations.

The decision by the EPO, released at the end of 2019, justifies the rejection of the two patent applications on the basis of the fact the inventor was not a human being. The EPO recently released the reasoning behind its decision. Firstly, the EPO concluded that the inventor of a patent must be a 'natural person' (and that the notion of a 'natural person' is internationally applicable). Secondly, the EPO argued that designating a machine inventor with a name 'does not satisfy the requirements of the European Patent Convention'.

Equivalent patents were filed in the USA and UK however, rejected by both patent offices. Equivalent patent applications have also been filed in Germany, Taiwan and some other countries.

This is a rapidly developing area of the law which we will be following closely and on which we will be updating our clients in due course.

Conclusion

Inventorship and ownership of inventions are very important legal principles which need to be understood by all parties involved in the sphere of innovations, including universities, businesses, researchers and other individual creators. At the outset of innovation related projects, in order to minimise potential future tensions or disputes which may lead to serious legal consequences and high costs, it is advisable to take the necessary precautionary measures by protecting an invention. Corrective measures can also be taken to rectify innocent mistakes. Legal action can also be taken in certain cases in order to remediate infringements such as a bad faith, alteration to inventorship, or a dispute over inventorship or ownership. However, such reactive measures may lead to protracted and expensive processes and are best avoided.

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Saudi Arabia's cloud computing regulatory framework 2.0

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Following public consultation in 2016, Saudi Arabia's telecommunications regulator, the Communications & Information Technology Commission ('CITC'), issued a cloud computing regulatory framework (the 'Cloud Framework'), which came into effect in March 2018.

Also in 2018, the National Cybersecurity Authority ('NCA'), the government agency responsible for cybersecurity, issued the Essential Cybersecurity Controls ('ECC:2018'). The ECC:2018 contains a very broad restriction on the use of cloud services based outside the Kingdom. This has caused some concern for both cloud service providers and cloud customers.

In February 2019, Saudi Arabia's Ministry of Communications and Information Technology published a document entitled 'KSA Cloud First Policy', showing that adoption of cloud services at the government level is very much on the government's radar. The version set out on the Ministry's website is still marked 'draft', so its exact status is unclear, but the document sets out a number of considerations relevant to the adoption of cloud computing by government and semi-governmental entities in the Kingdom. The stated goal is to accelerate the adoption of cloud computing services by mandating that government and semi-governmental entities consider cloud options when making new information technology investment decisions. The key drivers in the Cloud First Policy comprise: improving efficiency; enhancing agility and reliability; providing more robust cyber security; and increasing innovation.

Also in February 2019, the CITC issued amendments to the Cloud Framework. The nature of the amendments is largely focussed on ensuring that cloud customers, rather than cloud service providers, are responsible for key aspects of cloud services; in some ways it reads as if industry 'held the pen' on the amendments. Despite the amendments, there are still a number of ambiguities in the cloud framework and its application, and these would benefit from further review.

In this article, we briefly discuss the ECC:2018's restrictions on the use of cloud services located outside Saudi Arabia and outline key provisions of the Cloud Framework and the related February 2019 amendments. On the topic of the Cloud Framework, this article closely follows our earlier article, from March 2018, entitled CITC's New Cloud Computing Regulatory Framework in Saudi Arabia, adjusted to reflect the February 2019 amendments.

NCA's Essential Cyber Security Controls 2018; and the Law on Controls on the Use of Information and Communication Technologies in Government Agencies

The NCA is the government agency responsible for cybersecurity. The NCA's ECC:2018 applies to government agencies (including ministries, authorities, institutions and otherwise), entities and companies affiliated thereto, and private sector entities that own, operate or host critical national infrastructure. The recently issued Law on Controls on the Use of Information and Communication Technologies in Government Agencies 2019 includes a requirement for all government agencies to adhere to the policies, frameworks, standards, controls and guidelines related to cybersecurity issued by the NCA.

With regard to cloud computing, the ECC:2018 requires entities subject to its requirements to ensure that the hosting and storage of their data occurs in Saudi Arabia. This seems to be a very broad restriction on the use of cloud services based outside the Kingdom, and it is likely to have a significant impact on the cloud market in Saudi Arabia. Cloud service providers with infrastructure in the Kingdom are likely to do well; cloud service providers based outside the Kingdom are going to need clarity as to the impact on their business; and cloud customers in the Kingdom that are subject to the ECC:2018 are likely to need their cloud service providers to confirm compliance.

If ECC:2018 is not intended to operate as a blanket prohibition on the use of foreign cloud services by entities subject to the ECC:2018, then we would expect to see clarification issued by the NCA in the near future. (At the time of writing, the NCA has issued a draft Cloud Cybersecurity Control for public consultation. While only a draft, this document does not appear to pull back from the blanket prohibition on the use of foreign cloud services by government sector clients or those involved in critical national infrastructure).

Scope of application of the CCRF

The Cloud Framework, issued by the CITC in 2018 and amended in 2019, applies to any cloud service provided to cloud customers having a residence or customer address in Saudi Arabia. As originally drafted, these obligations were to apply to any cloud service provider that owns, operates, or offers access to data centres, or other elements of a cloud system, located in the Kingdom. The February 2019 amendments have removed this wording and introduced wording to the effect that the obligations shall apply to the cloud service provider that has concluded the relevant cloud contract with the cloud customer in question.

Essentially, this change replaces wording that had the potential to lead to the broad application of the Cloud Framework, including to cloud service providers that owned the relevant infrastructure, or that sold cloud services through local partners, but had no direct relationship with cloud customers. The new wording indicates that the Cloud Framework applies to cloud service providers that have contracted directly with cloud customers, and to cloud services provided to cloud customers in the Kingdom by such cloud service providers.

Regardless of whether a cloud customer has a residence or customer address in Saudi Arabia, where customer content or customer data is processed in a data centre (or other elements of a cloud system) located in the Kingdom, certain obligations can arise. These relate to major information security breaches, take down of unlawful or infringing content, and notification of violations of Saudi Arabia's Anti-Cyber Crimes Law 2007. In other words, regardless of whether a cloud customer is based in Saudi Arabia, if data centres or cloud infrastructure based in the Kingdom are utilised in delivering cloud services, these aspects of the Cloud Framework will apply.

Registration with CITC

The Cloud Framework has been amended to limit the requirement for prior registration with CITC. Now the registration requirement applies only to those controlling data centres, or other critical cloud system infrastructure, hosted in Saudi Arabia and used for the provision of cloud services. Previously, the registration requirement also extended to anyone controlling the processing of customer content that was categorised as 'Level 3', including private sector regulated industries subject to sector specific rules, and sensitive customer content from public authorities. This latter requirement has now been removed.

Cloud service providers registered with the CITC are required to comply with standards and business continuity, disaster recovery, and risk management related rules and guidelines, that CITC identifies as mandatory. If requested by cloud customers, cloud service providers also need to provide

Cloud service providers will not be administratively or criminally liable solely because unlawful content or infringing content has been uploaded, processed, or stored in their cloud systems.

information on actual performance relative to service levels, as well as information on any certification standards followed by the cloud service provider.

Information security

The February 2019 amendments to the Cloud Framework do not appear to have affected the information security classification provisions found therein, although further related guidance has been issued by CITC.

The four information security categories applicable to customer content as specified in the Cloud Framework are, in summary:

- **Level 1:** Non sensitive customer content of individuals, or private sector companies, not subject to any sector specific restrictions on the outsourcing of data;
- **Level 2:** Sensitive customer content of individuals, private sector companies, not subject to any sector specific restrictions on the outsourcing of data; and non sensitive customer content from public authorities;
- **Level 3:** Any customer content from private sector regulated industries subject to a Level 3 categorisation by virtue of sector specific rules or a decision by a regulatory authority; and sensitive customer content from public authorities; and
- **Level 4:** Highly sensitive or secret customer content belonging to relevant governmental agencies or institutions.

These levels are a means of categorising content, although they do not provide any clear direction on the corresponding level of information security that cloud service providers must provide to such content. It is unclear whether these levels were intended to conform to something like the requirements of The Uptime Institute's tier classification system (which are pointed at capacity, redundancy, fault tolerance, etc., and not specifically focused on information security), or whether the CITC plans to elaborate on what security mechanisms and processes it requires of each level, in practice.

Guidance issued by the CITC seems to indicate that the various information security classification levels may tie in with certain technical standards to be met by data centres hosting data falling within such classifications, although this is not entirely clear. Publicly available information on the cloud service providers that have registered with CITC, and the respective 'levels' for which they are registered, further confuses the situation. (At the time of writing, information published on the CITC website indicates that cloud service providers registered with CITC only fall within Level 1).

The application of these information security levels is subject to any other rules regarding information security requirements determined by other competent authorities in Saudi Arabia, and other rights and obligations of cloud customers relating to the outsourcing, transmission, processing or storage of content or data in a cloud system, specified elsewhere. Between Levels 1, 2 and 3, there is generally scope for cloud customers to opt for the application of a higher or lower level of information security. Presumably, where specific information security levels are to apply pursuant to other mandatory requirements (such as sector specific regulations), the cloud customer's ability to opt to apply a lower information security level is excluded.

The Cloud Framework sets out certain presumptions as to applicable information security levels for certain types of cloud content. The February 2019 amendments make clear that cloud customers must assume that these categorisations apply. For example, for natural persons resident in Saudi Arabia, there is a presumption that Level 1 shall apply; for private sector entities operating in Saudi Arabia, Level 2 shall apply. Ultimately, if the cloud customer wants a higher or lower information security level to apply, it needs to make this clear to the cloud service provider (presumably by implementing the required information security features available to it via the cloud platform). Otherwise, the cloud service provider may assume that the default levels specified in the Cloud Framework shall apply.

Transfer and location of customer content

The February 2019 amendments shift the responsibility for certain requirements relating to Level 3 customer content. Essentially, the obligation is now on cloud customers to ensure that:

- no Level 3 customer content is transferred outside the Kingdom unless this is specifically permitted under the laws or regulations of the Kingdom (other than the Cloud Framework); and
- no public clouds, community clouds or hybrid clouds are utilised for Level 3 customer content unless they are registered with CITC pursuant to the Cloud Framework.

Cloud service providers registered pursuant to the Cloud Framework must disclose to CITC the location and main features of their data centres located in Saudi Arabia, as well as the foreign countries in which they use data centres for processing the data and content of Saudi based cloud customers. (Cloud service providers are also required to notify cloud customers in advance if they will process data or content outside Saudi Arabia).

Reporting security breaches

The provisions relating to reporting of security breaches remain unchanged. There is a specific obligation on cloud service providers to notify cloud customers of any security breach or information leakage likely to affect the data or content of the cloud customers, or the services the cloud customers receive from the cloud service provider. Additionally, in the case of security breaches or information leakages relating to any Level 3 customer content, or to data or content of a significant number of cloud customers, or to a significant number of people in the Kingdom, there is a specific obligation to notify the CITC.

There is also an obligation on each cloud service provider to provide, on request of a cloud customer, information on the extent of insurance coverage for the cloud service provider's civil liability to the cloud customer. This information is intended to allow cloud customers to properly assess their own insurance needs and coverage.

