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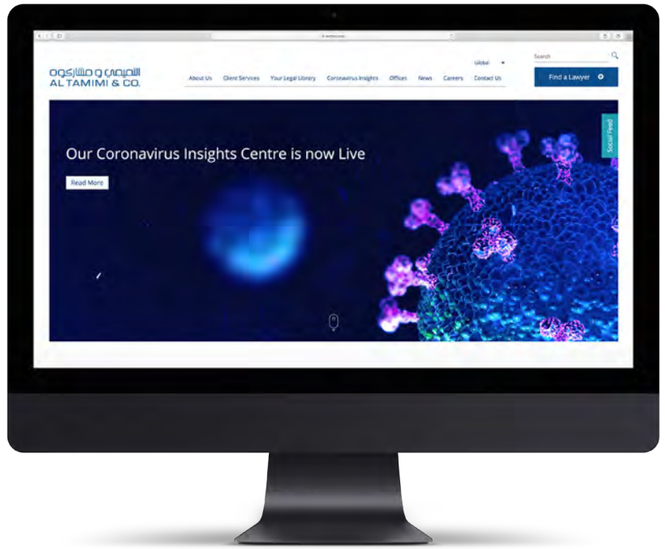
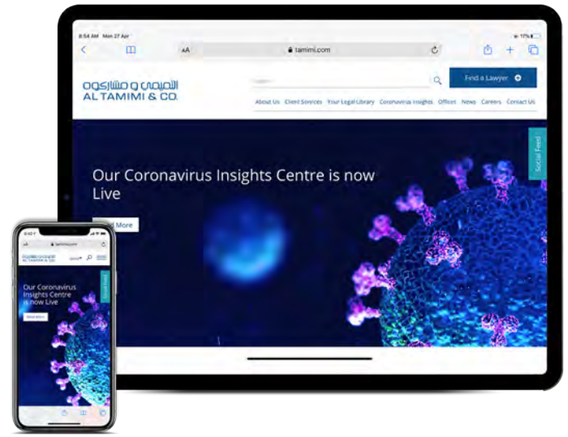
LAW UPDATE

Latest Legal News and Developments from the MENA Region

LAW UPDATE *Online*





For practical guidance and assistance on COVID-19, please visit our dedicated Coronavirus insights centre.

If you would like to have additional information on any of the topics covered or with other matters that are impacting your business with regard to COVID-19, please contact our special coronavirus email address: COVID-19advice@tamimi.com.

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In this Issue

Welcome to April 2020's issue of Law Update.

I hope this edition finds you well and that you are looking forward to the blessed month of Ramadan.

This month's special focus is on Real Estate and Hotels & Leisure. These industry sectors are critical to the success of the Middle East and North Afican ('MENA') economies but, unfortunately, both are under severe pressure due to the current crisis surrounding COVID-19. It is at times like this - when it's more critical than ever for companies to be able to identify, analyse and evaluate potential risks and opportunities – that a deep understanding of an industry sector and a practical knowledge of how the law operates are so important. I'm pleased to say that these are qualities which set Al Tamimi & Company apart from other law firms in the region.

A good example of this is our partnership with Dubai Land Department in respect of its 'Real Estate Lawyer' initiative. The objective of the initiative is to enhance transparency for real estate investors and simplify the process of completing real estate transactions in Dubai. Al Tamimi & Company was the first law firm to participate in this initiative following its launch in July 2019. The initiative has been gaining momentum steadily ever since.

Turning to this month's articles, our leading advisors in the UAE Hotels & Leisure sector, Tara Marlow and Ian Arnott, take us through performance testing in the hotel industry while questioning whether the performance test criteria will be strictly adhered to against the backdrop of the current climate (page 40).

In Saudi Arabia, our experts examine the new Regulation Regarding Ownership of Real Estate Units in Saudi Arabia and considers the positive impact it is likely to have on the regulation of the retail industry which, in turn, is expected to attract foreign direct investment and thereby boost the Kingdom's real estate market (page 44).

Looking at the increasing importance of technology in the smooth management and operation of hotels, as well as how best to appeal to new customers and encourage loyalty, our Dubai TMT experts explore the key legal and regulatory issues of which UAE hoteliers need to be aware, in order to guarantee they can fully exploit the benefits of technological advancements (page 58).

Staying in the UAE, our Real Estate and Investment Funds team delves into the rising attraction of property funds, in particular, how they may benefit sponsors. Importantly, they note that the UAE's property funds' framework is in line with international best practice and is capable of promoting and supporting a potentially thriving property funds' market in the region (page 68).

Turning to our colleagues in Egypt, there is a clear focus on going beyond the internationally renowned historical and cultural sites that have traditionally appealed to tourists as we see plans to tap into the potential of sporting events in order to attract a 'new' type of tourist and increase visitor numbers (page 82).

Indeed, our Egyptian team goes on to highlight that Egyptian hoteliers have recognised the need to (and benefit of) look at elevating the customer experience and are showing a willingness to embrace a different means of assessing 'hotel star ratings' with a view to accommodating their potential new clients (page 80).

In our general section our teams look at a variety of developments including new advertisement law in the Kurdistan Region in Iraq (page 30) and Saudi Arabia's draft Cloud Cybersecurity controls (page 34).

Our Banking & Finance team considers the growing appeal of alternative financing, especially from the perspective of small to medium businesses that may find it more challenging to raise working capital (page 20).

This month there have been a number of important judgments which may interest our readers. Firstly, our Private Client Services practice group draws attention to a decision which underlines the importance of knowing that everyone has the right of recourse under the judicial system (page 10).

A second judgment highlighted by our litigators represents a welcome decision by the Courts of England and Wales which enforced a decision of a Dubai Court. It is anticipated that this ground-breaking decision is also likely to have a significant impact on the prospects of enforcing English judgments in the UAE (page 14).

I hope you enjoy this in-depth issue. Should you have any questions about any of our topics, please feel free to reach out.

Best regards,

Samer Qudah

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Real Estate / Hotels &Leisure

When can a seller's mortgage be considered a reason to cancel a sale and purchase agreement?

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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Introduction

The UAE Courts have a wide range of discretionary powers to resolve disputes between sellers and purchasers if sufficient reasons exist to cancel the sale and purchase agreement concluded by the parties. The court will evaluate whether the parties fulfilled their obligations, and the reasons for and extent of the shortcoming of the alleged defaulting party.

In a recent judgment issued by the Dubai Court of Cassation (Appeal number 8/2019 hearing dated 6 March 2019), the Court held that a developer was in breach of its obligations towards the purchaser of a unit, as the developer had mortgaged the unit as security for a loan. The court arrived at this conclusion even though the purchaser was in default of its payment obligations because it had not made its payments due to the developer under the payment schedule annexed to the sale and purchase agreement.

Background

The developer ('Developer') concluded a sale and purchase agreement ('SPA') with the purchaser ('Purchaser') for the off-plan purchase of a unit in Dubai. The Purchaser made an advance payment of 40 per cent to the Developer at the time of signing the SPA. The provisions of the SPA did not specify the time for completion of the project. As the project was progressing at a slow pace, the Purchaser failed to make due payments and the Developer cancelled the SPA through the Dubai Land Department ('DLD'). Consequently, the Developer mortgaged the unit for a loan.

"In this decision of the Cassation Court, even though the Purchaser was in default because of a failure to pay, the court observed that the Developer's action to mortgage the real estate unit as collateral legally barred the Developer from disposing of the real estate. The breach committed by the Developer was more serious than the breach by the Purchaser and this justified the Purchaser's request to cancel the SPA.

The Purchaser filed a lawsuit before the Dubai Court of First Instance seeking the cancellation of the SPA requiring the Developer to return the purchase price. The Purchaser argued that the project was moving at such a slow pace that it had the right to withhold the payment of the purchase price. The Developer responded that it had the right to cancel the SPA as the Purchaser defaulted to make the payment, and further pleaded that the unit remained available for use and occupancy as it had not been sold to a third party; the Purchaser could take possession of the unit after paying the remaining balance of the purchase price.

Judgment

The Dubai Court of First Instance decided to cancel the SPA and obliged the Developer to return the purchase price paid by the Purchaser.

The Developer filed an appeal before the Dubai Court of Appeal challenging the First Instance Court judgment, but the Appeal Court rejected the appeal.

The Developer brought an appeal before the Court of Cassation on the following grounds:

1. the Court of Appeal had erred in rejecting the appeal because, although the unit was mortgaged, that did not preclude the Developer from transferring the title of the unit to a third party;
2. the Developer had lawfully exercised its right to cancel the SPA through the DLD and registered the unit in the Developer's name as the Purchaser defaulted in paying the purchase price; and

3. since the unit was still registered under the Developer's name, that did not make the contract impossible to perform as the mortgage on the unit could be released.

The Court of Cassation confirmed the Appeal Court's judgment which dismissed the Developer's appeal and stated that the Purchaser had the right to withhold the contractual obligation to make the purchase price, taking into account that the project was progressing at a slow pace.

The Court relied on the Mortgage Law (Dubai Law No. 14 of 2008) and observed that when a debt was secured by a mortgage over the unit, it provided an undivided interest therein, right in rem, or personal right over the property to the mortgagee until the mortgage debt was repaid. It also provided the mortgagee the right to follow the mortgaged property into the hands of any person in possession of the property thereof, to obtain payment of the mortgaged sum.

The Court stated that, in a binding contract, if one of the contracting parties did not do what he or she was obliged to do under the contract, the other party may require that the contract be rescinded. The existence of sufficient grounds for cancellation of a binding contract and the determination of whether or not either party is in default of performance of his or her contractual obligations was a question of fact for the trial court to decide as fact finder.

A registered mortgage contract which the developer entered into with the mortgagee, be it a licensed bank or a finance company or institution, with the proposed real estate or real estate unit as collateral, would legally bar the developer from disposing of the real estate or real estate units which had been mortgaged to secure its legal obligations against the purchaser who purchased the units as long as the mortgage contract remained in effect.

Conclusion

The Cassation Court's judgment indicates that, in an action for the cancellation of the contract, the court examines the contractual obligations of the parties and assesses the extent of the breach committed to determine if the breach committed by one of the parties is sufficiently gross to justify the cancellation of the contract.

In this decision of the Cassation Court, even though the Purchaser was in default because of a failure to pay, the court observed that the Developer's action to mortgage the real estate unit as collateral legally barred the Developer from disposing of the real estate. The breach committed by the Developer was more serious than the breach by the Purchaser and this justified the Purchaser's request to cancel the SPA.

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Are you lawfully exercising your right?

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Is the right to have recourse to the judicial system guaranteed in all cases? In what circumstances can a person be held liable for an unlawful or wrongful exercise of their rights to file a claim before the UAE courts? What is the general position adopted by the UAE Courts on whether or not a person has abused their rights in filing a claim? In this article we look at a recent ruling of the Court of Cassation which sheds some light on these questions.

The dispute

The Claimant filed a civil claim against his ex-wife and her son (the 'Respondents'), seeking compensation for material and moral damages on the basis that one of the Respondents (his ex-wife) filed a malicious criminal complaint against the Claimant and accused him of adultery.

The criminal complaint arose after the Claimant's ex-wife's son, while using a shared household laptop, stumbled upon a CD file which showed the Claimant with an unknown woman committing adultery in the parties' marital home. Based on this evidence, the Claimant's ex-wife submitted a complaint to the public prosecution and the CD file was referred to a forensic laboratory for examination. The forensic laboratory issued a report concluding that the images on the CD had been extracted from a cell phone, and there was no indication that the images had been altered or fabricated.

The Criminal Court of First Instance rendered its judgment against the Claimant sentencing him to one month's imprisonment and deportation for committing adultery. The Claimant appealed this judgment, but the Appeal Court upheld the ruling of the Court of First Instance. The Claimant made a further appeal to the Court of Cassation. The Court of Cassation accepted the appeal and repealed the Appeal Judgment, returning the case to the Court of Appeal for a re-trial. The re-trial ended with the Appeal Court ruling in favour of the Claimant and declaring him innocent. It based its finding on the fact that the files were transferred from an anonymous cell phone and since the method of transferring the files could not be determined, it could not be relied upon as admissible evidence to convict the Claimant.

This is what led the Claimant to file a civil claim against the Respondents, seeking compensation for material and moral damages in the sum of AED 100,000,000 (approximately US$ 2.5 million) plus interest, on the basis that the Respondents filed a malicious complaint which had resulted in his imprisonment and deportation thereby causing him significant material and moral harm.

The Court of First Instance and the Court of Appeal

The Court of First Instance dismissed the case and ruled that the Claimant must pay the court expenses and AED 1,000 legal fees (US$ 273). The Claimant appealed that judgment before the Court of Appeal. He argued that the Court of First Instance's judgment was based on flawed reasoning, wrongful interpretation of the law and contradicted the facts established by the documents submitted to the court as evidence. However, the Court of Appeal upheld the Court of First Instance's ruling and dismissed the appeal obliging the Claimant to pay all of the court and legal expenses.

The Court of Cassation

The Claimant appealed to the Court of Cassation, arguing that the Appeal judgment was flawed as it ignored the criminal court ruling that the Claimant was found innocent and that therefore the criminal claim was just a malicious complaint filed by his ex-wife with the malicious intent to cause harm to the Claimant. The Claimant also alleged that the images were fabricated by the Respondents in an attempt to damage the Claimant's reputation and his high social status. The Respondents argued that there was no malicious intent as the Claimant was married to one of the Respondents at the time the complaint was filed and it was based on evidence that strongly suggested he committed adultery. Thus the Claimant's ex-wife was well within her rights under the UAE Civil Law to file her complaint with the competent judicial authorities.

The Court of Cassation accepted the Respondents' defence and upheld the Court of Appeal judgment. The Court of Cassation laid down the following two underlying principles:

1. the right to resort to the judicial system is guaranteed to all by law; and
2. an individual who lawfully exercises this right should not be expected to incur damages or be liable for any harm, unless malicious intent, bad faith or misuse on their part is established.

Moreover, the Court clarified that, as per Articles 106 of the UAE Civil Transactions Law, the exercise of a right shall be deemed unlawful if:

1. *'the intention of the person exercising that right is to infringe the rights of another person and/or cause harm to them; or*
2. *the person exercising the right aims to achieve an outcome that is contrary to either Sharia rules, the law, public order and/or morals; or*
3. *the desired outcome is disproportionate to the harm that will be caused to another person or the exercise of the right exceeds the bounds of usage and customs.'*

> **No person who lawfully exercises his or her rights shall be liable for any damages or harm arising therefrom.**

In addition, Article 104 of the abovementioned law stipulated that:

> *'Whoever exercises a right lawfully will not be liable for any harm arising therefrom'*

Accordingly, the Court of Cassation held that as the Respondents had approached the competent authorities after discovering images which indicated that a crime had been committed, the Respondents had a lawful right to resort to the judicial system. Therefore, the Claimant's argument had no legal basis and was dismissed, along with his request for compensation.

In addition, it was confirmed that it is in the relevant judge's discretion to determine whether or not the person acted with malicious intent or in bad faith. In this case, the judge concluded that the Respondents did not act in bad faith and the fact that the criminal court found that the Claimant was innocent due to inadmissible evidence, did neither infer nor prove that the Respondent made the criminal claim with malicious intent or in bad faith. The burden of proof for establishing whether any abuse in exercising a legal right has occurred rests upon the person who suffered the damage and, in this case, the Claimant failed to convince the court that such abuse had occurred on the part of the Respondents. Consequently, the Court of Cassation dismissed the appeal and ordered the Claimant to pay the court fees and AED 2,000 (US$ 545) of legal fees.

Conclusion

Whilst there is currently no system of precedent that is binding on the UAE courts, Court of Cassation judgments are typically held in high regard and are considered persuasive. This judgment affirms the following important principles:

- the right to resort to the judicial system is legally guaranteed to every person, and no person who lawfully exercises his or her rights shall be liable for any damages or harm arising therefrom;
- a person shall only be held liable for abusing their legal rights if: (i) there is an intentional infringement of another person's rights or they are acting with malicious intent or in bad faith; (ii) if the exercise of such right is designed to contravene the rules of the Islamic Sharia, the law, public order and/or morals; or (iii) if the desired outcome is disproportionate to the harm that will be caused to others or they exceed the bounds of usage and customs; and
- the burden of proof for establishing whether any abuse of a right has occurred rests upon the person who suffered the loss or harm and the court will always be free to exercise its discretion when determining malicious intent and bad faith.

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English Courts recognise and enforce Dubai Court ‘bounced cheque’ judgment

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In the recent judgment of *Lenkor Energy Trading DMCC v Puri* [2020] EWHC 75 the English High Court enforced a Dubai Court judgment, finding that it was a final and conclusive judgment of a court of competent jurisdiction. This positive development indicates a shift away from the historical reluctance on the part of English Courts to enforce UAE issued judgments. It may also change the UAE Courts’ approach and willingness to enforce English judgments.

Context

There is no bilateral treaty between the UAE and the UK for the reciprocal recognition and enforcement of judgments other than the memoranda of understanding issued by the Courts of the DIFC and the ADGM. As a result, judgment creditors seeking to enforce a UAE judgment in England must bring a claim to sue the judgment debtors on the judgment debt under common law. This requires that the foreign court: (i) to have had original jurisdiction to render its judgment; (ii) issued a final and conclusive judgment; and (iii) issued a judgment for a definite and calculable sum. If all three grounds are proven, the defences available to a judgment debtor are limited, and include the defence that the enforcement and recognition of the judgment would contravene English public policy.

Background facts

Mr Puri and his company, IPC Dubai, agreed to buy a substantial amount of ‘high speed’ diesel from the claimant supplier, Lenkor, for delivery to a third party buyer. IPC was obliged, inter alia, to issue a payment guarantee cheque for the total value of the diesel. Mr Puri wrote two cheques in favour of Lenkor and signed them himself on behalf of IPC. The buyer received two of the expected shipments of diesel but, when it part-paid for the third, the shipments stopped. Lenkor brought arbitral proceedings in London under the terms of the agreement to secure the remaining payments due from the buyer. In the course of the arbitration, it was discovered that Lenkor had not supplied the ‘high speed’ diesel it contracted to provide, but had instead delivered an inferior gasoil. Lenkor was successful in its arbitration but the arbitrators criticised Lenkor for its actions and awarded the actual value of the substitute oil in damages, rather than the contract price.

The award was unsatisfied and Lenkor encashed the two guarantee cheques, which subsequently bounced. Lenkor brought proceedings in the Dubai Courts against Mr Puri, who was found personally liable for the cheques he had signed as IPC’s owner and sole shareholder, in pursuit of Article 599/2 of Federal Law No. 18 of 1993 (the Commercial Transactions Law). Interest at nine per cent was also awarded.

There have been very few, if any, Dubai Courts’ judgments enforced by the courts of England and Wales.

Enforcement in England

Lenkor sought enforcement of the judgment in England. Mr Puri resisted recognition and enforcement of the Dubai Courts judgment on three grounds, which he said comprised an impermissible offence to public policy:

1. the underlying transaction was tainted by illegality as Lenkor had provided falsified documents relating to the substitute oil, as the arbitrators had found;
2. no grounds existed for piercing the corporate veil of IPC, whether or not Mr Puri was personally liable under UAE law for the bounced cheques; and
3. the interest on the judgment was unduly high and therefore an unenforceable penalty.

The judge, a procedural specialist called Master Davison, addressed the issues as follows.

Illegality

In relation to illegality, he found that the Dubai judgment did not need to confront the issue of the underlying transaction given that it was ‘squarely based upon the legal consequences of signing cheques in Dubai’ and that ‘on the face of the judgment, those legal consequences were self-contained and independent. That an English court might have approached matters differently is irrelevant. It was a Dubai court applying the law of Dubai’.

Piercing the corporate veil

With concern to the ‘impermissible’ piercing of the corporate veil, it was found that although English law would not have imposed personal liability on Mr Puri in the same way that Dubai law did, it did not follow that English public policy would be offended by recognising the judgment. Rules relating to the limited liability of companies are confined to English commercial and company law, and are not principles of English public policy. Dubai law provides for the personal liability of cheque issuers for the cheque’s value; the dispute concerned a Dubai-based individual making out a cheque on a Dubai account. The judge found, therefore, that recognising the Dubai judgment does not involve recognising that the Dubai company’s corporate veil was pierced.

The judgment in Lenkor now allows UAE practitioners to demonstrate reciprocity when moving to enforce English judgments before the UAE Courts.

Interest

The English High Court also dismissed the argument that the increased interest (as compared to UK rates) paid on the judgment amounted to a 'penalty', finding it to be an 'unrealistic' assertion. The interest paid on the Dubai judgment was only one per cent higher than the judgment debt rate in England, and only 0.25 per cent higher than the rate under the Late Payment of Commercial Debts (Interest) Act 1998.

In conclusion, it was found that enforcement of the Dubai judgment would not offend English public policy, and summary judgment was ordered.

