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July/August 2022

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## **FEATURE ANCHORS AWAY**

Bahrain's new Maritime Law

## **PROFILE RENEWABLE ENERGY**

Shaun Johnson of BEEAH Group

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A ROUND-UP OF LEGAL, FINANCE AND TAX DEVELOPMENTS ACROSS THE MIDDLE EAST



# THE RIGHT TRACK

Clarifications and Changes to UAE Copyright Law



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#### EDITORIAL

Head of Middle East Publishing  
Hussain Hadi  
[hussain.hadi@lexisnexis.co.uk](mailto:hussain.hadi@lexisnexis.co.uk)

#### Editor

Claire Melvin  
+44 (0) 20 7347 3521  
[claire.melvin@lexisnexis.co.uk](mailto:claire.melvin@lexisnexis.co.uk)

#### Deputy Editor

Daniel Emmett-Gulliver  
+44 (0) 20 7347 3515  
[daniel.emmett-gulliver@lexisnexis.co.uk](mailto:daniel.emmett-gulliver@lexisnexis.co.uk)

#### MIDDLE EAST REGIONAL SALES

Benjamin Filafarro  
+33 (0) 1 45 58 90 43  
[benjamin.filafarro@lexisnexis.fr](mailto:benjamin.filafarro@lexisnexis.fr)

#### PRODUCTION

Senior Designer  
Jack Witherden

#### ENQUIRIES

UK  
LexisNexis, Quadrant House,  
Sutton, Surrey, SM2 5AS  
Tel: +44 (0)20 8686 9141 or  
Fax: +44 (0)208 212 1988

France  
LexisNexis SA,  
141 Rue de Javel,  
75015, Paris  
France  
Tel: +33 (0) 1 45 58 90 43

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# OLD AND NEW

In recent years we have seen steps being taken by authorities in the UAE to create an environment which will support and encourage innovation, and the development of the IT sector, particularly Fintech businesses.

Having a modern, effective intellectual property law framework is key to creating the right environment in this context, which was why new trademark and copyright laws were issued towards the end of last year.

It was almost 20 years ago that the last UAE copyright law was issued, and over 30 years ago that the last UAE trademark law was issued, so taking a fresh look at these areas was important.

So now that the implementing regulations to the copyright law have also been issued, we have decided to take a look ourselves at how UAE law has changed to meet the intellectual property needs of these new and developing sectors and industries, where innovation is so important. It is good to see that UAE copyright law is now taking into account, for example, different ways of working such as the increased freelancing which predominates in the IT sector and is also creating copyright rights in a whole host of new professions.

However, as well as looking to the future and supporting new industries, we are also seeing legislators in the GCC considering how to adapt the legislation which covers one of the oldest industries in the Middle East, the maritime sector, as they seek to match global standards and developments. The new Bahrain Maritime Code which we also cover in this issue is a significant piece of legislation of this type. In fact it is the most comprehensive law to have been issued in Bahrain since 1976 when the Penal Code was issued there.

What is interesting here is as well as making it easier for foreign vessels to register in Bahrain, even with a long established industry like shipping, one of the key themes is also a very topical issue - how best to tackle and prevent pollution.

Claire Melvin - Editor



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# THE RIGHT TRACK

Following the issue of Implementing Regulations to the UAE's new Copyright Law, **Noor Hasan** of Gowling WLG looks at how the position has changed for copyright rights holders.

**“O**ver the last year, the UAE has taken significant steps to revise its intellectual property framework through the introduction of several new IP laws,” states Noor Hasan. “Late last year the new UAE Copyright Law, Federal Decree-Law No. 38/2021 was issued and replaced the previous law in this area, Federal Law No. 7/2002.”

“However, it was not until the Implementing Regulations to that law, which are found in Cabinet Decision No. 47/2022 were issued in May 2022 that the new position on areas such as creative content creators in literature, arts, culture, and science, including writers, authors, musicians, programmers, investors, entrepreneurs, project owners, people of determination and publishing houses, became clearer.”

## A BROADER APPROACH

“Firstly, the Copyright Law has been broadened to include protection for architectural works, smart applications, computer programs and applications, databases and similar works as determined by the Ministry of Economy,” states Hasan. “This is great news for those working in the creative and tech space as there is now a more vigorous and protective framework in place which will allow them to own and enforce their rights in such works in the UAE.”

“One other area of change has been to the restrictions around transfer of future copyright



**Noor Hasan**  
Associate  
Gowling WLG

works,” Hasan continues. “In the past under Federal Law No. 7/2002 only five or less future works could be assigned. However, the Implementing Regulations, Cabinet Decision No. 47/2022, have increased number of future works which may be assigned to 10 future works. This is clearly an improvement on the previous position, but caution still needs to be taken when dealing with third parties who may be creating multiple works for you. For example, if you are commissioning a freelancer to create more than 10 works for you, it is recommended that you ensure they execute a confirmatory assignment at the completion and delivery of those works in order to ensure the valid transfer and assignment of rights in the works.”

## EMPLOYEE CREATED RIGHTS

“One of the big changes brought in by Federal Decree-Law No. 38/2021 has been on ownership of employee created rights,” states Hasan. “The new legislation has introduced a concept of work made for hire, which brings about a change in ownership of works where a work is created in the course of employment or through commissioning. The legislation makes it clear that where any work is created by an employee in the course of their employment, or commissioned by a company which compensates the commissionee for that work, the employer or commissioner will be considered the legal author of the work, unless otherwise agreed.”

“This concept applies if the author creates the





© Getty Images/Stockphoto

work for the benefit of another person, in which case the copyright belongs to that other person. While if the author creates the work within the scope of their employment using the employer's resources, tools or information, the copyright will belong to the employer, unless otherwise agreed."

"However, there are still some situations detailed by the new Law which provide an employee with the opportunity to remain the copyright holder," Hasan continues. "For example, this could happen if an employee author creates the work outside the scope of their employment and the work is not related to the employer's business or activities and/or where the employee creates the work without using the employer's resources, tools or information."

## FAIR USE

"The new legislation has also introduced the concept of fair use, although it applies in very limited circumstances," Hasan adds. "This relates to the reproduction of a copyrighted work particularly in the field of education. For example, it may apply if a teacher has used a video or sound clip they found online in a presentation they have created for their students, or if they have copied or posted portions of books or journals to provide students with supplementary reading, or if a video with excerpts, clips, paragraphs or analyses was copied to allow students to critique it in class. These types of uses could potentially be considered fair use which is now regulated under the new legislation. Fair use allows the use of any work in the

## RELATED LEGISLATION

### Article 2(1) of Cabinet Decision No. 47/2022

The Copyrights Register will contain all dispositions with respect to rights and related information about the work itself and the author, including exclusive rights, their scope, period of use, assigned purpose and other similar dispositions which are related to these rights.

(Source: Lexis Middle East Law)

fields of literature, arts or science, of whatever type, manner of expression, significance or purpose, without infringing an author's intellectual property rights, but only in very limited situations and within certain restrictions and qualifications."

## CHANGES IN THE IT SECTOR

"Given the UAE's fast paced development in the tech and innovation space, possibly one of the most significant changes to UAE Copyright law has been the provision of more clarity around copyright works created by software developers," states Hasan.

"Copyright protection has been added to smart applications, computer programs and applications, databases and similar works as determined by the Ministry of Economy. This together with the change in ownership of employee created rights, means software developers can now more easily use copyright as a means of protecting their work."

"For example, if a software development company creates new code for a particular piece of software or

## RELATED STORY

### **UAE: Implementing Regulations to Federal Copyright and Neighbouring Rights Decree-Law Reviewed 2022-06-24\_36**

The UAE's Economy Ministry has reviewed the Implementing Regulations to the Federal Copyright and Neighbouring Rights Decree-Law. They have been issued in line with the UAE's World Intellectual Property Organisation (WIPO) commitments. This includes the Berne Convention for the Protection of Literary and Artistic Works, and the WIPO Performances and Phonograms Treaty.

smart application, the copyright of that code will belong to that company unless they have signed it over to a third party by written agreement. Therefore, they will now be able to enforce these rights under Federal Decree-Law No. 38/2021."

## **IMPLEMENTING REGULATIONS CHANGES**

"The Implementing Regulations Cabinet Decision No. 47/2022 have also finally set out the criteria for obtaining collective management licenses and granting compulsory copyright licenses for use or translation, along with the requirements on accessible format copy," Hasan continues. "This is potentially a win for copyright holders, especially those in the music industry, particularly as in the past music licensing has constantly been a difficult area in the UAE and generally, across the region. In addition, steps

are also now being taken in the UAE towards establishing a collecting society (a body which licenses copyrighted works on behalf of authors and work on rights management). Once this body is created in the UAE it would allow copyright holders in music to use it to obtain royalties and would-be users of works to obtain a blanket licence that will allow them to legally use the music in their businesses."

## **GRIEVANCE PROCEDURES**

"One of the other changes provided for in Federal Decree-Law No. 38/2021 has been the creation of a new Grievances Committee for Copyright and Neighbouring Rights," states Hasan. "This body will be responsible for dealing with all disputes concerning copyright or neighbouring rights, and will report to the Ministry of Economy. Previously, there was no such dedicated committee in the UAE handling these types of disputes and it is hoped it will assist in the successful enforcement of copyright against infringers here."

## **NEXT STEPS FOR BUSINESSES**

"In a number of areas, the default position under this new regime is clear," states Hasan. "However, that is with the qualification that this is unless otherwise agreed. There are also restrictions on assignment of future rights which have changed. Therefore, employers and companies entering into agreements around the creation of copyrights should ensure that the ownership position is clearly addressed in any and all agreements of this kind."

"The relevant works which are to be created and provided and/or services to be performed should also be clearly set out and identified," Hasan adds. "In

addition, the necessary licences for any potential use of pre-existing and/or third party material incorporated into the works should be put in place if that is not already the case."

"Going forward it is advisable that signed confirmatory documents are sought," Hasan adds. "This will remove any ambiguity and will help ensure rights are validly assigned to the party to whom they should be assigned to. It will also be good practice to ensure there is a paper trail which proves the work which was created as well as ownership, assignments and/or licenses for these works, especially in the case of commercially important rights, in order to avoid any disputes on ownership of the work and ensure from the start that ownership has been agreed to and fully understood by the parties involved"

## **WHAT'S THE IMPACT?**

"This new regime has improved protection for creators and owners of relevant works," Hasan adds. "It should help employers, commissioners and holders of digital rights, developers of computer software and smart applications, game designers and investors feel more comfortable and have greater trust in the UAE's legal framework."

"With the clearer statutory protection which has been brought in by this new law it is also hoped that innovators and investors will be more likely to bring, initiate and launch their projects in the UAE," Hasan continues.

"It should also be noted, that in addition to strengthening copyright protection, this new legislation has also increased the sanctions and penalties in the event of any violations to and infringements of an author's copyright which can be found for example in Article 39-40 of Federal Decree-Law No. 38/2021. This should work as a deterrent to discourage infringers, but assure copyright holders that there are remedies available if their rights are infringed."

## **WHAT'S NEXT?**

"The question of future rights, while updated and increased, still brings about the potential for issues arising and a loss of rights."

"The law doesn't appear to accommodate technology related principles to elaborate on the protection and use of Non-fungible Tokens (NFTs) with the emergence of the Metaverse, open source code and data sets. It will be very important to improve knowledge in these areas and other areas covered by the new Copyright Law and find specialist judges who can deal with all the technical knowledge surrounding digital issues. There is scope for the Ministry to issue notifications around other digital rights which can benefit from protection. This will need a collective effort with the guidance of a sovereign decision from all of the relevant parties to ensure an effective and unified system is in place to protect and enforce the intellectual property rights of copyright holders in the UAE."