Internal rules and policies on business continuity, disaster recovery, and risk management must be prepared by each cloud service provider. They must make summaries available to their customers, and to the cloud service providers with whom they work, upon request.

Protection of customer data

Generally, the provisions relating to protection of customer data are without prejudice to any higher degree of protection required by law or contract.

The provisions relating to protection of customer data apply to cloud service providers who contract with cloud customers, as well as cloud service providers who do not have a direct contractual relationship with such customers but who determine (alone, or jointly with others) the purposes and means of processing cloud customer data.

Cloud service providers are prohibited from providing any third party with customer content or customer data, or processing such content or data for purposes other than those permitted in the relevant cloud services contract. This restriction on the cloud service provider is subject to an exception, namely, where such disclosure or other processing is required to address an obligation on the cloud customer, pursuant to a foreign law to which the cloud customer is subject. This exception is, in turn, subject to any Saudi law obligation on the cloud service provider to disclose, transmit, process, or use that content or data. Additionally, when customer data is categorised as Level 1 or Level 2, and the customer has expressly consented to non-application of the restriction, the restriction does not apply.

Basically, the exception that would permit a cloud service provider to provide a third party with customer content or customer data, or process such content or data for purposes other than those permitted in the relevant cloud services contract, would not apply if there is a contrary Saudi law obligation or if the cloud customer had confirmed to the cloud service provider, in advance, that the cloud service provider should not release or process such content or data.

There is also a requirement that cloud service providers allow and enable cloud customers to access, verify, correct, or delete their customer data.

Some of the wording relating to protection of customer data echoes language found in modern personal data protection laws in other jurisdictions. To the extent that customer data is not necessarily 'personal data', and cloud customers are not necessarily 'data subjects', this does seem curious.

Unlawful content and infringing content

The provisions relating to unlawful content and infringing content apply to cloud service providers who contract with cloud customers, as well as cloud service providers who do not have a direct contractual relationship with such customers but who determine (alone, or jointly with others) the purposes and means of processing cloud customer data.

The Cloud Framework makes clear that cloud service providers will not be administratively or criminally liable solely because unlawful content or infringing content has been uploaded, processed, or stored in their cloud systems. The February 2019 amendments include further language emphasising that this exception is to be read broadly.

Similarly, the Cloud Framework also makes clear that there is no obligation on cloud service providers to monitor their cloud systems for such content. (In the Cloud Framework as originally worded, there was no obligation on cloud service providers to 'actively and constantly' monitor their cloud systems. In the February 2019 amendments, this wording ('actively and constantly') has been removed, making it clear that the absence of such an obligation is broad).

Cloud service providers are required to remove or block any unlawful content and infringing content from their data centre, or other element of a cloud system located in the Kingdom, if directed to do so by the CITC (or other relevant authority). They are also required to notify the CITC (or other relevant authority) if they become aware of any customer content on their cloud systems that might violate Saudi Arabia's Anti-Cyber Crime Law 2007.

Mandatory contractual requirements and unfair terms

The Cloud Framework sets out various minimum requirements for cloud contracts. These include: requirements relating to details of the cloud service provider; description of the cloud services; duration, charges, payment terms, termination; rules on processing customer content, and processes enabling it to be returned post termination; service level type considerations; and a customer complaint mechanism.

In terms of liability, the February 2019 amendments introduced limitations favourable to cloud service providers. Previously, cloud service providers were not permitted to exclude liability for certain types of losses or damages, where such losses or damages were attributable to intentional or negligent acts or omissions of the cloud service provider (such as loss or damage to customer content or customer data linked

> **With regard to cloud computing, the ECC:2018 requires entities subject to its requirements to ensure the hosting and storage of their data is in Saudi Arabia.**

to the cloud service provider's processing of such content or data; service parameters that do not conform to the contractually agreed terms or any requirements mandated by the Cloud Framework; and information security breaches). The February 2019 amendments have included wording to make clear that this restriction on the ability of cloud service providers to limit their liability applies only to liability relative to individual consumer cloud customers. A similar amendment is reflected in respect of the restriction on cloud service providers to rely on 'best efforts' clauses; this restriction now only applies relative to individual consumer customers.

What next?

It would be helpful for the NCA to issue more detailed guidance on how it expects the cloud related aspects of ECC:2018 to apply in the market. (See the next edition of Law Update for our analysis of the draft Cloud Cybersecurity Control). In the meantime, foreign cloud service providers, and cloud customers subject to the ECC:2018, would be well advised to consider their own circumstances and the potential impact on their businesses and operations.

Cloud service providers subject to the obligation to register with CITC were required to register within a month of the Cloud Framework coming into force. Information available on the CITC website seems to indicate that there has only been limited uptake on this, despite it being a mandatory requirement.

The CITC may issue model contracts and clauses, recommendations, and other guidance on the Cloud Framework, and on cloud computing in general. So far, CITC has issued some guidance on the Cloud Framework, and this was updated at the time the February 2019 amendments were issued. Although the guidance appears to be designed to be user friendly, some of the guidance could be understood as raising more questions than it answers.

Generally, cloud service providers should review their own operations, and make sure they register with the CITC if required to do so. Being familiar with the requirements with regard to removal, blocking, and filtering of content, will enable cloud service providers to put operational mechanisms in place to accommodate these obligations. Cloud service providers should also review their standard contractual documentation to make sure that it is consistent with mandatory requirements set out in the Cloud Framework. They should ensure that their sales teams are familiar with these mandatory requirements.

Cloud customers should also familiarise themselves with the mandatory contractual requirements, and other rights, set out in the Cloud Framework.

For further information, please contact Nick O'Connell (n.oconnell@tamimi.com).

Document automation: a key part of an organisation's digital transformation journey

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The transformation of the legal sector from one of dusty books, paper files and time-intensive processes to new, automated and innovative ways of delivering legal services has been at a rapid pace over the past few years. This digital shift is impacting all sectors and we continue to see how our clients are disrupting their industries, and being disrupted by their competitors. Our clients are on an innovation journey and expect us to understand its opportunities and challenges and support them on it. One of the ways we have been doing this is through our document automation offering.

With a plethora of legal technology available to help with all aspects of a lawyer's role, long gone are the days where lawyers could spend hours creating first drafts of documents and expect to be paid for the time spent doing so. Today we operate in an environment where it is the norm for law firms to be continuously challenged on fees, turnaround times and quality thus equipping people to be able to move through the more mundane and repetitive tasks to the more complex aspects of their trusted advisor roles. This is where being able to produce first drafts of documents through automation comes into its own.

What is document automation?

'Document automation is to lawyers what Excel is to accountants' is a comment which resonates loudly in the legal sector: 'you would not expect your accountant to use an abacus when preparing your financial accounts, so why would clients expect their lawyers to be manually drafting their documents?'. This is a fair question to ask and answer. So what is document automation?

Document automation is the process of automatically generating first drafts of Word documents or forms through answering an online questionnaire. This streamlining of document production results in consistent, uniform and personalised first drafts being produced in a fraction of the time it would have taken previously to create when doing it manually.

The automation of documents is not new to the legal sector. On the contrary, automation solutions have been around for over 20 years. That said, adoption has only really taken off in the past few years as law firms outside the large international ones realise that they simply cannot afford not to adopt the technology. It is a simple case of 'ignore at your peril'.

By automating their documents, one of our clients cut the production of a NDA from 35-45 minutes to 2-5 minutes. A further example is an HR offer letter which previously took 25-30 minutes to produce and now, by being automated, can be created in less than two minutes.

Benefits of document automation

There are numerous benefits which come with automating documents. Directing lawyers to an automation platform ensures that there is consistency with document creation in terms of the look and feel and how documents are structured.

Using automated templates also increases quality and reduces risk as potential inaccuracies and mistakes are removed:

> **Automation has introduced accuracy. I now have a document which automatically pulls in the jurisdiction clause depending on the country the vendor is working in. I no longer have to go back to my precedents and cut and paste the clause as it automatically happens. This means the business team can send the document straight out as I know everything in the document is correct. I also know that an old precedent has not been used that might have an old client name in it.**
>
> *In-house Lawyer, Client*

Automation also removes from the user the requirement to remember every key issue as these will have been considered during the process of deciding the extent to which a document should be automated by its original creator.

Increasing efficiency and lowering costs are key benefits. The ability to generate documents quickly and accurately using fewer resources is essential to a busy legal department:

> **Document automation has been an absolute game changer in our team. It has helped us be much more efficient. We no longer draft all our NDAs, we no longer draft certain contracts. It has been absolutely excellent.**
>
> *Senior Legal Counsel, Client*

What can be automated?

We have automated documents for both internal and client use in a range of sectors and industries including healthcare, real estate, employment, banking, media and telecommunications. Documents which have been automated (in English, Arabic or both), include: NDAs, employment contracts, legal opinions, settlement agreements, IP documents, powers of attorney, corporate documents, lease agreements; and a range of HR letters. Both individual as well as suites of documents can be created.

What is the document automation strategy at Al Tamimi?

Our clients are at the heart of everything we do. We use our knowledge, experience and intellectual rigour to find innovative solutions to overcome complex business challenges for our clients. A key part of this approach is ensuring that our people have the right tools to deliver the best quality advice. This includes the ability to be able to quickly and accurately produce documents through automation.

Within the firm we have a team of six document automators, including one full time legal engineer. Three of the team are bilingual. This is a clear strength of the firm and unique in the region:

> **Al Tamimi is the only firm in the region which has been able to introduce document automation [to me] and take a legal aspect on that so as to help me automate our documents.**
>
> *In-house Lawyer, Client*

In addition to automating in and around the demands of their day jobs, the automation team meets every week for 'Coding Club'. Taking people away from their desks for a set period of time to code, learn and share knowledge and experience with each other is invaluable and ensures that we are able to realise our document automation strategy both internally and with our clients.

How are we supporting clients?

> **Automation has really changed the way I work and Al Tamimi have been key in putting that in place.**
>
> *Senior Legal Counsel, Client*

At Al Tamimi we see quality as a key differentiator, but also recognise the need to respond to commercial pressures by providing premium legal services that represent excellent value for money. Efficiency is part of our culture and way of working. We are constantly looking for ways to create further efficiencies without compromising the quality of the service we deliver.

One way we have increased our efficiency with our service delivery is with our document automation offering. Having had numerous conversations with in-house legal teams, it is apparent that our clients face a range of pressures which include time, responsiveness, multiple 'internal' client demands and high volumes of work. We have helped ease some of these competing exigencies for our clients by automating some of their most frequently used documents such as NDAs, board minutes and supplier agreements. The result has been positive:

> **Document automation has made me change how I look at every document and I think lawyers need to change the way they work as well. Every time they look at a document they should be considering its automation possibilities.**
>
> *Senior Legal Counsel, Client*

Conclusion

Enabling lawyers to increase efficiency, maximise accuracy and minimise risk in the production of first drafts of documents is a 'must have' rather than a 'nice to have' in today's legal sector. As stated at the start of this article, manually producing documents is now a yesteryear and outdated practice. Document automation at Al Tamimi is a key tenet of our internal efficiency strategy and we continue to look for ways to make improvements to how we work in order to deliver the best quality advice to our clients.