Analysis

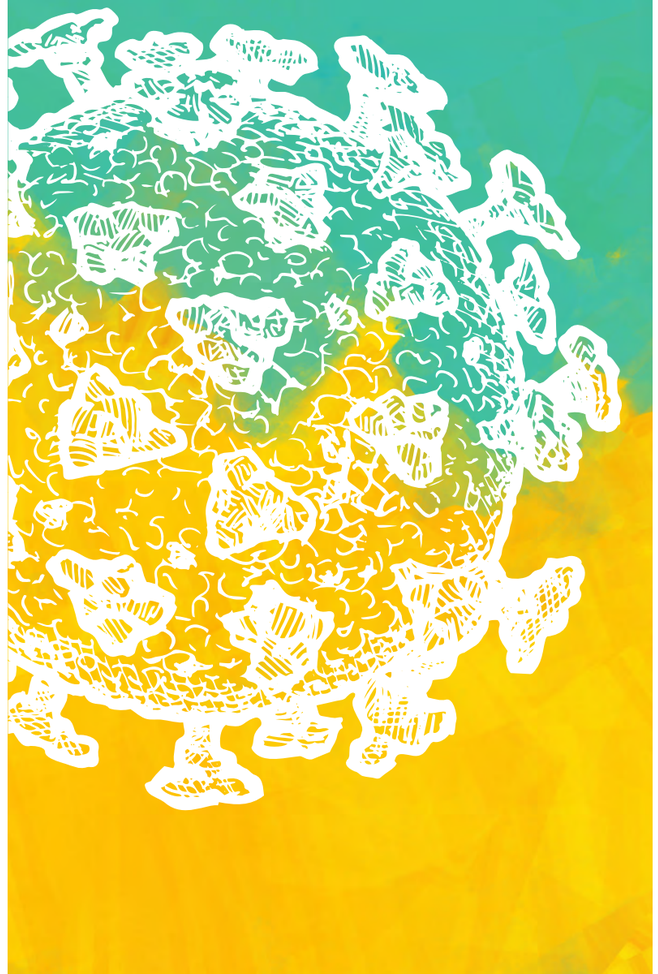
There have been very few, if any, Dubai Courts' judgments enforced by the courts of England and Wales. Not only does this decision provide reasoned authority for future enforcement of judgments of the UAE Courts in England, it is also likely to have a significant impact on the prospects of enforcing English judgments in the UAE where, in the absence of a treaty, reciprocity of enforcement between jurisdictions is essential and regularly used in the UAE Courts as a bar to recognition and enforcement.

The civil procedure for the enforcement of a foreign judgment in the UAE Courts is set out in Article 85 of Cabinet Resolution No. 57 of 2018 concerning the Executive Regulations of Federal Law No. 11 of 1992 (as amended), which states that orders issued in a foreign state may only be enforced in the UAE under the same conditions laid down in the jurisdiction issuing the order. In other words, the UAE will only enforce foreign orders when reciprocity exists with the issuing jurisdiction.

The judgment in *Lenkor* now allows UAE practitioners to demonstrate reciprocity when moving to enforce English judgments before the UAE Courts. It is highly likely, therefore, that the enforcement of English judgments will become more common in the UAE as a result.

For further information, please contact Peter Smith (p.smith@tamimi.com).

COVID-19 and its impact on arbitration



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Introduction

The most pressing issue in the worldwide legal community today is the impact of the spread of Corona ('COVID-19') Virus which was recently classified by the World Health Organization as a global pandemic (the 'Pandemic'). The matter has resulted in a partial or complete closure of many economies. International efforts have combined to contain this Pandemic which has had unprecedented implications on health, economic and legal activities. As we all hope that this Pandemic will soon subside, its consequences of this incident on various legal and contractual relations are likely to be felt for quite some time to come.

In this article, we discuss the effects of the Pandemic on contractual relations in general and, in particular. its impact on arbitration practice as well as its impact on the validity of arbitration agreements and the implications, if any, for arbitration proceedings. We also address precedents from the Dubai Court of Cassation and the Egyptian Court of Cassation regarding the validity and possibility of conducting arbitration in the event of special circumstances (such as the Pandemic) and whether such circumstances can be considered to fall within the meaning of force majeure.

Does the Pandemic qualify as a force majeure event?

Under UAE law, the concept of force majeure is regulated in Article 273.1 of the UAE Civil Transactions Law ('UAE Civil Code') which states that 'In contracts binding on both

parties, if force majeure supervenes which makes the performance of the contract impossible, the corresponding obligation shall cease, and the contract shall be automatically terminated'.

In analysing whether the Pandemic qualifies as a force majeure event, the analysis must tick each of the following boxes: (1) the Pandemic was unforeseeable to the relevant contracting party; and (2) the impact of the Pandemic was unavoidable and made the performance of certain obligation(s) impossible. In both cases, the analysis must be based on an objective test, i.e. on the conduct of a reasonable person, with regard to the existence of the conditions of the alleged force majeure.

The Dubai Court of Cassation confirmed the UAE Civil Code's definition of 'force majeure' when it determined 'A force majeure is an incident that: (1) is not foreseeable; and (2) is impossible to obviate [renders the obligation impossible to perform]. These two conditions have to be established for an incident to be classified as a force majeure incident. The analysis must be based on an objective test of a reasonable person in relation to the two conditions. The incident must be unforeseeable and impossible to avoid for any reasonable person in the same circumstances of the obligor'.[1]

As for an event of force majeure that triggers partial or temporary impossibility of performance, Article 273(2) of UAE Civil Law provides that 'In the case of partial impossibility, that part of the contract which is impossible shall be extinguished, and the same shall apply to temporary impossibility in continuing contracts, and in those two cases it shall be permissible for the obligee to rescind the contract provided that the obligor is made so aware'. That said, the obligation(s), in case of partial impossibly, shall be extinguished in the part corresponding to that impossibility. The same rule applies to temporary impossibility in continuous (i.e. running) contracts.

It is our view that the Pandemic is most likely to satisfy the first condition of a force majeure (i.e. is not foreseeable) as long as the parties have entered into the contract with sufficient time before the COVID-19 virus news broke and not only at the time of (or after) the declaration of the Pandemic by the WHO. However, in order to successfully cancel one's obligations under a contract by invoking 'force majeure' a party must also prove the obligations of a contract are 'impossible' to perform in this era of the Pandemic; to do so a party must satisfy the second condition i,e., that the impact of the Pandemic was unavoidable and has rendered the specific obligation or the contract's obligations impossible to perform). This, in our view, will essentially rely on the precautionary measures taken by the authorities in responding to the Pandemic and whether such measures would render the performance of the obligation(s) impossible; and to what extent.

Force majeure and arbitration agreements

Arbitration agreements, like any other agreement, are subject to the force majeure rule and may be terminated by the operation of law should a force majeure event make the performance of the arbitration agreement impossible.

In this regard, Article 8.1 of the UAE Federal Law no. 6 of 2018 on Arbitration ('UAE Arbitration Law') provides that:

> 'The court before which a dispute is brought that is subject to an arbitration agreement shall decline to entertain the action if the defendant has so pleaded before submitting any request or plea on the merits, unless the court is satisfied that the arbitration agreement is void or impossible to be performed'.

It appears from the wording of Article 8.1 of the UAE Arbitration Law that arbitration agreements will not only be terminated by operation of law in case of a force majeure event (which is unforeseeable and results in absolute impossibility) but also in case of any event which renders the performance of the arbitration agreement impossible whether such event is unforeseeable or not.

As such, we can knowingly say that arbitration agreements, unlike other agreements, can be terminated by operation of law (so parties are allowed to refer their disputes to the judiciary) in case of an event that makes its performance impossible irrespective of whether such an event qualifies as force majeure (i.e. unforeseeable) or not. The reason, in our view, for a differentiation can be attributed to the nature of the arbitration agreement which represents the parties' access to justice. So, the parties may not be prevented from having access to justice because the incidental event, which makes the performance of an arbitration agreement impossible, is not unforeseen.

On 8 April 2018, the Dubai Court of Cassation issued a judgment in Cassation no. 1042 of 2017 Commercial where it ruled that 'arbitration agreement is deemed as never made and borne invalid if it was impossible to be performed in the event that the agreed applicable rules and arbitration centre mentioned therein did not exist at the time when the arbitration agreement was executed'. The same ruling was also affirmed in an earlier judgment handed down by the Dubai Court of Cassation in Cassation 59 of 1990 Rights where it ruled that 'as long as the Claimant is not able to effect the arbitration agreement due to an out of control reason, he will be entitled to file his claim to the judiciary'.

However, it shall be impossible to perform the arbitration agreement in order to be terminated by operation of law. In case that an event temporarily renders the arbitration agreement impossible, the arbitration agreement is not likely to be terminated by operation of law. Instead, the only impact is that the statutory and/or agreed time limit (e.g. time bar or agreed filing deadline) for initiating the arbitration claim shall be stayed.

In a similar case, the Egyptian Ministry of Supply signed a contract, which contained a London-seated arbitration clause, with a private company in the 1960's. During such time, the political ties between Egypt and the UK had been cut. Consequently, the Egyptian Ministry of Supply filed its claim before the Egyptian Courts and argued that the cut of political ties between Egypt and the UK qualified as a force majeure incident which rendered the arbitration agreement impossible to be performed (especially in light of the lack of any online or internet communication at that time). The Egyptian Court of Cassation however, ruled on 17 June 1965 in Cassation 406 in 30 J that 'the force majeure in such case should not render the arbitration clause extinguished but will only stay the agreed deadline, if any, for filing such arbitration claim'.

Arbitration practice and COVID-19 implications

In our view, it is difficult to argue, or even envisage, that conducting arbitration might be impossible, whether permanently or temporarily, in light of the implications of the current Pandemic. Instead, we believe that arbitration is currently an advantage for those who have agreed to it as their dispute resolution method.

While we can very obviously note that court proceedings have been disrupted and sometimes totally stayed in light of the precautionary measures taken in most of the world's countries in responding to the current Pandemic, arbitration proceedings, instead, could be continued in an accessible, smooth and flexible manner that could fully adapt to the health precautions and other implications recommended by the experts in light of the Pandemic.

As a great example, we refer to the UAE Arbitration law which offered the arbitration community in the region a very accessible and flexible set of rules that would perfectly fit with a difficult and unprecedented time like what we are experiencing today. In this respect, we refer to the following Articles of the UAE Arbitration Law:

Article 28 provides that:

1. The Parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the Arbitral Tribunal having regard to the circumstances of the case, including the convenience of the Parties.

[1] *Court of Cassation Judgment 101/2014 Civil issued on 26/2/2015*

2. The Arbitral Tribunal may, unless otherwise agreed by the Parties:
    i. hold arbitration hearings at any place it considers appropriate to conduct any of the arbitral proceedings, while providing the Parties sufficient advance notice of the hearing.
    ii. hold arbitration hearings with the Parties and deliberate by modern means of communication and electronic technology. The Arbitral Tribunal shall deliver or communicate the minutes of hearing to the Parties.

Article 24.1.a provides that:

Any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at its place of business, habitual residence or mailing address known to the Parties or designated in the Arbitration Agreement or the document governing the relationship addressed by the Arbitration; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter, courier, or any other means which provides a written record of the attempt to deliver it. The expression "mailing address" shall include any facsimile number or email address previously used by the Parties in their dealings or previously advised by either Party to the other in its communications.

Article 41.6 provides that:

Unless otherwise agreed by the Parties, the arbitral award shall be deemed issued at the place of arbitration as determined in accordance with Article 28 of this Law, notwithstanding that it may have been signed by the members of the Arbitral Tribunal outside the place of arbitration, and irrespective of how the award was signed, whether by all the members of the Arbitral Tribunal at one sitting or separately by each member to whom the award was forwarded for signature, or by electronic means.

In our view, the above Articles, among other provisions in the UAE Arbitration Law, provide for arbitration tools that would continue to be effective despite the current challenging times. Under Article 28, arbitration hearings and the tribunal deliberation could be held by any means of electronic communications. Further any communication could be effected, under Article 24.1.a, via any facsimile number, email address, registered letter, courier, or any other means which provides a written record of the attempt of delivery. Article 41.6 also permits signing any award by electronic means and acknowledges the possibility of signing an award outside the place of arbitration unless otherwise agreed by the parties.

Conclusion

We believe that:

- the implication of the current Pandemic on contractual arrangements and whether it falls under force majeure depends on: (1) the nature and circumstances of the contract in question; and (2) the precautionary measures taken by the authorities in responding to the Pandemic;
- arbitration agreements could be rendered terminated by operation of law in the event that it is impossible at all to be performed; and
- arbitration practice provides a very effective means of dispute resolution that could avoid the current implications of the Pandemic and provide the community with uninterrupted access to justice.

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The rise of alternative financing

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Easy access to and the provision of suitable financing options continues to be a concern at the forefront of many corporates and financial institutions across the UAE, in particular the small to medium sized enterprises. With the backdrop of the growth of financial technology and constraints on working capital, the UAE market has witnessed a growing trend towards alternative financing models, including receivables financing, factoring and securitisations. These alternative financing methods seek to bridge the gap where traditional bank lending is no longer considered a viable option for businesses.

Receivables financing

While receivables financing has been a longstanding feature of alternative financing models in the UAE, recently more innovative ways to help business free up working capital have been deployed and banks are now seeing receivables financing as a key feature of their portfolio. It comes as no surprise that the rise in more financing solutions coincides with the development of technology in this area. Not only has technology emerged in the UAE to extend the reach of receivables financing to a previously untapped and under-served market but it also has helped to provide more streamlined and diversified alternative financing. Traditionally, businesses would undertake a general assignment of its accounts receivables or obtain vanilla discounting facilities as a means to obtain short-term financing. Unlike securitisations and factoring, typically the receivables are not (truly) sold or transferred to a lender but merely a lender would be entitled to collect the assigned receivable in the event that the business fails to keep up with its loan repayments.

Common themes which are prevalent in the UAE include using technology to establish electronic platforms in which receivables can be financed. Further, schools, insurers, developers and landlords are recognising the benefits of receivables financing and it is becoming commonplace in the UAE for such institutions to use receivables such as school fees, rent, sales proceeds and insurances proceeds as collateral for obtaining short-term financing. This is an emerging trend across the UAE and an example of how receivables financing is being adapted to suit the cash flow needs of businesses.

Securitisations

Another dominant feature of the alternative financing market in the UAE is securitisations. Securitisations, while a common feature of alternative financing in the US market, are becoming more prevalent in the UAE. This is, in part, due to the UAE financial free zones (including the Abu Dhabi Global Market and Dubai International Financial Centre) which have continued to be attractive to international investors seeking investment opportunities in the UAE in jurisdictions with familiar legal systems based on international best practice but also due to the change in the regulatory landscape across the UAE. For securitisations, the additional ability to house the relevant special purpose vehicles in these free zones makes it more attractive.

Essentially, a securitisation is a legal structure which enables businesses to transform their assets to working capital. A growing concern for businesses is managing their balance sheets and a key feature of securitisations is to remove the relevant asset being securitised from the businesses' balance sheet and to allocate the receivables as income (also known as a true sale). Where a transfer occurs on a true sale basis the assets to be transferred should be ring-fenced in a special purpose vehicle established solely for the purpose of holding the assets. Such ring-fencing of assets seeks to ensure that the bankruptcy of the originator of the assets does not have an impact on the transferred asset. Further, structuring the securitisation on a non-recourse basis is beneficial to businesses to ensure that it (as the originator) has no obligation to repurchase the transferred assets on enforcement and to restrict the investor's recourse solely to the assets that the special purpose vehicle holds and over which the investor has taken security.

Whilst the UAE market is seeing an increase in traditional securitisations as an alternative funding source, a wave of Islamic finance securitisations has also gathered pace across the GCC as a result of the market becoming more sophisticated in understanding and structuring Islamic securitisations. Islamic finance securitisations seek to rely on the principles of a traditional securitisation structures but have been developed in such a way so as to ensure compliance with the main principles of Islamic finance.

Factoring

Similarly, factoring has also become a pivotal channel for small to medium sized enterprises seeking to sell their assets (usually account receivables, i.e. outstanding monies owed to that business) to third parties at a discounted price. Whilst factoring usually involves the sale of assets to banks and financial institutions, securitisations commonly seek funding from the wider investment and capital market.

Factoring is gaining traction across the UAE as it is seen to play an important role in the growth of small to medium sized enterprises the access of which to finance has historically been restrained due to, for example, regulatory restrictions or a lack of credit history due to the infancy of the business. Taken together the market is becoming more sophisticated in understanding factoring and the increase in the number of banks offering factoring as an alternative, factoring is gaining momentum in the UAE and is moving away from the stigmatism that this type of financing is only employed by entities in financial difficulties.

It is clear that securitisations, receivables financing and factoring are paving the way as viable alternative financing options where traditional bank lending is no longer appropriate or available.

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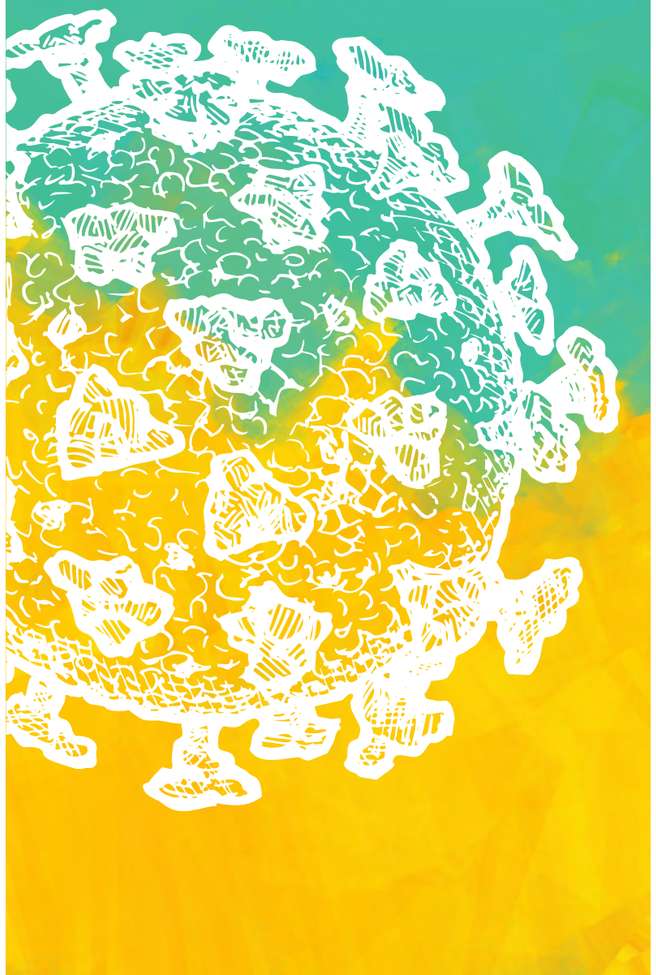
International Litigation Group

Law in the time of COVID-19: force majeure under DIFC law



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The widespread effects of the COVID-19 pandemic have had a serious impact on the ability of commercial parties to honour the terms of their contracts in the DIFC, Dubai and beyond.

Necessary government public health measures have forced the closure of many companies, from nurseries and schools to retail malls, cinemas and gyms, and restricted the operation of many more, with consequences across the payment and supply chains.

Many businesses are checking the terms of their agreements to see what provisions cover the disruption caused by the COVID-19. This article considers how contracts governed by DIFC law may respond in this crisis.

Force majeure in commercial contracts

A force majeure clause is engaged by the occurrence of a specified event or events, which can occur with or without human intervention. Broadly, there are two requirements in order for an event to constitute force majeure:

- the event cannot have reasonably been foreseen by the parties; and
- the event was completely beyond the parties' control and they could not have prevented its consequences.

Many contracts will contain explicit force majeure terms, particularly business-to-business agreements and those drafted by experienced lawyers.

The precise operation of the clause will depend on its wording. Typically, the risks covered are identified and listed and, in the case of COVID-19, in the first instance parties should look for wording covering the risks of "epidemic", "pandemic". "quarantine" or "notifiable diseases".

Parties should also bear in mind that the responsive measures taken by the authorities in the UAE or elsewhere may also be circumstances of force majeure, such as 'any law or any action taken by a government or public authority'. In addition, non-performance by third party entities such as suppliers or subcontractors may also be covered.

Some clauses may also contain 'catch-all' provisions intended to cover all other events 'beyond the reasonable control of the parties', which would tend to include the COVID-19 outbreak.

Once triggered, a force majeure clause usually permits one or more parties to agree to take one or more of the following actions, in whole or in part:

- cancel the contract;
- provide a lawful excuse from performance;
- seek the suspension of performance; or
- stipulate an extension of time for performance.