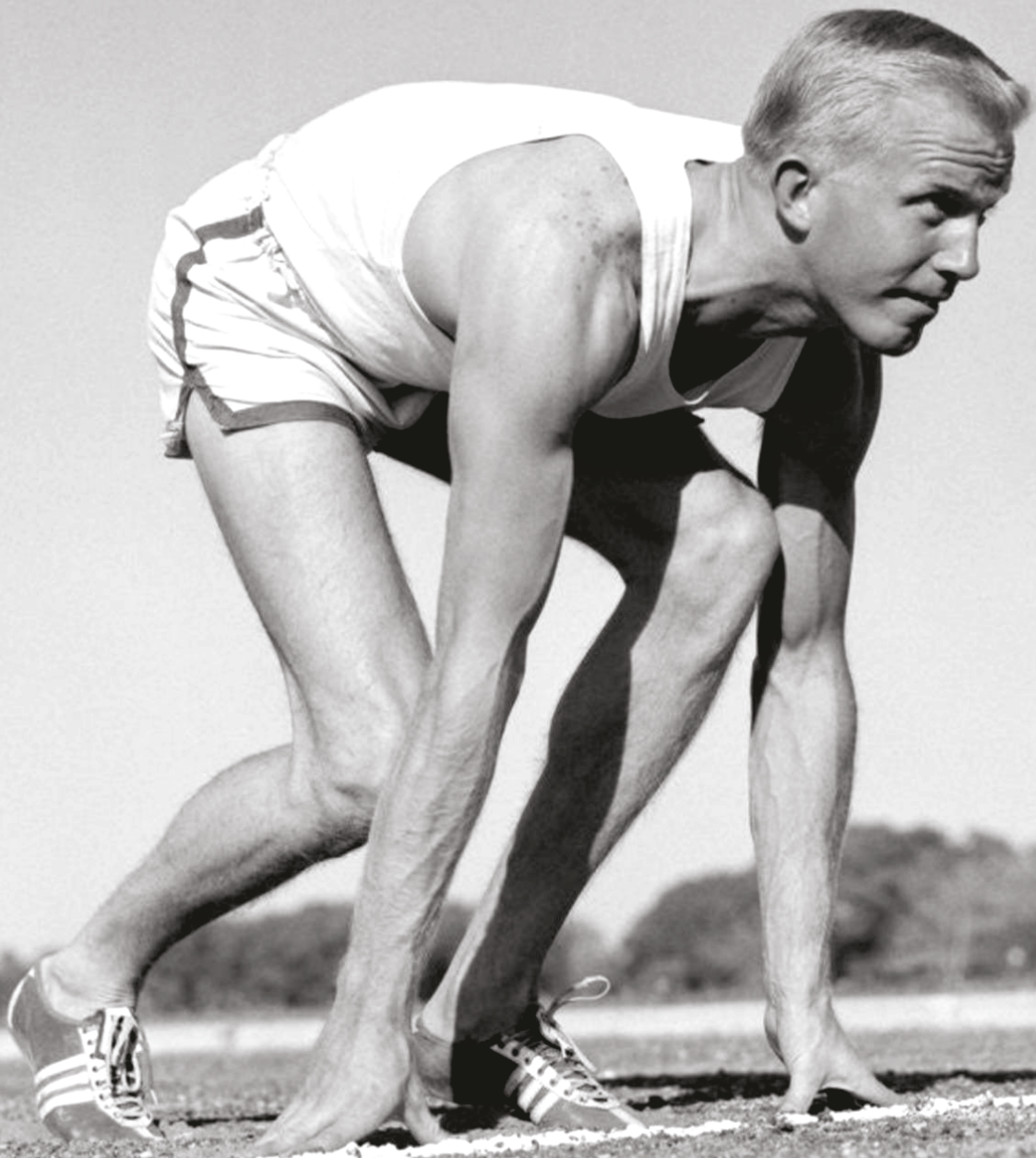


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# LEGAL ROUND-UP

COVERING RECENT KEY LEGAL DEVELOPMENTS – REGION-WIDE

## UAE

### PENALTIES FOR FALSE CRIME REPORTS



The UAE Public Prosecution has clarified the penalties which will apply to those who make false crime reports. Under Article 324 of Federal Decree-Law No. 31/2021 anyone who informs the judiciary or administrative authorities of incidents or dangers which do not exist or states things which are contrary to the truth or who give details of a crime which they know has not been committed, will be imprisoned for up to six months and/or fined.

## ABU DHABI

### PROPERTY APPEARANCE LAW CHANGES



Amendments have been made to Abu Dhabi Law No. 2/2012 On the Maintenance of Building Appearance in the Emirate of Abu Dhabi. This law bans any activity which adversely affects the 'appearance, cultural, architectural or aesthetic features of public areas in Abu Dhabi'. It covers green spaces, walkways, buildings, marketplaces and public roads, and when noise or disturbance is caused. As a result of the amendments to the law those issued with penalties for specific offences will now be able to appeal. The authorities will also be able to take direct action against those carrying out acts such as vandalism and fly-tipping. The authorities will also be able to issue fines directly without having to transfer cases to the public prosecution. However, there can be a 25% discount if a fine is paid within 60 days. Those dumping items will also be required to remove them and clean up the area within a specific timescale, or they will also be required to pay removal or clean-up costs.

### HEALTH INSURANCE FINES CLARIFIED



Abu Dhabi's Health Department has issued a clarification on health insurance fines. Where an employee has absconded it has been said no fine will be imposed on a sponsor who has not subscribed or renewed mandatory health insurance for that employee from the date a

report that the employee has absconded has been made until the date the situation is resolved. However, sponsors will need to provide official documents which verify the relevant Government entity has been notified the worker has absconded. There will also be no fine in these situations if the sponsor has died, provided an official death certificate is issued and given to the relevant Government authorities.

## DUBAI

### NEW DISTRICT COOLING LAWS



A new set of district cooling regulations will come into effect in Dubai on 30 September 2022, to reduce excessive billing. At this point the previous grace period which applied to district cooling service providers and billing agents will expire. The Regulatory and Supervisory Bureau (RSB) which was set up to regulate Independent Water and Power Producers in Dubai, will supervise and monitor the activities of the district cooling companies to ensure compliance with the regulations. District cooling permit holders will have obligations to develop and publish a customer charter and measure performance against it. They will also need to have clear engagement obligations when dealing with customers in arrears, have obligations to deliver chilled water, return deposits promptly, and reduce excess contract capacity estimates. There will also be penalties for poor energy performance, and obligations to monitor and report health and safety.

## SAUDI ARABIA

### TRANSFER OF OWNERSHIP AND LEASES



The Ejara Network in Saudi Arabia has confirmed that if a property is sold and ownership is transferred to a new owner without the tenant's knowledge, the lease agreement will remain valid until the end of its term.

Ejara has also stated as a result of Municipal and Rural Affairs and Housing Ministry initiatives to regulate and facilitate procedures in the real estate rental sector

if a landlord refuses to document a tenancy agreement and the tenant wants to do so or vice versa, the tenancy agreement can be documented using the Ejara platform provided the documentation conditions can be fulfilled. They have also added if a tenancy agreement is for a fixed term and the two parties wish to renew it, the contract is considered a new contract and the broker is entitled to a 2.58% commission.

## QATAR

### TENDERS AND AUCTIONS LAW AMENDMENTS



Qatar's Cabinet has approved a draft Cabinet Decision which will amend the Law regulating tenders and auctions (Qatar Cabinet Decision No. 16/2019)'s implementing regulations. Changes including a definition of local value, which is the total amount spent by a contractor, supplier or service provider within the country to develop national business, services or human resources to stimulate productivity in the local economy will be added. Model contracts which Government agencies will be bound by when concluding any contract, without the need for a review by the Contracts Department are also being prepared. These model contracts should not be modified and if there is a need to do so, special approval will be needed in co-ordination with the Contract Department. In addition, where bids are worth less than five million Riyals, the Government entity may be able to limit participation in the tender to micro, small or medium companies, or all classified at the Ministry.

## BAHRAIN

### INSURANCE CONTRIBUTION INCREASE



The Social Insurance Organisation of Bahrain has announced an increase in contribution rates due from insured Bahraini employees and their employers in the public and private sectors of all GCC countries, except the UAE with immediate effect. Employer contribution rates have increased by 2% of the salaries of Bahraini employees bringing the rate to 17%.

From January 2023, the employee contribution rate will increase by 1%, bringing the total percentage contribution to 7% for public sector employees.

From January 2023 until January 2028, the employer and employee rate for those in the private sector will increase by 1% at the start of each year,

## KUWAIT

### PROPERTY OWNERSHIP PROPOSAL



The Kuwaiti Government has announced it is currently reviewing whether non-Kuwaiti nationals should be allowed to own property there.

Under the existing law, Arab expatriates can only own one flat in Kuwait following approval by the Cabinet and the issue of a relevant Decision to this effect.

The Government is currently considering granting non-Kuwaitis the right to own a residential flat in an investment building, provided the applicant has a permanent Kuwaiti residency permit and has not been convicted of any honour or trust crime during their stay in Kuwait. The flat would have to be used as private residence by the applicant or their family and should not be more than 350 square metres in size. The individual would not be allowed to own another apartment in Kuwait.

## TURKEY

### NEW E-COMMERCE COMPETITION LAW



Turkey's Parliament has proposed a new e-commerce competition law under which all activities which disrupt or limit competition would be prevented. As a result, e-commerce providers with net transaction volumes of over 10 billion Turkish Lira will have to obtain a licence and prevent unfair competition by their vendors. Those with a net transaction volume of 30 billion Lira and more than 100,000 transactions will also not be able to engage in advertising and discount activities in a way which would harm their competitors. While e-commerce companies with net transaction volumes of 60 billion Lira and more than 100,000 transactions will be limited in their activities. This will include wallet-like electronic money applications. Additional obligations would also be

imposed on e-trade intermediary service providers. Those with whom a service provider is related to or have economic integrity with will be taken into account too. This will include both horizontal and vertical control, and real or legal persons and commercial companies and businesses connected with them. The management of more than one trading company by the same person(s) and if the same real or legal person(s) have the right to manage more than one trading company will also be considered when looking at economic integrity, regardless of whether or not they are shareholders

## EGYPT

### INVESTMENT LAW REGULATION CHANGES



Egypt's Prime Minister has issued Egypt Prime Ministerial Decree No. 2300/2022 amending the Implementing Regulations to the Investment Law issued by Egypt Prime Ministerial Decree No. 2310/2017. Article 42 and 43(2) of the Implementing Regulations will be amended. As a result the conditions required for anyone who applies for approval under Article 20 of the Investment Law has changed. In addition, the issued capital of a joint-stock company and capital of a limited liability company must not be less than 20% of the project's investment costs. There is also now an obligation to provide evidence of the project's financial solvency.

## JORDAN

### INVESTMENT CHANGE



The 2022 draft law regulating investment will provide special benefits for large investors. An investor would be categorised as a large investor after a decision has been issued by the Incentives Committee following a request from the investor on a Ministry approved form. Their investments in Jordan would also have to total more than 10 Million Dinars over at least 24 months. However, investors will lose the special status if the value of their investments in Jordan becomes less than five million Dinars, unless this is because of something they have no control over, and the value of their investment is increased to the required level within 24 months.

## REGULATORY ROUND-UP

**UAE:** The UAE Cabinet have approved the Commercial Registry Law **Federal Decree-Law No. 37/2022's** Implementing Regulations...

**ADGM:** A consultation on proposed amendments to the ADGM Insolvency Practitioner Regime ended on 23 June 2022...

**ADGM:** New off-plan property sales register regulations and real property fee rules have been issued...

**Dubai:** The Dubai Maritime City Authority has amended the regulations on the operation, registration and licensing controls for remotely-operated marine crafts and vessels...

**Saudi Arabia:** Landlords cannot keep copies of apartment keys after renting apartments and do not have the right to cut off electricity, gas or water...

**Saudi Arabia:** The Human Resources and Social Development Ministry is taking legal action against an employer who asked personal questions that focused on a candidate's appearance and their eyes in an interview...

**Saudi Arabia:** Public taxi drivers, airport taxi drivers, family taxi drivers, passenger transport application drivers and private taxi drivers must wear uniform regardless of their gender from 12 July 2022...

**Qatar:** Tanker owners who wish to obtain permits to enter sewage treatment plants in Qatar will need to have installed tracking devices on their vehicles by 1 August 2022...

**Qatar:** The Labour Ministry has issued new heat stress legislation which clarifies responsibility where multiple employers are working at the same site...

**Qatar:** A draft Ministerial Decision on tax and customs exemptions for hosting the World Cup has been approved...

**Oman:** The Capital Market Authority is preparing a standard insurance policy for SMEs which will detail minimum basic coverage for them...

**Kuwait:** The Central Bank has issued directives on a new mechanism for pricing deposits in Dinars...

**Kuwait:** The Kuwait Central Bank has approved the implementation of the Gulf Payment System Initiative (Aafaq) for banks there...

**Jordan:** Materials required to build, establish and equip commercial complexes will be exempt from customs duties and subject to 0% sales tax...