For further information, please contact Allison Hosking (a.hosking@tamimi.com).

C is for content, clients, claims and copyright: ten short notes about copyright for the Middle East

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Copyright forms the basis of the rights that are incorporated within any piece of content. Be it a photograph, a short video, a jingle, a film or a game, the hard work that you put into development and creative output is generally going to be covered by the law of copyright in the country of origin.

For creators it is really important to understand the basis for the protection. It is elusive, intangible and often misunderstood. Today we remind you of the ten basic things that a creator in the Middle East should understand as they venture into the exciting work of content production.

1. Originality forms the core of copyright

For copyright to exist in a work, it must be original. This underlies the protection. If a person takes a photograph of a fence, they cannot then stop another person from also taking a photo of a different fence, or even that same fence. It is, after all, simply a photograph of a fence.

An excellent example of this was a case that arose between two cook book authors in the United States. One lady wrote a children's recipe book, based on the idea of hiding vegetables in the food. Another author sued her, claiming that this was her idea. However, the judge said the whole thing failed for lack of originality; mums have been doing this for generations! This case also nicely pointed out that placing a photo of a carrot next to a photo of carrot soup is not going to be considered original.

2. An idea is not copyrightable, and in fact nor are a few other things

Copyright covers the substantial work, not the idea behind a substantial work. Clients regularly seek advice about the protection of pitches for advertising work for example. Our view is that they can protect the images that they use to sell the pitch, and possibly some of the more developed content that is contained in the pitch, such as a storyboard or storyline. But the idea itself – 'let's show the sports car driving over the roof of the Dubai cricket ground' is not going to be developed enough to attract copyright.

3. Creation is the basis for copyright

Copyright exists in a work as soon as a work is created in a tangible form; it is automatic. It is owned by the person who created it (unless a binding contract says otherwise). Many people were amused by the case raised in relation to a photograph that was taken by Naruto, a crested macaque monkey from Indonesia. PETA took on the case for Naruto, arguing that, as Naruto created the photo, he should be able to own it. Unfortunately, the judge did not agree, stating that the Copyright Act had no provision for non-human creation. But all human creators will be the owners of the work in the first instance.

In some jurisdictions (UAE and USA to name but two) a creator can register copyright works with the authorities however, this does not add to or alter the nature of the copyright that the creator already acquired when the works were created. Do get advice if you are considering registration as, in some cases, the registration can be important to the protection of the work against future infringements.

4. Decisions rest with the copyright owner

With copyright works, the creator is the one who decides if a copy can be made, if it can be publicly shown, if it can be licensed or altered and re-sold to others. Any dealing with a copyright work needs permission from the owner.

The owner can, of course, sell (known as assigning) their right to another party and in that case, they also relinquish their ability to make decisions as to what happens to their copyright. Always make sure you are dealing with the current owner of any copyright work.

5. Employers might not always own what their employees create

Some countries have what is known as a 'work-for-hire' provision which deems any work created by an employee to be the property of the employer, where it was created as part of the employee's normal workplace role. So, by way of example, if an employee designs a logo for a client, under this regime, the ownership would rest with the employer, and the employer can easily pass the rights in the logo to the client.

However, not all countries have such provisions and in such countries (of which there are several in the Middle East), a contract with each and every employee is vital in order to ensure that copyright passes to the party that should rightfully own it. If this is not done, then the employer cannot pass the rights to the client; they will still be owned by the employee.

6. Consents, licence, permissions and fees

As mentioned above, only the copyright owner can give permission to do anything with their copyright work. A party may have physical ownership of materials but this does not mean that they have any right to deal with the work itself. Given that a party must get permission from the copyright owner in order to use their work in any way, this means that consents and licences must be sought, and inevitably fees must be paid.

A website owner cannot licence the right to use a photograph that is uploaded to the site by someone else. A gallery cannot licence the right to copy a painting that hangs on its wall. An ad agency cannot licence the use of someone else's music.

There are exceptions to the need to licence content for example those times when you do not have to ask for permission. These vary from country-to-country but an example that applies in most countries is the reporting of news; if a singer dies, for example, you can play clips of their songs when reporting that news. Once that story ceases to be newsworthy (and that can be in as little as 24 hours) you cannot use the song without consent from the owners.

7. Copycats and soundalikes

For someone to make a copy, they need to have taken your work and actually made a copy of it.

In the 80s, Annie Leibovitz took a photo of Demi Moore whilst Moore was pregnant. Paramount Pictures, the producers of 'The Naked Gun', decided to replicate the pose with another pregnant woman, adding the head of its star Leslie Nielsen. It created a lot of publicity and attracted a lawsuit from Leibovitz. However, in court Leibovitz failed in her attempt to have the alleged infringement of the Demi Moore photograph recognised, as the judge held that the photo had been created by someone else. Further, the stance of the woman, the theme and the lighting were all different. Legal commentary on this decision has been mixed though so it is advisable to consult with expert professionals before undertaking any such activities with other people's work.

Copyright exists in a work as soon as a work is created in a tangible form; it is automatic.

8. What constitutes an infringement?

Any use that is not undertaken with consent and where a legal basis for use does not exist (and as we noted above, this varies from country to country) can amount to infringement. It is true that everyone has a story about getting away with taking someone else's copyright works.

Rumours abound about what can and cannot be done with copyright works. It is not, for example, true that you can use "less than 10 per cent" without consent. A judge will be more likely to consider whether you have taken the heart and soul of a work, not whether you have taken a certain percentage. In other cases one may take a few small, but key, elements and be found to be infringing. Similarly, do not think that, because you give the final product away for free, that you are not infringing. Collecting images of work from Andy Warhol on a website that anyone can access for free is still breaching the copyright in those works.

9. Infringing costs money

Do not, unless you are prepared to pay an enormous fee, use work from well-known and powerful brands without first obtaining consent. Disney will not thank you for using Winnie the Pooh, even if you do it in context with the brand!

It is important to note that owners of copyright will double their usual licensing fee (at least) when they find infringements. Courts have been known to award up to four times the usual licence fees as damages, so infringement can be costly.

10. Watching your own rights

It is important to keep an eye on your own valuable intellectual property as well. It is advisable to undertake regular searches to ensure that an obscure ad campaign in Mexico is not using your work. From a business perspective, licensing is a money making business and legitimate covers, copies and adaptations can make good money; the American version of The Office had much greater success than the original UK version and in doing so, made Ricky Gervais a rich man. Kylie Minogue had a bigger hit with Locomotion than Little Evie.

Conclusion

Clearing copyright and protecting copyright makes good business sense. Always assume that clearance is required and budget for it accordingly. If you think you might have the right to use it under an exemption at law, check with a professional to ensure that letters do not start coming in from lawyers; and if you do get a lawyer's letter, take it to a lawyer to obtain a view as to how to proceed. Early legal advice can be instrumental in containing the potential damage payment and assisting in managing the reputational fallout.

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Putting the campaign on ice: the position of alcohol advertising in the UAE

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Alcohol has an unusual position in the UAE. Whilst not illegal, it is not legal to consume it unless you are a non-Muslim and are doing so in certain licensed areas. Not unexpectedly, activities relating to the promotion of alcohol in the UAE are similarly stringent.

The laws

At the outset, the prohibition on alcohol advertising and marketing exists at the Emirate level. It is regulated by Liquor Control Law of 1972 in Dubai and Liquor Law No 8 of 1976 in Abu Dhabi. Both of these laws state that 'advertising liquor in a public place or private place through any media services' or 'through any form of expression or publication' is not permitted.

The Chairman of the Board's Resolution No. (26) of 2017 on Media Content (the 'Content Resolution') is designed to cover the regulation of all content, whether advertising or not. Article (44) contains the 'Criteria for Media Content' and specifically notes in sub-article (7) that no advertisement on alcoholic drinks or prohibited drugs shall be allowed by any means directly or indirectly.

'Directly or indirectly' replicates the language of the earlier laws on advertising standards; this language is intended to be broad in its application. The application of the law has, for many years, been clear. By way of example, an entity licensed to sell alcohol in Dubai included a brochure in a popular magazine including the form for obtaining an alcohol licence. No brands or alcohol products were mentioned however, after complaints, that issue of the magazine was taken out of circulation.

The Content Resolution also prohibits material that encourages the taking of alcohol. Again, this can be considered as potentially very wide in scope. The analysis of the content becomes more difficult; is an image depicting the mere holding of a glass whilst laughing likely to encourage alcohol consumption? Is it implying that alcohol will add enjoyment to an activity?

What is advertising?

With advertisers now utilising online and social media in the promotion of their products, global trends are moving away from direct promotion and into promotion in subtler ways. The question then becomes less about whether the advertising is direct or indirect and more about whether it is advertising at all? On this basis, if a brand decided to pursue advertising that included alcohol, it would need to assess the advertising content against notional criteria such as, by way of example only:

1. the directness of the alcohol message; is it actively promoting alcohol or is the message more subliminal?

2. the prominence of the alcohol-related part of the message and of the branding; what level of 'obviousness' is present in the words and images that comprise the message?
3. the mood or feeling that is associated with the alcohol message; is it 'encouraging' the activity?

In relation to online activities, such as websites and social media, advertising that contains any alcohol brand would, strictly speaking, be prohibited. The regulatory authorities would, upon receiving a report of an infringing advertisement, pursue the infringing advertiser under the applicable laws if it felt that the content was not compliant.

Indirect advertising

Alibi advertising is a method of advertising that uses, for example, colours or shapes associated with the brand whilst not actually naming the product. Notwithstanding that the brand is not mentioned, the material will still be readily associated with the brand in the minds of a large percentage of consumers because of these subtle links.

Despite the prohibition on the advertising of the alcohol, including advertising in social media, brands are nonetheless undertaking low level alibi marketing activities without concerns being raised. As the regulators in the UAE tend to be reactive, this is more likely because no complaints have been raised by a member(s) of the public, rather than because the activity itself is not breaching the letter of law.

In addition, it is clear that the prohibition on advertising alcohol would also extend to surrogate advertising as well; the advertising of one product that has the planned effect of advertising a banned product.

Anecdotally, in the past entities in the UAE have attempted to proceed with direct and indirect alcohol advertising. However, in each case, the authorities were active and appeared willing to proceed with enforcement.

Risks

There is no doubt that many companies take the view that effective policing of these matters is not regular and some online advertisers in the UAE do publish advertisements that are contrary to applicable law. Essentially, these businesses are undertaking an activity that carries some risk, and must hope that such advertisements are not reported to the authorities. In practice, a complaint of an advertisement that conflicts with the law is likely to originate from a competitor or a consumer, rather than being found by the authorities themselves.

Given that the law is drafted in a way that is broad, reflecting the social and cultural position of alcohol generally, the authorities can be expected to take a conservative approach if they are informed of a potential infringement of any of the relevant laws. Compliance with the applicable law is vital to ensure action is not taken that would be contrary to a brand's interest, or otherwise elicits negative publicity.