Force majeure under DIFC Law

In English law, if the contract does not contain an express force majeure clause, no term is likely to be implied to the same effect. The position is different for contracts governed by DIFC law as the DIFC Contract Law (DIFC Law No.6 of 2004) effectively implies a force majeure term into DIFC law governed contracts at Article 82(1):

> *'Except with respect to a mere obligation to pay, non-performance by a party is excused if that party proves that the non-performance was due to an impediment beyond its control and that it could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences.'*

Article 82(1) follows the requirements of force majeure clauses listed above: the force majeure event is not reasonably foreseen and is beyond the parties' control. The key exception to this clause is in respect of an obligation to pay.

This means that in a contract such as a lease governed by DIFC law, Article 82(1) alone will not excuse a tenant from payment of rent due if it cannot make payment due to the COVID-19.

Article 82(1) and its implication is very important in relationships like those between employers and employees, where express force majeure clauses are rare. Note, however, that parties can vary or exclude Article 82 in their agreement (Article 11, DIFC Contract Law).

The effect of force majeure

Article 82(2) stipulates that, when the impediment is only temporary, the excuse shall have effect for such period as is reasonable having regard to the effect of the impediment on performance of the contract. The COVID-19 epidemic is likely only to be temporary, which means it is unlikely (but not impossible, depending on the commercial circumstances) that the affected party could justifiably seek the cancellation of the contract by relying on Article 82.

A 'reasonable' period of reliance on force majeure will depend on a number of factors including the commercial purpose and practical operation of the contract, its subject matter and the connection between the coronavirus and the affected party's impediment.

Notice requirements

Article 83(3) sets out notice requirements: notice must be given by the affected party to its counterparty, with an explanation of its ability to perform, within a reasonable period of time after the affected party knew or ought to have known of the impediment. A failure to give notice in a reasonable time will make the affected party liable for damages. Article 13(1) of the DIFC Court Law provides that notice may be given 'by any means appropriate to the circumstances' unless the agreement stipulates otherwise).

The precise operation of a contractual force majeure clause will depend on its wording but usually the clause should:

- contain a notification provision, setting out a period within which the affected party should notify the other party (usually in writing) of the event of force majeure, giving basic details of the event such as the date on which it started, its duration and the effect of the event on the affected party's ability to perform any of its obligations under the agreement; and
- oblige the affected party to use all reasonable endeavours to mitigate the effect of the event on the performance of its obligations.

The consequence of a validly notified force majeure may also be stipulated, in such a way that states the affected party is not in breach of the agreement and extending the time for performance.

Proper notification is very important. In several cases brought by property owners against a developer in respect of delays to the construction and hand-over of apartments in a DIFC development caused by third party contractors, the Courts considered the validity of the notices of force majeure served by the defendant which purported to exercise its right to extend the anticipated completion date. The judge at first instance had found that the notices issued had failed to satisfy the requirements of the contractual force majeure clause: neither the force majeure event nor the extent of delay of the impeding event had been identified, with a substantial effect on the delay analysis and, amongst others, entitling the claimants to damages (*(1) Kenneth David Rohan (2) Andrew James Mostyn Pugh (3) Michelle Gemma Mostyn Pugh (4) Stuart James Cox v Daman Real Estate Capital Partners Limited* and *Ahmed Zaki Beydoun & (1) Daman Real Estate Capital Partners Limited (2) Asteco Property Management LLC* [2013] DIFC CA 005 and CA 006, 16 October 2014).

Other contractual and statutory rights

Article 82(4) explicitly recognises that nothing in the Article prevents a party from exercising a right to terminate the contract or to withhold performance or request interest on money due. Those actions, of course, will been considered lawful or unlawful in light of DIFC law and a proper construction of the relevant rights themselves. Article 86 of the DIFC Contract Law permits termination where the failure of the other party to perform an obligation under the contract amounts to a fundamental non-performance, the ascertainment of which will have regard to a number of factors including whether the non-performance substantially deprives the aggrieved party of what it was entitled to expect under the contract and whether it has reason to believe it cannot rely on the other party's future performance.

Checklist for businesses

- ☐ Precisely how, what, and to what extent, is the coronavirus epidemic affecting your ability to perform your obligations?
- ☐ Is your contract governed by DIFC law?
- ☐ Does your contract have a force majeure clause?
- ☐ Does your contract expressly exclude Article 82 of the DIFC Contract Law?
- ☐ Are the affected obligations covered by the force majeure clause or do they fall into an exception (e.g. a 'mere' obligation to pay)?
- ☐ Have you given reasonable notice to your counterparty of the impeding event affecting performance, and have you included sufficient details in your notice?
- ☐ Are you mitigating the extent of non-performance by taking reasonable countermeasures?

The treatment of force majeure by the DIFC Courts

As well as the *Daman* cases above, the DIFC Courts have considered force majeure cases on several other occasions.

In *Gert v Germaine* [2016] DIFC SCT 097, the defendant landlord was unable to rely on force majeure for a failure to carry out maintenance to cure the smell of sewage in the property leased by the claimant tenant when the landlord was unable, through no

fault of his own, to access the property for maintenance. In *DIFC Investments LLC v Mohammed Akbar Mohammed Zia* [2017] DIFC CFI 001 the Court of First Instance confirmed that Article 82 applied to contracts governed by DIFC law without the requirement for an express term.

Whilst these cases are each confined to their specific facts, parties should note that in none of the cases was the defendant able to rely successfully and in full on the force majeure terms. Affected parties should bear in mind that the scope of the clause, exceptions to its coverage (such as mere obligations to pay), and notification requirements may all shape the extent to which a term can be relied on to excuse non-performance.

Generally speaking, common law precedents, and particularly English case law, are persuasive in the DIFC. In future cases, relevant cases may shape issues like the interpretation of the force majeure clause, the burden of proof, and requirements of the clause's invocation including that a force majeure event is the only effective cause of default by a party under a contract relying on a force majeure provision.

Frustration of the contract

As a common law court, the DIFC Courts are able to supplement DIFC law with the application of the common law, including the doctrine of frustration, as DIFC law makes no specific provision for frustration in the DIFC Contract Law or elsewhere in its statutes.

The doctrine usually requires the performance of the contract to be impossible, not 'merely' very difficult, time-consuming or expensive to perform. The doctrine may excuse both parties from their obligations if contractual performance becomes impossible, whether physically or legally, thereby frustrating the contract. Generally, the doctrine requires a higher threshold than force majeure.

Litigating in the time of COVID-19: the reduced operation of the DIFC Courts

If disputes arise in respect of insufficient or non-performance of contractual obligations, businesses should check what dispute resolution terms apply.

If a dispute falls into the exclusive civil and commercial jurisdiction of the DIFC Courts, whether because of the parties involved in the dispute or its subject matter, or because the parties have opted into the DIFC Courts' jurisdiction, for the most part parties should not experience any disruption or delays in connection with filing claims or responses and the listing of hearings.

Parties should be aware, however, of the DIFC Courts' restricted work practices, as announced on its website (at www.difccourts.ae/2020/03/17/covid-19-difc-courts-update/ and subject to change). The principal changes at as of 23 March 2020 are:

- from 17 March until 26 April 2020 or further notice, the DIFC Courts will be physically closed and all staff will work remotely;
- all hearings in the Courts (whether CFI or SCT) will be by teleconference or videoconference;
- parties are urged to use the e-bundling platform, particularly given the additional difficulties of hard copy bundling in an environment of 'social distancing' and severed physical communications.

Parties should plan accordingly, particularly if urgent applications or interim relief are sought.

Conclusion

The COVID-19 pandemic is unique in modern times and underscores the extent of globalisation and our interconnected world from a human and economic perspective. Of course other pandemics have swept the world before, and will do so in the future. These facts do not reduce the costs of the disease, the numbers of lives lost or the economic disruption caused. But, as the wording of Article 82 reminds us, the interruption will ultimately only be temporary.

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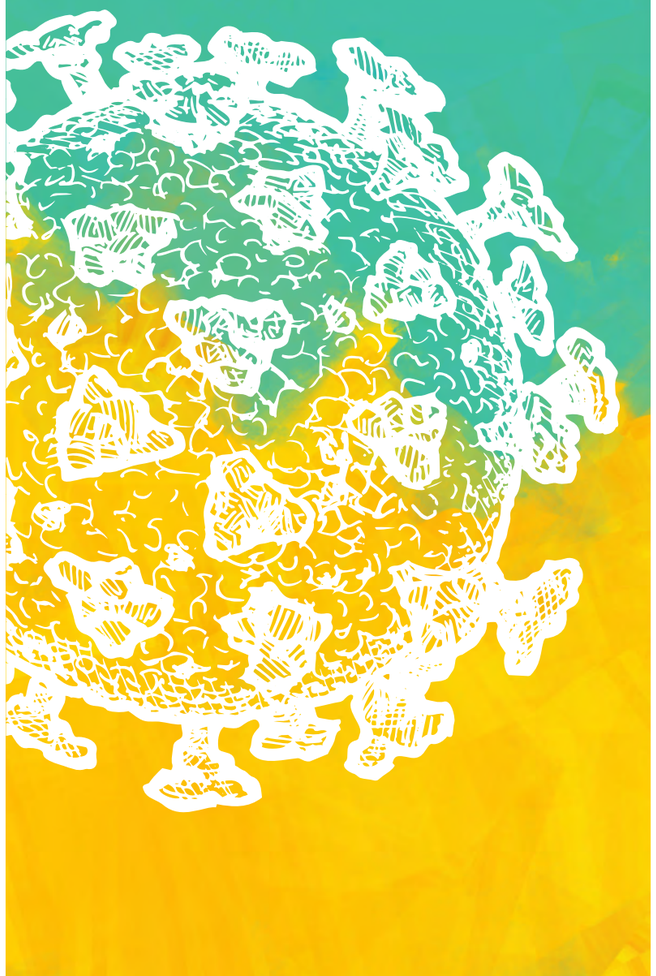
Transport & Logistics

COVID-19 and force majeure: UAE maritime law



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Following the spread of COVID-19, one of the main concerns UAE entities have been considering is whether contractual obligations could still be performed in light of various restrictions that have been imposed on transport and businesses alike. This article explores how the law of force majeure operates in the UAE and the legal considerations that parties in the maritime industry might take into account.

The starting point

Subject to public policy and statutory provisions, UAE law upholds parties' freedom to contract. Most contracts include a force majeure clause, and where such clause is absent, contracting parties may fall back on Article 273 of UAE Federal Law No. 5 of 1985 (the 'Civil Code') to invoke force majeure:

1. *'In contracts binding on both parties, if force majeure supervenes which makes the performance of the contract impossible, the corresponding obligation shall cease, and the contract shall be automatically cancelled.*
2. *In the case of partial impossibility, that part of the contract which is impossible shall be extinguished, and the same shall apply to temporary impossibility in continuing contracts, and in those two cases it shall be permissible for the obligee to cancel the contract provided that the obligor is so aware.'*

…a force majeure declaration is likely to fail if the underlying contract was entered into when public authorities have been imposing ever stricter restrictions because it was foreseeable that that the obligation(s) would be impossible to perform.

Establishing force majeure

In essence, a force majeure is a supervening event rendering impossible the performance of an obligation under an agreement between parties. Whilst courts are not bound to follow the decisions of higher courts, judgments of the UAE's highest court (the Court of Cassation) are typically followed. Therefore, it would be helpful to note that the Court of Cassation has, in two judgments, confirmed that force majeure must be unforeseeable and unavoidable: (Dubai Court of Cassation Judgment No. 101 of 2014 (Civil); and Dubai Court of Cassation Judgment No. 49 of 2014). It follows that a force majeure declaration is likely to fail if the underlying contract was entered into when public authorities have been imposing ever-stricter restrictions because it was foreseeable that that the obligation(s) would be impossible to perform.

Whilst it is good practice to specify what are force majeure events in an agreement, it is not necessary for the words 'natural disaster', 'war', 'disease', 'pandemic', 'epidemic' and the like to be expressly mentioned in a force majeure clause for force majeure to be successfully declared or argued in court. The key ingredient is impossibility of performance. Mere hardship, on its own, does not qualify as force majeure.

If force majeure under Article 273 of the Civil Code cannot be established, the doctrine of exceptional circumstances under Article 249 of the Civil Code may be an alternative. Unlike force majeure, which concerns impossibility, the doctrine of Exceptional Circumstances applies to excessively difficult obligations 'threatening grave loss'. Further, unlike the consequence of successfully establishing force majeure (where the party declaring force majeure will not need to perform the relevant obligation), the party successfully establishing that exceptional circumstances took place would have its relevant obligation(s) adjusted to a level that the Court opines reasonable.

Force majeure under DIFC law

Under the laws of the Dubai International Financial Centre ('DIFC'), force majeure is implied in Article 82 of DIFC Law No.6 of 2004. In any agreement governed by DIFC law, non-performance by a party is excusable if that party successfully proves that the non-performance was due to an event or incident beyond its control and that it could not reasonably have been expected to have taken the event or incident into account at the time of the execution of the contract, and thereby could not have avoided or overcome it or its consequences. However, a force majeure event will not excuse a party where its obligation is a 'mere obligation to pay'.

Maritime Specifics

Article 273 of the Civil Code, as discussed above, sets out how force majeure operates generally under UAE statutes, and that a successful declaration of force majeure may result in cancellation of contracts. However, UAE Federal Law No. 26 of 1981 further specifies certain rights and liabilities of parties in maritime and shipping scenarios concerning force majeure, of which the latter parties should be aware.

Specific Issue	General Points
Payment of Crew Wages	Crew is entitled to wages for the days spent working in the services of the relevant vessel until the force majeure event took place.
Voyage Charterparties	A voyage charterparty shall be terminated without compensation required by either of the parties to the other, when a force majeure event renders the voyage impossible. A voyage charterparty remains in force without compensation or increase in freight if a force majeure event occurs which temporarily interferes with the vessel's voyage.
Time Charterparties	The hire period runs from the day on which the vessel is placed at the disposal of the charterer, until the occurrence of force majeure.
Contracts for the Carriage of Passengers	If a passenger is prevented from travelling due to force majeure, the contract shall be cancelled on the condition that his or her heirs notify the carrier before the voyage of those facts, failing which, the carrier shall be entitled to receive 25 per cent of the fare.
Towage	The towing vessel shall be liable for any damage which it causes to the vessel being towed unless it is established that the damage arose as a result of force majeure.
Collision	If a collision between vessels arises from force majeure, each vessel shall bear the loss it suffered.

Going forward

Despite the ongoing restrictions faced by parties in the maritime and logistics sectors, many transactions and operations in these sectors are still continuing. Due to the evolving circumstances, it is suggested that the following be considered in order to stay ahead of the potential hurdles and hiccups:

1. review your agreements and determine whether the force majeure clause specifies epidemics, pandemics, disease and the like as force majeure events;
2. consider how notice is performed as stated in your contracts, or if there are specific requirements for declaring force majeure;
3. if you intend to declare force majeure, consider how any of your losses may be mitigated and or reduced, and do so without delay;
4. familiarise yourself with your insurance policies and claim-making processes;
5. concerning 'Safe Port' obligations under charterparties, determine whether the load and discharge ports that your vessel calls, have implemented procedures to ensure safety of persons and crew;
6. review your charterparties' Deviation Clause to confirm the right to deviate from agreed route(s), and whether freight and hire clauses were drafted in your favour in situations such as deviation; and
7. in Ship Sale & Purchase transactions, buyers should ensure sellers of ships obtain necessary permits from the respective port for the ship to leave following delivery or closing.

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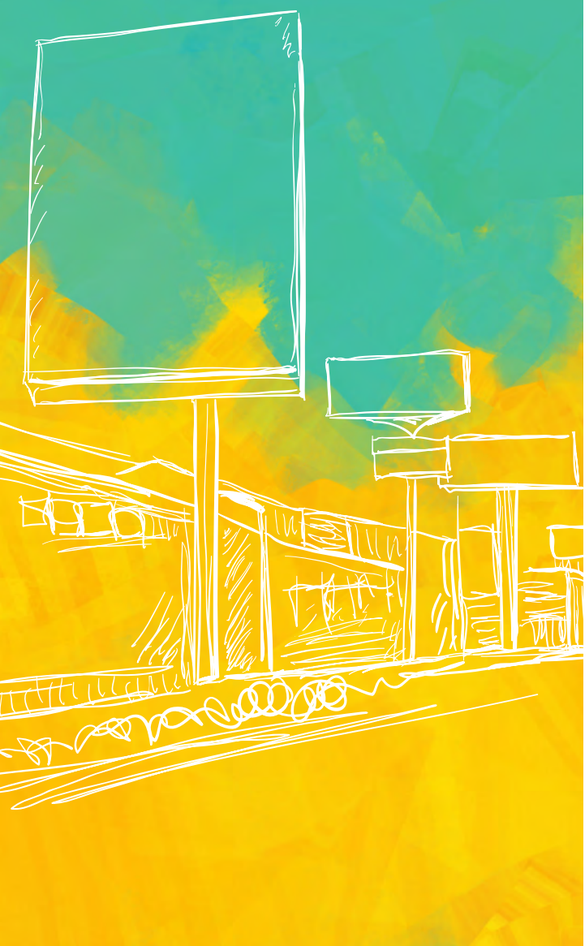
New advertisement law in the Kurdistan Region of Iraq



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The Kurdistan Region of Iraq (the 'KRI') adopted its first Commercial Advertising Law (the 'Advertising Law') in December 2019 which imposes controls on advertisers wanting to promote their goods or services within the territory. The Advertising Law applies equally to local and foreign companies operating in the KRI. The KRI Ministry of Culture (the 'Ministry') is the competent body responsible for enforcing the Advertising Law. Businesses marketing their goods by way of advertising need to pay close attention to the Advertising Law. This article provides a snapshot of the Advertising Law as well as relevant legislation.

What are the major aspects of the 2019 Advertising Law?

The Advertising Law defines commercial advertising as the activity of attracting public attention to a product or business, by any means of communication including but not limited to print, broadcast, or electronic media. In addition to these broad categories, the law specifically mentions social media advertising, transit advertising (by any mode of transportation), and outdoor advertising. The forms of advertisement are broadly defined and remain open to interpretation.

The Advertising Law imposes mandatory conditions on advertisers, including but not limited to:

1. obtaining the consent of the manufacturer and/or service provider of the product being advertised (Article 1)'
2. providing an accurate description of the product (Article 2);
3. any research or data cited in the advertisement shall be academic and credible (Article 3);
4. obtaining the consent of the owner of a vehicle prior to installing advertisements on the said vehicle (Article 4); and
5. complying with luminance restrictions on outdoor digital advertising screens (Article 5).

Media platforms (e.g. television networks, radio channels) are required to dedicate broadcasting time free of charge to matters of public awareness, health, traffic, and human rights. For television networks, the broadcasting slot of the advertisement shall be no less than one minute for every 24 hours of broadcast.

The Advertising Law prohibits advertising content that is contrary to the public interest, public morality, national security, health security, and/or human rights in the KRI. In addition to the Advertising Law, a small number of sector specific laws and regulations exist. Pursuant to the Anti-Tobacco Law, tobacco advertising and promotion is prohibited in print and audiovisual media, including outdoor advertising. Also, the Pharmacy Law prohibits unlicensed parties from marketing medical products.

Sanctions and fees

Advertisers, advertising agencies, and advertising platforms need to take care that they do not receive penalties as a result of breaching the Advertising Law. The penalties provided for in the Advertising Law are not restricted to the advertiser; advertising agencies and advertising platforms are also exposed to liability (to the extent of their involvement) in the event an advertisement has been found to breach the law. The remedies or the penalties that the Ministry or the competent Court shall impose depend on the nature of the violation:

1. for breaching Article 1 and/or Article 2 of the Advertising Law, the Ministry or the competent Court may:
   i. order the immediate removal of the advertisement;
   ii. impose a fine of no less than 500,000 Iraqi Dinars (IQD) (US$ 420) and no more than 15,000,000 IQD (US$ 12,600);
   iii. such fines shall be doubled in case of recidivism; i.e. if the defendant has previously been found to be in breach of Article 1 and/or Article 2 of the Advertising Law.
2. for willfully damaging, distorting, or removing an advertisement, the Ministry or the competent Court may:
   i. impose a fine of no less than 250,000 IQD (US$ 210) and no more than 1,000,000 IQD (US$ 840);
   ii. order the defendant to repair or restore the advertisement to its original state;
   iii. require the defendant to compensate the claimant for the damages incurred.

Consumer protection

The Consumer Protection Law No 1. of 2010 provides consumers with the right to be fully informed about consumer goods. In the event that the consumer has not been informed about the specifications of the consumer goods beforehand, he or she is entitled to claim compensation before the Court. Pursuant to the Consumer Protection Law advertisers that engage in fraudulent actions to conceal the specifications of a commodity or service from the public expose themselves to civil and criminal liability.