**Turkey:** The minimum salary has increased from 1 July 2022...

# LAW MONITOR

## RECENT LEGAL DEVELOPMENTS IN THE GCC

### SAUDI ARABIA - COMPANY



The Saudi Arabian Cabinet of Ministers has adopted a new Companies law which will replace Saudi Arabia Cabinet Decision No. 30/1437 (the current Company law issued in 2015) and the Professional Companies Law, Saudi Arabia Cabinet Decision No. 77/1441. It has created a new form of company the Simplified Closed Joint Stock Company (SCJSC) which will combine benefits of an LLC such as no minimum share capital and ease of management, with the benefits of a Closed Joint Stock Company (CJSC) such as the ease of trading shares, and creating any type of special share. In addition, small companies with between six and 49 employees and annual turnover of SAR3 to 40 million and very small companies with up to five employees and total turnover of less than SAR3 million will not need a certified auditor unless they are a foreign company.

### QATAR - COMMERCE



Qatar's Cabinet has approved a draft anti-commercial concealment law and has referred it to the Shoura Council. If approved it will repeal and replace Qatar Law No. 25/2004. Under the law any non-Qatari natural or legal person, would be banned from practising or investing in a commercial, economic or professional activity which they are not licenced to practise or invest in according to the laws in force in Qatar. They would also be banned from obtaining percentages of profits which exceed the percentages stated in the company's incorporation document or its articles of association. There will also be penalties for natural or legal persons who enable a non-Qatari to violate the law in this way or covers up that they are doing so.

### GAZETTE WATCH

**UAE Official Gazette Nos. 728-730** – These Gazettes include Ministerial Decision No. 386/2022 on the establishment of the Federal Prosecution for Tax Evasion Crimes.

**Sharjah Official Gazette No. 3 of 2022** – This Gazette includes Sharjah Executive Council Decision No. 20/2022 approving the fees of the Directorate of Public Works in the Emirate.

**Dubai Official Gazette Nos. 570-574 of 2022** – These Gazettes include Dubai Administrative Decision No. 7/2022 on the approval of the Instruction Manual for providing first aid services in various work sites in the Emirate.

**Saudi Arabia Official Gazette Nos. 4934-4939** – These Gazettes include Saudi Arabia Ministerial Decision No. 020092-43-101/1443 approving the amendment of the Implementing Regulation to the Private Health Institutions Law.

**Qatar Official Gazette Nos 5-7 of 2022** – These Gazettes include Qatar Ministerial Decision No. 43/2022 establishing a Unified Economic Register at the Commercial Registration and Licences Department.

**Oman Official Gazette Nos 1443-1449** – These Gazettes include Oman Ministerial Decision No. 109/2022 amending the Implementing Regulation for the System of Rules Governing Real Estate Ownership in Integrated Tourism Complexes.

**Kuwait Official Gazette Nos 1586-1591** – These Gazettes include Kuwait Ministerial Decision No. 196/2022 on the conditions and controls for obliging private sector institutions to treat medical waste resulting from their work at the medical waste treatment plant in the private sector.

(Source: Lexis Middle East Law Official Gazette Index)

### BAHRAIN - CONSTRUCTION



Bahrain Law No. 29/2022 has been ratified by the King and amends Article 2 of Bahrain Decree Law No. 25/2015 On Collection of Costs of Constructing and Developing Infrastructure In Construction Projects. The amendment aims at taking into account the social purposes of construction work carried out by citizens on their homes.



## KUWAIT - OIL



Kuwait's Human Resources Development Committee has approved a proposal made by a Kuwaiti MP which would see an amendment of the law on the appointment of graduates in the Oil Sector. As a result the recruitment process would be divided into two parts. In the first stage candidates would be accepted after adding up the highest mark from the personal interview, language exam, university average and intelligence test. The second stage would involve a two month training session with weekly tests and the candidate would have to pass an exam with a score of at least 70%.

## FEATURED DEVELOPMENT

**Paula Boast**, Partner and Head of Construction Engineering & Projects Middle East at Charles Russell Speechlys LLP examines the impact of Bahrain's new PPP Guide.

Following on from the release of its Government Action Plan (2019-2022) Bahrain has now approved a guide regulating public-private partnerships (PPPs). Bahrain Edict No. 30/2022 is designed to work alongside Bahrain's Sustainable Development Goals 2030 (SDGs) and as part of its overall Economic Vision 2030.

For many years GCC countries have actively considered their traditional procurement systems, weighing them up against alternative options for procurement, particularly for the development of major social infrastructure projects. We have seen policy initiatives in this area wrapped up in each country's 2030 vision plans or similar documents. They have always highlighted PPP as a viable procurement method. Some countries have gone further. A key feature of the initiatives taken to date by Oman, UAE, Qatar, Kuwait and Saudi Arabia has been the enhancement of inward foreign investment.

A whole host of guidelines, directives, and in some cases PPP laws in the GCC, are now based on a firm platform of creating better business and investment environments for foreign

investors. Bahrain has now joined the PPP ranks.

Even the countries without formal PPP laws have ensured that distinct PPP principles have been tried and tested on their major projects. GCC countries will most certainly continue in their PPP journey as a means of achieving the developments required to satisfy their individual 2030 visions.

The Bahrain Edict in particular will cement its Economic Development Board's recognition of the fiscal and non-fiscal benefits of PPPs. For Bahrain projects that will mean focusing on value for money, increased project budget certainty and flexibility to manage the cost of funding. The backdrop to this is, will of course be attracting foreign direct investment.

Successful PPP projects require a well-structured projects pipeline with a PPP friendly political and legal frameworks in place which provides foreign investors with sufficient comfort and protection. Bahrain Edict No. 30/2022 sets out to do exactly that. It is a positive and welcome measure in the Kingdom. In addition, it is a timely one as projects such as Phase 1 of the Bahrain Metro appear to be just on the horizon.

## OMAN - SECURITIES



A new Securities Law Oman Sultani Decree No. 46/2022 has been published in the Official Gazette. It aims to regulate and provide fair and transparent access to funding from the public for SMEs. Under this law it will be illegal to deal or induce others to deal in securities based on undisclosed internal information, and to not disclose any material information about a security which the law requires to be disclosed. Giving incorrect or misleading information or data which may affect the price of any security, the reputation of any issuer or the investment decision of any dealer is also forbidden.

## UAE - AGENCY



The UAE's Economy Minister has announced details of a draft Commercial Agencies Law. If approved, public joint-stock companies and public legal entities with a minimum 51% national capital contribution will be able to act as commercial agents. The existing UAE Commercial Agency Law (Federal Law No. 18/1981) imposes a number of restrictions on the cancellation of commercial agencies, even after the contract term has expired. Under the new law, the agency contract will terminate on expiry of the contractually agreed term.

# TAX AND FINANCE ROUND-UP


COVERING RECENT KEY TAX AND  
FINANCE DEVELOPMENTS – REGION-WIDE

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## UAE

### COMMON REPORTING AND FATCA DEADLINE EXTENSIONS


 The UAE Ministry of Finance has announced the report deadline for the OECD Common Reporting Standards (CRS) and US Foreign Account Tax Compliance Act (FACTA) compliance purposes was 20 July 2022. This deadline applies to UAE Reporting Financial Institutions. The Automatic Exchange of Information Portal relating to FATCA and CRS requirement reports is also now available on the Ministry's website. FACTA and CRS annual reports must be submitted via the new portal. Users who have been notified must complete registration procedures before they submit their reports. Financial Reporting users were also required to submit their Risk Assessment Questionnaire via the Portal by 20 July 2022.

### VAT REGISTRATION CASE

 The UAE Federal Supreme Court has ruled that a taxpayer who made a VAT registration error but had nonetheless reported output VAT should not face late payment penalties and should only have to pay the penalty for failure to register for VAT. The case involved individuals who jointly held real estate. They had mistakenly reported for VAT individually rather than jointly and the partner who held some of the property was not added to the initial VAT number. A second VAT number was requested later which included that partner. The court stated that tax procedures were not an end in themselves, but rather a means to achieving the goal of the law in collecting the legally due tax.

## ABU DHABI


### CUSTOMS DISCLOSURE SERVICE

 The Abu Customs' General Administration is now providing an electronic financial disclosure service

through the Abu Dhabi Government's TAMM Service. The system will allow travellers who are carrying more than 60,000 AED in cash or the equivalent in other currencies or travellers' cheques to declare that in advance. The system applies before reaching a port in Abu Dhabi and regardless of the form of transport the traveller is using.

## SAUDI ARABIA

### VAT CLARIFICATIONS

 Saudi Arabia's Zakat, Tax and Customs Authority has confirmed VAT will not be charged twice on the same item and services. The confirmation was made following a query from someone who had made a purchase from a store which had imposed VAT twice on some products. All items and services are subject to VAT of 15% if they are provided by an establishment or business owner who registered in the VAT system. Imposing VAT twice on the same item is illegal. In addition, following VAT exemption certificates rumours, the authority has also confirmed all business owners who engage in economic activities and have annual revenue of 375,000 Riyals or more must register in the VAT system. Business owners who engage in economic activities but whose annual revenues are less than 187,500 Riyals do not have to register for VAT in Saudi. However, those whose annual revenues exceed 187,500 but are less than 375,000 Riyals can opt to register for VAT. VAT registration must be completed within 30 days once the 375,000 Riyals limit has been reached.

### ELECTRONIC INVOICING

 Saudi Arabia has announced it has started implementing the procedures for the second phase of the electronic invoicing programme which is the linking and integration phase. The aim to link and integrate the electronic invoicing systems of taxpayers subject to the electronic

billing regulation with the Authority's Fatora system. The Authority will notify affected entities when they need to complete procedures for implementing this phase, which will start on 1 January 2023 for establishments in the first group. The selected entities had a standard volume of revenues subject to VAT for 2021 which exceeded three billion Riyals.

### SINGLE-STOCK FUTURES TRADING

 Saudi Arabia's Stock Exchange has allowed limited single-stock futures trading from 4 July 2022. A single-stock future is a type of futures contract between two parties to exchange a specified number of stocks in a company for a price agreed with delivery occurring at a specified future date. The first set of futures contracts will include Al Rajhi Bank, Saudi Aramco, Saudi National Bank, Alinma Bank, SABIC, Saudi Kayan, Saudi Telecom Co, Saudi Electricity Co, Almarai and Ma'aden. Each company will have four contracts, representing the current month, next month, next quarter and current quarter. Trading on single-stock contracts will take place half an hour before the market opens and half an hour after it closes.

## QATAR

### DEADLINE FOR REAL BENEFICIARY DECLARATIONS

 The Qatari Commerce and Industry Ministry has urged all companies registered in the commercial registry in Qatar to submit their real beneficiary transaction declarations by 31 December 2022. A real beneficiary is a natural person who finally owns or actually controls the customer, through an ownership interest or voting rights, or a natural person on whose behalf transactions are carried out. Under Qatar Law NO. 1/2020 on the Unified Economic Register and Qatar Cabinet Decision No. 12/2020 which is the Implementing Regulation to that law the declaration of the

real beneficiary has become a mandatory procedure when requesting a licence, registering in the commercial registry, amending or renewing legal persons and legal arrangements. As a result none of these requests will be accepted unless a declaration of the true beneficiary is attached to it.

## OMAN

## WITHHOLDING TAX SUSPENSION EXTENDED



Oman's Capital Market Authority has announced a Circular stating collection of withholding tax on dividends of shares, returns on Sukuk and interests on bonds was to be suspended until 6 May 2022 has been extended. Withholding tax is levied at 10% on such transactions. The suspension is now extended until 2025.

## KUWAIT

## INCOME TAX CLARIFICATION



Sources have confirmed that a foreign company which operates in Kuwait but does not have a permanent establishment there is not exempt from paying income tax. This is also the case where a foreign company's work term is less than a year but they are likely to continue their business in Kuwait. Where a foreign company does not have a permanent establishment in Kuwait but has signed a representation agreement with another company so that company represents them in order to obtain a new contract, this will be considered to be a continuation of business. These companies will be subject to the tax rules in line with double taxation avoidance agreements.

## BAHRAIN

## ACTUARIAL CHANGES IN INSURANCE



Bahrain's Central Bank has issued two new directives to insurance companies which will require them to establish internal actuarial units. Under these new directives, the insurance companies will also be required to appoint Bahraini executives and train them to be

## TAX TREATY UPDATE

**Saudi Arabia:** A Memorandum of Understanding has been signed between the Zakat, Tax and Customs Authority and Singapore Customs.

**Qatar:** A double taxation agreement on income tax and prevention of tax evasion and avoidance has been signed by Qatar and the Czech Republic.

qualified actuarial experts with licences from the approved actuarial colleges so they can prepare reports which meet the Central Bank requirements. In addition, a Bahraini actuarial analyst must be appointed by these companies no later than the end of June 2023.