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Diplomatic immunity for data: Bahrain's Data Embassy Law

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The practice of cloud computing by using a network of remote servers hosted on the Internet to store, manage and process data, rather than a local server or PC, is increasingly common place. However, storing of data on the cloud also has its potential downsides and countries have tried to implement new laws in order to protect important information.

As the Kingdom of Bahrain moves towards becoming a cloud computing hub, it extended its innovative scope in 2018 by implementing new legislation that allows foreign parties to store their data in data centres located in Bahrain under what is known as a 'data embassy' which blurs the legal lines of national borders and sovereignty.

It is revolutionary as when fully implemented it will allow consumers to store their information in data centres in the Kingdom of Bahrain while having the comfort of their data being governed by the domestic data protection law of their residence.

What is a Data Embassy?

A Data Embassy is a relatively new legal concept. It was first introduced through a bilateral agreement between the governments of Estonia and Luxembourg in 2017.

In 2007, Estonia reportedly fell victim to 'distributed denial-of-service attacks' by Russian attackers which consequently took a number of government and bank websites offline and threatened to make Estonia's entire public sector data communications network inoperable.

The Estonian Government's response was to strengthen their protection against such attacks, penalisation for cybercrime, and to develop the concept of an out of country 'data embassy' under which Estonian data and related systems are stored in Luxembourg's government owned data centre. As with physical embassies, the Estonian state owned servers resource outside its borders are considered sovereign embassies in the Luxembourg data centres.

The Cloud Computing Services Law in Bahrain

In 2018, the Kingdom of Bahrain implemented the Legislative Decree No.56 of 2018 In Respect of Providing Cloud Computing Services to Foreign Parties ('Cloud Law'). The Cloud Law's purposes is to 'provide a legal framework that encourages Foreign Parties use of an investment in Cloud Computing Services within Data Centres.'

Under Article 3 of the Cloud Law the data stored in data centres by overseas consumers of cloud services in the Kingdom of Bahrain will be subject to the domestic law in the 'Foreign State' where the relevant consumer resides (or is incorporated in cases of legal persons) and so will be subject to the jurisdiction of that Foreign State's courts, and other competent authorities.

Therefore, the courts and other competent authorities of the consumer's Foreign State are empowered to issue binding judgments with respect to any dispute which may arise between the overseas consumer and the domestic service provider, for example, orders for providing access, disclosure, preserving or maintaining the integrity of the consumer's data.

This means that competent courts and competent public authorities have to issue binding orders in the event of a dispute arising between an overseas consumer and the domestic service provider in Bahrain, 'including orders for providing access, disclosure, preserving or maintaining the integrity of the Customer Content.'

A service provider is obliged to inform the Attorney General in writing 'as soon as practicable' when they have received an order from a competent court or competent public authority of a Foreign State and must provide a copy of the order.

The competent judge and Attorney General in Bahrain can order the enforcement of any executable order, 'which is final and not subject to further appeal' concerning matters relating 'to providing access, disclosure, preserving or maintaining the integrity of Customer Content, or any matter in connection with Customer Content (…).'

What does it mean for cloud service customers?

Consumers worry about the safety of their data being held outside of their reach while awareness of the possible vulnerabilities of data is increasing.

The Cloud Law addresses what is a significant concern that there is always a risk that country data does not have the same level of protection as your own. Further, it clarifies who can have access to it.

However, the law is not yet fully effective. The Cloud Law only applies to:

- **Data Centre** defined as any data centre designated under Article 4 of the Cloud Law that is physically located in the Kingdom and which provides Cloud Computing Services to Customers; and
- **Foreign State** defined as any foreign state, including where applicable any of its territorial units which has its own laws, designated under Article 4 of the Cloud Law

The Kingdom of Bahrain's Council of Ministers shall issue a resolution to designate local Data Centres subject to the Cloud Law and Foreign States which have jurisdiction to issue judgments in connection with foreign consumers' data. To date no such resolutions have been issued.

Accordingly, the data embassy concept is still very new and not yet fully developed

At the same time there appears to be an increasing number of data localisation laws being introduced.

Data Localisation Law

In contrast to the concept of data embassies, a data localisation or data residency law mandates that data about a country's citizen or residents be collected, processed, and / or stored inside that country that businesses operating on the Internet, store and process data within the country.

By way of example, under the UAE's Federal Law No.2 of 2019 Concerning the use of Information and Communications Technology in HealthCare it is not permitted to store, develop or transfer health data outside of the UAE that is related to health services provided within the UAE, except where the relevant health authority and the Ministry of Health and Prevention have passed a resolution to allow specific data to be handled outside of the UAE.

The common justification for data localisation laws is that where data is stored onshore ensures security and privacy.

However, data localisation laws clearly create barriers and pose a threat to the free flow of information across borders on the internet as well as the maintenance of global supply chains, in a world increasingly relying on e-commerce.

Fit for purpose

The Cloud Law's purpose is to 'provide a legal framework that encourages Foreign Parties use of an investment in Cloud Computing Services within Data Centres.' (see Article 2).

In July 2019, Amazon Web Services ('AWS') opened three data centres in Bahrain: the company's first in the region, bringing its global network to 69 centres in 22 locations.

This is indicative of the growing success of Bahrain's innovative strategies to encourage cloud computing services.

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Artificial Intelligence: regulatory approaches in the UAE and abroad

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Artificial Intelligence

Although there is a fair degree of debate as to what Artificial intelligence (more commonly referred to as 'AI') is and what it is not, the term is broadly used to refer to machines that incorporate some degree of human cognitive ability. AI systems are not created equal and they range from simple recruitment applications and chatbots to systems that possess 'machine learning' capabilities. The latter type is, as the name suggests, able to 'learn' on their own (using the data set fed into it) and thereby make accurate predictions and decisions. Some are even more complex and use 'deep learning' algorithms; i.e. algorithms that broadly mimic the information processing patterns found in the human brain, to make sense of new information they receive by comparing it to a known object.

Ridesharing apps like Uber and Careem use deep learning to calculate your route and trip fare; Tesla relies on a model of machine learning (that is not supervised by humans) to drive its auto-pilot features; and Netflix and Amazon use behavioural algorithms to predict which movies and television series you are likely to enjoy, and what products you are likely to be interested in based on your previous selections and purchases.

Although discourse on AI has been around for at least 60 years with numerous waves of development and excitement having each fizzled out, the field has taken the spotlight yet again more recently, except this time the latest wave of advances in AI promises to fundamentally change many aspects of our lives (more than the just the pure convenience factor brought about by the likes of Siri and Alexia). Consider for example, a use case of AI in the field of robotics which allows 68 billion dots binding DNA molecules to be imaged and 'read' in two minutes, thereby allowing every child to be tested for every possible genetic disease. All this and further progress (albeit at an accelerating pace) has been made possible as a result of the convergence of significantly faster, cheaper and on-demand (cloud based) computing processing power, coupled with an ever-increasing generation and availability of vast data sets (which AI systems rely on to 'learn' and develop).

Should we regulate AI, and if so, how?

Safety and Liability

There is ongoing debate as to whether AI should be regulated and, if so, whether entirely new or separate legal systems and concepts would need to be developed (including whether new classes of liability that sit somewhere between personal liability and corporate liability should be created, and whether the burden of proof should be adapted or reversed) to address any safety issues posed by AI. Such risks may arise from defects in the AI system or code which result in, for example, an autonomous vehicle not recognising a pedestrian and as a result causing injury or death. Who should bear liability in such a case; the AI system driving the autonomous vehicle or the person who wrote the algorithm or code for the underlying software? Existing concepts such as reasonable foreseeability, intent and standard of care may not be appropriate for such systems which (at least for now) lack the entire spectrum of human cognitive ability and emotions.

Most regulators around the globe have thus far avoided implementing blanket AI regulations which cover all industries, for fear that such an approach may stifle innovation, particularly given the relative infancy of AI technology and its rapidly evolving nature. Although existing regulatory frameworks may not be entirely adequate to address novel risks inherent in AI, they provide a good foundation (at least for the level of AI that is generally available today) and can be amended and enhanced as appropriate to address AI specific risks. This approach has also been favoured by the UK House of Lords in its report titled 'AI in the UK: Ready, Willing, and Able', as well as the European Union's recently released White Paper on Artificial Intelligence, which among other things, sets out potential amendments and enhancements to existing EU legislation to address AI specific risks.

Industry specific regulations (such as the Abu Dhabi Department of Health's Policy on the Use of Artificial Intelligence in the Healthcare Sector) appear to be more appropriate as they present an agile and evidenced based approach to regulation, allowing specific risks to be addressed quickly without the unintended consequences inherent in more broad based law. As the pace of technological innovation increases exponentially and real risks (as opposed to theoretical ones) emerge, laws will need to continue to evolve (albeit much more quickly than we are accustomed to) and more industry specific regulations are likely to be enacted (or enhanced) as new AI use cases and associated risks crystallise.

It is worth noting that existing regulations, such as those relating to product liability, also indirectly apply to AI just as they would to any other product that malfunctions or is defective. Consider for example:

- Article 316 of the Civil Code which provides that *'any person who has things under his control which require special care in order to prevent their causing damage, or mechanical equipment, shall be liable for any harm done by such things or equipment…'*; and
- the Consumer Protection Law which prescribes penalties for (among other things) displaying, offering, promoting or advertising goods or services which cause damage to consumers, and, extends liability (by virtue of the definition of a 'provider') to the local agents and distributors as well as the manufacturer, whether based in the UAE or abroad (and not just to the entity that had direct contact with the consumer).

Although strict liability applies in product defect matters, proving causation may be challenging where an incorrect algorithm (as in the autonomous vehicle example above) gives rise to the harm, particularly in circumstances where the algorithm is embedded in a black box system that is not explainable (see below), and even more so where the algorithm is developed further by the machine learning process. Further, as discussed in our previous article titled 'Connected Cars, Autonomous Vehicle and Legal Potholes', delineating responsibility between the various parties involved in the development of AI products and services can be difficult, especially where the damage arises due to a malfunction or failure in more than one component simultaneously. In this regard, Article 291 of the UAE Civil Code currently provides *'If a number of persons are responsible for a harmful act, each of them shall be liable in proportion to his share in it, and the judge may make an order against them in equal shares or by way of joint or several liability'*. In practice, apportioning liability between a number of actors where such complex systems are involved, may prove to be rather challenging. On the other hand, the EU White Paper proposes that, in cases of 'significant harm', strict liability should apply to the person who: (a) benefits most economically from the AI system; and (b) has the most control over the risk associated with it. Again, determining who benefits most economically and who has the most control, is unlikely to be a simple exercise.

Privacy, discrimination and biased data

Although a small number of jurisdictions have enacted specific legislation (such as the Algorithmic Accountability Act in the US) mandating large technology companies to monitor and assess the accuracy, bias, privacy, accountability and cybersecurity of their AI products, the international trend has been for regulators and other organisations (including the UAE's Ministry of AI and Smart Dubai) to take a soft approach to regulation, mostly in the form of non-binding guidelines that are intended to foster development and uptake of AI in an ethical, transparent and responsible manner whilst minimising pitfalls such as discrimination and algorithmic bias. Although discrimination currently occurs even without the use of AI, the concern with algorithmic bias is that it would ingrain human bias and discrimination in 'black box' systems which are not able to detect in themselves such bias (let alone fix it), and as a result, risk perpetuating discrimination and inequality, particularly in the absence of human oversight.