Conclusion

Although the Advertising Law has numerous shortcomings and is yet to be fully tested in practice, its introduction is a welcome development in light of the rapid growth of the advertisement sector. The KRI remains an attractive region for investors, especially in the agriculture, tourism, and natural resources sectors. It is important for investors operating or exploring the territory to keep up to date with the Advertising Law as the competent bodies begin its application.

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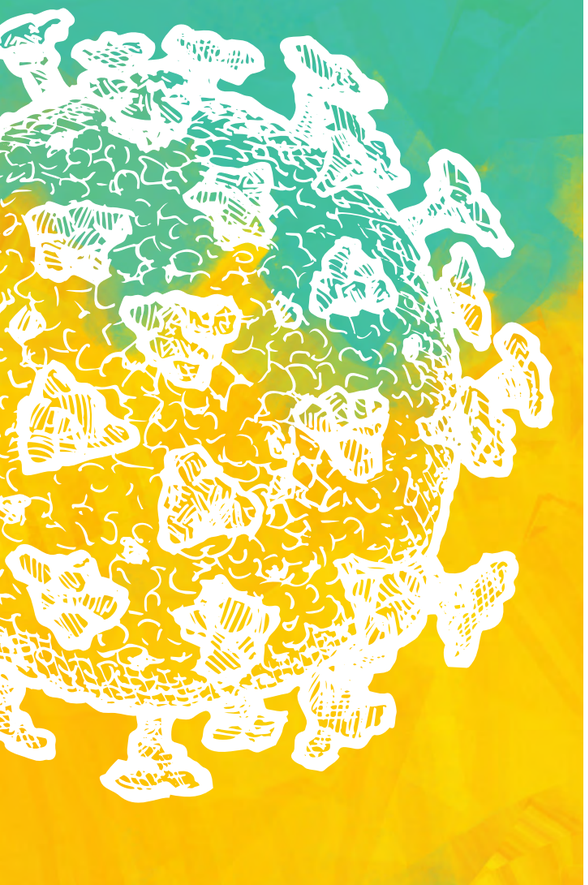
Invoking force majeure in Kuwait during the COVID-19 crisis



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Introduction

The ongoing COVID-19 pandemic continues to throw supply chains into turmoil on an unprecedented scale after its designation by the World Health Organisation ('WHO') as a Public Health Emergency of International Concern ('PHEIC'). Governments worldwide are increasingly imposing strict measures restricting the movement of people and goods in order to contain its rapid spread, whilst factory shutdowns, staff shortages and border restrictions cast a heavy shadow on supply chain operations. The knock-on effect on companies' ability to comply with their contractual obligations raises the question of force majeure: an oft-used clause found in many commercial contracts which may excuse the delay or non-performance of a party's obligation(s) following the occurrence of a specified event. Some major logistics companies are already invoking force majeure or the contractual emergency situation clauses to temporarily relieve them of their contractual obligations. In Kuwait, the government has also taken some progressive measures to reduce the outbreak of this pandemic via decrees issued by the Kuwait Port Authority (the 'KPA'), the Ministry of communications (the 'MOC') and the Ministry of Health (the 'MOH') (collectively the 'Government'), details of which are set out below.

Government's response

On 25 March 2020, due to the increase of COVID-19 cases in Iran, the KPA suspended all vessel movements to and from Iran with immediate effect until further notice.

Meanwhile, as a part of the efforts to prevent the spread of COVID-19, the MOC informed ship agents that Kuwaiti ports are prohibited from receiving foreign vessels arriving from or heading to some countries (i.e. The Republic of Korea, Italy, Thailand, Singapore and Japan as well as Republic of China and Hong Kong (the 'Prohibited Countries') in addition to closing all marine ports and banning all arrivals of any citizens from the Prohibited Countries until further notice.

Furthermore, MOC has further advised that in order to maintain efficient trade, ships carrying goods from the Prohibited Countries will be allowed to berth but will be prohibited from having direct contact with the crew who will be barred from disembarking from the ship. These measures are due to remain in effect for two weeks of the vessels' departure from the affected ports.

With effect from 6 March 2020, the MOH imposed a ban on travellers arriving from, (or who have in the two weeks prior to their travel date) visited or passed through the following countries: Mainland People's Republic of China, South Korea, Italy, Iran, Iraq, Japan, Singapore, Hong Kong (SAR); and Thailand.

> **Two conditions must be fulfilled… (i) to be beyond control of a party; and (ii) independence of the human action.**

In addition to these measures, on 12 March 2020, it was advised that the Government impose a series of exceptional measures in a bid to prevent the spread of the coronavirus by halting commercial flights and requiring public sector employees to take a two-week public holiday until 26 March 2020.

However, the Government continued to permit marine navigation and usual operations at all Oil Terminals (Mina Al Ahmadi & Mina Abdulla) and Commercial ports (Shuwaikh and Shuaiba) in order to maintain the supply of food and oil.

Despite the above exception, the MOC, on 24 March 2020, advised that agents are required to provide, in addition to the usually required documentation before arrival, the following documents:

- a copy of the ships' logbook for the last 30 working days (in English); and
- a copy of port clearance for the last 10 ports where cargo operations were carried out.

In light of the above the Government is aware that such extreme measures may lead to disputes which may, in turn result in the delay and frustration of agreements in respect of the multimodal trading, especially in relation to vessels that were suspended from the prohibited countries. This article focuses on how the Kuwaiti legislator has addressed and continues to handle this crisis. We will also consider whether a debtor can invoke force majeure and/or emergency condition clauses in order to avoid losses.

Force majeure vs emergency incident

In general, jurists agree that the force majeure and the emergency condition clauses are considered similar however they are different in the way in which they impact an agreement. However, two conditions must be satisfied in order to rely on the said options: (i) the event in question must be considered to be beyond the control of a party; and (ii) independence of the human action.

Furthermore, the emergency incident and force majeure are common in that either of them may not be predicted and may not be avoided. However, they differ in the outcome,

as force majeure concerns the performance of an obligation being impossible. As for an emergency incident, it concerns the performance of the obligation being only considered burdensome. This difference establishes a difference in the effect, as where the two step test of force majeure is satisfied the obligations under the contract are deemed impossible to perform and the contract is thereby terminated, and the debtor is not liable for the consequence of non-implementation. However with regard to emergency incident clauses, an agreement is not terminated but, where possible, any losses are distributed between the debtor and creditor and the debtor shoulders a part of the consequence of the emergency incident.

On the other hand, Kuwaiti legislators have described force majeure and emergency situation events as a cause external to the contract, which was not possible to forecast upon concluding the contract. This view is stipulated in Articles 214 and 215 of the Kuwaiti Civil Law number 67 of year 1980 (the 'Civil Law') where if the performance of the contractual obligation is impossible due to an external reason beyond the control of the performing party, the contract shall be automatically revoked. But if the impossibility is partial, the creditor or party entitled to the relevant right, may insist that the performing party performs the obligation. It is noted that the Kuwaiti legislator's view has effectively combined two theories (force majeure and emergency conditions) in defining them as cause external to and arising after the conclusion of the contract. Further, it has ruled that in order to consider the incident as an external cause Article 437 of the Civil Law provides the event should not be predictable, and it must be impossible to avoid. If either of these two conditions does not exist, then the incident shall not qualify as an external cause and the conditions of force majeure have not been met. It is not required to consider whether the relevant event or incident is predictable if it occurs as a matter of custom or practice. Rather, it is enough, in this respect, that the conditions and circumstances indicate the possibility of its occurrence. Further, it is not required that the debtor has become informed of these conditions if they are not invisible to a very alert and insightful person because the non-predictability required for the existence of the external cause and force majeure should be absolute and not relative. The criterion in this case is objective.

Conclusion

In summary, the doctrine of force majeure is a legal concept that broadly refers to the occurrence of certain pre-specified events in a contract which are beyond the control of the contracting parties, and we believe that any of the contracting parties could rely on both force majeure and emergency condition clauses according to the aforesaid explanation as the two conditions may be acts of god in the context of COVID-19, which is independent of human action and its occurrence is likely beyond the control of the relevant performing party.

As such, international conventions such as the Hague Rules may also apply, depending on the jurisdiction and contractual clauses present, whereby courts take a narrow stance on the doctrine of force majeure. Consequently, it is important to ensure that once the contracts are sealed or concluded, companies should be prepared to provide appropriate documentation and evidence to demonstrate that such events and consequences were beyond their control, and that they took reasonable steps under these circumstances to mitigate the effects of those circumstances. Key is to make sure contractual documentation is robust and explicit with regard to the force majeure and emergency incident clauses with a comprehensive paper trail supporting contractual negotiations and conclusions. Clients are well advised to seek legal counsel to ensure they are protected.

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Jurisdiction Update
Saudi Arabia

Saudi Arabia's draft Cloud Cybersecurity Controls

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Saudi Arabia's National Cybersecurity Authority ('NCA') is responsible for addressing the strategic and regulatory needs of the Kingdom in so far as cybersecurity is concerned. This includes aspects such as the development of policies, governance mechanisms, frameworks, standards, controls and guidelines.

The uptake of cloud services will continue to increase across the globe, and the popularity of cloud-based solutions in Saudi Arabia shows no signs of abating. As a result, the NCA has identified a pressing need to ensure that there are cloud-focussed mechanisms for addressing cybersecurity risks in a cloud computing context.

In mid-February 2020, the NCA issued the draft Cloud Cybersecurity Controls (CCC-1: 2020), as a proposed extension to the application of its Essential Cybersecurity Controls 2018 (ECC 2018). (One criticism of the ECC 2018 has been that it contains a general prohibition on the use of cloud services hosted outside the Kingdom, without any further nuance.) A public consultation period followed, inviting interested parties to make submissions. In this article, pending the outcome of the consultation process, we provide brief observations on the CCC-1:2020 in its originally published form.

Application

The CCC-1:2020 is intended to reduce cybersecurity risks for both cloud service providers and cloud customers.

As drafted originally, CCC-1:2020 will apply to Saudi government entities (including ministries, authorities, establishments, and others) and their companies and entities, as well as private sector entities owning, operating or hosting critical national infrastructure.

Cloud service providers and cloud customers that are subject to the ECC:2018 will be required to implement CCC-1:2020. This point raises some questions, as the ECC:2018 does not appear to apply directly to cloud service providers that are not government entities or critical national infrastructure providers.

The CCC-1:2020 is drafted to apply to cloud service providers, inside or outside the Kingdom, that provide cloud services to cloud customers who are subject to CCC-1:2020. (It does not apply to such cloud service providers in so far as they also provide cloud services to customers that are not subject to the CCC-1:2020).

Consistent with the more general ECC:2018, the CCC-1:2020 also contemplates other entities, not strictly subject to CCC-1:2020, complying with the CCC-1:2020 requirements as a means of adopting best practices and enhancing cybersecurity.

Cloud-specific Cybersecurity obligations

As defined in the draft CCC-1:2020, cloud computing is more than just operation of data centres. It includes Software as a Service ('SaaS'), Platform as a Service ('PaaS') and Infrastructure as a Service ('IaaS'); and it contemplates private, community, public and hybrid cloud models. A cloud service provider is defined as anyone who provides cloud services to the public (presumably this means 'to others, on a commercial basis', rather than to 'members of the public' per se), either directly or indirectly, through data centres (both inside and outside Saudi Arabia), and who manages them in whole or in part. A cloud customer is anyone who subscribes to cloud services provided by such a cloud service provider.

According to the original draft, cloud customers subject to CCC-1:2020 will be required to contract only with licensed cloud service providers. This could refer to cloud service providers holding a Saudi commercial registration, although we cannot rule out the possibility that it may refer (in limited circumstances) to local and foreign cloud services providers registered with the Communications and Information Technology Commission ('CITC') pursuant to the CITC's Cloud Computing Regulatory Framework.

The provision of cloud services to cloud customers subject to CCC-1:2020, as drafted, will need to be governed by Saudi laws and regulations. Cloud service providers will need to consider all laws and regulations relating to cybersecurity in Saudi Arabia, and to comply with the applicable controls, guidelines, frameworks and regulations for cybersecurity at the relevant level; and cloud customers are required to verify such compliance.

Additionally, the draft contains a requirement to comply with the data classifications of the National Data Management Office ('NDMO'). Exactly what this will entail is unclear at this point, as the NDMO has not yet (as far as we are aware) issued any such classifications.

Broad data classifications as contemplated in the draft CCC-1:2020 are as follows:

Level	Application
1	Applies to data classified as 'top secret', based on what is issued by 'the relevant government entity' (presumably, the NDMO).
2	Applies to data classified as 'secret', based on what is issued by the relevant government entity.
3	Applies to data classified as 'restricted', based on what is issued by the relevant government entity. (Level 3 is the lowest level for hosting sensitive systems and data).
4	Applies to data classified as 'open', based on what is issued by the relevant government entity.

Critical national infrastructure comprises assets (including facilities, systems, networks, processes, and operators responsible for them), the loss or vulnerability of which may result in: significant negative impact on national security and/or national defence and/or state economy or national capacities; significant negative impact on the availability, integration or delivery of basic services (including services that could result in serious loss of property, lives, or injuries, or significant economic or social impact).

-ECC 2018

According to the draft, cloud service providers will need to provide cloud computing services from within Saudi Arabia. This requirement extends to all systems used, including storage, processing, monitoring, support, and disaster recovery. The CCC-1:2020 also requires them, to the extent required by Saudi law, to use telecommunications infrastructure, including connectivity points, provided by operators licensed in Saudi Arabia. (The wording of this provision is unclear; rather than imposing an obligation, it could be read simply as highlighting the need to comply with any such requirements as may be imposed pursuant to other laws or regulations.)

Cloud service providers are prohibited from complying with any non-Saudi laws that may conflict with obligations imposed by Saudi laws with regard to cybersecurity and the treatment of data under their control. In the event of any direction apparently in conflict with this requirement, that might result in the disclosure of data held in Saudi Arabia, the cloud service provider is required to notify the Saudi authorities promptly.

Cloud service providers are required to provide, to the NCA, an annual report (updated in the event of material changes in the interim) reflecting the technology, features and controls related to the cloud service provider's ability to access or decrypt (directly or via a third party) any cloud customer data.

What next?

It is possible that the draft CCC-1:2020 will be revised as a result of feedback that CITC receives as part of its public consultation process. Cloud customers and cloud service providers need to monitor developments in this space, to ensure that they can accommodate the potential impact of these cloud-focussed cybersecurity requirements.

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Real Estate and Hotels in the Time of COVID-19

Our Focus for this month's Law Update covers Real Estate and the Hotels & Leisure industry across the region. It is a timely focus given the unfortunate climate we find ourselves in as a result of the COVID-19 situation. No-one is escaping the pain that this is causing, and the Real Estate and Hotel sectors have been heavily impacted. We have seen launches of real estate projects postponed, temporary closure of hotels, restaurants, facilities and retail outlets, cancellation of events, thousands of hotel staff being furloughed, and generally revenues plummeting as a result of the necessary measures taken.

As Governments across the Middle East & North African ('MENA') region have been swift to take action to limit the spread of the virus, we are hopeful that the situation will be as short lived as possible, and business starts to return to normal before too long.

We have included a range of articles that we hope you find of interest. At the time of publication, we are busy assisting and supporting our clients in respect of the impact of COVID-19 on their day-to-day businesses. Whether a landlord, financial institution, investor, hotel owner, hotel operator, fund or tenant, we are here to help.

Please do not hesitate to get in touch if you need any assistance, advice or guidance.

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Coronavirus: hotel management agreements and force majeure

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The tourism and travel sectors are currently at the forefront of disruption caused by the global outbreak of Coronavirus ('COVID-19') with hotel revenues significantly impacted both regionally and globally.

There was already tension in the UAE hotel market impacting both owners and operators with decreased occupation, room rates and revenues and owners experiencing difficulties in servicing their debt obligations. The Coronavirus pandemic and the resulting economic fallout seems likely to exacerbate such tensions.

Travel restrictions implemented globally to reduce the spread of the virus have all but put tourism in the UAE completely on hold for the near future. Many hotels have taken the decision to close for the time being. For those hotels that remain open, occupancy is at unprecedentedly low levels resulting in such hotels taking urgent steps to reduce their operating expenses, such as placing staff on unpaid leave, reassessing suppliers of goods and services and closing off room inventory where not required to accommodate guests. Below we look at some of the legal ramifications:

Performance tests

In the region, the relationship between hotel owners and operators is most commonly governed by a hotel management agreement ('HMA'). Most HMAs include a performance test whereby a hotel owner may terminate the HMA (or receive a cure payment covering some of the profit shortfall) if the hotel's performance fails certain performance related tests. A typical performance test involves the operator needing to ensure that both:

1. the actual Gross Operating Profit ('GOP') of the hotel achieves a certain agreed percentage of GOP as compared to that determined or agreed in the annual budget ('GOP Test'); and
2. the Revenue Per Available Room ('RevPAR') achieves a certain agreed percentage of the average RevPAR of an agreed 'Competitive Set' of comparable hotels in the local market ('RevPAR Test').

Such tests usually need to be failed over a number of consecutive financial years (two years is typical) before the owner's rights are triggered.

However, a performance test clause will usually contain certain circumstances whereby the hotel is deemed to have satisfied the test despite having not met the relevant performance targets. Force majeure is one of such events that is typically carved out.

Whether or not a performance test failure can be avoided due to the effects of the pandemic will depend upon how 'Force Majeure' has been defined in the HMA and the position under the relevant governing law of the agreement (for example, many

For those hotels that remain open, occupancy is at unprecedentedly low levels resulting in such hotels taking urgent steps to reduce their operating expenses, such as placing staff on unpaid leave, reassessing suppliers of goods and services and closing off room inventory where not required to accommodate guests.

HMAs in the region are subject to the laws of England & Wales rather than the jurisdiction in which the relevant hotel is located) . Although force majeure definitions usually contain general sweep-up wording that covers all events outside of the reasonable control of the contractual parties, for the sake of certainty, operators will often seek to expressly reference such matters as local, regional or global outbreaks of infectious disease, epidemics or pandemics, and travel disruption affecting the country in which the hotel is located, as specific events of force majeure. Operators may also seek to extend the scope of the force majeure definition to overseas territories if its sales and distribution platforms have a large reach and a customer base in particular countries. This is so that those source markets for guests that provide a significant part of the hotel's revenue are included and events such as travel restrictions being imposed upon, or even a general economic downturn in, such key target markets are included as events of force majeure. As the force majeure definition is key to the performance test, a hotel owner will often seek to limit its scope through localising the definition to just cover relevant events that occur within the country in which the hotel is located (with general market and economic conditions also expressly excluded).

The HMA should also be closely examined regarding how the force majeure carve-out operates specifically in relation to the performance test. For example, if a force majeure event and its likely effect on revenue and profit is within the knowledge of the operator at the time that the annual budget is agreed or determined, then there may be wording included preventing such event from being relied upon to neutralise the GOP Test, as such matters should have been taken into consideration at such time.

Also, in relation to the RevPAR Test, there may be wording whereby force majeure may not be relied upon to the extent that it also generally affects the other hotels in the Competitive Set (as RevPAR is likely to be affected in a similar way for all of such hotels). For example, if the pandemic has generally reduced RevPAR across the Competitive Set, the hotel's percentage target will be similarly reduced and it is unlikely that the hotel would, in such circumstances, fail the RevPAR test (as the other hotels in the Competitive Set would be similarly impacted). However, if this is not the case and the hotel has failed the RevPAR test, then reliance on the event of force majeure (i.e. the pandemic) as a direct cause for the failure would, if challenged, need to be proved.

However, if for example, the hotel was shut down due to a specific outbreak at the hotel, it would be reasonable to allow this as a direct cause of the failure of the RevPAR test.

The effect of one or more of the hotels in the Competitive Set being closed would also need to be considered in the context of the relevant HMA provisions.

Generally, given the current unprecedented and extreme circumstances, we consider that it would be very difficult for an hotel owner to claim a failure of the performance test for the current financial year.

Construction milestones

For those HMAs entered into between owner and operator prior to or during construction (which remains the most common form of HMA in the region), the owner is obligated to comply with various milestone dates, usually relating to construction commencement, completion and hotel opening, which, if not met, places the owner at risk of termination by the operator. However, events of force majeure usually allow for the relevant milestone date to be extended up to a maximum long stop date. Supply chain issues caused by the pandemic are having a palpable effect on construction timelines. Owners should therefore review the force majeure clauses in their HMAs if it is likely that such construction delays could potentially place the owner in breach and at risk of termination.

Generally, given the current unprecedented and extreme circumstances, we consider that it would be very difficult for a hotel owner to claim a failure of the performance test for the current financial year.