## TURKEY

## NEW FINANCIAL CENTRE



A Law establishing an Istanbul Financial Centre has been approved. Turkey Law No. 7412/2022 came into force on 28 June 2022. The Law defines the financial activities that can be carried out in the centre which are banking, pensions and private pensions, insurance, financial leasing, factoring, savings financing, payment services, electronic money services, and capital markets services. In order to operate in the new centre, financial institutions will need a Presidential Finance Office participant certificates. An implementation regulation will be issued which will set out the requirements for obtaining these certificates. Financial services provided by the Centre's resident financial institutions to clients residing abroad will be considered financial service exports if the client ultimately benefits from these services abroad. Derivative transactions, asset purchase and sale transactions for own account, and activities involving the savings of the domestic residents abroad undertaken by these financial institutions will not be considered financial service exports. Under Article 6(1)(a) of Turkey Law No. 7412/2022, 75% of the earnings obtained from financial services export activities carried out within the new Centre by financial institutions that have participation certificates will be deducted from corporate profit when determining the institution's corporate tax base, provided this has been shown separately on their corporate tax return. The general

taxation regime will be applied for their other earnings.

Financial institutions with participant certificates will also be exempt from income tax on 60% of the real net value of the monthly salary paid to Centre staff with at least five years' professional experience abroad and 80% for those with at least ten years' professional experience abroad, if they have not worked in Turkey in the last three years before they started working at the centre.

## EGYPT

## CONSUMER FINANCE LAW AMENDMENTS



The Economic Affairs Committee of Egypt's House of Representatives has approved a draft law amending the Consumer Finance Law (Egypt Law No. 18/2020). The amendments included adding new Articles 6 bis, 28 bis, 28 bis 1 to the Law. Under Article 28 bis, anyone who uses fraud or deception to refrain from carrying out all or some of their financial obligations under a financing contract concluded with a consumer finance company or licensed consumer finance provider, will be jailed and fined between 5,000 and 50,000 Egyptian Pounds.

## JORDAN

## AIRLINE TICKET TAX EXEMPTION



Jordan's Cabinet has approved a three year extension to the period in which passengers leaving Jordan from the King Hussein International Airport in Aqaba will be exempt from a special tax on their airline tickets. The aim is to encourage tourism in the Aqaba Special Economic Zone and the surrounding region, and lead to more airlines operating from the King Hussein International Airport in Aqaba.



# ANCHORS AWAY

The issue of Bahrain's new Maritime Law, Bahrain Law No. 10/2022 was a landmark moment. Eleanor Livingstone of Zu'bi & Partners looks at its key areas of impact.

**“W**hen Bahrain Law No. 10/2022, the new Bahrain Maritime Law was ratified on 7 April 2022, it was a landmark moment for Bahraini Law.” states Eleanor Livingstone. “It is the most comprehensive piece of legislation to be issued in Bahrain since the 1976 Penal Code. It has repealed both the previous Maritime Law (Bahrain Law No. 23/1982) and the Registration of Ships and Determination of Safety Conditions Law (Bahrain Law No. 14/1978) but has also built on these two earlier pieces of legislation.”

“This is a new law which adopts internationally recognised standards on maritime safety, licensing, pollution control, rights and liabilities over vessels, vessel ownership, insurance and seizure,” Livingstone adds. “In doing so, it is expected to help facilitate local and international investment in the Bahraini maritime industry as well as overhaul and clarify rights and obligations in this sector, and make it easier for foreign vessels to be registered in Bahrain with the associated benefits that brings.”

## WHO IS IMPACTED?

“Bahrain Law No. 10/2022 only applies to entities which own or operate vessels, including those under

construction with a gross tonnage of at least 150 tons and a length of at least 24 metres,” Livingstone states. “In addition, vessels which have been constructed over 20 years ago cannot be registered unless they have been given specific permission to operate on a case-by-case basis by the Minister of the Ports and Maritime Authority. While vessels which are over 30 years old cannot be registered.”

“There are various new obligations and restrictions in place which entities involved in this sector now need to be aware of.”

“For example, in order to operate legally, vessels must obtain a licence to navigate from the Ports and Maritime Authority registrar,” Livingstone states.

“Failure to do this will lead to criminal liability. This Law’s Implementing Regulations are also expected to set out the conditions which will be required for obtaining the navigation licences.”

## PENALTIES

“Probably, the most significant change Bahrain Law No. 10/2022 has brought in has been the notably harsh penalties which are now imposed for specific violations,” Livingstone continues. “These include jail terms and fines up to 150,000 Dinars. These penalties also





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to a wide range of violations, including operating without a licence, carrying unauthorised cargo, and failure to comply with safety requirements. There are also penalties for evading taxes and fees, carrying stowaways and refusing official inspections.”

“However, some of the heaviest penalties, which can include the potential seizure of vessels now apply where there is non-compliance with environmental restrictions. This can include causing marine pollution, dumping oil or chemicals, carrying harmful materials without a licence, dumping sewage or garbage, failing emissions checks and failing to report pollution incidents.”

## REGISTRATION

“Some of the most interesting changes brought in by this new Law have been the facilitation of the process for and expansion of the possibility for foreign vessels to obtain Bahraini nationality,” Livingstone states.

“Foreign-owned vessels can now be registered in Bahrain, if they are self-propelled and their owner has an elected domicile in Bahrain. In addition, foreign bareboats can be registered in Bahrain in line with their charterparty contract, provided the charter period exceeds six months and the charterparty is certified.”

“All registrations of foreign vessels in Bahrain are subject to review by the Ports and Maritime Authority Council of Ministers,” Livingstone continues. “It should also be noted that vessels registered in Bahrain have a number of privileges.”

“In addition, the right to undertake marine commercial activities and port operations like cruises, recreational trips, dredging and tugging are limited to vessels which have Bahraini nationality. However, non-Bahraini vessels may be authorised to undertake marine commercial activities if they are permitted to do so under the Implementing Regulations which are expected to be published soon.”

“Vessels qualify for registration under this law if they are owned fully or by majority shareholding in the case of joint ownership by Bahraini or GCC nationals or by companies which have their head office registered in Bahrain or in any other GCC country.”

“However, vessels will automatically be de-registered if their owner or operator loses their Bahraini or GCC nationality, if the vessel undertakes illegal trade or practices which violate national or international laws or if the vessel fails to fulfil the required health and safety and environmental standards under local and international regulations,”



**Eleanor Livingstone**  
Associate  
Zu'bi & Partners

Livingstone adds.

“Vessels can only be de-registered at the owner’s request if the vessel is unencumbered by any mortgage or seizure.”

## FLAGS AND NAMES

“Any proposed vessel name must be approved by the Ports and Maritime Authority registrar, and must not already be being used by another Bahraini vessel, contravene public or public morals or be otherwise prohibited under any law,” Livingstone continues.

“In addition, Bahraini-registered vessels must fly the Bahraini flag at all times and cannot fly the flag of another jurisdiction except where international customs permit.”

## VESSEL SALES AND OWNERSHIP

“Vessel ownership may be transferred under a contract of sale, and the required conditions for such a contract are to be specified in the Implementing Regulations when they are issued,” Livingstone adds.

“However, the relevant Court can block the sale of a vessel if a valid objection has been submitted by a third party or it otherwise considers it necessary.”

“If there is joint ownership of a vessel, the joint owners are also equally responsible for any debts which arise in connection with the vessel,” Livingstone continues.

“Although, a joint owner can dispose of their share without the consent of other owners, unless the disposal causes the ship to lose its Bahraini nationality, in which case, the consent of all owners is required.”

“In addition, joint owners cannot mortgage their share in a vessel unless they have the consent of owners holding at least three-quarters of the shares,” Livingstone explains.

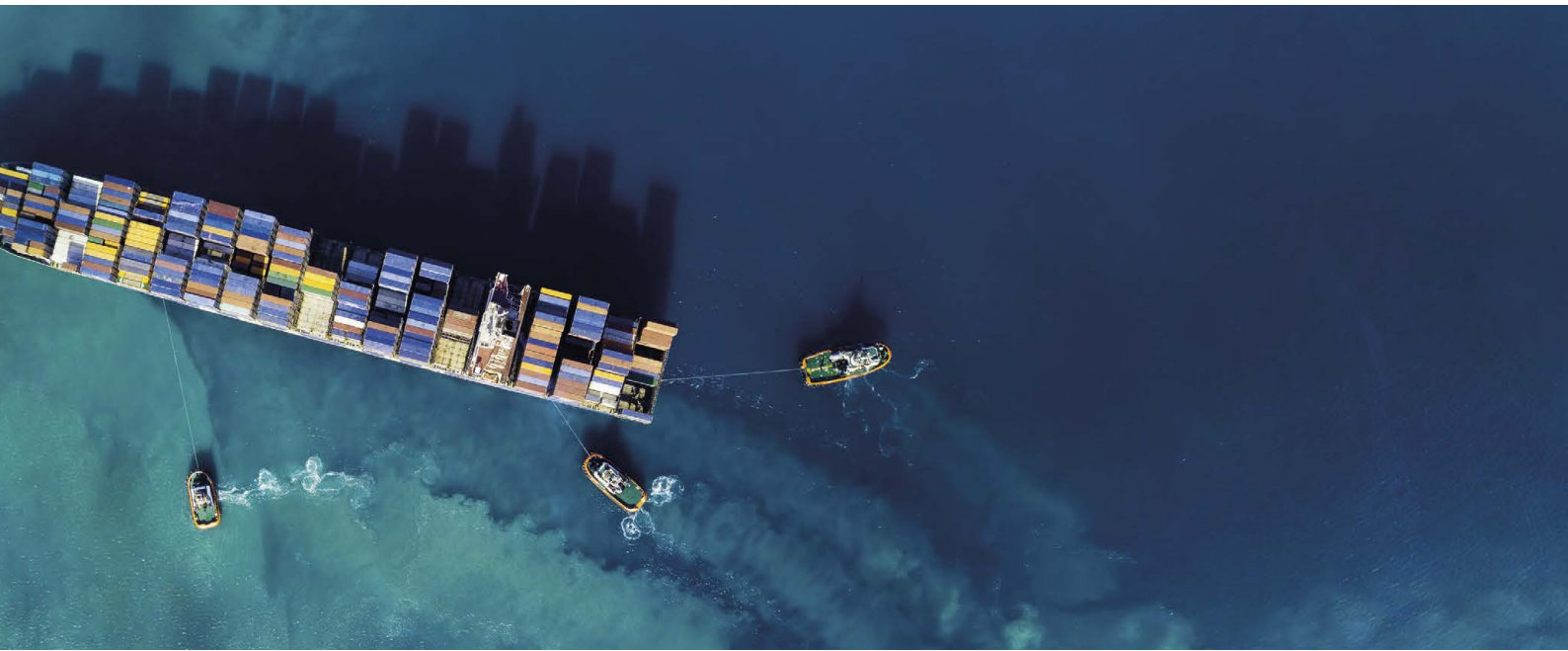
## RELATED LEGISLATION

### Article 286 of Bahrain Law No. 10/2022

Renewal of the charterparty of the Ship after the expiry of the specified period will not be presumed.

(Source: Lexis Middle East Law)





© Getty Images/istockphoto

## DEBTS

“Certain debts will give rise to preferential rights over vessels and freight by creditors,” Livingstone states. “These include judicial expenses incurred in the sale of the ship and the distribution of the sale proceeds, fees and taxes due to the State, as well as fees for cargo, Ports, pilotage, towage and costs of guarding, maintenance and other maritime services. This is also the case for debts arising from employment contracts of the Master, Seafarers, and other individuals employed on board the Ship under maritime contracts of employment, and salvage-related rewards and share of the Ship in general average losses. Preferential rights are also given to compensation for collisions, debts caused by pollution and other navigation incidents, damage sustained by Port installations, docks and navigation lines, death or bodily injury of Passengers, the Master and Seafarers and loss or damage sustained by Goods and luggage.”

“This approach also includes debts arising from contracts concluded by the Master and operations they carry out outside the Ship’s Port of registration, within their statutory powers, for the necessary maintenance of the Ship or the continuance of its voyage, whether or not the Master is the Owner of the Ship and whether the debt is owed to them or to suppliers, lenders, Persons who have repaired the Ships, or other contractors. In addition, any mortgage over a vessel must be registered with the Ports and Maritime Authority registrar, and such mortgage debt ranks after these preferential rights.”

“In addition, precautionary seizure of vessels can now be imposed by a competent Court, if the vessel is subject to an outstanding marine debt, or by the decision of the Ports and Maritime Authority or other competent Government agency,” Livingstone states. “However, entities may request the seizure order be lifted if they are able to provide sufficient alternative

security to secure the debt. If a marine debt remains unfulfilled, the Court may also order judicial sale of the vessel.”