Note that the UAE Federal Law Combating Discrimination and Hatred would also indirectly apply to AI systems (including AI powered recruitment systems) that provide outcomes which discriminate against an individual on specified grounds. In the absence of a legal regime where AI systems are granted separate legal personality and responsibility, it is the developers, distributors and utilisers of AI systems who remain liable for any breach of laws or losses arising from the use of such systems. For example, if a company were to deploy an AI staff recruiting system whose algorithm or data sets are discriminatory against women (because the data sets were from past job applications where the human assessors rejected candidates based on their gender), the company would be liable for the discrimination exhibited by the AI application.

Additionally, Article 38(1) of the proposed new DIFC Data Protection Law (which is undergoing consultation and yet to be enacted) provides *'the Data Subject shall have the right not to be subject to a decision based solely on automated Processing, including Profiling, which produces legal effects concerning him or her or significantly affects him or her'*. Examples of such an automated decision may include online credit applications or online recruitment tools, where there is no element of human intervention.

How to mitigate legal risks associated with the deployment of Artificial Intelligence

Accordingly, companies looking to deploy AI tools and applications need to:

1. obtain contractual warranties from the vendor that the AI system complies with all applicable laws and ethical use of AI guidelines. Even though guidelines may not currently be binding as law, they may form the basis of any future laws;
2. ensure legal requirements and ethics are embedded in the AI tools and systems 'by design'. For example, by ensuring that the AI algorithm is understandable and its decisions are explainable (reasons can be provided for a given input), noting that 'deep learning' systems may not be explainable, even to their developers;
3. employ diverse teams (in terms of age, gender, skill etc.) to help guard against the production of biased data sets;
4. ensure the data set used is unbiased and reflective of the population, that it is not unfair to use the data even if the data is so reflective, and that the data is only used for ethical ends; and
5. for companies established in the DIFC, provide a right to data subjects to object to decisions based solely on automated processing (including profiling) which significantly affects him or her.

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The new DIFC intellectual property law: enhanced rights and remedies

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The new Dubai International Financial Centre Intellectual Property Law No. 4 of 2019 (the 'DIFC IP Law') came into force with effect from 21 November 2019. The wider aim of the DIFC IP Law is to provide the legal framework and environment for the encouragement and protection of creativity and innovation in the DIFC, consistent with the promotion of creativity and innovation by the DIFC institutions over the past years especially in the FinTech area.

The DIFC IP Law has come about at the right time, especially in light of the announcement in January 2020 of the establishment of the Dubai Future District, which aims to be the largest innovation area in the world. The Dubai Future District will be established through the integration of the Dubai World Trade Centre, Emirates Towers and Dubai International Financial Centre. It will include a future economy research centre, incubators, accelerators and an innovative space for future economy pioneers. The district will be a hub for the production of IP based products, and in that context the DIFC IP Law is a key legislative foundation stone, from a legal perspective, of the project to establish a world leading creative and innovative district.

The DIFC IP Law provides for and regulates the full spectrum of intellectual property rights from patents, utility certificates, industrial designs and drawings, copyright, trademarks, trade names and trade secrets. The Law was drafted in accordance with international best practice, taking into consideration the applicable UAE Federal laws regulating the different IP rights and in line with international treaties to which the UAE is party. The opportunity has been taken in that context to introduce some international concepts that have been previously lacking in UAE IP federal laws and the need for which had been in major discussions among commercial IP stakeholders. In this article we shall highlight the key aspects and concepts that have been introduced by the DIFC IP Law.

1. Recognition of the IP rights registered in the UAE

The DIFC IP Law does not establish a separate DIFC registry for IP rights; however, it clearly recognises the IP rights registered in the UAE under the relevant federal laws. This is an important aspect of the DIFC IP Law, as it does not create an additional burden on IP owners to register their rights within the DIFC, hence any IP rights (including for example trademarks and patents) registered in the UAE shall be enforceable automatically within the DIFC. This ensures that the DIFC IP Law will operate in harmony with the relevant UAE IP laws, and that IP rights' owners who want to enforce their IP rights in the DIFC, shall ensure they have registrations under the Federal UAE laws.

2. IP Ownership in employment relationship

The issue of ownership of copyright has always created issues in the UAE especially against the backdrop where employment contracts are typically silent as to IP ownership and this issue is not addressed or regulated under the federal UAE Copyrights Law. In contrast, the DIFC IP Law has introduced an express framework for the ownership of copyright in employment relationships. The Law presumes employer ownership of copyright for all works created in the course of employment or using the employer's resources. Of course parties may agree otherwise, but any such agreement shall be in writing.

In addition, the DIFC IP Law regulates the IP ownership for commissioned works that are done by independent contractors outside the employment relationship, which is the concept of work for hire, which is new to the UAE.

Similarly, the ownership of inventions has been regulated in the DIFC IP Law, which is now in line with the UAE Federal Patent Law.

Hence, employers in the DIFC should now look into their employment agreements to bring IP ownership into line with the DIFC IP Law.

3. Well-known trademarks

The DIFC IP Law provides for clear criteria for considering a trademark as well-known, where such criteria are lacking in the UAE federal laws. The criteria provided under the DIFC IP Law are those adopted internationally and include: (i) the degree of public knowledge or recognition in a relevant sector; (ii) the duration, extent and geographical area of use; (iii) the duration, extent and geographical area of any promotion of the goods or services to which the trademark applies; (iv) the duration and geographical area of any registrations, or any applications for registrations, to the extent that they reflect use or recognition of the trademark; (v) the record of successful enforcement of rights in the trademark, in particular the extent to which the trademark was recognised as well known by competent authorities; and (vi) the commercial value associated with the trademark.

4. Trademark licence

The DIFC IP Law regulates trademark licensing and provides some provisions that balance licensor and licensee interests. The DIFC IP Law clearly states that any use by the licensee in contravention of the grant of the licence shall be considered to be an infringement. In addition, the Law has granted a licensee the right to take action against third party infringements affecting the interest of the licensee in cases where the licensor has refused to take action, unless agreed otherwise.

5. Trade names, conflicts with trademarks

Conflicts between trademarks and trade names are one of the most common conflicts in the UAE, due to the existence of separate registers for trademarks and trade names, and the lack of cross checking systems or protocols between the registries at the time of registration. Under the UAE federal laws there is no clear provision that specifically addresses this issue. By contrast, the DIFC IP Law clearly regulates the issue of conflicts between trademarks and trade names, and allows for an action to be taken against a trade name that is considered to conflict with a trademark.

6. Trademark fair use

The DIFC IP Law has introduced the concept of trademark fair use, which is new to the UAE and probably the whole Middle East region. The DIFC IP Law allows certain uses of third parties trademarks that would not be considered infringements. This includes the use within comparative commercial advertising or promotion to identify competing goods or services, provided that such use is in good faith and in accordance with honest practices in commerce; in news reporting, news commentary or parody; and to indicate the intended purpose of the goods or a service related thereto, provided that such use is necessary and in good faith.

The DIFC IP Law is a welcome addition to DIFC legislation which reflects the development of the DIFC as a hub for innovation and creativity in the UAE.

7. Patent infringement test

The DIFC IP Law provides lists of acts that constitute infringements of a registered patent. In addition, it has provided for some criteria for considering whether a patent has been infringed. For example, the infringement of one claim granted under the patent will be considered as an infringement of the patent. The DIFC IP Law has adopted the equivalent test of infringement rather than the literal, whereby a claim is considered to be infringed even though the infringing product, process or method does not fall within the literal scope of the patent claim but is equivalent to the claimed invention.

8. Trade secrets

In providing for the regulation of trade secrets the DIFC IP Law is the first legislation in the UAE to address trade secrets. The relevant section dealing with trade secrets within the Law is consistent with comparative international standards and will qualify information as a trade secret when it includes all of the following: (i) the information involved constitutes a Trade Secret as defined in wide terms in Schedule 1 to the Law, or part thereof; (ii) the information derives actual or potential economic value from not being generally known to other persons who may obtain economic value from its disclosure or use; and (iii) the person lawfully in control of the information has taken reasonable measures to keep the information a secret.

The DIFC IP Law also lists the acts that are considered misappropriation of trade secret rights, as well as the limitations on such rights, where the use would not be considered misappropriation.

9. Creation of administrative authority to enforce IP

The DIFC IP Law has created an administrative body that will be responsible for the administration of the law and for its non-judicial enforcement, which is the IP Commissioner. The IP Commissioner is entitled to resolve IP disputes and impose administrative fines against infringers. The establishment of such an administrative body will facilitate the enforcement of the IP rights within the DIFC jurisdiction, as usually IP infringements require quick and immediate action.

The IP Commissioner has the right to issue directions to cease, confiscate and destroy infringing goods. The Commissioner may also order the violator to refrain from the violation, including by removal of the infringement, and to carry out all necessary acts to abide by the Law. He or she may also request the DIFC Registrar of Companies to temporarily suspend the DIFC licence of the violator or, in the event of reputation, to revoke the violator's licence and/or impose up to double the maximum fines stipulated as being payable for the different types of contravention under Schedule 3 of the Law.

The decisions of the IP Commissioner can be challenged before the DIFC Courts.

10. Penalties for infringement

The DIFC IP Law has introduced hefty administrative penalties that range from US$ 5,000 to US$ 40,000 based on the type of infringement as detailed in Schedule 3 of the Law. The high penalties serve as a deterrent penalty for any type of infringement.

In the UAE, by way of comparison, administrative penalties are between US$ 4,000 and US$ 12,000; criminal penalties in the UAE on the other hand are low and tend almost invariably to be imposed by the Courts at the minimum amount equating to US$ 1,370.

11. DIFC Courts

Under Article 68(2) of the DIFC IP Law the DIFC Court has jurisdiction to issue injunction orders and to award damages resulting from the violation of any DIFC intellectual property legislation. Under Article 67 any victim of a violation of the Law has the right to resort to the Court to seek injunctions and damages, and in assessing the damages for infringement the Court may take into consideration loss including future loss established with a reasonable degree of certainty; the value of the subject intellectual property right infringed; and the loss of opportunity in proportion to the probability of that opportunity's occurrence.

Apart from actions under Part 5 of the Law, relating to misappropriation of trade secrets, which must be brought within three years after the misappropriation is discovered or should reasonably have been discovered by the injured party, the ordinary limitation period of six years for actions in tort applies.

Under Article 5(A)(1)(c) of the Judicial Authority Law ('JAL') the DIFC Courts have exclusive jurisdiction for all IP disputes and infringements arising in the DIFC. In this regard, the DIFC IP Law applies to any person who owns or claims ownership, uses or attempts to use, or who seeks to enforce or protect an intellectual property right, or any part thereof, in the DIFC. Therefore, IP owners may bring infringement or enforcement proceedings before the DIFC Courts relating to any infringements occurring within the DIFC.