General force majeure provisions

HMAs also usually contain a general force majeure clause whereby one of the parties is relieved from its obligations and not in breach where such performance is prevented due to an event of force majeure. These vary in nature. Sometimes they just provide for the applicable timeframe to perform the relevant obligation to be extended accordingly and for the parties to consult with each other as to how best to overcome and mitigate the force majeure event. However, some clauses may contain a long-stop date whereby if the relevant force majeure event persists for a certain amount of time, a right for one or both of the parties to terminate arises. Such clauses may come into play if the effects of the virus persist for a long period of time, such as with a long term closure.

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Kingdom of Saudi Arabia issues a new Regulation of Ownership of Real Estate Units and their subdivision and management

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A new law has been issued in the Kingdom of Saudi Arabia (the 'Kingdom') called 'The Regulation of Ownership of Real Estate Units and its subdivision and management' (the 'Law'). The Law was published in the official gazette on 13 March 2020 (Corresponding to 18 Rajab 1441 H) and shall be effective after (180) days from the date of its publication in the official gazette.

The issuance of this Law is considered a unique step which will have positive effects in promoting and regulating the real estate sector in the Kingdom, namely the real estate development industry and strata ownership scheme. This Law is part of the Kingdom 2030 vision and aims to encourage citizens to purchase and reside in units located within jointly owned projects.

The Law introduces a new concept to the real estate joint ownership scheme in the Kingdom which is called 'Real Estate Community' and accordingly the ownership of the jointly owned properties are not limited to standalone buildings anymore. It also includes a group of single-use or multi-use buildings located in one community.

The Law confirms it is compulsory to establish an owners' association ('OA') in the case of jointly owned property comprising three or more units. The Law also grants OAs an independent legal personality and independent financial liability.

The Law provides that jointly owned properties located within a Real Estate Community may establish a 'Community Association', whereby the members of the Community Association are one representative or more of each OA. The Community Association will be subject to all of the provisions of the OAs.

The main duty of an OA is to manage the jointly owned property in accordance with the standards determined by the implementation regulations of the Law.

The constitution of the OA is considered binding as it sets out the requirements to ensure the smooth operation and the good management of jointly owned property. The implementation regulation will clarify, in further detail, the constitution, but as it stands the Law outlines a number of matters which must, at a minimum, be regulated in the constitution and they are as follows:

1. operating rules of the general assembly and the manager;
2. provisions regarding utilisation and management of the common areas;
3. rules determining the financial obligations of the owners to be paid towards the management in relation to the maintenance of the common areas;

4. determining the beginning and the end of the fiscal year for the OA, the rules of payments from the association budget and financial control methods; and
5. rules to be followed upon the dissolution of the OA and the applicable liquidation procedures.

A manager must be appointed to manage the jointly owned property and take care of the daily management of the common areas. The manager appointed may be one of the owners or anyone else. The constitution sets out the rules applicable to the appointment of the manager, its duties and authorities. The Law provides the owner who built the jointly owned property the right to solely appoint a manager according to the rules stated in the Law (which are expected to be specified in further detail by the implementation regulations).

The constitution is deemed to be binding on all of the owners in the jointly owned property and is not subject to negotiation. Owners must comply with the decisions issued by the OA.

One of the new requirements imposed by the Law is the necessity of including a disclosure statement in the sale contract stating all descriptions related to the unit and the project so as to ensure that the purchaser is fully aware of all the details that may affect his or her decision to purchase the property. In the case of the omission of this statement the purchaser is entitled to terminate the contract within 30 days of the date of signing the contract or from the date he or she became aware of such information where such information is material.

The Law obliges owners in the jointly owned property to contribute to the costs of maintaining and managing the common areas. As a general rule each owner's share is determined on the basis of the unit area. Other criteria may also apply in calculating the maintenance costs of the owner's share in the common areas. The amount of service fees payable, is based on the property value or nature of use, and that may vary from one project to the next.

The Law indicates that the manager's decisions (once approved by the Real Estate General Authority) are considered as an executive deed against the owners. This would contribute in facilitating and expediting the collection mechanism of the maintenance and management fees without the need to go through the normal process of filing a substantive case, but instead directly filing an execution case. The implementation regulations will further elaborate upon the procedures and conditions in that respect.

"The Law is part of the Kingdom's 2030 vision and aims to encourage citizens to purchase and reside in units located within jointly owned projects.

The Law allows tenants who have leases of more than five years to establish an OA subject to agreement with the owner.

The Real Estate General Authority is the main authority responsible for the implementation of the provisions of the Law taking into consideration that such authority is also responsible for regulating the real estate sector in the Kingdom. We are looking forward to the issuance of the implementation regulations of the Law which will clarify, in further detail, the procedural matters regarding implementing the provisions of the Law. We think that this Law contains many positive features which we expect will contribute to promoting investment in jointly owned properties in the Kingdom.

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Focus Real Estate / Hotels & Leisure

Foreign ownership rights and restrictions: who can own real estate property in Saudi Arabia?

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This article outlines the rules on foreign ownership of real estate in Saudi Arabia (rights and restrictions).

GCC nationals

Pursuant to article 1 of the Real Estate Appropriation by Citizens of Arab Gulf States Co-operative Council and the Executive Rules, citizens of the Gulf Cooperative Council ('GCC'), in their natural person capacity, may own one property in Saudi Arabia. The property may be land or a building located in a residential area. In respect of land, the land area shall not exceed (3,000 m^2).

The right to own shall be for the purpose of housing for the owner or his family, with no right to use the property for another purpose unless permitted by the law of the state in which the property is located.

If the property is land, the owner must begin construction within three years from the date of registration of ownership, and the building must be completed within five years of such date, otherwise the property may be confiscated and sold, (in which case, the owner will be compensated if the owner is able to demonstrate convincing reasons for any delay in construction).

Citizens of the GCC are also allowed to lease real estate in Saudi Arabia for use as a personal residence.

The above does not apply to real estate located within the city limits of Mecca and Medina, which is separately dealt with below.

GCC company (wholly owned by GCC nationals)

A GCC company wholly owned by GCC nationals is permitted to lease or own real estate in Saudi Arabia where its use is for the purposes of conducting the company's licensed business activity.

The above does not apply to real estate located within the city limits of Mecca and Medina, which is separately dealt with below.

Other foreign nationals (non GCC)

Foreign natural persons enjoying a legal residency status in Saudi Arabia may:

- own real estate, for use as a personal residence, subject to obtaining a permit from the Ministry of Interior; or
- lease real estate, for use as a personal residence.

The above does not apply to real estate located within the city limits of Mecca and Medina, which is separately dealt with below.

Foreign companies (non GCC)

Even the smallest equity interest held by a non-GCC individual or entity will make a corporate entity a 'foreign' company, triggering the requirement for a foreign investment licence from the Ministry of Investment (including conditions stipulating the amount of capital that must be invested, and the timeframe for such investment). Additionally, Saudi Arabia has a strict anti-fronting law, which must be carefully considered when structuring investments through a corporate entity.

Pursuant to article 1 of the Law of Real Estate Ownership and Investment by Non-Saudis and subject to addressing the Ministry of Investment's foreign investment licence requirements, a non-GCC company may:

- own or lease real estate for the conduct of its professional, technical or economic activities;
- own real estate for property development purposes, in case of particular projects (see following paragraph);
- own or lease private residences for housing employees of a licensed project; or
- own or lease real estate for residential use by its employees who enjoy normal legal residency status.

With respect to foreign real estate developers in particular, it should be noted that where a foreign company's licensed activity includes purchasing buildings or lands for development and investment (by means of selling or leasing), then the total investment amount must not be less than thirty million Saudi Riyals (approximately US$ 8 million) (this amount may be amended by the Council of Ministers). Furthermore, the development of the real estate must be completed within five years from its acquisition, unless the Ministry of Investment approves an extended timeframe for completion.

The above does not apply to real estate located within the city limits of Mecca and Medina, which is separately dealt with below, nor to areas specifically excluded from ownership by foreign companies by royal decree.

Ownership and lease of real estate located within the city limits of Mecca and Medina

Generally speaking, non-Saudi nationals or entities, are not allowed to own or lease real estate located within the city limits of Mecca and Medina (save as mentioned below):

Pursuant to a recent amendment to the Law of Real Estate Ownership and Investment by Non-Saudis (by Royal Decree No. (M/94), dated 15-9-1439 AH) Non-Saudi entities (whether GCC or otherwise) may own or lease real estate in the vicinity of Mecca and Medina, provided that they fall under the following exemptions:

- banks and real estate financing companies licensed by the Saudi Arabian Monetary Authority ('SAMA'), provided that their acquisition of real estate is for the purpose of financing Saudi nationals, for their offices or branches, or for the practice of their activities in accordance with the regulations set out by SAMA;
- listed companies not engaged in real estate activities, provided that the entirety of the real estate is designated for their offices or branches, or the practice of their activities in accordance with the rules set out by the Capital Market Authority ('CMA'); or
- other entities specified by the Council of Ministers.

Pursuant to article 2 of the Regulations for Premium Residency, Non-Saudi nationals with premium residency status may acquire a usufruct right over real estate in the vicinity of Mecca and Medina for a period not exceeding 99 years.

Foreign missions

Foreign diplomatic missions in Saudi Arabia may, on a reciprocal basis, own the property where the official premises and chancery and the mission members' residences are located. In cases other than the above, the Chairman of the Council of Ministers may grant approval for real estate ownership for private residential purpose.

Economic Cities

There are a number of 'Economic Cities' under development in Saudi Arabia. At the date of this article, these are: the King Abdullah Economic City (Makkah Region, on the West Coast, near Jeddah); the Knowledge Economic City (Medina Region); the Prince Abdulaziz bin Mousaed Economic City (Ha'il Region, in the North of the Kingdom); and the Jazan Economic City (in the South West of the Kingdom). Pursuant to article 15 of the Statute of the Economic Cities Authority, foreign natural persons or companies may own or be granted a right of use of real estate in the Economic Cities, in accordance with rules set by the Board of Directors of the Economic Cities Authority.

Regulations have been issued by the Economic Cities Authority for the registration of all foreign companies established in the Economic Cities, the registration of all land title deeds in the name of foreign entities established in the Economic Cities, and the issuance of licenses and other approvals to service providers, including district cooling, warehousing and logistics in the Economic Cities.

Tadawul listed REITs or companies

Non-resident foreign investors are also allowed to trade in the units of Real Estate Investment Traded Funds ('REITs') and shares in companies listed on the Saudi Stock Exchange (the 'Tadawul').

In particular, the CMA introduced (in 2016) new rules for the listing of REITs on the Tadawul. The portfolio of REITs must include developed and income generating real estate (at a rate not less than 75 per cent) of the total portfolio. It is also mandatory for REITs to distribute at least 90 per cent of their net profits to unit holders in the form of dividends, with only 10 per cent of such net profits allowed to be re-invested.

From a macro perspective, REITs contribute to the goals of the Saudi Vision 2030 and the National Transformation Plan ('NTP') which aim to stimulate the real estate sector and increase its contribution to the overall GDP.

From a micro perspective, they also offer investors in Saudi Arabia attractive dividend yields and in many cases exposure to a diversified portfolio of real estate assets which may not otherwise be easily accessible to such investors.

The above, coupled with the proactive approach of the CMA in dealing with regulatory challenges, has allowed Saudi Arabia to lead the GCC countries with the highest number of established REITs.

Conclusion

Initiatives arising from the Saudi Vision 2030 and NTP have been viewed as providing a powerful momentum to both the encouragement of foreign investment generally in Saudi Arabia and also to the real estate sector.

Needless to say, the Saudi Vision 2030 will create even more opportunities in the real estate sector, with the objective of making the Kingdom of Saudi Arabia a leading real estate jurisdiction of choice.

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Focus Real Estate / Hotels & Leisure

Hotel establishments: keeping track of millions of yearly guests and maintaining safety

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Hotel establishments: an overview

The United Arab Emirates ('UAE') has long been recognised as a premier tourism and leisure destination. Over the past decade, the Hospitality and Tourism sector has experienced rapid and continued growth, becoming a vital factor of the UAE's successful economic expansion strategy.

In 2017 it was estimated that the Hospitality and Tourism sector contributed over AED 150 billion (US$ 41 billion) to GDP (4.6 per cent of GDP), and provided almost 570,000 jobs which represented 4.8 per cent of total employment.

According to the UAE's Competitiveness and Statistics Authority, the country welcomed 20.4 million hotel guests in 2017, making it one of the world's top tourism destinations.

The total number of overnight stays has increased by 155 per cent in the past 10 years to 2017 to 70.9 million, while the country's supply of hotel rooms is set to increase to an estimated 165,000 by this year.

In parallel, the UAE has also been ranked as the safest country in the world; considering the number of individuals that come in and out of the UAE through the hospitality and tourism sector, how does the UAE keep track of guests staying at hotel establishments whilst also ensuring seamless stays?

Licensing Hotel Establishments

At the outset, hotel establishments in Dubai are regulated by a number of pieces of legislation, including mainly, the Decree No. 17 of the year 2013 Concerning the Licensing and Specification of Hotel Establishments in Dubai ('HE Decree').

As per the HE Decree, hotel establishments include, but are not limited to, hotels, apartment hotels, inns, and student dorms ('Hotel Establishments'), and are licensed and regulated by the Department of Tourism and Commerce Marketing ('DTCM').

In addition to licensing Hotel Establishments, the DTCM (inter alia) supervises Hotel Establishments' activities, classifies them from ranging from five stars to touristic in accordance with international standards, and oversees the implementation of the required guests safety procedures in the UAE.

Recording guests: IT Programme

Further to the Decree No. 13 of 2011 Concerning the E-Program for Hotel and Touristic Facilities in Dubai, all Hotel Establishments in Dubai are required to adopt and operate a Hotel Establishments Information System Programme ('Programme'), and to operate such a programme and enter the proper information in order to be linked electronically with any government institution or authority.

The Programme's specifications are determined by the Dubai Police General Headquarters ('DPGH').

All Hotel Establishments are required to install computers and appropriate hardware and software that abides by the DPGH's Programmes' specifications.

The main purpose of the Programme is to ensure that the facility is linked to the Dubai Police for security and information, as well as other relevant governmental departments, including (but not limited to) the DTCM particularly for the purpose of recording information, and obtaining fees, including the Tourism Dirham (further clarified below).

The DPGH prepares the Programme, and supervises its operation, maintenance and development. The DPGH also ensures that the Programme is linked to the required governmental departments and public agencies, and institutions, as may be required (which include for example, but are not limited to, the Department of Economic Development, the General Directorate of Residency and Foreigners Affairs-Dubai, and the Roads and Transport Authority, and the DTCM).

Programme subscription and operation

To subscribe to the Programme, Hotel Establishments are required to submit an application to the DTCM.

The term of subscription to the Programme is for the same period prescribed for the facility's licence, which is customarily one year, and the annual fees for subscription to the Programme amount to AED 3,000 (US$ 800) for hotel facilities and AED 1,500 (US$ 400) from touristic facilities, payable to the DTCM.

Hotel Establishments are not permitted to welcome guests unless they have subscribed to the Programme, and an Hotel Establishment's licence will not be renewed unless its subscription to the Programme is renewed, and will be subject to penalties should these conditions be contravened.

Once the Programme is obtained, hotels are required to obtain a dial-up line from Etisalat (the telecommunications corporation) for their computers and software to be used solely for the systems' requirements. The line must be exclusively used for the Programme, and will be connected to the DPGH and other concerned government departments.

All Hotel Establishment employees must be trained to use the Programme, and must ensure that all guests provide the required information for input into the Programme.

Obtaining information

Upon checking-in to the Hotel Establishment, the respective guests' information must be input within the Programme, which is connected to the DPGH and other governmental authorities and bodies. The information required by the each of the DPGH, the DTCM, and other governmental authorities will be stipulated within, and accessible on, the Programme.

It is mandatory that copies of passports (for tourists) and Emirates IDs or UAE Diving Licenses (for UAE residents) be taken for all guests staying at the hotel.

Additional information, including for example, email address, residence address, and profession can be taken from one of the guests.

To ensure the safety and confidentiality and data privacy of guests, applicable laws stipulate the information and data contained within the Programme are deemed as confidential, and all workers of the facility are prohibited from using the said data for purposes other than those for which it is designated.

Guests: payment

In addition to ensuring that guests' information is recorded in the Programme, Hotel Establishments must ensure that their guests comply with the applicable laws and pay all applicable fees. To do so, guests are not permitted to check-in to any Hotel Establishments without covering the stay's expenses through one of the following methods:

1. cash advance deposit;
2. credit card pre-authorisation for an amount equivalent to such expenses;
3. pre-paid voucher issued by a travel agency or tour operator approved by an Hotel Establishment; or

4. a letter from the guest's company, approved by an Hotel Establishment, guaranteeing full or partial payment of the guest's bill.

Additionally, and as per Executive Council Resolution No 2 of 2014, Approving the Tourism Dirham Fee in the Emirate of Dubai, guests will be also charged a 'Tourism Dirham Fee' for each night of occupancy at an Hotel Establishment. The Tourism fee was introduced as a means to help fund Dubai Expo 2020 projects.

The applicable Tourism Dirham Fee differs depending on the Hotel Establishment's classification category. For example, the Tourism Dirham fee for five star or higher rated hotels or resorts is AED 20 (US$ 6) per night, for four-star hotels or resorts its AED 15 (US$ 4) per night, and for two to three star hotels its AED 10 (US$ 3) per night.

The Tourism Dirham fee must be paid by the guest at check-in along with the foregoing payments.

In the event that guests refrain from paying the applicable fees (i.e. the Tourism Dirham, or the hotel stay expenses, or any other applicable stay fees), an Hotel Establishment should take the following steps:

1. suspend the guest's credit card within the Hotel Establishment facilities and request service payment in cash;
2. request the guest to leave their room or apartment and double-lock it with the luggage inside;
3. in the event that negotiations to settle the due amount fail, the Hotel Establishment may call in the guest's embassy, or company, or otherwise, the Dubai police; or
4. finally, if the hotel establishment retains the guest's passport (which is the case when it is sponsoring visa), the hotel will be required to submit the passport to the police, or the guest's company, or alternatively, the respective embassy.

Penalties

Hotel Establishments that commit violations to the foregoing will be subject to fines that range from AED 1,000 (US$ 270) to AED 10,000 (US$ 2,700).

For example, the penalty for non-subscription or non-renewal of the subscription to the Programme on operation of devices despite the availability thereof is AED 1,000 (US$ 270), while the penalty for the disclosure of confidential information is AED 10,000 (US$ 2,700).

The said fines can be doubled in case of recidivism within one year of committing the preceding violation, with a limit on the value of the fine capped at AED 40,000 (US$ 10,900).

Other penalties include closing the facility for a period of no more than three months.

Conclusion

The UAE, and in particular Dubai, has one of the highest numbers of hotel rooms in the world as it is one of the most visited destinations in the world. The UAE's hospitality market is expected to reach US$ 7.6 billion by 2022, growing at a five-year CAGR of 8.5 per cent between 2017 and 2022.

To ensure that Dubai maintains a record of all said guests, and ultimately, preserve its security, the DTCM introduced the Programme, which ensures that all guest information is recorded, retained, and accessible by the Dubai Police as well as any respective governmental authorities.

All guests are required to provide copies of their passports, as well as an advance payment of their stay together with the payment of the applicable Tourism Fee.

This ensures that no disputes arise between Hotel Establishments and guests at the end of their respective stay, that safety is maintained within the Emirate, and that the Hospitality and Tourism sector profits are realised, which ultimately leads to the sectors' growth.

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Qatar Financial Centre provides platform for international hospitality enterprises

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The Qatar Financial Centre ('QFC') is now celebrating its 15 year anniversary in Qatar.

When the QFC was first established, firms that provided professional and business services to the financial service industries only were permitted to be established. That is no longer the case and QFC-licensed entities can now serve and support a broader array of businesses. A wide range of companies and entities are active in the QFC under the permitted Non-Regulated Activity of 'professional and business services'. Professional and business service providers are firms that actively provide business to business services. Professional and business services is a wide concept and is not limited to 'auditing, accounting, tax, and legal services' as referred to specifically in the QFC Law, but extends to and includes such activities: as human resources consulting; marketing and brand management; event management services; management operations; business and professional education; public relations; accreditations consulting; logistics planning and consulting; and many other business-to-business services.

Obviously a number of the aforementioned activities will be applicable to the hospitality industry, especially for offshore consultants in that field. An entity can now be established to carry out such activities and be 100 per cent foreign owned allowing such consultants to undertake business activities in Qatar without fear of breaching either foreign investment laws or 'doing business' laws. A staffed office will be able to be located in Qatar permanently in a jurisdiction that carries no labour quotas or wage protection systems.

Equally important for the hospitality industry is the fact that a Non-Regulated Activity can also include that of a 'company headquarters'. This term is not defined as being a regional HQ company or holding entity, but rather as an entity that supports other companies within a corporate group. Thus for a hotel management company, it can have staff located in Qatar that can consult with hotels under its operational umbrella and assist with marketing and promotional activities as well as management and operational consulting. Instead of relying on one of the hotels in its group sponsoring staff who are then answerable to the owner, the hotel manager can have its own staff dedicated to supporting all hotels under the same operational umbrella. Obviously this is not meant for staff who are involved in the day-to-day operations of a particular hotel but more for staff involved at a strategic level.