## DOCUMENTATION

“There are also a number of new rules on documentation,” states Livingstone. “For example, any vessel operating in Bahrain must present on request any certificate, register, record, document or insurance certificate required under the International Convention for the Prevention of Pollution from Ships and the International Convention on Civil Liability for Bunker Oil Pollution Damage. Vessels can also only transport harmful substances if they have a permit from the Ports and Maritime Authority and subject to any conditions specified in it. The discharge of garbage, sewage waste and other pollutants is banned and any marine pollution incidents must be reported immediately to the Ports and Maritime Authority who may take any action they consider appropriate to prevent or reduce the associated damage.”

“The Ports and Maritime Authority also has the right to monitor and inspect vessels located in Bahrain’s territorial waters or adjacent to them, whether the vessel is Bahraini or foreign, in order to ensure their compliance with the Law and international conventions.”

“The Bahrain Ports and Maritime Authority is expected to issue the Implementing Regulations accompanying the new Law within the next few months. These Regulations should be reviewed in detail by relevant entities once they are published, as they will clarify and expand on the existing rights and obligations found in Bahrain Law No. 10/2022.”

## RELATED STORY

### Bahrain: Maritime Law Ratified

**2022-04-08\_33**

Bahrain’s King has ratified Bahrain Law No. 10/2022 issuing the Maritime Law. It had already been approved by the Shoura and Representative Councils. Under Article 1, the Maritime Law will be enforced, in a way which does not conflict with the provisions of relevant international conventions and treaties and protocols in force in the Kingdom.

# CASE FOCUS

**Case No ....** Maire v Maizah, DIFC 016/2022 issued on 2 June 2022

**Jurisdiction ....** DIFC

**Court ....** DIFC Courts, Court of First Instance

**Recommended by ....** Clyde & Co

## WHAT HAPPENED?

A dispute between the parties arose over a residential tenancy for an apartment in the DIFC. The claimant was the landlord and the defendant was the tenant. The parties entered into a tenancy agreement on 19 January 2021. Under the agreement, the defendant rented an apartment in the DIFC from the claimant for a year from 1 February 2021 in exchange for payment of 85,000 AED.

The Property consisted of two bathrooms, one of which was connected to the master bedroom. This bathroom was equipped with a bidet but no shattaf. A shattaf was subsequently installed in the master bathroom during the tenancy.

Following its installation, the shattaf's neckline broke resulting in a large amount of water pouring from a rip in the shattaf's rubber inner tubing, leading to a flood in the property and the wooden flooring being damaged.

The circumstances of the installation of the shattaf and therefore the liability to rectify the damage caused were disputed. The claimant argued the installation of the shattaf required the claimant's written permission which was not provided and therefore the defendant had installed the shattaf without the claimant's consent and bore liability for the damage caused.

The defendant argued that while the shattaf installation was paid for by them, the installation was undertaken by the building maintenance team with the landlord's consent so the liability for any damage caused therefore lay with the claimant.

## WHAT WAS DECIDED?

The Court of First Instance initially dismissed the claimant's claim and partially granted the defendant's counterclaim on the basis that the expert had advised the main cause of the incident was due to the drain in the master bedroom being blocked.

The judge found the claimant was responsible for

the flood irrespective of who had installed the shattaf and so there was no need to identify that person.

On appeal, the court disagreed with the Court of First Instance judgement and concluded the opening in the master bedroom was blocked before the shattaf's malfunction or installation and both parties were aware of this. The shattaf was therefore knowingly connected in a room incapable of draining any water which might collect on its floor. Liability therefore rested on the party who had installed the shattaf.

The court added that the tenancy contract required the tenant to obtain the landlord's written permission before making any changes to the apartment. While the court was shown various email communications on the shattaf installation between the defendant and the claimant's property management company, it concluded the defendant had not provided any evidence of approving the shattaf installation which actually took place, and which the court found to be of low quality. They also found it was not in line with the shattaf installation works envisioned by or on behalf of the claimant in the email correspondence.

At best the court stated that 'any permission which could possibly be extracted from these emails would not extend beyond the work proposed within them and would not, therefore, extend to the shattaf in fact installed in the master bathroom'. The court therefore found the Defendant was responsible for installing the shattaf.

The court found the installation of the shattaf was done without permission and together with the damage caused must be regarded as the defendant's responsibility. The court ordered the defendant to pay the claimant the cost of rectifying the damage totalling 27,183 AED, together with reasonable costs of the appeal.

## WHY'S IT SIGNIFICANT?

This case highlights the importance of ensuring any alterations or renovations to a residential leased premises are undertaken only with the lessor's express consent which from a practical perspective should always be in writing.

This is reinforced by Article 36(1) of DIFC Law No. 1/2020, which obliges tenants of residential properties to obtain their landlord's consent before making any alterations to a leased property.

**Case No ....** DCC 515/2021 issued on 10 February 2022  
**Jurisdiction ....** Dubai  
**Court ....** Dubai Court of Cassation  
**Recommended by ....** MN Law

### WHAT HAPPENED?

An employee of a café in Dubai suffered a heart attack and an ambulance was called. After administering first response medical help, the ambulance transported the employee to a hospital in Dubai. They were in cardiac arrest when they arrived, had to be resuscitated and then underwent intensive care.

This included a prolonged stay on a ventilator and mandatory physical and respiratory treatment. The Café was a civil company owned by two shareholders. Following the employee's treatment at the hospital and in respect of the medical bill, one of the shareholders advised that the Employee did not have health insurance and offered to pay 10,000 AED for their treatment.

The hospital refused the payment offered and filed Case No. 616/2020 Civil Partial before the Dubai Court of First Instance requesting the court oblige the café and the shareholders to jointly pay the cost of the medical bill. This totalled 794,724 AED plus 12% legal interest. The defendants pleaded they lacked capacity in the case as what had happened was not a work-related injury and the claim should instead be pursued against the employee himself. In August 2021, the Dubai Court of First Instance issued its judgment rejecting the case on the ground the defendants had no capacity. The hospital appealed the Court of First Instance judgment under Case No. 1035/2020, Civil Appeal, and an expert medical committee from the Dubai Health Authority was appointed to consider the matter.

Based on the report submitted by the expert committee in November 2021, the Dubai Court of Appeal issued its judgment repealing the Court of First Instance judgment and ordering the café and shareholders to jointly pay 794,724 AED with 5% interest from the claim initiation date to the hospital. The café and the shareholders filed a further appeal against the Court of Appeal judgment before the Dubai Court of Cassation under DCC 515/2021.

The basis of the arguments by the café and the shareholders was that they did not have capacity in respect of the claim and the person responsible for the claim was the employee who had benefited from the medical treatment, but against whom the hospital had not filed the claim.

They argued that the hospital did not comply with the provision of Article 15 of Dubai Law No. 11/2013 as the hospital had failed to inform the Dubai Health Authority of the employee's health status. They also argued the expert report which formed the basis of the Court of Appeal's judgment contravened the provisions of Ministerial Decision No. 224/2001 on the calculation of expenses of a non-national patient for medical treatment and hospital stay.

### WHAT WAS DECIDED?

The Dubai Court of Cassation did not accept the defendants' defence and found Article 2 of Dubai Law No. 11/2013, in defining relevant terms, stipulated an Emergency as a situation which called for immediate medical intervention by a health service provider for saving a person's life or for eliminating a danger threatening a person's life. The Court of Cassation outlined that Article 10(4) of Dubai Law No. 11/2013 stated that an employer had to bear the costs of health services and medical intervention in the event of an emergency situation in respect of an employee if the employee was not covered by a health insurance scheme. Based on the evidence presented to it, the Court of Cassation found that the employee worked for the café and the shareholders as the café was a civil company. They also found the employee, as confirmed by the expert report, was admitted to the hospital under an emergency medical situation. The Court dismissed the defendant's defence that they lacked capacity and upheld the Court of Appeal judgment.

### WHY IT'S SIGNIFICANT?

The judgment sets aside the general preconception among most companies and employees that employers will be liable to employees in respect of work-related injuries only based on the compensation provisions under the Labour Law. Some companies therefore tend to overlook the importance of mandatory health insurance for employees, which leaves them susceptible to having to pay large sums of money as was the case here.

**Case No ....** Madesh v Muhura, DIFC 107/2022 issued on 14 June 2022  
**Jurisdiction ....** DIFC  
**Court ....** Dubai International Financial Centre  
**Recommended by ....** Fotis International Ltd

### WHAT HAPPENED?

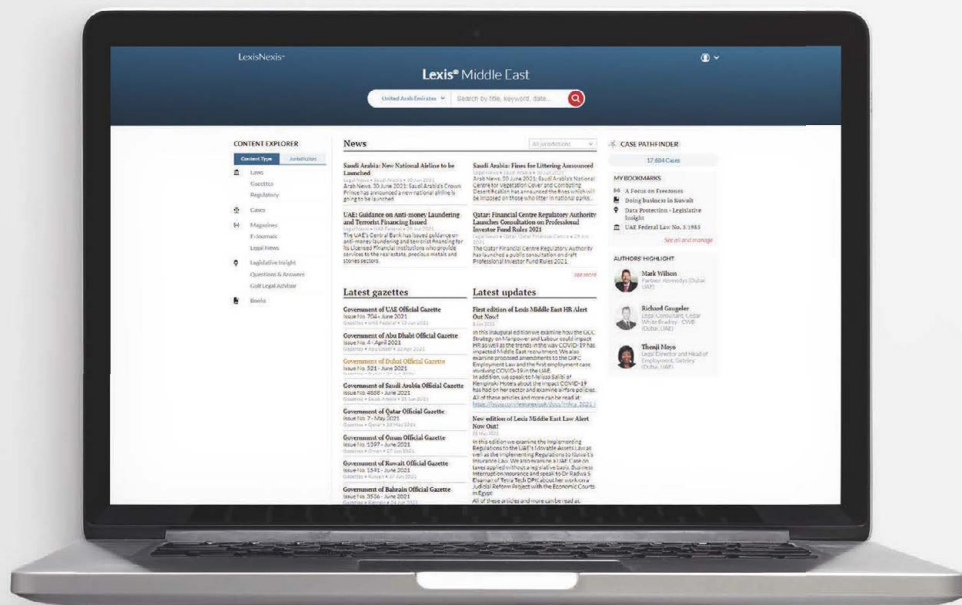
This case involved termination payments and penalties due to an individual who claimed that during recruitment interviews for a fintech business it had been misrepresented that he was to be employed by one entity only to later receive a contract which stated he was employed by another entity. Both entities had shared ownership and operated from the same offices. Salary payments had not come from the company he believed to be his employer.

Key points were that he had continued to work after he had discovered the contract was not with the entity he believed was his employer. At that time he had accepted verbal assurances that this did not matter without also getting any written documentation confirming the position.

### WHAT WAS DECIDED?

The Claimant's claims were dismissed. Each party was to bear their own costs.





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Shaun Johnson, Group General Counsel at BEEAH Group explains how ESG and digital developments are impacting his business.

#### ABOUT YOU

I began my career in Australia. I enjoyed student life so much I did three degrees which included degrees in politics, management and law. I then qualified at Ashursts in Melbourne, before moving to Freshfields in London in 2002. However, quite early on in my legal career I decided to move inhouse and have worked inhouse for the last 17 years, where I have had both public and private sector roles in the UK, Saudi Arabia and now at the international holding company BEEAH in the UAE.

At BEEAH I am their Group General Counsel, so am involved in all legal and sometimes non-legal issues involving the Group's 30-plus companies. This can range from banking and finance, employment, construction, intellectual property, litigation, disputes, restructuring, technology, corporate M&A, governance and procurement or sometimes even something as straightforward as reviewing a press release.

#### YOUR BUSINESS

BEEAH is involved in many sectors ranging from waste collection and recycling, waste to energy (including hydrogen), as well as the digital, transport, health, ports, funds, real estate, education, and the research and development sectors. We have operations across most of the UAE's Emirates and also in Egypt and Saudi Arabia.

Although we have a public sector shareholder, we are run like any private company, which means we are looking for potential efficiencies as we grow. We have been through a privatisation phase and are now in the next stage of our corporate evolution and growth.

I find that the issues we get management queries on change with the priorities of a particular week. At present, for example, governance issues come up quite a lot and this is a key issue for us.