In addition, under Article 5(A)(1)(a) JAL, any "DIFC Establishment", and therefore any company established in the DIFC, may either proceed as a claimant or be sued as a defendant in respect of any infringement occurring either within or outside the DIFC, including worldwide. This wider jurisdiction may be particularly apt for claims for damages including on a worldwide basis, especially given that the DIFC, as a common law jurisdiction, will assess and award damages for breaches of intellectual property rights commensurate with the practice of the English commercial courts and other common law jurisdictions. As such, for damages claims where the DIFC Court's jurisdiction can be engaged the DIFC Courts will offer claimants a significant advantage over the onshore UAE Courts, where compensation awards are typically modest.

In respect of the DIFC Courts' injunctive jurisdiction to enforce IP rights and restrain infringements, including by mandatory injunctions where appropriate, the orders of the DIFC Courts in this context as others can be enforced through the onshore Dubai or other local courts. Therefore, depending on the case, the seeking of injunctive relief before the DIFC Courts in respect of infringements occurring anywhere in the UAE may offer an effective remedy for speedy enforcement action onshore, as an addition to or in the alternative to taking direct actions before the local IP authorities or the local or federal courts.

In terms of the remedies open to owners of IP rights more generally, whether before the IP Commissioner or the DIFC Courts, the DIFC IP Law is a very positive addition to DIFC commercial laws and IP regulation. Notably, as well as introducing several best practice concepts and solutions to the wider UAE intellectual property landscape, the administrative remedies before the IP Commissioner and the statutory action for damages including worldwide damages for infringement of IP rights before the DIFC Courts are likely to be an important milestone for the protection of intellectual property in the UAE and the wider Middle East region.

For further information, please contact Rasha Al Ardah (r.alardah@tamimi.com).

Insight into the protection and enforcement of intellectual property rights in Egypt

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Intellectual Property Rights ('IPR') are, without a doubt, one of the most important assets of major companies and corporations. Not only are they important for the protection of a brand, but they are also important for the protection of the rights derived from the products developed and services promoted by corporations. This is clearly demonstrated by the huge legal battles that are initiated by Fortune 500 companies disputing ownership of trademarks, a new invention or a recently developed software.

For many years, Egypt has acknowledged the importance of the protection of IPR and its direct correlation to securing a healthy environment for investments. In addition to being one of the pioneers in the promulgation of legislation that protects IPR the Egyptian Constitution guarantees the protection of Intellectual and Industrial Rights. Egyptian Laws and Regulations also seek to protect IPR. For instance, the Minister of Health Decree no. (297) of 2009 requires a registrant of a pharmaceutical product to sign an undertaking attesting to compliance with Egyptian Protection of Intellectual Property Rights Law no. (82) of 2002 ('IP Law'). Another Example is the Minister of Internal Trade's Decree no. (43) of 2016 confirming the necessity of registration of trademarks at the General Organization of Export and Import Control for the importation of certain products.

In this Article, we shall address the necessary procedures required for the protection of IPR and methods of enforcement of certain rights in Egypt; namely trademarks, copyright and patents.

Trademarks

A Trademark is defined under the IP Law as 'a logo, mark or word that is used by a certain person, company or group to differentiate their products and/or services from others in the market.' One of the common misperceptions is the assumption that registration of a trademark grants the applicant ownership of that trademark. However, registration is only considered as proof of ownership, which can be disproven. According to Egyptian law, and as established and confirmed by precedent, ownership of the trademark is established by 'first use of the mark' in the market.

In any case, registration of a trademark is necessary for the enforcement of IPR in Egypt. The owner of a trademark registration is entitled to prohibit others from registering and/or using identical and/or similar trademarks through the following:

1. opposing the registration of a similar trademark. Even though any interested party is entitled to oppose the registration of a trademark, the chances of success in case of the presence of a trademark registration is much higher;
2. initiate a raid against traders of counterfeit products (i.e. products that bear similar or identical trademark);
3. initiate direct trademark Imitation misdemeanour against traders of counterfeit products; and
4. file for compensation action sustained and profit lost as a consequence of trademark infringement.

It is worth mentioning that well known trademarks enjoy special and wider protection under Egyptian Laws. Despite the fact that there are no criteria to prove 'well known' status, it is at the Court's sole discretion to assess the trademarks and fulfilment of the so called 'well known' criteria.

Copyright

Similar to trademarks, ownership of copyrighted content is proven either by first publication or prior submission. Copyright in Egypt is divided into three sections:

1. Drawings

These include cartoon characters, creative shapes and artistic drawings. Such content is registered at the Fine Arts Sector at the Supreme Council of Culture.

2. Books

This includes books and scripts. These books are registered at the National Library.

3. Software Codes

This is mainly the software code and language of the applications and/or software. Software codes are registered at the Information Technology Industry Development Agency ('ITIDA').

Furthermore, the Agency responsible for the enforcement of copyright depends on the copywritten content. In the case of drawings and books, the Censorship on Artistic Works is the responsible agency. Meanwhile, the Investigations Bureau, with the assistance of the ITIDA, is responsible for the enforcement of copyrighted software codes.

Patents

According to the IP Law, an invention is eligible to be patented when certain conditions are fulfilled:

1. novelty;
2. inventive step; and
3. capability of economic exploitation.

Once the patent has been registered, the owner of the patented invention is entitled to prohibit others from the commercial use of such patent.

Enforcement of rights related to a patent are achieved through filing patent infringement actions, and in urgent cases injunctions. Moreover, due to the nature and complexity of patents, the Egyptian courts usually assign a technical expert to review and adjudicate on the technical aspects of such disputes (i.e. an expert in the field of the patent which is the subject of the dispute is assigned with the task of reviewing and researching whether an infringement of a claimed right has occurred).

Conclusion

The Egyptian legislator has set up a system for the protection of IPR which protects the enforcement of such rights. Although this system is incomplete, it is still undergoing change and upgrades in an attempt to reach the optimum structure for the protection of proprietary works and thereby minimising infringements and violations of such rights.

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Registration of trademarks and its objectives in Oman

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Introduction

Business profitability is highly dependent on its brand. As a result, brands that gain fame and profitability among consumers create competition in the market. The fame of a brand opens the door to third parties in creating a similar brand; thereby potentially resulting in an infringement. Such a controversial and political issue gave rise to the complexity and importance of trademark registrations. Trademark registrations are a way of protecting an owner's legal rights in the goods and services a company holds. It also allows the trademark owner to sue for any infringement of any unauthorised use of their brand. The Omani trademark office is keen on inviting foreign investors and citizens who wish to do business in Oman to register their trademarks.

Since the Omani market has begun to recognise innovation, this article will demonstrate how trademarks are generally registered (theoretically and practically) in Oman and how products could be recalled if the labelling and trademark of the products are not consistent with the service of the product.

Registration of a trademark in Oman

Trademark law is defined as 'Everything that takes a distinctive form such as names, words, signatures, characters, symbols, numbers, titles, seals, drawings, images, engravings, packaging, figurative elements, shapes and/or a colour or a mixture of colours, or any other sign or group of signs used or intended to be used to distinguish goods or services of one business from the goods or services of another business, indicate the provision of a service, or indicate control and inspection of goods or services.'

To register a trademark in Oman, a trademark application must be submitted to the department of Intellectual Property Department ('IP Department') at the Ministry of Commerce and Industry. The application shall include the description of the mark and the list of goods and services (that are covered within the Nice Classification) required to register the mark. The trademark should be distinct from other trademarks in terms of shape, colours and symbols used and the trademark shall not be descriptive. The trademark shall also be truthful in describing the product. For example, the trademark 'GODIVA Belgium 1926'that is associated with a drawing of a horse is a distinct trademark associated with distinct handwriting, symbol and shape. As an example the term 'Belgium 1926' is an indication that GODIVA chocolate has been present since the year 1926. This represents the true meaning of the product and the company itself. Moreover, when registering trademarks, the applicant shall not use wordings such as 'discounted' associated with their trademark. This is because the trademark office is of view is that a shop cannot be discounted the whole year as it is against the policy in Oman. Therefore, the trademark shall not go against the policies and morals of the country. The fee for the submission of a trademark application is OMR 50 (US$ 139) for every Nice Classification in which the goods are covered.

Once the trademark is considered, a decision is issued by the IP Department that explains its objections in writing (if any). The applicant has 60 days to respond to the trademark office's decision. Once the objections have been resolved and the trademark application is accepted (without conditions), the applicant proceeds to pay OMR 100 (US$ 278) for the publication notice of the trademark application in the official gazette. The trademark will also need to be published in a local daily magazine. Publication in the official gazette is aimed at inviting any interested party to oppose the registration of the trademark. The opposition period is 60 days from the date of publication. Once 60 days have elapsed from the date of publication in the official gazette, the applicant can proceed in registering their trademark by paying a fee of OMR 50 (US$ 139) (for every Nice Classification).

Document trail required for registration of a trademark

The documents required for registering trademarks at the Omani trademark office are as follows:

- a power of attorney from the country of origin and notarised by the Omani embassy;
- a copy of the certificate of incorporation of the applicant company or an extract of the entry of the applicant in the commercial register;
- a soft copy of the proposed trademark;
- name and address of the company wishing to register the trademark; and
- a description of goods and services along with the Nice Classification.

It should be noted that in, practice, the above documents must be submitted to the trademark office in Arabic. Also, an applicant can initially proceed in filing for a trademark without submitting a power of attorney or certificate of incorporation; however, once the trademark is approved, the approval will only be based on the condition of submitting a power of attorney or certificate of incorporation.

Renewal of trademark

Under Omani trademark law, the protection conferred by the registration of a trademark is for a period of 10 years from the date of filing the registration application. The trademark owner shall have the right to renew the registration of a registered mark within the six months following the expiration of the registration. If the period of six months lapses and the owner of the mark has not applied for renewal thereof, the trademark office shall strike off the mark from the register. However, in practice, the trademark office gives applicants more than six months to renew their trademark without striking it off the register. For example, if a trademark expired in 2015, the trademark office will allow the applicant to file for renewal for a fee of OMR (US$ 834) with a fine of OMR (US$ 139) and the protection of the trademark will continue until 2025.

Importance of registering your trademark

It is also very important to have your trademark registered in other countries as it will be easier to challenge other potential infringing trademarks. It should be noted that the Omani trademark law provides leeway for established trademarks. For example, if a recognised trademark is not registered in Oman and a competitor wishes to register a similar trademark to that well known trademark, under Omani trademark law, the applicant of that well established trademark is within its rights to challenge the proposed registration under conditions, as set out below:

1. submits evidence that he or she has used that mark in good faith for at least six months prior to the filing date or the priority date, if applicable;
2. submits evidence that he or she has acquired clientele and that clientele attributes some reputation to the mark; and
3. he or she files an application for registration of his or her own mark prior to sending the registry the notice to opposition.

Moreover, it is important to have your trademark registered to protect your business from unfair competition and in order to easily raise cases at the competent authority if your trademark is infringed by other parties. Further, since we are living in a generation of innovation, the marketplace is flooded with products and it is hard to distinguish a person's product from their competitors'. Therefore, trademarks are an efficient commercial communication to capture customers' attention.