The FIFA World Cup is scheduled to kick off on 21 November 2022 with the final being contested on 18 December 2022. Expectations are for 1.6 million spectators to visit during the month-long competition with around 160,000 requiring accommodation. Some estimates have stated that Qatar, by that date, will have 70,000 hotel rooms with even 1,600 rooms to be made available as floating hotel rooms on Qetaifan Island North which is close to the iconic Lusail International Stadium, where the opening and final games of the tournament will be played. For a country of its size, Qatar already has a significant number of hotels and other hospitality venues, with most major international operators being represented. The fact that the QFC is offering a corporate structure that will suit the interests of major hotel operators could see a boom in hospitality companies utilising the QFC as a base for operations not only in Qatar but throughout the region.

A hotel management company can have staff located in Qatar that can consult with hotels under its operational umbrella and assist with marketing and promotional activities as well as management and operational consulting.

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Staying smart: IoT in UAE hotels and the key legal issues

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Introduction to IoT

All around the world, technology companies are disrupting markets with electronics personalising consumer experience. The amount of products categorised as part of the 'Internet of Things' ('IoT') is on the rise, transferring data across networks in devices as sophisticated as smartphones, and as simple as a toaster. With the value of personal data on the rise, and the willingness of consumers to hand it over, there are predictions that connected devices sharing user data offer the potential for a fourth industrial revolution. It is true that IoT offers an infinitely connected world, bringing us closer together in very real and important ways.

Consumers are becoming less satisfied with the idea of 'one size fits all', and are growing a lot more accustomed to personalised treatment. The hotel industry has recognised this well; especially in the UAE, which is fast embracing the use of IoT in its hotels to offer a hyper personalised experience and act as a key differentiator in a highly competitive market.

IoT in hotels

Consumers now expect to find smart technology in their hotel rooms; technology that mirrors the smart technology they have at home, whether it is an intelligent thermostat, colour-changing lamp, or smart door lock. They are looking to control their hotel rooms at the press of a button or, increasingly, with a voice command. The hoteliers that get this right will secure key brand loyalty.

International hotel chains are building their IoT technology footprint with key partnerships with IoT providers. Examples of this are Marriott's partnerships with Legrand's IoT programme and Samsung's ARTIK cloud-based IoT platform.

Hotels are also using IoT services to offer personalised services such as restaurants, gyms and activities, using location-based information (which also brings with it certain legal challenges). This can be used to send real-time information about menu options, activities close by and transport updates.

Hotel guests can even rely on their smart phones to check in and unlock their hotel doors, perhaps setting up their hotel room preferences as they walk through the lobby on arrival, creating a truly seamless customer experience.

Real-time information also allows hotel staff to be alerted to any required repairs and preventive maintenance within the hotel. There is nothing a hotel guest dislikes more than a broken TV in their room on arrival!

In addition to the advantages of making hotel guests' stays more convenient, interactive and personalised, IoT in hotels has economic and environmental advantages.

With IoT adoption in UAE hotels on the rise, this article explores the key legal and regulatory issues that UAE hoteliers need to be aware of, and comply with, to ensure that they can fully exploit the innovation benefits of IoT.

For example, smart rooms that are able to monitor and adjust air, heat or lights may save company owners money on energy bills. Hotels can leverage these cost savings whilst emphasising their green footprint to hotel guests who are increasingly choosing hotels based on environmental criteria.

Of course, like any industry disrupter, IoT has the potential to pose certain risks unless businesses fully understand the relevant legal landscape in which they are operating and take steps to ensure their compliance. Laws chase emerging technology trends, but sometimes struggle to predict the unchartered waters of this increasingly connected world. This is particularly relevant in the Middle East.

Cybersecurity considerations

As IoT devices are connected to the internet, they can be hacked. This is especially concerning given the number of IoT devices and the interconnection of each IoT device within each hotel room, and with the wider hotel network. If a hacker enters through a single point of entry, there is an ability for that hacker to compromise additional parts of the overall network. Given both the growth in the use of technology like virtual room keys activated via your mobile phone and the increasing collection of hotel guest personal data through IoT devices, this potentially puts hotel guests at increased risk.

The more use hotels make of IoT devices, the more information a hotel can collect on a hotel guest and the greater the opportunity for personalisation and increasing guest brand loyalty. Hoteliers need to take steps to ensure the risk of a security breach is low and hotel guest personal data collected via IoT devices is protected. Penalties for non-compliance with laws can be severe, as can the consequences of reputational damage for hotel brands. With a number of recent high profile global cyber incidents impacting hotels, hoteliers need to be very focused on installing robust and secure IoT systems

The laws to watch out for in the UAE

Hoteliers need to be aware of a number of key UAE legal and regulatory requirements as they move forward with greater guest data collection and usage:

- compliance with UAE IoT regulations; and
- compliance with UAE personal data protection laws.

UAE IoT regulations

The UAE Telecommunications Regulatory Authority ('TRA') recently issued an IoT regulatory policy which aims to regulate IoT with the intention of making the UAE a leading country in developing IoT services and driving innovation ('IoT Policy'). Please see our previous article titled 'What's Got Hot in the Internet of Things?'.

An IoT Service Provider is defined broadly under the IoT Policy as 'any person that provides an IoT Service to users (including individuals, businesses and the government), that will comprise the provision of IoT services'. IoT services is also broadly defined. IoT Service Providers have a number of key obligations, including registration with the TRA, under the IoT Policy, and hotels adopting new IoT solutions need to assess whether they could fall into the IoT Service Provider category.

Moreover, personal data collected via IoT devices needs to be kept secure and the IoT Policy sets out key requirements for ensuring data security, particularly in relation to the transfer of personal data outside the UAE. Hotel chains use global hotel management systems and transfer and store data regionally, or even, globally. UAE hoteliers need to consider whether their current data collection, transfer and storage practices meet the requirements of the IoT Policy.

Personal data protection laws

Hoteliers generally want large, centralised datasets to analyse and monetise. This allows them to track trends in the hotel industry, as well as guest behaviour and preferences. Please see the related article entitled 'Unlocking the value in data: successfully implementing compliant data monetisation strategies'. IoT devices, by their, nature generate large amounts of valuable personal data, particularly when aggregated and mined using emerging technologies, like AI.

As set out above hotel chains are global, running globalised IT infrastructure. They transfer and hold data at a regional, and often global, level. With no comprehensive 'European style' data protection legislation in the UAE specifically designed to regulate the collection, processing, transfer and/or use of personal data, except for certain specific UAE financial free zones (DIFC and ADGM), hoteliers need to be aware of a web of UAE laws that cover the use (and particularly the transfer) of personal data to ensure that they remain compliant. Where hotels are established in the DIFC and ADGM, hoteliers need to be aware of the current data protection laws that apply to them (and also the hotly anticipated new data protection laws that are expected very soon).

Conclusion

The implementation of IoT in hotels in the UAE is increasing and UAE hoteliers should be looking to take full advantage of the benefits IoT offers to their businesses. They need to balance this opportunity with heightened awareness of, and full compliance, with all relevant UAE laws.

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Buying a home abroad

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A number of our clients will, at some point, purchase a property abroad, whether in the cosmopolitan cities of London, Paris, Monaco or further afield in the US for example. These can be fantastic investments and holiday homes but in order to ensure these assets remain at their optimum in our clients' portfolios, rather than becoming a burden, it is essential to follow our top tips.

1. Do not blindly follow what friends and family may have done when buying their properties

Your personal tax, residency and domicile position should be assessed by a professional advisor to ensure that the property is acquired and held in the most optimal way, always taking into account your personal circumstances, applicable legislation, reliefs and exemptions as well as any favourable tax treaties.

2. Take professional advice about registering a will in the country where you are buying a home

A will ensures that your wishes will be known and followed in the event the worst should happen and that your loved ones are taken care of. The will should cover, not only the property but all assets in that country, including bank accounts, cars, artwork etc.

It is also important to ensure that clients who have registered wills in more than one jurisdiction, consult with their advisor to ensure that their various wills do not revoke or conflict with each other. It is common for some wills to have a clause that states 'all other wills are revoked' so such a clause would need to be carefully considered and revisited.

3. Take advice on your tax position

Taxes differ from country to country and you could be exposing yourself to some hefty tax bills which could potentially be reduced with the right planning in advance. In the UK for example, inheritance tax rates are currently at 40 per cent and can be payable on worldwide assets depending on where the owner is domiciled. In addition, many of our clients face large ATED (Annual Tax on Enveloped Dwellings) bills due to outdated holding structures and/or not availing of certain reliefs and exemptions that may be applicable to their personal circumstances.

It is critical that you proceed with eyes wide open and be aware of whether you are or could be subject to income tax, inheritance tax and capital gains tax abroad in the country where you purchase the property. The way that you purchase your property could have a huge impact on how you are taxed in the future, so it is important to obtain the correct advice from a specialist before you sign on the dotted line.

Also consider life insurance policies which are available in the market to cover future inheritance or other tax liabilities.

4. Financing

Explore the various financing (and re-financing) options available to you by using recommended and trusted financial advisors and mortgage brokers. This process should be started as early as possible so as not to slow down the acquisition process once an offer is accepted by a seller.

Finding and financing property overseas can be difficult and time consuming but the right advisor can help you capitalise on opportunities around the world.

5. Stay updated

It is also important to stay up to date with developments on tax and other applicable legislation in the country where you have purchased a property since what may have made sense before, may no longer make sense. Clients who hold real estate through an offshore SPV may no longer need these SPVs given changes in law and so restructuring how assets are held may be something to consider.

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Focus Real Estate / Hotels & Leisure

IP and the construction industry

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Background

As virtually all construction projects have, at least, an element of design, intellectual property plays an important part in the construction industry.

The purpose of this article is to briefly highlight some key issues and complexities regarding the interface and relationship between the construction sector and construction related contracts and intellectual property rights.

Intellectual property rights and design

Typically, all design appointments as well as construction contracts (including 'construction only' contracts on the basis that the contractor will almost inevitably have a degree of design responsibility) require the designer to provide the owner (i.e. the party who is procuring the project) with a right to use the design produced by that designer. Without such an entitlement, the ability of the owner to use the designer's designs is questionable.

Although different drafting positions can be adopted, a common approach is to insert a definition of 'Design Documents' in the appointment or construction contract, stating that Design Documents include such things as all designs, drawings, models (including BIM models), calculations, reports that are produced by the consultant or contractor in relation to the project.

An operative clause of the appointment or of the construction contract should then specify the type of use that is conferred upon the owner. Generally, this can either be in the form of granting ownership in the Design Documents to the owner (which can be effected through an assignment) or, alternatively, providing the owner with a licence to use the Design Documents.

Licence or ownership transfer

In terms of granting ownership of the Design Documents, the designer needs to be aware that it will no longer be able to use such Design Documents in respect of other projects without the permission of the Owner (which is seldom granted). Additionally, an exclusivity clause may be inserted so as to ensure the non-replicability of the designs in other construction projects. This is particularly significant in the context of architectural designs.

While this may be acceptable if the Design Documents are only relevant to the project in question (such as an MEP design in respect of a commercial tower), the designer should nevertheless reserve ownership of its 'background IP'.

Background IP can be broadly characterised as intellectual property rights or knowhow that the designer used to create the Design Documents (but this concept should be clearly defined). It is therefore important that the designer reserves the right to use such design techniques in respect of future projects. In this regard, the designer would be well advised to officially register any unique way that it has developed to undertake designs or unique design techniques and we note that this issue is particularly significant in the context of complicated output focussed projects (such as process plants). As the GCC region focusses on developing alternative energy sources in its landmark vision to shift away from oil, architects and designers are being commissioned to develop unique designs with respect to wind turbines or solar projects. With such designs requiring specific technical expertise, designers may attribute the implementation of their designs and technical drawings to pre-approved contractors. GCC Copyright laws reserve a set of rights; moral rights to creators so as to ensure the following entitlements:

1. attribution of the original creator to a given design;
2. avoiding false attribution of design works; and
3. offering a degree of respect to each given design while safeguarding work from derogatory attempts aimed at damaging the authors honour or reputation. Derogatory attempts would include practices such as poor or malicious representation of the original work.

It is worth noting at this stage that moral rights may not be waived or assigned as may be done in respect other Intellectual Property Rights.

Conditions

If, on the other hand, the designer grants the owner a licence to use the Design Documents, ownership of the Design Documents would remain vested in the designer (so that the designer would be free to re-use such Design Documents in respect of subsequent projects) but the drafting of the licence clause should specify the scope of the licence. For example, it is typical to state that the licence is royalty free, irrevocable and that the owner may grant sub-licenses or assign the licence. The drafting should also specify whether the licence simply applies to the project in question or if it is of broader application and can be used in respect of unrelated projects.

Whether title to the Design Documents is transferred or a licence is granted, it needs to be considered whether either right should be linked to the owner paying for the Design Documents or if the right should be granted on creation. Designers obviously prefer the former approach but owners usually resist this on the basis that justified payment disputes may prevent it from using the Design Documents. However, we also have experience of designers arguing that rights to use their intellectual property rights should terminate in the event of termination of their engagement on account of the owner's breach. However, this position is typically robustly resisted by owners, particularly if the owner has settled all dues to which the designer is entitled arising out of such termination.

A grey area arises, which needs to be carefully considered on a jurisdiction by jurisdiction basis, if the Design Agreement fails to address the issue of intellectual property. On one hand, the designer could credibly argue that no right to use its Design Documents is implied. However, the owner is likely to argue that its payments to the designer entitle it to use the Design Documents. This ambiguity can be difficult to resolve and has been the subject of formal dispute resolution proceedings. However, disputes of this nature can easily be avoided by clear drafting, which would be to the benefit of each party.

It is also usual for designers to be required to waive moral rights over any designs; by way of background the Berne Convention anticipates that designers have the right to be acknowledged as the author of the design in question but owners invariable delete this right.

Third parties

It is important to remember that parties other than the owner may need to use designs and, as such, intellectual property rights need to be addressed in third party rights' contracts, particularly collateral warranties that are issued by designers in favour of key third parties such as funders, purchasers and key tenants of a project.

Intellectual property rights in the construction sector are very significant but, in our experience, they are not always given the attention that they deserve.

Typically, the intellectual property rights are in the form of a licence but the designer will be unable to grant a licence if title to the intellectual property rights has been transferred to the owner. In this situation, the owner needs to grant a licence to the relevant beneficiaries.

Indemnities

A further key point in respect of intellectual property rights in the construction sector includes indemnities; indeed, it is typical for the designer to hold harmless and indemnify the owner against any liability that the owner incurs in the event that the Design Documents infringe the intellectual property rights of a third party. This may occur if, for example, an architectural design copies an existing building. It is also noteworthy that such indemnities are usually excluded from any caps on liability that have been agreed while liability for a breach of a third party's intellectual property rights may not be covered by professional indemnity insurance.

Conclusion

Intellectual property rights in the construction sector are very significant but, in our experience, they are not always given the attention that they deserve. We therefore recommend that all stakeholders ensure that the documents to which they are party set out a clearly drafted intellectual property regime.

If your business engages a contractor who creates intellectual property, your contractor may have moral rights attached to their work. Moral rights are rights that protect the intellectual property of creators. For example, an artist's name should always appear next to their artwork in an exhibition. As a business, it is important that you do not infringe upon your contractor's moral rights. Moral rights clauses in your contractor's agreement can serve to protect your business from infringement claims.

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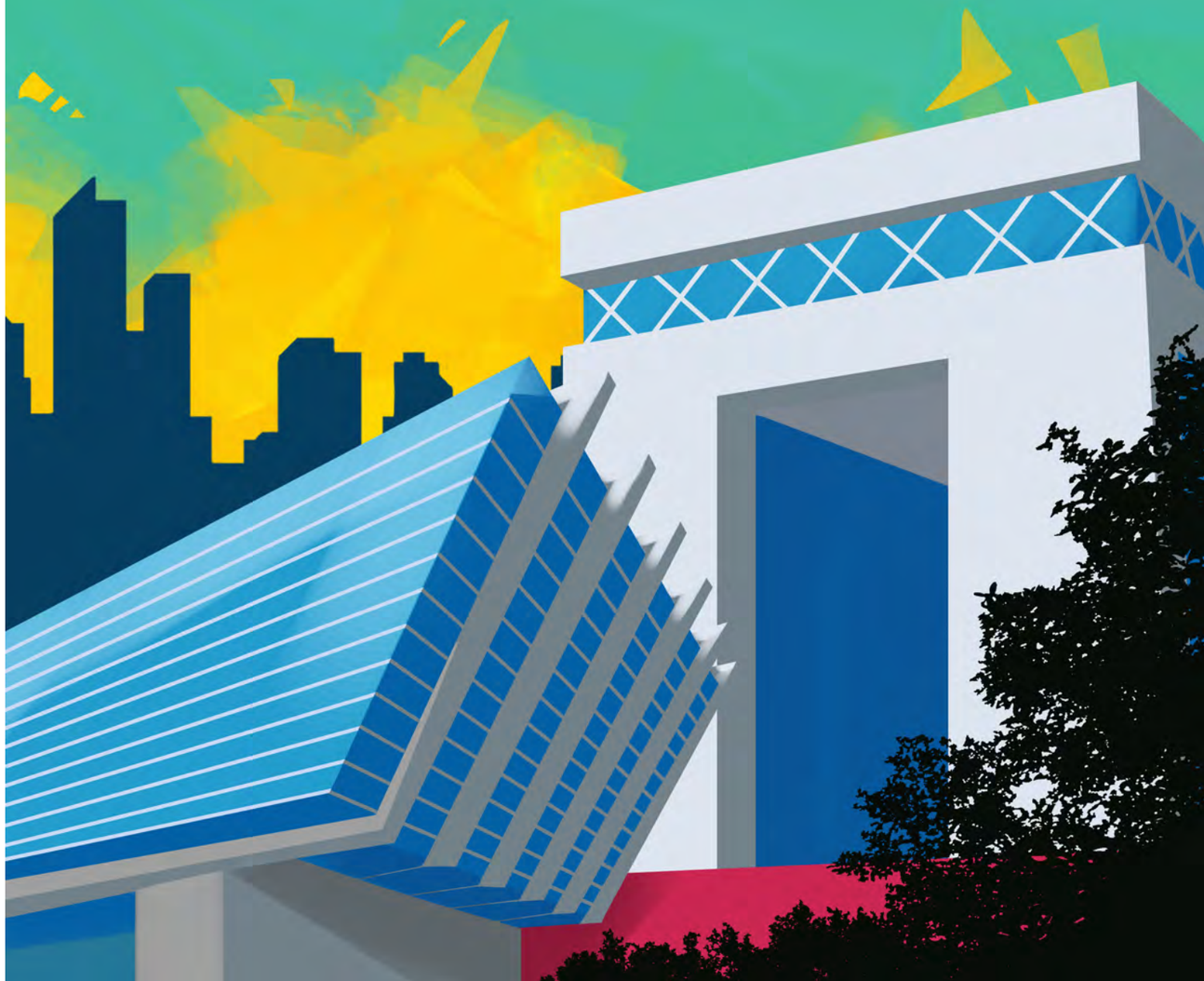
Focus Real Estate / Hotels & Leisure

Property funds in the UAE: available options and key considerations



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Property funds are a type of collective investment fund that invest primarily in real estate and real estate-related assets. These funds provide an easy way to obtain income from property without the need to buy the property itself. For sponsors, property funds give them access to a dedicated pool of capital to fund their real estate investments without having to raise capital on a deal-by-deal basis.

This article discusses the available jurisdictions for the establishment of property funds in the United Arab Emirates ('UAE'). It then sets out the key considerations that sponsors should bear in mind when navigating the legal and regulatory complexities of launching the same.

The choice of jurisdictions in the UAE

Property funds can be established in the UAE in accordance with local Federal laws, or offshore under the common law adopted by either of the following UAE financial free zones, being: (i) the Dubai International Financial Centre ('DIFC'); and (ii) the Abu Dhabi Global Market ('ADGM') (collectively, the 'Jurisdiction(s)'). We set out below a summary of the offering that each of these Jurisdictions provide to the sponsors of property funds:

UAE onshore

The fund regime onshore in the UAE is regulated by the UAE Securities and Commodities Authority ('SCA') pursuant to its Administrative Decision No. (6/R.T.) of 2019 Concerning Real Estate Investment Fund Controls (the 'UAE REIT Regulations') read with Chairman Decision No. (9/R.M) of 2016 Concerning the Regulations as to Investment Funds and Administrative Decision No. (63/R.T) of 2019 Concerning Evaluation of In-Kind Shares of Investment Funds.