The two core pillars of our group are sustainability and digitalisation which circular economies are built around and which we see as essential for economic growth in the future. This means the desire to use or build the best available technology possible to achieve better outcomes for our internal and external stakeholders is ingrained in our DNA. For example, from the legal function perspective, I have investigated the different types of technology which are used in the legal industry, including the use of AI in legal workflows.



#### LEGAL TECH

There are five areas I have been looking at where legal tech can assist. Our plan is to integrate legal tech into entity management, contract lifecycle management, litigation and claims management, create a board portal and virtual data rooms/repositories. AI will be particularly important in contract lifecycle management in order to make BEEAH's businesses self sufficient. The plan is that the BEEAH legal function will empower the group's different businesses by using AI, so they can be self-sustaining by creating their own contracts as part of their day-to-day operations, but to still allow for an escalation mechanism which will take matters back to the legal department where issues become more complex.

#### ESG

In the context of Environment, Social and Corporate Governance (ESG), the UAE has empowered the private sector by using regulatory and legislative framework tools which have been combined with specific targets to motivate and enable the private sector to achieve these sustainability goals. Within the circular economy, this ultimately improves the quality of life and the UAE is acting as a guiding force in the region in this area. So for example, I sit on the BEEAH Group's Procurement Committee and we are developing and instituting new supply chain procedures so that businesses we engage with are required to guarantee higher ESG standards and demonstrate a commitment to ESG principles if they wish to do business with the BEEAH Group.

## PRACTITIONER PERSPECTIVE



**William Reichert**

Partner

Charles Russell  
Speechlys LLP

William Reichert of Charles Russell Speechlys LLP talks about the growing importance of Environmental, Social and Governance (ESG) considerations for public and private entities in the UAE.

The term Environmental, Social and Governance (ESG) is generally used by investors to measure the actions of entities on key environmental, social, and governance factors which may affect their financial performance. As responsible investing continues to gain popularity, there is a greater demand for ESG information from

companies. In addition, the way a company manages its ESG issues can also affect its long-term performance and valuation. Therefore, ESG due diligence is gaining traction in merger and acquisition transactions and an increasing number of investors have started to integrate ESG factors into their investment decisions when evaluating a possible investment. In 2020, the UAE Securities and Commodities Authority (SCA) issued Securities and Commodities Authority Decision No. 3/2000 on the Adaptation of the Governance Code. In line with Article 76 of Securities and Commodities Authority Decision No. 3/2000, public joint stock companies listed on the Abu Dhabi Securities Exchange (ADX) and the Dubai Financial Markets (DFM) must now publish a sustainability report.

Following the SCA's lead, the ADX and DFM have also made a commitment to developing sustainability in the financial markets by becoming part of the UN-led Sustainable Stock Exchanges initiative. In addition, DFM also launched its Sustainability Strategic Plan 2025 which aims at supporting its efforts to promote ESG best practices amongst listed entities there. Both ADX and DFM have published ESG disclosure guidance to assist listed entities' sustainability reporting. Companies listed on these markets have to produce a report demonstrating their long-term strategy in this area which must provide commentary on the company's impact on the environment, society, and governance. This should include information on how the company has consumed energy and managed its environmental impact. Factors to be considered include carbon emissions, energy efficiency, climate change, deforestation, biodiversity, air and water quality and waste management. There must also be information on how the company fosters its people and culture and how that has affected the broader community. Factors to be considered here are gender and diversity, inclusivity, data protection, employee engagement, labour standards, customer satisfaction, community relations, privacy and human rights.

A company's internal system of controls, practices and procedures should also be considered which will include areas such

as shareholder rights, board composition, executive compensation, audit committee structure and bribery and corruption.

Companies listed on ADX or DFM also have to comply with the Global Reporting Initiative Standards, which are set by a not-for profit organisation which provides sustainability reporting guidelines.

Companies currently listed on ADX or DFM had to submit their annual sustainability report for the 2020 financial year no more than six months following the end of that financial year. For subsequent financial years, their sustainability report must be submitted to the SCA within 90 days from each financial year end or before the date of the annual general assembly meeting, whichever is earlier. These reporting obligations are mandatory for publicly listed companies. However, it seems the UAE Government is also keen to develop this and encourage voluntary reporting by the private sector in line with other international initiatives. The UAE has also announced a Net Zero by 2050 strategic initiative to drive emissions down and wants to bid to host COP28 in 2023.

Internationally, the International Financial Reporting Standard (IFRS) Foundation has also launched a consultation on its first two proposed standards in this area. The first sets out general sustainability-related disclosure requirements and the other specifies climate-related disclosure requirements. While this is currently intended for capital markets, it is clear further ESG movements are being made and scrutiny in this area is increasing.

However, ESG reporting does not seem to have fully caught on with the private sector yet, among those who remain outside the mandatory reporting. Although, there are steps companies can take to embed an ESG strategy and implement clear frameworks and procedures which sit with the company's ethos. For example, there should be clear roles and defined targets and where possible external audits. However, further regulation and guidance is needed to solidify ESG best practices in the private sector. This is a relatively new area of law for the Middle East and local regulators are likely to continue updating their requirements to keep up with global trends and developments. The massive investment flow towards ESG-related investments coupled with the regulatory and cultural shifts taking place are all indicators ESG is going to become increasingly important for investors and regulators in the UAE. Companies will therefore need to have a framework in place to ensure compliance and remain attractive to investors, even if it is not mandatory for them yet.

With thanks to Charlotte Jackson, Associate and Sarah Kadhum, Associate for their contributions to this article.

### OTHER LEGISLATIVE CHANGES

At present there are three major legal developments in the UAE which our business has been focusing on. These are the recent changes to UAE employment law, the fact corporate tax is now to be introduced

here and the development of regulatory frameworks for the metaverse. All three of these areas impact BEEAH's business segments and in my role I have the opportunity to shape how we respond as a group to these changes.



# MOVERS AND SHAKERS

## A ROUND-UP OF THE TOP APPOINTMENTS AND PROMOTIONS

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### RENEWABLE ROUTES

**David Leckie**, a Partner at Clyde & Co has relocated from the firm's London office to their Dubai office. Leckie has more than three decades of experience working in the global energy sector and has represented clients in various international energy disputes. In addition, he



has significant experience of energy transition and the renewables sector.

Going forward he will be working closely with Legal Director Leonard Soudagar, who is an international arbitration and litigation lawyer who represents clients in various sectors, including the energy and natural resources sectors, marine sector, international trade and commodities.

### UP AND UP AND UP

**Gerry Rogers** has been promoted to Partner over at Galadari

Advocates and Legal Consultants. **Rogers**

has extensive experience in high profile projects and has worked on transactions in the energy and infrastructure sectors, including advising on structuring and project agreements, and their corporate and technical aspects. Before switching to the law, Rogers spent 10 years working as a chemical engineer.



in Dubai as the head of the Middle East Technology and Intellectual Property practice for a leading international law firm. His past experiences have included advising clients on multi-million-dollar digital transformation and outsourcing projects, coordinating data protection compliance and cybersecurity programmes and leading on breakthrough projects in the region in areas such as Artificial Intelligence, E-sports, FinTech and Blockchain.

He has also been heavily involved in the development and advancement of regulation in data protection and FinTech. In addition, he has worked with government entities and regulators to help shape legislation and has assisted clients with responses to consultations and ongoing compliance with legislative developments in these and other areas.

oil and gas, power and water industries. Previously he has held various General Counsel positions in leading companies in the oil and gas and power and water sectors in the UAE and Saudi Arabia.

### PROJECTING HIMSELF

**David Johnston** has been appointed as a Partner in Norton Rose Fulbright's banking and finance team.



**Johnston** was previously a Senior Associate at the Mohammed Al Ghamdi Law Firm, in association with Norton Rose Fulbright in Riyadh. He has experience of advising sponsors, lenders and procuring authorities on major utility and infrastructure projects in Saudi Arabia.

He has also advised on major project finance transactions across the Middle East, particularly in the energy, desalination, petrochemicals, social infrastructure, real estate development and transport sectors. He first joined Norton Rose Fulbright in 2013 and spent over five years in the firm's Bahrain office. During that time he worked on various commercial matters in the Middle East projects market.

### TECH HIM OUT

**Rob Flaws** has joined Baker Botts LLP as a Special Counsel in their Corporate Group. **Flaws**

will be based in the firm's Dubai office and will focus on technology, data protection and intellectual property.

He is a technology, intellectual property, FinTech and data protection law specialist who has more than a decade of experience supporting both international and local clients across the Middle East in understanding complex legal issues in relation to technology and data, managing their intellectual property and executing transactions.

Previously he worked as Global Counsel for telecoms giant MTN and in that role supported the business in its provision of technology and telecoms services across multiple jurisdictions and on the growth and development of its new mobile money and FinTech businesses.

Prior to joining MTN, Rob was based



### NEW HORIZONS

**Sirri Al Kaylani** has joined PwC Legal Middle East as a Director covering Energy and Infrastructure Projects.

**Al Kaylani** is an experienced corporate and commercial lawyer with more than 20 years' experience. He specialises in working on high value energy and infrastructure projects, in the Middle East (including the GCC), Africa and Europe.

He qualified as a Solicitor of England and Wales in 2000. He has advised national oil companies, international oil companies, Governments and a triple A rated development finance institution on energy and infrastructure projects in the



### OTHER CHANGES

**Moroglu Arseven:** A Basak Acar, LLM and C Hazal Baydar, LLM have become Partners with effect from 1 July 2022.

**PwC Legal Middle East:** PwC Legal Middle East has opened an office in the Qatar Financial Centre. It is currently the only big four accountancy firm to be partnered with an established law firm in Qatar.

### BUILDING TOMORROW, TODAY

**Hasan Rahman** has been appointed Partner at Trowers & Hamlin and will work in their International Construction team in Abu Dhabi.



**Rahman** is an English-qualified construction and engineering lawyer who has particular experience in advising on drafting and negotiating construction contracts and related agreements for major projects across a range of sectors and industries.

He has also advised on various projects across the GCC and elsewhere on industries and sectors, including the real estate industry and power sector, including in renewables, infrastructure and transport. He previously worked at DLA Piper where he led the firm's non-contentious construction team in the Middle East.

### TECH HER OUT

**Melissa Forbes-Miranda** has joined Stephenson Harwood LLP as a Partner in the firm's corporate practice. Previously she worked at Baker McKenzie. She will be based in Stephenson Harwood's Dubai office. **Forbes-Miranda** has significant experience advising on a broad range of corporate and commercial transactions. Her practice focuses primarily on M&A, joint ventures, Foreign Direct Investment, restructuring and insolvency, corporate and shareholder disputes and private equity and venture capital. She also has expertise in advising on various commercial, outsourcing and technology mandates. She is known in particular for her technology sector expertise.



She has advised on matters relating to data centres, data security, defence technology, healthcare technology, technology product manufacturing and distribution, software licensing and development, FinTech, e-commerce, online advertising and media, Internet of Things, Blockchain and cryptocurrency.

**Forbes-Miranda** has also advised on matters relating a range of sectors, including financial services, insurance, life sciences, healthcare, the industrial and manufacturing sectors, consumer,

real estate, education and hotels and leisure.

Meanwhile **Rania Tadros** has also joined Stephenson Harwood LLP as the Dubai office Managing Partner.



**Tadros** is a leading marine and international trade lawyer and will join the firm's global practice in that area. Previously she worked at Ince & Co and she has over 20 years' experience in shipping and offshore energy disputes. She has also provided commercial support to companies in the shipping and offshore sectors. **In addition, Tadros** specialises in issues which arise in construction contracts and has advised on numerous related disputes.

### PARTNERING UP

Baker McKenzie has made five partner promotions in the Middle East and North Africa region.

The first is **Amir Alkhaja** who has over 15 years' experience in the UAE. He focuses on commercial, white-collar crime and banking litigation.

He was admitted to the UAE Courts in 2012, is a licensed UAE lawyer and has rights of audience in local and federal courts in the UAE, including all Cassation Courts and the Federal Supreme Court.

He has successfully represented multinationals, financial institutions and high net worth individuals in local and cross-border disputes in the UAE and the Middle East.

The second new partner is **Kellie Blyth** who is an experienced technology and privacy lawyer. She has been advising multinational businesses and public institutions in the Middle East region since 2012. **Blyth** was admitted in Scotland in 2008 and advises clients on technology procurement, digital transformation projects, and information law advisory work. This includes data protection compliance matters, the regulation of cross-border data flows and cross-border investigations as well as product roll-outs, including electronic payments and

stored values and policy matters. Her clients include innovators and first-movers.