Conclusion

To conclude, intellectual property is a growing field in the Sultanate of Oman. Consumers in Oman have been innovative in creating brands and products and therefore registering such brands can protect businesses from unfair competition. Consumers should always create a trademark that best describes the role and service of their product. Falsifying the true meaning of a product can be recalled by the Authority. The Omani trademark office has simplified the process for consumers to protect their brands making the procedures for registering trademarks that much easier for their consumers.

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United Arab Emirates
Ministry of Justice
50th Year
Issue No. 671
5 Jumada al-Akhirah 1441H
30 January 2020

FEDERAL DECREES

138 of 2019	Ratifying the UAE-Niger Agreement on the Encouragement and Reciprocal Protection of Investments.
140 of 2019	Ratifying the UAE-Niger Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income.
143 of 2019	Ratifying the UAE-Botswana Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income.
161 of 2019	Ratifying the UAE-Peru Agreement on Mutual Exemption of Entry Visa Requirements for Holders of Diplomatic, Special, and Service Passports.
162 of 2019	Ratifying the UAE [Ministry of Economy]-China [The National Development and Reform Commission]-Agreement for Strengthening Industrial Base Capability and Investment Cooperation.
163 of 2019	Ratifying the Agreement on Liberalization of Trade in Services among Arab Countries.
164 of 2019	Ratifying the UAE-Mali Agreement for Economic and Technical Cooperation.
165 of 2019	Ratifying the UAE-Cyprus Agreement for Economic and Technical Cooperation.
167 of 2019	Ratifying the UAE-Grenada Agreement for Air Services Between and Beyond their Respective Territories.
168 of 2019	Ratifying the UAE-Marshall Islands Agreement for Air Services Between and Beyond their Respective Territories.
169 of 2019	Ratifying the UAE-Ireland Agreement for Air Services Between and Beyond their Respective Territories.
170 of 2019	Ratifying the UAE-Estonia Agreement for Air Services Between and Beyond their Respective Territories.
171 of 2019	Ratifying the UAE-Bhutan Agreement for Air Services.
172 of 2019	Ratifying the UAE-Gambia Agreement for Air Services Between and Beyond their Respective Territories.
173 of 2019	Ratifying the UAE-Bahrain Agreement for Air Services Between and Beyond their Respective Territories.
174 of 2019	Ratifying the UAE-Kiribati Agreement for Air Services Between and Beyond their Respective Territories.
175 of 2019	Ratifying the UAE-Bosnia & Herzegovina Agreement for Air Services Between and Beyond their Respective Territories.
176 of 2019	Ratifying the UAE-Vanuatu Agreement for Air Services Between and Beyond their Respective Territories.

ADMINISTRATIVE DECISIONS

- From the Securities and Commodities Authority (SCA)
  - Certificate of approval of amendment of the Articles of Association of Ras Al Khaimah National Insurance Company PSC.
  - Certificate of approval of registration of Etihad Export Credit Insurance Company PJSC.

United Arab Emirates
Ministry of Justice
50th Year
Issue No. 672
22 Jumada al-Akhirah 1441H
16 February 2020

FEDERAL LAWS

1 of 2020	Repealing Federal Decree-Law No. (3) of 2013 on the establishment and organization of the Office of the Representative of the President of the UAE.

FEDERAL DECREES

1 of 2020	Conferring the rank of Undersecretary on the Director General of the Federal Youth Authority.
2 of 2020	Establishing a UAE embassy in Mauritius.
3 of 2020	Establishing a UAE embassy in Sierra Leone.
4 of 2020	Terminating the duties of the UAE Ambassador to Brazil.
5 of 2020	Transferring the UAE Consul General in Boston to the Headquarters of the Ministry of Foreign Affairs and International Cooperation.
6 of 2020	Transferring the UAE Ambassador to Indonesia to the Headquarters of the Ministry of Foreign Affairs and International Cooperation.
7 of 2020	On performing the duties of the UAE Ambassador to Indonesia.
8 of 2020	On performing the duties of the UAE Ambassador to Germany.
9 of 2020	Appointing a UAE Consul General in Boston.
10 of 2020	Appointing a UAE Ambassador to Norway.
11 of 2020	Appointing a UAE Consul General in Toronto.
12 of 2020	Ratifying the UAE-Zimbabwe Agreement for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with respect to Taxes on Income.
13 of 2020	Ratifying the UAE-Hong Kong Agreement on the Encouragement and Reciprocal Protection of Investments.
14 of 2020	Ratifying the UAE-Zimbabwe Agreement on the Encouragement and Reciprocal Protection of Investments.
15 of 2020	Ratifying the UAE-Senegal Agreement on the Encouragement and Reciprocal Protection of Investments.
16 of 2020	Terminating the tenure of the Vice-Chancellor of the United Arab Emirates University.
17 of 2020	Terminating the tenure of the Director General of the Federal Customs Authority.
18 of 2020	Promoting an employee of the Federal Customs Authority.
19 of 2020	Appointing the Deputy Director General of the National Emergency Crisis and Disaster Management Authority.

21 of 2020	On the retirement of judges of the Federal Courts.
28 of 2020	Terminating an employee's secondment.

REGULATORY DECISIONS OF THE CABINET

64 of 2019	On the effective date of Federal Decree-Law No. (4) of 2019 amending the Penal Code.
65 of 2019	On the effective date of Federal Decree-Law No. (10) of 2019 on Protection Against Domestic Violence.
7 of 2020	Amending Cabinet Decision No. (31) of 2019 Specifying the Requirements for Real Economic Activity.
9 of 2020	Promulgating the executive regulations of Federal Law No. (9) of 2017 on veterinary products.
10 of 2020	On the UAE solar products monitoring system.

MINISTERIAL DECISIONS

- From the Ministry of Justice

31 of 2020	Authorizing certain officials at SAAED for Traffic Systems to enforce the law as judicial officers.
32 of 2020	Authorizing certain officials at the Government of Sharjah Human Resource Department's Roads & Transport Authority to enforce the law as judicial officers.
46 of 2020	On the new composition of the admissions committee responsible for screening applications, interviewing applicants, and selecting among applicants for listing as court banking experts.
53 of 2020	Appointing the Chief Justice of a Federal Court of First Instance.

- From the Ministry of Health and Prevention

1019 of 2019	On the reclassification of semi-controlled drugs.

ADMINISTRATIVE DECISIONS

- From the National Media Council

2 of 2020	Assigning the duties of Director General.
7 of 2020	On the implementation of a decree terminating an employee's secondment.

- From the Federal Transport Authority - Land and Maritime

1 of 2020	On the registration, licensing and use of pleasure craft.

- From the UAE Central Bank

01/COMMEMORATIVE COIN/2020	Issuing a commemorative silver coin to mark the naming of Sharjah as World Book Capital for 2019.
02/COMMEMORATIVE COIN/2020	Issuing a commemorative silver coin to commemorate the first Emirati astronaut's space mission.
-	The Dormant Account Regulation.

- From the Securities & Commodities Authority

-	Certificate of registration of Abu Dhabi Developmental Holding Company PJSC.
-	Certificate of approval of amendment of the Articles of Association of Methaq Takaful Insurance Company PSC.
-	Certificate of approval of amendment of the Articles of Association of Ras Al Khaimah Co. for White Cement & Construction Materials PSC.

United Arab Emirates
Ministry of Justice

50th Year
Issue No. 673
3 Rajab 1441H
27 February 2020

FEDERAL LAWS

2 of 2020	Amending Federal Law No. (5) of 1992 regarding the Police College.

CORRIGENDUM

-	Federal Decree-Law No. (23) of 2019 amending Federal Decree-Law No. (9) of 2016 on Bankruptcy, published in Issue No. 662 Supplement 2, dated 15.09.19.

FEDERAL DECREES

166 of 2019	Ratifying the UAE-Bahrain International Transport of Passengers and Goods by Road Agreement.

MINISTERIAL DECISIONS

- From the Ministry of Justice

86 of 2020	The MoJ's information security and user compliance guidelines.
109 of 2020	Adding a member to the committee tasked with interviewing and assessing applicants for registration on the Roll of Intellectual Property Experts admitted before the courts.
121 of 2020	On the establishment of the Family and Juvenile Prosecution.

ADMINISTRATIVE DECISIONS

- From the Securities and Commodities Authority (SCA)

3 R.M of 2020	Approving the Governance Standards of Public Joint Stock Companies.
4 R.M of 2020	Amending SCA BoD Resolution 157R of 2005 on the Regulations concerning Listing and Trading Commodities and Commodity Contracts.
5 R.M of 2020	On the Adequacy Standards.
-	Certificate of approval of amendment of the Articles of Association of Al Hilal Takaful Company PSC.

United Arab Emirates
Ministry of Justice

50th Year
Issue No. 674
16 Rajab 1441H
11 March 2020

FEDERAL DECREES

31 of 2020	Ratifying the UAE-International Renewable Energy Agency (IRENA) Supplementary Agreement to the Headquarters Agreement.
32 of 2020	Ratifying Amendments to the Framework Agreement on the establishment of the International Solar Alliance.
33 of 2020	Ratifying the UAE-Equatorial Guinea Agreement on Mutual Exemption of Entry Visa Requirements.
34 of 2020	Terminating the duties of the UAE Ambassador to Barbados.
35 of 2020	Transferring the UAE Ambassador to New Zealand.
36 of 2020	On performing the duties of the Head of the UAE Representative Mission to Barcelona.
37 of 2020	Appointing a UAE non-resident ambassador to Barbados.
38 of 2020	Appointing a UAE non-resident ambassador to Estonia.
39 of 2020	Appointing a UAE Ambassador to Brazil.
40 of 2020	Appointing a UAE Ambassador to Bulgaria.
41 of 2020	Appointing a UAE Consul General in Hong Kong.

REGULATORY DECISIONS OF THE CABINET

11 of 2020	Promulgating the executive regulations of Federal Law No. (19) of 2016 on Combatting Commercial Fraud.
14 of 2020	On the Medical Liability Supreme Committee.

MINISTERIAL DECISIONS

- From the Ministry of Health and Prevention

221 of 2020	Amending the Communicable Disease List.
223 of 2020	Amending the Communicable Disease List.

Awards

Managing Intellectual Property Awards Success

We were honoured to be recognised as the **UAE- Contentious Firm of the Year** at the 15th Managing Intellectual Property Awards 2020.

The Managing Intellectual Property EMEA Awards, held in London this year on 5 March , provided an unrivalled opportunity for the leading IP firms and their clients from around the world to come together for a refined evening of dining and networking. The Managing IP awards programme is widely recognised as the most comprehensive and respected IP law firm awards event in the world, with the programme covering a vast range of IP practice areas, across over 30 jurisdictions. This year, the ceremony was attended by over 650 Intellectual Property practitioners and over 200 client organisations from around the world. Awards were presented to firms, individuals and companies that conducted the most innovative and challenging IP work of the past year, as well as those driving key developments in the international IP market.

Congratulations to practice leaders, Omar Obeidat, Partner, Head of Intellectual Property, Ahmad Saleh, Partner, Head of Patents & Designs (R&D and Innovations) and the Intellectual Property team. We would also like to thank our clients and peers for their continued trust and support.