SCA has to date not issued regulations that concern property funds in general but has instead concentrated on REITs which are a subset of property funds. The main regulatory elements of a REIT under the applicable SCA Regulations are as follows:

1. a REIT can be either a public or private fund. If established as private, it can be converted to public in the future;
2. a REIT may borrow no more than (50 per cent) of its total assets' value from a bank licensed to operate in the UAE;
3. a private REIT must be established to invest at least 75 per cent of its assets in real estate assets for construction, development or re-fitting in preparation for sale, management, leasing or disposal;
4. a REIT may establish or own one or more real estate services companies, provided that its investment in the ownership of such company and its subsidiaries shall not be more than 20 per cent of the REIT's total assets;
5. the fund documents needed to establish the REIT must be in Arabic;
6. a public REIT must:
   i. have 75 per cent of its total assets be revenue generating real estate assets;
   ii. receive at least 90 per cent of its total revenue from real estate interests, dividends and capital earnings relating to such income generating real estate properties;
   iii. have equal to or less than 25 per cent of the net assets of the fund as investments in usufructuary rights, for which the remaining period is less than 30 years; and
   iv. distribute 80 per cent of its net profits to its unit holders, every year.

REITs established pursuant to the SCA regime may be listed on a local financial market such as the Dubai Financial Market. The option to list on a local financial market provides the potential for greater access to liquidity. However, it should be noted that there is, at present, no precedent for a SCA governed public REIT listing on the Dubai Financial Market.

1. DIFC

The DIFC is a purpose-built financial free-zone, located within the Emirate of Dubai. Collective investment funds (including property funds) operating in the DIFC are regulated by the Dubai Financial Services Authority ('DFSA'), The DFSA regulations for collective investment funds are compliant with the principles of the International Organization of Securities Commissions ('IOSCO') satisfying its objective to meet international standards for regulation and, where required, to provide adequate investor protection.

The DIFC was the first of the Jurisdictions to implement its funds regime in 2006 and as such represents a well-established and tested regulatory environment. Some of the features of the DFSA funds regime that make it attractive to sponsors hoping to set up in Dubai are set out below:

1. a public fund regime, that offers protection to retail investors through greater regulatory oversight;
2. an exempt fund and qualified investor fund that provides a fast-track notification process with significantly fewer regulatory requirements than a public fund;
3. DFSA-licensed fund managers that can manage funds in both the DIFC and in jurisdictions outside the DIFC;
4. external fund managers from other IOSCO member regulatory regimes are able to establish and manage funds in the DIFC by satisfying certain criteria;
5. bespoke Sharia governance requirements applying to Islamic Funds, that promote high Sharia governance standards with flexibility of application; and
6. regulation of the fund management service providers, including fund administrators, custodian and trustees, thereby providing a one-stop jurisdiction for setting up a property fund platform.

In line with other developed fund regimes, the DFSA takes a modular approach to regulation. This means that sponsors can choose which type of collective investment fund they wish to establish, which will have its own foundational layer of regulation and then, if they wish to further specialise their fund, there are additional modules of DFSA regulation that apply. The documentation required to establish a fund in the DIFC must be in English.

The table below sets out the key characteristics of the collective investment funds available in the DIFC that offer different platforms for large scale property investment.

Type of Fund	Public Funds	Exempt Funds	Qualified Investor Funds ('QIF')
Level of Regulation	Prescriptive regulation compliant with the principles of IOSCO.	Reduced regulations since investments are being made to 'Professional Clients'.	Light regulation since investments are being made to 'Professional Clients' for a high minimum subscription amount.
Investors and Offer	• Retail investors • Greater than 100 investors • Public Offer	• Restricted to Professional Clients • No restrictions • Private Placement	• Restricted to Professional Clients • No restrictions • Private Placement
Minimum Subscription Amount	N/A	US$ 50,000	US$ 500,000

As discussed above, specialist types of fund in the DIFC each have their own additional regulatory requirements. Please find brief summaries of these requirements set out below with respect to the main types of specialist funds that are deployed for real estate focused investments in the DIFC.

Property Funds

A collective investment fund is categorised as a Property Fund under DFSA regulation, if its main purpose is investment in real property and in securities issued by body corporates the main activities of which are investing in, dealing in, developing or redeveloping real property.

Save for the first six month period of the Property Fund's operation or any other time period as set out in the prospectus or as approved by Special Resolution of its unit holders, the assets of the Property Fund must consist only of any or all of the following:

1. real property;
2. property related assets or units in another property fund; and
3. cash, government and public securities, up to a maximum of 40 per cent of holdings.

Public Property Funds

In case a Property Fund is or intends to be a Public Fund:

1. an investment company or investment trust must be utilised as the investment vehicle of the fund;
2. the fund must be listed within three years of when its units are first offered to potential unitholders; and
3. the constitution of the fund must include provisions that deal with: (i) the manner in which the issue and redemption of units of the fund will be made to ensure that the fund is closed-ended; and (ii) if applicable, the circumstances in which any private placements may be made.

If the offer documentation or marketing material of a Property Fund, which is also an Exempt Fund or a Qualified Investor Fund, states that it intends to be listed or traded on an Authorised Market Institution, or on an exchange in a recognised jurisdiction, it must:

1. be registered as a public company;
2. list and trade its units on the exchange specified in its offer document or marketing materials within three years of its registration; and
3. during the period pending its listing and trading, comply with all the requirements applicable to a public fund other than the requirements relating to: (i) the independent oversight function; and (ii) the issue of a public fund prospectus.

Islamic Property Funds

Islamic Property Funds, whilst similar to conventional property funds are subject to additional compliance requirements and fund managers are required to maintain establish and maintain systems and controls which ensure that its management of the fund and the fund property is Sharia compliant. The fund manager must appoint a Sharia Supervisory Board ('SSB') and to have systems in place to disseminate the SSB's rulings, conduct regular Sharia reviews and also conduct an internal audit in accordance with the Islamic Finance Rules Module of the DFSA Rulebook.

Real Estate Investment Trusts (REITs)

A REIT is a property fund which:

1. is constituted either as an investment company or as an investment trust;
2. may hold development property provided it does not exceed 30 per cent of the net asset value of the fund property, provided the intention is to hold such assets on completion;
3. is primarily aimed at investment in income-generating real property; and
4. distributes to the unitholders at least 80 per cent of its audited annual net income.

"Property funds are a type of collective investment fund that invests primarily in real estate and real estate-related assets. These funds provide an easy way to obtain income from property without the need to buy the property itself.

2. ADGM

The ADGM is a financial free zone located in Abu Dhabi. Based on ADGM's direct application of common law, its funds regime balances a business friendly environment for sponsors, while retaining the appropriate levels of investor protection. Collective investment funds operating in the ADGM are regulated by the Financial Services Regulatory Authority ('FSRA') that is compliant with the principles of IOSCO.

Qualifying ADGM entities may acquire title to real estate in the Emirate of Abu Dhabi (inside or outside Abu Dhabi's designated investment zones). Fund managers located

both within and outside the ADGM can establish funds within its jurisdiction using a corporate, limited partnership or trust platform. Sharia compliant funds and structures are also offered by the FSRA regulations. ADGM has also developed a platform that permits start-up and boutique fund managers to establish in the ADGM to manage non-retail funds.

The FSRA regulations permit the establishment of public funds, exempt funds and qualified investor funds on essentially the same criteria of investment and regulatory oversight as does the DFSA in the DIFC.

FSRA has developed sector-specific frameworks, including a private REIT regime allowing REIT managers to launch in a private placement setting without a listing requirement, making ADGM the first international financial centre in the MENA region to offer a private REIT regime.

Pursuant to ADGM Fund Rules, a Fund Manager can only include the terms 'Real Estate Investment Fund' or 'REIT' in a Domestic Fund if the fund: (a) is primarily aimed at investment in income generating Real Property; and (b) distributes to the unitholders at least 80 per cent of its audited annual net income.

ADGM's three independent authorities (ADGM Courts, FSRA and ADGM's Registration Authority) provide for a complete environment for investment funds to conduct business with confidence.

The ADGM funds' regime is the most recently established out of the Jurisdictions but the FSRA is a proactive regulatory body and the rate of progress over recent years in this Jurisdiction has been significant.

The ADGM is the first international financial centre in the MENA region to offer both a private and a public REIT regime. The ADGM recognises that some sponsors may wish to structure a REIT that is only offered by way of private placement to professional investors, while still providing other sponsors with the ability to establish public REITs in the region.

For sponsors, property funds give them access to a dedicated pool of capital to fund their real estate investments without having to raise capital on a deal-by-deal basis.

Key considerations for a successful launch

We have discussed above the regulatory Jurisdictions that the current legal framework in the UAE offers to sponsors who are desirous of setting up a property fund. Sponsors however, will need to be mindful of the practical challenges that they may face from the pre-incorporation phase until the successful launch of their fund. Given that each fund has a specific set of objectives, the relative significance of the issues, discussed below, will depend upon the specific objectives and dynamics of each property fund.

1. Structural considerations

The legal and investment advisors must analyse the particular objectives of the sponsors with a view to formulating a corporate structure that would allow the sponsors to meet their objectives. Discussions at this stage will revolve around the available types of fund, the management structure, the required capitalisation, the characteristics of the offering, including whether it would be Sharia compliant or not, and other issues of critical importance that should be clarified and agreed on from the outset. Consideration must also be given to the type of special purpose vehicles that will need to be deployed, the tax optimisation strategy, the roll-up strategy and the expected timeframe to implement the corporate structure taking into account the regulatory approvals that will be required. These structuring considerations are of significant importance because of their practical consequences. For example, the type of fund or the special purpose vehicles deployed may impact where the fund can own property within the target jurisdiction. Further, the decision as to whether or not to elect to have the fund be Sharia compliant will determine the types of real estate assets that can form part of the seed portfolio.

2. Regulatory considerations

It is essential to analyse the regulatory approvals that are required to establish a property fund. These approvals will primarily depend on the type of the fund, the type of the entities forming part of the corporate structure of the fund and the location of the properties that will be acquired by the fund. There are often a number of governmental authorities that would be involved in the process with each one of these authorities having specific rules and procedures that must be complied with. It is very important to note that some of these requirements are not necessarily written in the law and could take the form of unwritten policies and practices. The legal advisors of the sponsors should, therefore, anticipate the potential regulatory hurdles through sophisticated advance planning and early engagement with authorities on a no-names basis as governmental authorities are generally proactive in the funds sector and many hurdles can be overcome by maintaining a positive dialogue with them.

3. Acquisition programme

More often than not, sellers of real estate assets would be willing to look at scenarios other than a pure cash sale to unlock the value of their real estate holdings. This is particularly the case in the buyer's market that currently exists in the UAE, where the pricing of real estate assets is facing downward pressure. Sponsors should seize this opportunity and consider a variety of transaction structures that could allow them to generate more profit than the classical cash based or leveraged models. They could, for instance, offer the seller units in the fund in exchange for the seller contributing the real estate asset to the fund on an in-kind basis, or potentially structure the consideration as a mix of cash and equity. The foregoing and a number of other issues, including with respect to each target acquisition of a real estate asset forming part of the seed portfolio, the kick-off date of such acquisition, the timeframes for completion and the closing mechanism, should all be part of the acquisition programme developed by the legal and investment advisors and approved by the sponsor. Careful consideration should also be given to the structuring of the acquisition of the real estate assets from the outset, in order to ensure that the transaction is as efficient from a land transfer fees perspective as is possible within the relevant jurisdiction.

4. Due diligence considerations

The application of 'off the shelf' due diligence queries can result in delay, waste resources or, in some instances, fail to identify the critical issues. Due diligence methods must be primarily based on the requirements of the licensing authority whilst taking into account the regime applicable in the jurisdiction in which the property is located as well as local practices. Due diligence requests that appear to the sellers of the real estate assets as particularly uncommon or unreasonable can easily distance the seller from the deal or result in the fund's management losing credibility during the acquisition process. Equally important is the ability to identify the material issues that could have a significant impact on the fund's interests and to

distinguish them from those that are non-material or which can easily be remedied. This requires a jurisdiction-specific knowledge and an understanding of the local customs and practices. It also requires a contextual understanding of the specifics of the deal. For example, an issue that could appear material in the context of an acquisition of a single real estate asset might, however, be of lesser significance when the value of that asset is considered relative to the overall value of the seed portfolio.

5. Acquisition practices

It is essential to understand the custom and practice of acquiring properties in the target jurisdictions. For example, understanding the difference between an institutional seller who could be familiar with the range of protections that are required by the fund and a non-sophisticated seller who may not be well versed in the acquisition processes adopted by the fund, could be critical to successful deal execution. Knowing how and at what price level to start the negotiations with a seller will often be crucial in determining the success or failure of an acquisition. Similarly, permissible deal protection structures, including deposit mechanisms and liquidated damages, valuation requirements and conveyance practices adopted in these jurisdictions could likely differ in meaningful ways from what sponsors are accustomed to in other parts of the world. Sensitivity must also be shown to the decision making processes of the seller and to what could be perceived as unacceptable tactics, such as unsolicited pressure by the acquirer in the negotiations, as these practices could alienate the seller instead of closing a deal.

Although there is no single model of success when it comes to promoting real estate investments, there is a settled consensus that recognises the importance of a robust property funds' regulatory framework to support the ever-evolving needs of sponsors and investors. In our opinion, the existing property funds' framework in the UAE, aligns with international best practices and as such does provide the required support to promote a strong and ever-growing property funds market in the region. As in any other part of the world, however, the process to launch a property fund involves a variety of structural complexities and commercial challenges. These complexities and challenges can be easily overcome through sufficient planning and by developing a comprehensive strategy that adopts a pragmatic approach to the jurisdictional requirements of the UAE and recognises the importance of early and proactive engagement with the relevant regulators.

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Focus Real Estate / Hotels & Leisure

DIFC Foundations and ownership of real estate in Dubai

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In recent years it has become increasingly easier and more affordable to own real estate in Dubai compared to years gone by. Dubai continues to attract investors keen to capitalise on its growth and tax advantages and has gradually opened its doors to foreign investors through new legislation.

The introduction of the DIFC Foundations regime (pursuant to the DIFC Law No. 3 of 2018) is one such welcome development which extends Dubai's succession planning and structuring offering. As a relatively recent addition, many investors (both locally and internationally) are not aware of what a DIFC Foundation is and how they may benefit from one: the summary below provides an overview of both the features and benefits of a DIFC foundation.

The key features of a DIFC Foundation

- a foundation is established by a founder(s) in order to allocate certain of their assets to specific individuals or purposes;
- the foundation has its own legal personality, separate from that of its founder(s) and beneficiaries. Unlike a typical company, it has no shareholders or partners; rather it is 'self-owned';
- it must have a "charter" which sets out the name, objects, description and duration of the foundation, as well as a declaration by each founder requesting its "council" to comply with its terms;
- a council of at least two members (the equivalent of a company's board) shall be appointed by the founder(s) to administer the assets held within the foundation and carry out the objectives of the foundation for the benefit of one or more beneficiaries (which may include a founder).
- a set of "by-laws" sets out the duties and functions of the council members, as well as the manner in which the assets of the foundation may be distributed and accumulated; and
- there is no requirement to have a physical presence in DIFC, but there must be a registered office in DIFC (this requirement can be fulfilled through a registered agent).

Why consider a DIFC Foundation?

Flexibility

A foundation provides the utmost flexibility as the management, governance and control of the foundation can be tailor-made to reflect the arrangements the founder(s)' desire through a combination of the provisions set out in the charter and by-laws. The objectives of the foundation may be amended from time to time to reflect changing circumstances or the wishes of the founder(s), for instance to change the beneficiaries or impose conditions on their receipt of the assets in due course.

Succession planning

It provides a means for the founder(s) to separate their personal wealth from their commercial interests and re-structure ownership of those personal assets by moving them into the foundation, provided that local ownership restrictions are respected. Once the founder(s) transfers any assets into the foundation, those assets cease to form part of his or her estate. It allows UAE residents to now include local real estate assets in their legacy planning, rather than just overseas assets.

Retaining control

Although assets may be transferred to the foundation, the founder(s) can continue to retain control of those assets during his or her lifetime and beyond, through the terms of the foundation's charter and by-laws.

Ownership of real estate assets in Dubai

DIFC has entered into a Memorandum of Understanding ('MOU') with the Dubai Land Department ('DLD') which allows DIFC entities (including foundations) to own real estate assets registered with DLD. Typically speaking, DLD charge a fee of four per cent of the property value when any property is transferred. However, if the ultimate beneficial owner of a property is an individual and he or she transfers that property into a DIFC foundation of which that individual is a founder, it is likely that the transfer will be regarded as a "gifting" transaction and may be subject to a reduced fee of 0.125 per cent of the property value (though this remains at the DLD's discretion and is determined on a case-by-case basis).

The introduction of the DIFC foundations regime is certainly an encouraging development and provides a further viable and flexible option for investors and family businesses to consider in the context of their wealth management, succession planning and corporate structuring. As ever, there is no-one-size-fits-all when it comes to such wealth management, succession planning and corporate structuring, and advice must be sought on a case-by-case basis as to whether a DIFC foundation may help to achieve the intended objective based in specific circumstances. As a relatively recent addition, DIFC foundations also remain untested to a certain extent and how different regulators may recognise and treat them remains to be seen.

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Re-counting stars: Egypt revisits hotel rating criteria

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Egypt as a tourist destination

In the past couple of years Egypt has become one of the world's fastest growing tourist destinations. According to the World Tourism Barometer issued by the United Nations World Tourism Organization ('UNWTO'), in November 2019, Egypt showed a 'remarkable rebound' since 2017, with the country witnessing a 21.1 per cent increase in international tourist arrivals in 2019. It scored fourth on highest performance improvement in the 2019 Travel & Tourism Competitiveness Report issued by the World Economic Forum and has also been recognised as the top scorer in the MENA region in environmental sustainability, cultural resources and business travel.

Government's initiative to support the tourism industry

One of the primary reasons for such development is the reform of the criteria adopted for ranking hotels in Egypt which was implemented through the Ministerial Decree No. 760 of 2019 issued in December 2019 ('Decree'). The new criteria not only evaluate and classify hotels according to their infrastructure and fixed assets, but also take into account customers' experience, quality of services, hygiene standards, facilities, staff compliance, environmental implications, and its overall health standards. The purpose of the Decree is to further encourage and boost competition in the hotel and tourism industry by introducing new hospitality criteria which considers global trends such as green tourism, and eco-friendly destinations. Importantly, the promulgation of the Decree was followed by the announcement by Central Bank of Egypt ('CBE') in December 2019 to increase its financing plan to the tourism sector from EGP 5 billion to EGP 50 billion (approximately from US$ 317 million to US$ 3 billion) mainly to finance development and renovation of hotels.

What's new?

Classification of hotels

The Decree prescribes new criteria to classify each type of hotel, as well as staff criteria. These new criteria aim to develop a mechanism to rank hotels, resorts, floating hotels, boutique hotels, safari, and camps. The Decree also includes new types of visitor accommodations, such as heritage hotels, apartment hotels, Dahabeyas (traditional Egyptian sailing ships with four to ten cabins) and eco-lodges.

Criteria for classification of hotels

The evaluation is conducted using a points system. Each criterion is equivalent to a number of points, and the overall score is determined by adding the percentage of points of mandatory and non-mandatory criteria fulfilled against non-compliance of mandatory and non-mandatory criteria. The process of classification is undertaken by qualified inspectors of the Ministry of Tourism who are experienced in assessing hotels and their compliance with the newly

Egypt witnessed a 21.1 per cent increase in international tourist arrivals in 2019.

set criteria. The new criteria will not only evaluate and classify hotels according to their infrastructure and fixed assets, but will also take into account customers' experience, quality of services, hygiene standards, facilities, staff compliance, environmental implications, and its overall health standards. The Ministry has also issued a communiqué stating that numerous inspectors from the Hotel Control Department have been trained on the new criteria by UNWTO experts and the use of digital technology that will be used in reporting compliance and evaluation of hotels. This is to ensure transparency and accuracy in implementing the new criteria.

The "Mystery Guest" concept

The Ministry will also adopt the 'Mystery Guest' method. The Mystery Guest will use a hotel services as an ordinary guest (unbeknownst to the hotel as the Mystery Shopper) and will provide feedback regarding hotel services and experience. Such feedback will be reflected in the evaluation of the hotel. The Decree suggests that it may use international organisations specialising in providing the Mystery Guest services to classify, or ensure adequate classification of the hotels.

Environmentally friendly and socially responsible initiatives

With a view to encouraging environmentally friendly management, the Ministry intends to motivate companies to abide by environmentally friendly and socially responsible guidelines by offering hotels the Green Star Hotel Certificate, conferred by the Global Sustainable Tourism Council under the auspices of the Ministry's Green Star Hotel Certification Program. By awarding this certificate, the Ministry aims to increase awareness environmental actions and seek to sustain such actions.