The third is **Sally Kotb** who leads the firm's arbitration practice in the UAE. Her practice focuses on the resolution of both local and international commercial arbitration disputes across a range of industry sectors, including construction, engineering, real estate, energy, distribution and shareholders' disputes, as well as providing clients with strategic advice and project management for dispute avoidance. In addition, she sits regularly as an arbitrator under various leading arbitration institutions, including the ICC, DIAC, ADCCAC, LCIA, CRCICA and the BCDR.

In addition, **Mohamed Elharmy** and **Keltoum Boudribila** are also now Partners in the firm in Egypt and Morocco. Elharmy is a banking, finance and projects lawyer who focuses on energy, mining and infrastructure projects. Keltoum Boudribila has worked in the firm's Casablanca office since 2012.

### BEAM ME UP

**Finjuris Counsels** has become the first legal consultancy firm in the UAE to have a presence in the Metaverse. They are an international legal advisory firm and specialise in white collar crimes, blockchain and cryptocurrency, venture capital funds, fintech and crowdfunding. They help companies get all types of legal licensing to run their businesses. In addition, MENA Legal has also opened headquarters in the metaverse.

They state they were the first law firm in the region to provide specialist advice on blockchain technology, cryptocurrencies, smart contracts and the emerging Metaverse. They helped advise on the development and launch of QuantoPay, the world's first Global Digital and Blockchain Bank and the launch of a Sharia-compliant, NFT asset-backed UAE racing car project in Dubai's Metaverse.

### SEND US YOUR NEWS

If you have news of an appointment or promotion within the legal or financial professions you would like to see reported in Lexis Middle East Law, please send details to: [daniel.emmett-gulliver@lexisnexis.co.uk](mailto:daniel.emmett-gulliver@lexisnexis.co.uk)



# LEXISNEXIS EVENT CALENDAR

UPCOMING AND RECENT EVENTS FROM AURIFER AND LEXIS

## UPCOMING EVENTS

### FROM BRICKS TO BYTES

**September (exact date TBC)**

Aurifer is to host an e-commerce seminar and webinar along with its partners in September (although the exact date is yet to be confirmed) which will give practical guidance on how to take your bricks and mortar shop forward. The session will be hosted by Nirav Rajput and Thomas Vanhee of Aurifer. For more information on this event, including the date when confirmed contact lovely@aurifer.tax.

## RECENT EVENTS

### MANAGING WITHHOLDING TAXES TRAINING

**26 May 2022**

Thomas Vanhee of Aurifer hosted a discussion on how businesses can mitigate the adverse impacts of withholding taxes. The issue was considered from both a contractual point of view and from the perspective of potentially applicable double tax treaties. Topics discussed included how relief from withholding taxes can be obtained as well as the strategies taxpayers can develop in this area. For more information contact lovely@aurifer.tax.

### TAX LAW

**14 to 22 June 2022**

LexisNexis, the DIFC Academy, Aurifer Tax Consultants and the Middlesex University Dubai jointly hosted a webinar in their Tax Law series. This training session was part of the DIFC Laws Certificate programme, which aims to provide education and training to professionals whose work involves exposure to common law systems and taxation matters. For more information on this event contact lovely@aurifer.tax.

### IFA UAE EVENT

**8 June 2022**

The Institute of Financial Accountants (IFA) (DIFC) Non Profit Incorporated Organisation or NPIO board provided an update on their activities on 8 June 2022. This included both information on



their financial status and details of future plans. On the tax technical side, fellow IFA member Thomas Vanhee of Aurifer provided his views on the consultation document which has been issued on UAE Corporate Income Tax (CIT) as well as on recent experiences on the consultation process.

It was stated that the consultation document has provided clarity on who will be considered a Taxable Person, how CIT will be imposed, how it will affect entities offshore in the UAE free zones and how taxable income will be calculated. It was also noted that the Consultation has provided clarity on how Groups will be treated for CIT purposes, on Transfer Pricing as well as on the administration of CIT. For more information on this subject contact lovely@aurifer.tax.

## UPCOMING LEXISNEXIS EVENTS

### QATAR BUSINESS LAW FORUM CONFERENCE, GALA DINNER & AWARDS CEREMONY

**12 October 2022**

Following on from the success of previous Qatar Business Law Forums, LexisNexis Middle East, the Qatar International Court and Dispute Resolution Centre - QICRDC

(LexisNexis' Strategic Alliance Partner), the Department of Legal Affairs at Qatar's Ministry of Commerce and Industry, Qatar University's College of Law, and Al Sulaiti Law Firm (LexisNexis' exclusive Law Firm Partner in Qatar) will host the 7th Qatar Business Law Forum Conference. It is expected around 200 legal decision makers will attend the Law Conference itself (which is specifically designed for inhouse counsel) and many more will attend the Gala Dinner, which means this event will offer a unique, exclusive opportunity to meet existing and potential clients with an interest in Qatar.

Sessions will be held in Arabic and English. For details of the speakers go to <https://www.qatarbusinesslawforum.com/2022-speakers/>

During the event there will also be an Awards Ceremony to recognise exceptional achievement from within the Qatari legal community.

Entries are now open for the four inhouse and 11 private practice categories. For further details on these go to <https://www.qatarbusinesslawforum.com/>. The deadline for applications to these awards will be 11.59pm on 12 September 2022. Entries should be sent to [qatarbusinesslawforum@lexisnexis.fr](mailto:qatarbusinesslawforum@lexisnexis.fr).



## THE PRICE OF JUSTICE



**Osman Salih Tekin,**  
Arbitrator at Wasel & Wasel Arbitrator  
Services Inc examines the dispute resolution  
aims of Saudi Arabia's Judicial Costs Law.



**Osman Salih  
Tekin**  
Arbitrator  
Wasel & Wasel  
Arbitrator  
Services Inc.

In the past the Saudi legal system did not charge fees for the filing of claims or requests. However, that is set to change as Saudi Arabia has issued Saudi Arabia Royal Decree No. M16/1443 On the Approval of the Judicial Costs Law in an attempt to make reforms in this area. The Law, which came into force on 13 March 2022, provides a new framework for judicial costs. It aims to reduce malicious lawsuits, improve the quality of the judicial work and the quality of litigation procedures, as well as urging litigation parties to fulfil their obligations before they resort to the court as judicial fees will be an additional cost which the defaulting party will have to bear if they have not-fulfilled their obligations.

### EXCLUDED LAWSUITS

Article 2 of Saudi Arabia Royal Decree No. M16/1443 breaks down which lawsuits and cases are subject to the law. These are matters related to Criminal and disciplinary lawsuits against public officials, lawsuits on family issues and estate distribution, terminations related to proof of determination of inheritance, proof of divorce, proof of wills, other requests related to social and family matters and administrative lawsuits filed against Government bodies.

There is also a distinction between the categories of people judicial costs are and are not imposed on. Under Article 17 of Saudi Arabia Royal Decree No M16/1443, prisoners and detainees at the time of judicial cost accrual in non-criminal financial cases and lawsuits filed, whether issued by them or against them and workers, employees and their heirs claiming their entitlements arising from the employment contracts are excluded from Saudi Arabia Royal Decree No. M16/1443. Under Article 12 of Saudi Arabia Royal Decree No. M16/1443, exception in the case of a petition for reconsideration and request for cassation, a failure to pay the prescribed judicial costs does not preclude the filing of the suit or the request. It is clear that the State has taken the types of people who may not be able to make these payments into account. In such cases the State either bears these costs or postpones payment in order to achieve justice and fairness to those in need.

### QUANTIFYING THE JUDICIAL COSTS

Although Saudi Arabia Royal Decree No. M16/1443 does not identify the exact fees, payable leaving these to the Implementing Regulations, it does set out the maximum fees payable. In new lawsuits, there is a maximum of 5% of the claim value and a maximum amount of one million Riyals, dependent on and in line with the assessment criteria in Article 3 of Saudi Arabia Royal Decree No. M16/1443.

In the case of an arbitral award 1% of the amount of an award will be charged to the claimant in an annulment of an arbitral award case under Article 5 of Saudi Arabia Royal Decree No. M16/1443.

In addition, if the court decides to dismiss a lawsuit because the claimant is not present or a lawsuit is inadmissible because the claimant has not filed the case in an appropriate way, an additional charge of 25% of the fees prescribed for the original lawsuit will be levied. The claimant will bear these fees even if a ruling is issued in their favour under Article 4 of Saudi Arabia Royal Decree No. M16/1443. An amount not exceeding 10,000 Riyals for any applications made will also be charged. These include applications for permission to appeal to the Court of Appeal and the Supreme Court and petitions to review a decision under Article 7 of Saudi Arabia Royal Decree No. M16/1443. There will also be a maximum fee of 1,000 Riyals which applies to certain applications made by interested parties for copies of documents or court records.

### WHO PAYS?

Saudi Arabia Royal Decree No. M16/1443 states that the losing party will have to pay the judicial costs prescribed for the case and related requests, or a part of them, unless the Law or Regulations states otherwise. The aggrieved party is also entitled to request compensation for the additional expenses or other damages which have arisen from the lawsuit. In addition, if the case for judgment ends without collection of the judicial costs, the competent department will issue a final report which operates as an executive bond against the payee. However, to encourage parties to amicably settle disputes, the Law states that if a settlement takes place before the first hearing, the judicial costs are waived and can be recovered by the payer.

### RECOVERY OF JUDICIAL COSTS

Some commentators have stated the process of collecting, identifying and recovering costs, will increase the burdens on the courts and the Justice Ministry. However, the Justice Ministry are to provide quick electronic solutions to ensure cost collection procedure is more efficient.

This law is a monumental step in improving the Saudi legal system by potentially reducing the numbers of malicious lawsuits. As fees increase we may also see, reconciliation and alternative dispute resolution methods being used more frequently in Saudi and parties being encouraged to uphold their obligations.

# ARBITRATOR SPOTLIGHT



## JUSTICE SUBODH SHAH

**HAVING SERVED AS A JUDGE FOR 22 YEARS BEFORE TRANSITIONING TO ARBITRATION ON YOUR RETIREMENT FROM THE BENCH, HAVE YOU SEEN ANY PARALLELS BETWEEN YOUR WORK AS A JUDGE AND YOUR NEW ROLE AS AN ARBITRATOR?**



I would say there are quite a few similarities in both the activity and the role of a judge and an arbitrator. For example, as a judge and as an arbitrator, you tend to perform the same type of judicial work, you have to read case papers in the same sort of way and need to use decision-making skills. In addition, with both positions you have the same level of prestige, respect and honour. You also have to remain reserved and aloof and act in an independent manner in both these roles. In addition, although it is not compulsory, either for a judge or arbitrator to do so, I think it is advisable that those who hold either of these positions do not also participate in political movements.

## **HOW MANY CASES HAVE YOU PRESIDED OVER AS A JUDGE**

As a City Civil and Sessions Judge, I used to conduct civil and criminal matters. This saw me deciding 1,388 cases in 174 days which is the equivalent of eight cases a day. As a Central Bureau of Investigation (CBI) Judge in India I worked on complex scam cases and criminal cases. This saw me deciding 88 cases in 138 days. I also decided more than 250 discharge applications and examined 272 witnesses in 138 days. This was equivalent to almost two cases a day and to recording depositions of two witnesses a day.

I was also a High Court of Gujarat Judge. There I dealt with almost all subjects and delivered approximately 19,832 judgements within 1,260 days or more than 15 cases a day.

## **WHAT ADVANTAGE DOES THIS EXPERIENCE GIVE YOU IN YOUR WORK AS AN ARBITRATOR?**

My experience as an advocate, a judge and then the head of the E-Committee of the Supreme Court of India helps me a lot when it comes to applying the use of technology in arbitration.

For example, my advocacy allows me to understand the modality of parties during arbitrations. While my experience as a judge has

given me astute decision-making powers. I also find that my technical knowledge can help me handle everything in a more meticulous way which is faster but involves less effort. Often, I find too that I can handle several things personally without having to wait for any help from others which can be particularly useful.

## **YOU SERVED AS THE HEAD OF THE E-COMMITTEE OF THE SUPREME COURT OF INDIA WHICH FOCUSED ON THE COMPUTERIZATION OF THE ENTIRE JUDICIARY IN INDIA. HOW FAR DO YOU SEE INDIA TAKING THE DIGITIZATION OF THEIR LEGAL SYSTEM AND WHAT IS INDIA'S ULTIMATE VISION FOR THEIR JUDICIARY?**

The E-Court Project began in 2006, when there was no technical support in the country's judiciary. Therefore, I had to start the project from scratch which meant designing the requirements for the hardware and software. Over time, the development in technology, particularly in software allowed the project design to be appropriately moulded. The ultimate aim of this project was to ensure there was appropriate disposal of cases, as there are a huge number of cases in the Indian Courts. Every detail and all orders and judgment of each case are now available to the public online. When filing cases and in hearings/trials, litigants do not have to wait and queue in front of a window or desk. Online filing and case hearings have made the judiciary progress efficiently.