MIP
FIRM OF THE YEAR
2020

Bahrain

12th **FEB**

International Construction Companies Roundtable
The Capital Club, Manama

Our Bahrain office alongside The International Labour Organization ('ILO') in association with the International Organization of Employers hosted an intimate breakfast roundtable at the Capital Club, Wednesday 12th February.

Delivered by an ILO representative, the primary focus of the session was for the charity to launch their guidance toolkit, designed for construction companies in the Gulf States. In order for the toolkit to be fully understood, it was important that companies understood why it was important for such a guidance tool to exist. As a result the session covered topics such as understanding how complying with international standards of worker welfare can increase business productivity: best practices on recruitment wages and benefits, contacts, and workplace safety: understanding what investors and clients may require from companies in their supply chains and the challenges facing companies in implementing worker welfare, and also risks of poor practices and lack of due diligence. Companies can use this practical and flexible tool to enhance their ability to comply with national and international labour standards.

The session was attended by representatives from the Bahrain Chamber of Commerce & Industry ('BCCI'), Nass Corporation, Olympic Contracting and Ahmed Omer Contracting / Bahrain Chamber of Commerce & Industry.

Egypt

19th **FEB**

Al Tamimi & Company participates in the Legal 500 GC Summit
Four Seasons Hotel Cairo at Nile Plaza, Cairo

We are pleased to announce our participation in the Legal 500 GC summit which took place in Cairo on Wednesday, the 19th of February 2020 at Four Seasons Hotel Nile Plaza.

The event brought together leading in-house lawyers and experts from Egypt to discuss key issues and challenges that companies based in Egypt are faced with.

We were the exclusive sponsor of a panel session held in relation to competition laws in Egypt. The session addressed the thin line that should be drawn between normal business practices and anti-competitive practices.

Dr. Khaled Attia was the moderator of the session alongside two panellists; Justin Woodward, Chief Compliance Officer, Ezz Steel and Nada Amer, General Counsel, Unilever Mashreq. The session focused on resale price maintenance in distribution agreements, exclusive geographical distribution, and merger & acquisition transactions.

Saudi Arabia

22nd **FEB**

Al Tamimi & Company invited to the Third Annual Alumni Reunion at Prince Sultan University
Prince Sultan University, Riyadh

The Deanship of Student Affairs, represented by the Unit of Cooperative Education and Alumni Relations at Prince Sultan University ('PSU') invited Al Tamimi and Company to participate in their Third Annual Alumni Reunion, for graduates and postgraduates (Bachelor - Masters).

The event took place on the 22nd of February where our trainee lawyers supported by the Marketing team represented the firm's booth at the University campus along with other known companies in the Saudi market.

We were very honoured and proud to have received a plaque of appreciation for our *'generous support and cooperation with the university in cooperative training program and employment of PSU graduates'*.

26th **FEB**

FURAS Forum in Riyadh
Riyadh International Exhibition and Convention Center, Riyadh

We were delighted to have Hesham Al Homoud, Partner and Head of Corporate Structuring - KSA, as a moderator for the 'Public-private partnership ('PPP') in the Municipal Investments panel' at the Municipal Investment Forum ('FURAS') hosted by the Ministry of Municipal and Rural Affairs.

About the panel

The privatization program is one of the main programs to achieve Saudi Vision 2030, which will allow an increase in the quality of government projects and services, and to remove any obstacles that may hinder the private sector from playing a greater role in economic development. In addition, the program seeks to contribute in advancing the development and raising the level of private sector participation in the local product by promoting consumer spending and attracting capital investments.

This session highlighted the most important opportunities and initiatives of partnership with the private sector in the municipalities. Furthermore, the session offered a series of partnership models that will entice the private sectors to participate in achieving the balance between revenues and risk assessments, while taking into account the legal aspects that preserves the rights of urban residents. This session also guaranteed the participatory and balanced relationship between the municipalities and the private sectors.

United Arab Emirates

20–21 JAN

ICC Annual Trade Conference Dubai 2020
Four Seasons Jumeirah, Dubai

The ICC Annual Trade Conference 2020 took place at the Four Seasons on Jumeirah Beach Road on 20th – 21st January with a strong Al Tamimi & Company presence on the line up to contribute to the discussions around changing trade dynamics in the Region.

Ibtissem Lassoued closed out the final panel session of the conference, leading a discussion on trade sanctions alongside the Head of Export / Import for the UAE Federal Authority for Nuclear Regulation, the Head of Sanctions for Mashreq Bank and a Partner in EY's Forensic & Integrity Services. The speakers represented a triad of expertise on developments in the UAE's trade sanctions landscape, covering public sector efforts to implement a robust supervision framework, the practical challenges faced by financial institutions in modernising and maintaining their compliance programmes, and the emerging risks witnessed in the private sector for sanctions circumvention schemes in sectors like the maritime industry, which experiences high exposure to sanctions volatility. Raising awareness around these topics is a high-priority objective for the UAE authorities following reform to its sanctions framework and renewed commitment to implementing international best practice following its assessment by the Financial Action Task Force last year. Companies operating in high-risk sectors must implement defensive control programmes to ensure that they are able to manage their exposure to trading with restricted entities, and understanding the broader context of the UAE's sanctions legislation is an important step to achieving this.

Hassan Arab was also in attendance as the Chair of the ICC UAE Commission on Arbitration & ADR and delivered the opening remarks for the special focus session on Trade Dispute Resolution.

16–18 FEB

8th ICC MENA Conference
Park Hyatt Hotel, Dubai Creek Club

Looking back on a busy week with another successful ICC Arbitration Annual MENA Conference in Dubai. On Sunday, 16 February, Sara Koleilat-Aranjo, Senior Associate, shared insights on strategic considerations when applying for interim measures at the ICC Advanced Level Training. On Monday, 17 February, Hassan Arab, Partner, Regional Head of Dispute Resolution and Chair of the ICC UAE Commission on Arbitration & ADR delivered the opening remarks of the 8th ICC MENA Conference on International Arbitration. Finally, we were delighted to support the joint ICC Arbitration-ArbitralWomen event on Tuesday, 18 February, where distinguished speakers discussed entrance barriers and corrective measures for women across arbitration, mediation, adjudication and expert proceedings. A big thank you to ICC Arbitration for hosting these successful set of events throughout this week – We are already looking forward to next year!

26th **FEB**

DIFC Chief Justice launches Courts' 2019 Annual Review
Four Seasons Hotel, DIFC

The International Litigation Team attended a spring gathering hosted by the Chief Justice of the DIFC Courts, H.E. Justice Tun Zaki Azmi, on 26 February 2020 at the Four Seasons Hotel, DIFC.

The Chief Justice called the gathering, of leading DIFC Courts practitioners, to announce the release of the Courts' Annual Review for 2019. Last year was a very successful one for the DIFC:

- Over AED 5.7 billion of claims were brought across the Courts (claims in the Court of First Instance and Small Claims Tribunal, and arbitration and enforcement claims)
- Claims of all types had increased by 42% from 2018.
- The average CFI and arbitration claim was over AED 82 million, and the average enforcement action sought to enforce payment orders of over AED 10 million.
- Two new judges were added the Courts' bench in 2019: Justice Wayne Martin and Justice Robert French, both distinguished Australian judges.

Furthermore, two specialist judicial appointments were announced at the gathering. H.E. Justice Shamlan Al Sawalehi has been appointed judge with special responsibility for arbitration matters, and H.E. Justice Ali Shamis Al Madhani is to be judge with special responsibility for the Courts' international relations. Justice Sir Richard Field had previously been appointed as judge in charge of the Courts' technology and construction division.

The Chief Justice particularly emphasised the pioneering role of women in the Courts' staff, who totalled almost 2/3 of all employees, and over a third of employees were UAE nationals.

In addition to the successes highlighted by the Chief Justice, in 2019 the DIFC Courts signed a co-operate agreement with the Dubai Future Foundation to launch the world's first Court technology laboratory, which Al Tamimi is involved in setting up. More than 600 employees in the DIFC had received assistance from the Pro Bono Clinic.

The Annual Review can be found at https://www.difccourts.ae/2020/02/26/difc-courts-annual-review-2019/.

27th **FEB**

Capital Raising Opportunities for Family Businesses
Nasdaq Dubai, DIFC

On Thursday 27th February, Andrew Tarbuck, Partner, Head of Capital Markets, Richard Catling, Partner and Nawal Abdelhadi, Senior Associate spoke at our joint event with Nasdaq Dubai on capital raising opportunities for family businesses. Some of the key topics covered were the challenges and pitfalls for families in business in the region, corporatization and consolidation as well as the advantages of going public for family businesses. It was an insightful event with over 40 attendees from family businesses, institutions and advisors, such as Alpen Capital, the Al Habtoor Group, Foundation Holdings and the Amana Group.

Other Events

Tuesday, 4th February
Al Tamimi & Company and Singapore International Arbitration Centre (SIAC) Lunchtime Event
DIFC Office, Dubai, UAE

Speakers:

Gary Born
Partner, Chair of the International Arbitration

Lim Seok Hui
Chief Executive Officer, SIAC

Thomas Snider
Partner, Head of Arbitration

Sunday, 16th February
Korean B&F Clients Round Table Lunch
DIFC Office, Dubai, UAE

Speakers:

Mamoon Khan
Partner, Banking & Finance

Gordon Barr
Partner, Employment

Noff Al Khafaji
Senior Associate, Corporate Structuring

Tuesday, 18th February
Arbitrator Intelligence Breakfast Event: The Representation of Regional Arbitrators in International Arbitration
DIFC Office, Dubai, UAE

Speakers:

Thomas Snider
Partner and Head of Arbitration, Al Tamimi & Company

Aseel Barghuthi
Associate, Herbert Smith Freehills, New York City

Akram Abu El-Huda
General Counsel and Director of Compliance, CICON

Catherine A. Rogers
Professor, Penn State Law and Queen Mary University, London; Founder and CEO, Arbitrator Intelligence

Robert Stephen
Registrar, DIFC-LCIA

Thursday, 20th February
GC Innovation Roundtable
IN5 Dubai Internet City, Dubai, UAE

Speakers:

Martin Hayward
Head of Technology, Media & Telecommunications

Allison Hosking
Director of Knowledge & Legal Transformation

About Us

Al Tamimi & Company has unrivalled experience, having operated in the region for over 30 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 MENA region.

17 Offices

9 Countries

75 Partners

350+ Lawyers

450+ Legal Professionals

850 Employees

50+ Nationalities

1 Fully Integrated Law Firm

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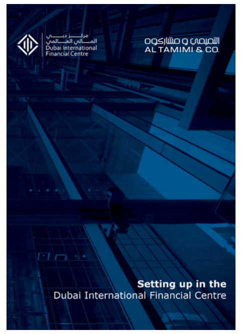
Publications

Al Tamimi & Company is at the forefront of sharing knowledge and insights 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.



Accolades

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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

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> **“We appreciate the diversity of the lawyers’ backgrounds – there’s always someone qualified to answer any query.**

Chambers Global

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