Validity of classification

The classification determined will remain valid for four years. Reclassification is subject to review of Ministry three months prior to the expiry date of the existing classification.

Display of classification

Each hotel must display in a place that is visible to guests its rating as per the latest Classification. A hotel will also be required to publicise its rating whenever it is advertising itself on websites or social media platforms.

It is worth noting that 3-star, 4-star and 5-star hotels shall be given a one year grace period to regularise their status, while 1-star and 2-star hotels shall be given two years.

Conclusion

Given that the hospitality criteria for Egyptian hotels has not been updated since 2006, reforms through the Decree were vital to achieve sustainable tourism consistent with international standards. Tourism has always been one of the key elements of the Egyptian economy, given the country's rich history and culture, favourable all-year-round weather and prominent geographical features. Therefore, it is important to ensure that the Ministry has a reliable mechanism to monitor the type and quality of services provided to guests, so as to ensure that hotels are being adjudicated to an internationally approved rating system, and to guarantee that guests have a modern and transparent source to decide on their next vacation.

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Egypt: promoting tourism through sports and leisure

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Introduction

Tourism is one of the leading sources of income for Egypt and is crucial to its economy. During 2018 and 2019, tourism contributed an average of 7.2 per cent to Egypt's Gross Domestic Product ('GDP') and 14.4 per cent to its foreign currency revenues. The Egyptian Government is determined to promote tourism further and increase the number of tourists through organising different events. For this reason, in recent times Egypt has targeted attracting increased numbers of tourists through organising sports events and leisure activities.

Amongst other initiatives, these efforts include hosting international sporting events such as the African Cup of Nations ('AFCON') which took place during the months of June and July 2019; organising marathons at historical venues; as well as developing and encouraging the growth of water sports activities at Egypt's famous Red Sea diving spots.

The private sector also plays a significant role in promoting tourism through sports and leisure activities within the country. Private companies organise several sport leisure events such as the Sahl Hashish Endurance Festival and a number of marathons among other events. The Government encourages these initiatives and facilitates the process of organising these sporting events.

A significant step to supporting the growth of this sector was taken with the implementation of the Egyptian Sports Law issued in 2017 (the 'Sports Law'). The Sports Law regulates sports activities in Egypt including, but not limited to, adopting measures to promote multiple sporting disciplines, facilitating dispute resolution (where necessary) and attracting investment into the sports sector. The development of the tourism sector through sports and leisure initiatives remains a live issue, requiring open channels of discussions between the Ministry of Tourism and Ministry of Sports, whilst also taking into consideration international standards, rules and regulations regarding the relevant sports, which are baseline requirements for attracting major events.

This article will focus on three key initiatives aiming to promote tourism in Egypt through sports and leisure activities.

1. Hosting AFCON 2019 and its positive impact on tourism and hotel occupancy rates

In June and July 2019, Egypt hosted the AFCON, organised by the Confederation of African Football ('CAF'). The tournament was the first AFCON with an expanded format of 24 teams (increased from the previous standard of 16 teams). It resulted in a significant increase in the number of tourists visiting Egypt during the tournament, travelling from many different parts of the world to support their respective teams.

It has been reported that AFCON 2019 attracted more than 50,000 tourists during June and July 2019. A significant increase in hotel occupancy, coinciding with the start AFCON, was recorded in the governorates of Cairo (35,000 room bookings), Alexandria (4,000 room bookings), Suez, and Ismailia (65 per cent occupancy), exceeding the normal occupancy levels. The benefits of hosting AFCON were remarkable. According to the President of CAF, Ahmad Ahmad, Egypt's revenue from the AFCON 2019 reached US$ 83 million dollars during this relatively short period. Furthermore, several touristic and educational institutions took steps to enhance the experience of fans during the tournament, for example the Bibliotheca Alexandrina opened its doors to African fans attending the tournament and holders of official FAN IDs to enter, free of charge.

2. Organising the Pyramids half marathon

On 22 February 2020, Egypt held, for the second year in a row, the Pyramids Half Marathon at the Giza Pyramids, sponsored by the Ministry of Tourism and the Ministry of Sport. This event is one of a series of sports events which focuses on promoting tourism at the country's archaeological sites under the slogan 'race through history'.

In keeping with any running competition organised at an international level, the Pyramids Half Marathon adopted the rules and regulations set by the World Athletics (formerly known as International Association of Athletics Federations 'IAAF'). In addition, anti-doping tests were conducted by the Egyptian National Anti-Doping Organization ('EGY NADO') on random participants and no positive tests were reported. The Pyramids Half Marathon was open to participants of all ages from different countries.

The event featured 21K, 10K and 6K races so that runners of differing abilities could participate subject to the following minimum age requirements: eight years old for the 6K race; 12 years old for the 10K race; and 14 years old for the 21K race.

Scuba diving in the Red Sea has long been a 'bucket-list' experience for seasoned divers and novices alike.

It has been reported that over 3,700 runners participated in the Pyramids Half Marathon from 77 different countries, an indication that tourists are eagerly engaging with such sporting initiatives.

3. Water sports; new Regulations related to dive boats operating in the Red Sea

Egypt is known for its wide array of water sports activities; in particular, scuba diving in the Red Sea has long been a 'bucket-list' experience for seasoned divers and novices alike. In 2019, the Professional Association of Diving Instructors ('PADI'), announced Egypt as being one of the top six destinations to scuba dive. However, as diving requires certain skills and professional guidance, the authorities have been keen to note that increased numbers of tourists participating in snorkelling and diving requires an increased focus on safety measures that need to be taken in order to avoid accidents.

In September 2019, regulations regarding water activities in the South Sinai region were issued by the Ministry of Tourism to ensure the safety of tourists whilst limiting the impact of the commercial dynamics of water sports on the marine life and wildlife of the Red Sea.

The new regulations stipulate that travel agencies will be granted permission for water activities only if they do so in collaboration with licensed diving centres. Tourists must be accompanied by a licensed guide while snorkelling or diving, and will need to sign a contract that includes all their contact information, as well as all the information about their chosen dive centre and the location of the planned water activities.

In early 2020 stricter controls were imposed, so that all divers from abroad or those diving from day boats should present a medical certification of fitness to dive, issued within a year prior to the proposed diving experience. This requirement supersedes the previous system of self-declaration forms previously accepted by many operators and dive organisations.

The new regulations aim to protect divers' safety and ensure that all necessary actions are taken to minimises the risks associated with water sports.

Conclusion

Several clear initiatives have been introduced to promote the dynamism of tourism offerings through sports and leisure within Egypt. The regulatory and legal frameworks of these initiatives remain under constant development both to enhance participants' experiences and ensure their safety and security: all of which should enhance Egypt's reputation as a tourist destination capable of attracting an increased number of visitors to enjoy both to the sports and leisure sectors and the more established historical and cultural tourism sector.

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Jointly owned property: the Owners' Committee

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Following the introduction of Law No. (6) of 2019 Regulating Jointly-Owned Property in the Emirate of Dubai (the 'New JOP Law'), the Real Estate Regulatory Agency ('RERA') issued the 'Declaration of Compliance of Ethical Guideline for Owners' Committee' (the 'Declaration'), to provide further clarity and guidance on the responsibility of those owners who are members of the owners' committee formed for the project (the 'Owners' Committee').

What is the Owners' Committee?

As outlined in our recent article entitled 'A new era for jointly owned property in Dubai', a key difference between the New JOP Law and the previous law is the role that the owners of units in a project will now play in the administration, operation and management of a project.

Moving forwards, the Owners' Committee will be appointed by RERA and will consist of up to nine owners, who will represent the collective body of all owners in the project and there will no longer be an 'Owners' Association'.

The Owners' Committee (which will be formed when title to at least 10 per cent of the units in the project has been registered in the name of owners) will play an advisory role in the day-to-day running of the project. The primary responsibility for the administration, operation and management of a project remains with the appointed RERA licensed and approved management company (the 'Managing Agent').

Functions of the Owners' Committee

Article 24 of the New JOP Law sets out the functions of the Owners' Committee, some which are as follows:

- review the annual budget prepared by the Managing Agent of the project;
- submit recommendations to the Managing Agent regarding the management, operation, maintenance and repair of the common areas of the project;
- receive complaints and suggestions from owners and occupiers regarding the project and notifying the Managing Agent of the same. If the Managing Agent does not address the complaint or suggestion within 14 days, the Owners' Committee shall refer the complaint or suggestion to RERA;
- co-ordinate with RERA, the Managing Agent and any other relevant authority regarding matters pertaining to the safety, environment and security of the project; and
- for projects other than large scale projects (i.e. master community) and hotel projects, submit a request to replace the Managing Agent (should the Managing Agent not be performing its functions to a satisfactory standard) and assist in the selection and appointment of the replacement Managing Agent.

"The Owners' Committee (which will be formed when title to at least 10 per cent of the units in the project has been registered in the name of owners) will play an advisory role in the day-to-day running of the project. The primary responsibility for the administration, operation and management of a project remains with the appointed RERA licensed and approved management company.

Who can be on the Owners' Committee?

In accordance with Article 22(c) of the New JOP Law, an owner who wishes to be a member of the Owners' Committee must:

- have full legal capacity;
- be a resident of the project;
- be of good conduct;
- have paid all of the service charges owing in respect of its unit; and
- must regularly attend and actively participate in the meetings of the Owners' Committee.

If at any time a member of the Owners' Committee fails to satisfy the above requirements, that member will no longer be eligible to be on the Owners' Committee and that owner's membership may be terminated by RERA.

Can the developer be on the Owners' Committee?

Provided that the developer owns unsold units in the project, the developer will be entitled to be a member on the Owners' Committee (subject to RERA's approval of such nomination).

When does the Owners' Committee meet?

The Owners' Committee is required to meet quarterly, with the first meeting to be held within 30 days from the date of formation.

Each member shall have one vote when voting on the decisions and recommendations of the Owners' Committee.

Guidelines

Given that there will only be up to nine committee members in total, it is necessary that appropriate guidelines are put in place to ensure the Owners' Committee represents the interests of all owners and occupiers to the best extent possible.

The Declaration issued by RERA sets out the general obligations of a committee member. In particular, a committee member must:

- act honestly and fairly;
- act in the best interests of the project;
- not require the Managing Agent to contract with a related party of a committee member;
- not interfere in the affairs of the management and/or the operation of the project;
- disclose any potential conflict with the Owners' Committee prior to any vote on a matter taking place;
- comply with laws and regulations of the UAE and Dubai;
- not publicly discuss or disclose confidential matters pertaining to the project; and
- abide by the behavioural and ethical rules while dealing with the Owners' Committee, the Managing Agent and any other appointed service providers.

Should an owner wish to be a member of the Owners' Committee, it is important that the owner has a thorough understanding of its obligations under the New JOP Law and the Declaration. An owner who fails to comply with its obligations in this respect may have their membership terminated by RERA.

Application process

RERA has issued the prescribed application form for owners to submit to the Managing Agent to become a member of the Owners' Committee, with the Managing Agent to submit the completed form and supporting documents (outlined below) to RERA.

On face value, the form itself is relatively straight forward and will be easy for owners to complete and submit. When submitting an application, an owner will be required to submit the following documents along with the signed application form:

1. personal photo;
2. copy of their unit title deed;
3. copy of their passport and copy of residence visa (if an expatriate);
4. copy of trade licence (if a company);
5. copy of their emirates ID;
6. DEWA bill in the unit owner's name;
7. good conduct certificate from the Dubai Police; and
8. signed Declaration.

The approval of any application to be on the Owners' Committee will be subject to the approval of RERA.

Moving forward

Al Tamimi has a wealth of experience in advising developers, owners and other stakeholders on jointly owned property and is in regular contact with RERA to clarify matters arising out of the New JOP Law and the issuance of the directions to the New JOP Law.

Should you have any queries regarding the Owners' Committee or how the New JOP Law affects your project (both as a developer or a unit owner), Al Tamimi would be happy to assist. Once the directions for the New JOP Law are issued, Al Tamimi will be running workshops on the New JOP Law, the directions and what stakeholders can do to align their project with the new jointly owned property regime. Should you be interested to attend this workshop, please get in touch and we will ensure that you are notified once dates for the workshop(s) are confirmed.

For further information, please contact Tara Marlow (t.marlow@tamimi.com), Mohammad Kawasmi (m.kawasmi@tamimi.com) or Sebastian Roberts (s.roberts@tamimi.com).

United Arab Emirates
Ministry of Justice

50th Year
Issue No. 675
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31 March 2020

FEDERAL LAWS

3 of 2020	Regulating the UAE's strategic reserve of food commodities.

FEDERAL DECREES

42 of 2020	Terminating the tenure of the Director of Zayed University.
43 of 2020	Terminating the tenure of an advisor at the National Qualifications Authority.
44 of 2020	On a promotion to Director General of the General Pension and Social Security Authority.
45 of 2020	Appointing the Undersecretary for Emiratization at the Ministry of Human Resources and Emiratization.
46 of 2020	Appointing judges in the Federal Courts.
47 of 2020	Terminating the tenure of an official at the Ministry of Education.
48 of 2020	Terminating the duties of the UAE Ambassador to Russia.
49 of 2020	Terminating the duties of the UAE Ambassador to Kazakhstan.
50 of 2020	Terminating the duties of the UAE Non-Resident Ambassador to Benin.
51 of 2020	On performing the duties of the UAE Ambassador to Russia.
52 of 2020	Appointing the UAE Ambassador to Benin.
53 of 2020	Appointing the Undersecretary of the Ministry of Foreign Affairs and International Cooperation.
54 of 2020	Appointing the Director General of the Bureau of Firearms and Hazardous Materials.
55 of 2020	Appointing the Undersecretary of the Ministry of Presidential Affairs.
56 of 2020	Promoting a member of the diplomatic and consular corps.
57 of 2020	Appointing a UAE consul-general in Zanzibar, Tanzania.

REGULATORY DECISIONS OF THE CABINET

15 of 2020	On the medical exam for newborns.
16 of 2020	On the positive list of economic sectors and activities eligible for direct foreign investment and their corresponding percentages of ownership.
17 of 2020	On the list of sanctions for violating the precautionary measures, directives and restrictions aimed at combatting Covid-19.
18 of 2020	Granting a temporary license for a project to use digital technology for notary services.

MINISTERIAL DECISIONS

- From the Ministry of Justice

272 of 2020 Authorizing certain officials at the RAK Environment Protection and Development Authority to enforce the law as judicial officers.

- From the Ministry of Human Resources and Emiratization

211 of 2020 On the licensing and regulation of private recruitment agencies.

212 of 2020 On the regulation of recruitment agencies licensed in accordance with Ministerial Decision No. (1205) of 2013 on the licensing and regulation of private recruitment agencies.

- From the Ministry of Climate Change and Environment

43 of 2020 On the reconstitution of the UAE Council for Climate Change and Environment.

98 of 2020 On the identification of imported livestock.

104 of 2020 On the reconstitution of the National Biosecurity Committee.

105 of 2020 On the reconstitution of the Technical Committee on Veterinary Medicine Licensing.

- From the Ministry of Health and Prevention

232 of 2020 Amending the Schedule of Communicable Diseases appended to the executive regulations of Federal Law No. (14) of 2014 on combating communicable diseases.

ADMINISTRATIVE DECISIONS

- From the Federal Authority for Nuclear Regulation

17 of 2019 Chairman of the Board Resolution extending the term of the UAE Radiation Protection Committee and approving its revised Terms of Reference.

1 of 2020 Chairman of the Board Resolution granting Nawah Energy Company PJSC an operating license for Barakah Nuclear Power Plant Unit 1.

2 of 2020 Chairman of the Board Resolution granting Nawah Energy Company PJSC a license for the conduct of certain regulated activities at Barakah Nuclear Power Plant Unit 2.

- From the National Media Council

17 of 2020 Chairman of the Board Resolution assigning the duties of Director General.

- From the Insurance Authority

5 of 2020 Chairman of the Board Resolution delegating duties to the Director General of the Insurance Authority.

9 of 2020 Chairman of the Board Resolution amending Chairman of the Board Resolution No. 33 of 2019 on the regulation of Committees for the Settlement and Resolution of Insurance Disputes.

- From the UAE Central Bank

  - The Major Acquisitions Regulation.

- From the Securities and Commodities Authority

9 of 2020 Chairman of the Board Resolution amending Chairman of the Board Resolution 37/RM of 2019 on the definition of "qualified investor."

  - Certificate of approval of amendment of the Articles of Association of Dubai Islamic Bank PJSC.

Legal 500 2020

The recently published Legal 500 directory rankings have again demonstrated our strength and depth as the largest full service law firm in MENA.

17 Tier 1 Practice Rankings

15 Tier 2 Practice Rankings

43 Ranked Lawyers

Practice Areas

UAE

- 6 rankings in Tier 1
- Dispute Resolution: Arbitration and International Litigation – Promoted from Tier 2 to Tier 1

Bahrain

- Commercial, Corporate and M&A – Promoted from Tier 2 to Tier 1
- Dispute Resolution – Ranked for the first time achieving a Tier 1 ranking

Egypt

- 3 rankings in Tier 1
- Banking & Finance – Promoted from Tier 2 to Tier 1
- TMT – Ranked for the first time, achieving a Tier 2 ranking
- Projects & Infrastructure – Ranked for the first time achieving a Tier 3 ranking

Iraq

- Ranked in Tier 1 as a Leading Firm

Jordan

- Ranked in every category for the 4th consecutive year

Oman

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

Qatar

- Tier 1 rankings in every category

Saudi Arabia

- Capital Markets – Ranked for the first time since 2015, achieving a Tier 3 ranking
- Projects and Energy – Promoted from Tier 4 to Tier 3

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

Gordon Barr selected as DIFC Employee Workplace Savings Scheme ('DEWS') Supervisory Board Member – Employer Representative

We are delighted to announce that after an extensive nomination and voting process, Gordon Barr, Partner, Employment & Incentives) has been selected as the Employer Representative of the DIFC DEWS Supervisory Board.

Introduced from 1 February 2020, DEWS is a progressive end-of-service benefits plan aimed to restructure the current defined benefit end of service gratuity scheme into a funded and professionally managed, defined contribution savings plan. The initiative also offers employees the ability to make voluntary savings into DEWS.

The DEWS Supervisory Board will oversee the governance and commercial aspects of the scheme that are not subject to regulatory supervision, and ensure the interests of all employers and employees based in the DIFC are protected. The Dubai Financial Services Authority (DFSA) will supervise regulatory aspects of the master trustee and scheme administrator's duties.

As part of the nomination process for both employee and employer representatives, the DIFCA received more than 200 nominations, which were then narrowed down to a shortlist of 21 highly qualified and experienced individuals. The final shortlist was then voted on by the DIFC community, which ultimately led to the final appointment of the board members.

Gordon Barr
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ICC appoints John Gaffney, Senior Counsel as Ambassador

John Gaffney, Senior Counsel with the Abu Dhabi office of Al Tamimi & Company where he leads the office's arbitration practice, has been appointed by the International Chamber of Commerce ("ICC") as an Ambassador to the Belt and Road Commission of the ICC International Court of Arbitration.

The ICC launched the Commission in February 2018 in order to drive the development of ICC's existing procedures and infrastructure to support Belt and Road disputes. Co-Chaired by Susan L. Munro, Managing Partner of the Beijing and Hong Kong offices of Steptoe & Johnson and Robert S. Pe, ICC Court Member for Myanmar, the Commission works to raise awareness of the ICC Court as the "go-to" institution for disputes arising out of China's Belt and Road Initiative.

The Belt and Road initiative is a development strategy launched by the Chinese government to promote trade and economic cooperation amongst countries along the Belt and Road routes. The initiative spans across over 70 countries, and focuses on connectivity along the land-based Silk Road Economic Belt and the Maritime Silk Road.

The ICC created the Belt and Road Commission to promote and develop ICC's existing services to support Belt and Road disputes. The commission addresses dispute resolution opportunities arising from the Belt and Road initiative and engages with the full spectrum of Belt and Road stakeholders, in China and beyond, to promote ICC dispute resolution services. These include mediation and arbitration for any disputes that arise in relation to infrastructure build and investment.

Ambassadors play a pivotal role in helping to keep the Belt and Road Commission informed of strategic developments and supporting Belt and Road Commission projects within their respective jurisdictions. In his role as Ambassador, John will support and promote the Commission's work in the UAE and the wider region.

For close to 100 years, the ICC has helped to resolve international business disputes. Its success stems from its continuous focus on improving efficiency, controlling time and costs, and aiding the enforcement of ICC arbitral awards by introducing innovative arbitration tools and procedures and remaining attuned to the concerns and interests of commercial parties throughout the world. It's not surprising, therefore, that the ICC is rapidly establishing itself as the world's leading arbitral institution for the resolution of disputes arising out of the Belt and Road Initiative.

John Gaffney

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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

73 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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