**Justice Subodh Shah** is the former Judge of the High Court of Gujarat in India and an independent arbitrator listed with Waseel & Waseel Arbitrator Services Inc. Having served for 22 years as a judge, Justice Shah has decided almost 17,000 cases during his career, before transitioning to arbitration in 2019 after his retirement from the bench. Since then, he has presided over eight different arbitration disputes.

### **Waseel & Waseel Arbitrator Services Inc.**

First Canadian Place

100 King Street West, Suite 5700

Toronto, Ontario, M5X 1C7

Email: [inquiry@waselandwaseel.ca](mailto:inquiry@waselandwaseel.ca)

Tel: +1 416 900 1213

Web: [www.waselandwaseel.ca](http://www.waselandwaseel.ca)

# ARBITRATION CASE FOCUS

## RECENT KEY ARBITRATION CASES

**Case No .... ACC 341/2022 issued on 17/05/2022**

**Jurisdiction .... Abu Dhabi**

**Court .... Abu Dhabi Court of Cassation**

**Recommended by .... Wasel & Wasel Arbitrator Services Inc**

Article 135 of Federal Law No. 5/1985 states that no statement may be attributed to a silent person. However, circumstantial silence will be seen to constitute acceptance.

Silence will also amount to acceptance if there have been previous dealings between the contracting parties which have been met by the offer made or where the offer is made to the benefit of the offeree.

### PREVIOUS CASE

The DIFC Court of First Instance considered the meaning of Article 135 of Federal Law No. 5/1985 in *DAS Real Estate Owned and represented by Mussabeh Salem Mussabeh Humaid AlMuhairi v First Abu Dhabi Bank Pjsc* DIFC Case No. 002/2016.

This was a case involving the termination of a bank loan where it was argued that a person who had remained silent should not be deemed to have made an utterance but silence in the face of need was tantamount to a statement and should be regarded as acceptance, when arguing that the Defendant had waived any right to rely upon the non-provision of documents.

Chief Justice Sir David Steel noted that 'In the event of silence the secondary question arises as to whether there was a 'need' to speak...Silence in the face of 'need' amounts to 'acceptance'. Indeed Article 135(2) of Federal Law No. 5/1985 identifies the specific example of acceptance of an offer in the context of prior dealing between the parties.

The commentary on the UAE Civil Code (Federal Law No. 5/1985) by James Whelan also gives the example of a person who it is stated has the right to prohibit the act by their words and is regarded as consenting to it by having deliberately abstaining from saying anything.

So basically, silence will be considered acceptance under Article 135 of Federal Law No. 5/1985 in certain circumstances.

### SILENCE IN ARBITRATION AGREEMENTS

However, arbitration agreements have a high threshold in the UAE in terms of evident acceptance by the parties, for example in relation to capacity, authority to represent a principal, or where arbitration agreements are in a separate document to the substantive agreement, or in reference to standard forms such as the FIDIC forms of contract.

Article 7(2)(a) of Federal Law No. 6/2018 (the Federal Arbitration Law) states that 'The

requirement that an Arbitration Agreement be in writing is met in the following cases...If it is contained in a document signed by the Parties or mentioned in an exchange of letters or other means of written communication or made by an electronic communication according to the applicable rules in the State regarding the electronic transactions'.

However, Article 7(2)(a) of Federal Law No. 6/2018 does provides room for interpretation with respect to the nuances which can arise in exchanges of electronic communication to conclude an arbitration agreement.

In the past the UAE Federal Supreme Court has confirmed that an arbitration agreement can be concluded through written electronic communication or through instant messaging.

Therefore this raises questions as to whether an offer to bind a dispute to arbitration which has been issued by some form of manuscript or particularly electronic communication may fall within the parameters of Article 135 of Federal Law No. 5/1985 where silence is considered acceptance.

### RECENT CASE

On 17 May 2022, in ACC Case No. 341/2022 in a matter involving a payment order and whether the courts had jurisdiction vis-a-vis a purported arbitration agreement, the Abu Dhabi Court of Cassation explicitly addressed the issue of silence in an arbitration agreement offer.

The Abu Dhabi Court of Cassation found that it was not permissible to derive proof of an arbitration agreement from the mere silence of one of the parties on the response to the arbitration offer from the other party, or the implementation of what was presented to them by this party related to the invitation to conclude a specific contract as long as it was not proven that the party to whom this offer was addressed had accepted the writing of arbitration while accepting the contract.

In addition, it was also not permissible to deduce the proof of arbitration from the mere work taking place between the two parties to arbitrate in certain contracts that arbitration would also apply to another contract between those parties.

That work did not provide for arbitration since the agreement on arbitration was not presumed and could not be implicitly drawn.

### WHY IS THIS CASE IMPORTANT?

This case shows the difference between silence during the negotiation of a more general agreement such as the one in the previous DIFC case which involved a bank loan and the specific position as in the Abu Dhabi Court of Cassation case where there was an attempt to derive proof of an arbitration agreement by mere silence in response to the arbitration agreement offer.



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## Option Agreements



**O**ptions are frequently employed in connection with business transactions. These range from the very sophisticated, like complex finance transactions, to relatively straightforward, such as those used to grant to a prospective buyer a right to buy land. These options typically take the form of a discreet Option Contract giving one party known as the option holder the right, but not obligation, to buy or sell an asset at a pre-determined price and by a set future date.

Option Contracts allow parties to manage risks more effectively. For example, complex derivative Option Contracts allow parties to mitigate risk exposure to movements in stock prices, exchange or interest rates, by transferring that risk elsewhere, so giving them greater certainty.

Option Contracts can be contrasted with other forms of option, such as an Option Right given by contract to a party to allow them unilaterally to decide a course of action to which both parties are then bound, such as delaying performance of an obligation. An Option Right would include the right to terminate a contract through an Option to Cancel. Under UAE law, it is particularly important to differentiate between these different arrangements as they also have different legal effects.

### OPTION CONTRACTS

Subject to satisfying general

contract rules, Option Contracts are permissible in UAE Law provided all essential elements of the intended future contract are present and the period for making the future contract is certain.

However, there is one general rule which needs particular consideration. Namely a contract must not involve excessive risk or speculation (or *gharar*). There have been inconsistent court decisions on this particular point in relation to complex derivative Option Contracts, which have created concerns about their enforceability. While this risk has largely been assuaged in respect of Qualified Financial Contracts by the passage of the Federal Netting Law (Federal Law No. 10/2018), it is possible other sorts of Option Contract may still be void if *gharar* is present.

### OPTION RIGHTS

Some Option Rights are specifically addressed under UAE law, in particular Options to Cancel. These are either automatically created by law or created contractually by agreement and allow one or both parties to a non-binding or cancellable contract to unilaterally terminate it. An Option to Cancel allows the party exercising it either to confirm the contract or terminate it retrospectively. In the case of termination, the parties should be fully restored to their pre-contract position. While agreed Options to Cancel are valid and enforceable, there is some confusion as to whether the exercise of the right may be made conditional. For example only in case of a breach by the other party.

### OPTION CONTRACT OR CONTRACT WITH AN OPTION?

A recent Dubai Court of Cassation decision highlighted some serious consequences where an agreement was found to be a presently

enforceable contract as opposed to an Option Contract. In this case, parties entered into an investment contract in relation to some land. Although the contract purported to grant one party an option, conditionally exercisable in future, to acquire the land, it was found to be a complete and fully enforceable off-plan sale and purchase agreement regarding the land rather than an Option Contract.

As the contract had not been registered in line with Dubai law, it was void and unenforceable, demonstrating the risk the court may construe an option right to acquire an asset in future, which one party anticipated would be an Option Contract, as a mere Option Right in a sale contract instead.

### KEY LEGAL CONSIDERATIONS

Keeping these UAE legal considerations in mind, the contract should be drafted in a way which very clearly distinguishes the intended nature and operation of the option right and it should also be considered whether the contract might better be written under another law to mitigate interpretation risk. In the case of Option Contracts, all the essential elements of the intended future contract should be fully, completely and separately specified and the period within which the contract is to be made must be made certain. The risk of *gharar* must also be mitigated by careful structuring and the use of clear language and drafting. For contracts with an Option to Cancel, the relevant clause should satisfy the specific requirements of the UAE Civil Code (Federal Law No. 5/1985) and should not contain any condition relating to a breach of obligation by the other party which may render it invalid.



Contributor

David Nunn

Partner, Bryan Cave Leighton Paisner  
Middle East



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## Dubai

### In-House Commercial Construction Solicitor, Engineering Consultancy

We are currently working on an excellent in-house opportunity for a lawyer who specialises in construction to join an international engineering consultancy that provides project management for some of the world's most unique infrastructure projects. The work will be international with a focus on large scale developments across the Middle East. Applicants must have at least 2 years' experience with construction projects in the Gulf either in-house or private practice.

Reference: *RPG-IL-12545*

## Riyadh

### Legal Counsel, Renowned International Manufacturer

Our client is a renowned, international manufacturer and a leader in its field. They are looking to hire a Legal Manager to advise on their interests in Saudi Arabia and act as their most senior lawyer in the country. Applicants will need a minimum of 8 years' experience gained working for international law firms and/or the legal team of an international company, with at least 3 years' experience in the ground in Saudi Arabia. Applicants will ideally be qualified to practice law in Saudi Arabia but lawyers qualified in other jurisdictions will be considered.

Reference: *JRS-IM-12391*

## Qatar

### Competition and Compliance Senior Counsel, Energy Company

This role is at the forefront of the company's drive into new areas and is one of the most exciting roles in the Gulf at present. Based in Qatar, the role will focus on anti-trust, competition, trading compliance and market abuse. Applicants must have at least 10 years' PQE and be qualified in the UK, US, Australia, New Zealand or an EU jurisdiction.

Reference: *IJR-IM-12592*

## Qatar

### General Counsel, Investment Company

One of Qatar's leading investment companies is looking to hire a General Counsel to manage a small team of lawyers and work closely with the CEO to manage the existing assets of the company and expand the interests of the company. Applicants must have at least 10 years' PQE with extensive experience in M&A and general commercial law, with in-house experience gained in a similar investment company.

Reference: *IJR-IM-12188*

## Abu Dhabi

### Corporate General Counsel, Major Subsidiary

This is an incredible opportunity to join an economic entity that promotes new ventures in sectors of national importance based in Abu Dhabi. As General Counsel for a major subsidiary in the group, you will be working closely with the CEO to manage and develop the interests of the group in a key strategic role. Applicants must have at least 10 years' PQE with an emphasis on corporate transactions and will ideally have in-house experience at a senior level obtained in the IT/tech sector.

Reference: *IJR-IM-12463*

## Saudi Arabia

### Third Party Risk Management Lead

This is an opportunity to lead the Third Party Risk and Compliance programmes across one of the fastest growing entities globally across a wide range of business activities. You will be involved in setting up and designing the Third Party Risk programme, and growing the team needed to deliver the programme. Applicants need experience of developing and implementing risk management programmes in global organisations, with robust knowledge of technology, risks, architectures and related tools, as well as an understanding of compliance (ABAC, Sanctions, Anti-Trust, Human Rights etc.) laws, regulations, and risks.

Reference: *MBP-PL-12608*

## Dubai

### HighQ Implementation Consultant, Legal Software (Contract Role)

Our client is looking for an implementation consultant for a 3-6 month contract in Dubai, with opportunity for extension. The successful candidate will be responsible for guiding new clients through the implementation of legal applications specifically focussed on HighQ and ensuring that all commitments for the client are met.

Reference: *DLK-PM-12644*

## Qatar

### Commodities Compliance Officer, Trading Business

This is an opportunity to lead the trading compliance function within a major energy company in a broad role encompassing advisory, monitoring, and trade surveillance. Applicants will need to have experience advising and implementing applicable firm business conduct standards, and monitoring compliance to policies, rules, and regulations such as MiFid, REMIT, EMIR, MAR and Dodd Frank as well as AML, Market Abuse, sanctions that are applicable to the Trading Business.

Reference: *MBP-IM-12638*

For more information or to discuss any of these roles please contact Iain Rainey at [iain.rainey@jamesonlegal.com](mailto:iain.rainey@jamesonlegal.com), or Jeremy Small at [jeremy.small@jamesonlegal.com](mailto:jeremy.small@jamesonlegal.com).



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