

LEXIS MIDDLE EAST **LAW ALERT**

تشريعات الشرق الاوسط

January / February 2023

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FEATURE DIRECTOR DIRECTIONS

The Bahrain Corporate Governance Code

PROFILE TECHNOLOGY

Riyadh Al Habshan of Solutions by STC

CONTRACT WATCH

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

EVIDENTLY ELECTRONIC

The New UAE Evidence Law





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NEW APPROACHES

Towards the end of last year in the UAE there was a flurry of new legislation impacting litigation including - a new Evidence Law, a new Civil Procedure Law and a new Criminal Procedure Law. These three laws - two of which we cover in this issue replaced legislation which had originally been issued back in 1992.

A lot has changed since then, in part as a result of technological developments and increased globalisation, but also as a result of COVID 19 which out of necessity saw even the most traditional institutions, courts included, realise that there was another way of working. Physically being in a particular location to do something is no longer seen as important as it previously was. This may explain why one important change in the new UAE civil procedure law, Federal Decree-Law No. 42/2022 has been improving the processes for service outside the jurisdiction. It has also been one of the motivations for changes in the new Evidence Law, Federal Decree-Law No. 35/2022 to enable the use of electronic evidence, electronic signatures and even for witness testimony to be received by remote communications means.

As we know from past experience including our ongoing publishing of new GCC case summaries on Lexis Middle Law, changes in laws of this type have a habit of also leading to large numbers of new cases, in part because parties to litigation need time to get to grips with changed procedures and new ways of doing things, but also because new laws inevitably generate new questions about their meaning.

Therefore, we are also pleased to be launching a new regular column in the magazine in this issue - Dispute Resolution Focus in conjunction with Al Aidarous Advocates & Legal Consultants. This will enable us to provide additional coverage on this frequently changing area.

Claire Melvin - Editor

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EVIDENTLY ELECTRONIC

With digitalisation high on the UAE government agenda a new law has been brought in to allow electronic evidence. Taha H Tawawala and Amer Al Marzooqi of Amer Al Marzooqi Advocates & Legal Consultants LLC-SO looks how it will change court procedures.

“On 2 January 2023 a new Evidence Law, Promulgating the Law of Evidence in Civil and Commercial Transactions, Federal Decree Law No. 35/2022, which replaced the UAE’s previous Evidence Law, Federal Law No. 10/1992 came into force,” states Taha Tawawala. “The aim of this law is to facilitate and accelerate digitisation and the use of data and information by government entities while still ensuring confidentiality, speed and flexibility in civil and commercial matters.”

ELECTRONIC EVIDENCE

“Following on from COVID-19, there has been an increased reliance on technology and electronic correspondence,” states Amer Al Marzooqi. “As a result, the UAE has been taking steps to stay current and simplify and streamline administration of justice procedures.”



Taha H Tawawala
Partner, Amer Al Marzooqi Advocates & Legal Consultants LLC-SO



Amer Al Marzooqi,
Partner, Amer Al Marzooqi Advocates & Legal Consultants LLC-SO

“In order to facilitate this a new chapter, entitled ‘Electronic Evidence’ (Article 53-64 of Federal Decree Law No. 35/2022) has been included in the Evidence Law,” Tawawala adds. “This covers the type of electronic evidence that is admissible and the criteria used to authenticate this evidence.”

“Article 53 of Federal Decree Law No. 35/2022 states that any evidence derived from any data or information that is created, stored, extracted, copied, sent, communicated, or received by means of information technology on any medium and is retrievable

in a perceivable form is classed as ‘electronic evidence’ and is treated as written evidence in accordance with Federal Decree Law No. 35/2022,” Al Marzooqi continues. “This Article is the first piece of legislation in the UAE to consider the use of electronic evidence in civil and commercial transactions.”

“Meanwhile, under Article 55 of Federal Decree Law No. 35/2022 official electronic evidence (which involves a public servant or officer) is treated in the same way as evidence in writing (such as wet ink signed contracts



and original documents) and any electronic evidence including but not limited to an electronic document, electronic signature, electronic seal and any electronic correspondence including e-mail issued by an official electronic platform will also be considered as an official written document which cannot be challenged in the court of law, except in the case of allegations of forgery.”

“Article 59 of Federal Decree Law No. 35/2022 also adds that electronic evidence has the same legal standing and binding force as that of a written document,” Tawawala explains.

UNOFFICIAL ELECTRONIC EVIDENCE

“However, unofficial electronic evidence is handled in a very different manner to official electronic evidence,” Al Marzooqi states.

“This type of evidence will only be considered as evidence against the parties either when the electronic evidence has been issued in accordance with the legislation in force at that time or when the contract at issue was executed using an electronic method specified in the contract at the time of execution or when an electronic means that is documented was used for this purpose.”

RELEVANT LEGISLATION

Article 22(1) of Federal Decree-Law No. 35/2022

If the litigant is incapacitated or lacks capacity, his legal representative may be questioned, and the court or the supervising judge, as the case may be, may question him if he is discerning in the matters in which he is authorised.

(Source: Lexis Middle East Law)

EVIDENCE BY CUSTOM

The addition of ‘Evidence by Custom’ in Article 89–92 of Federal Decree Law No. 35/2022 is another important amendment in this law,” states Tawawala. “Evidence based on ‘custom and usage’ created between the parties to the dispute is deemed admissible in cases where terms are not specifically expressed or not agreed upon by the parties and it does not harm public order. However, the onus to prove the existence of such a custom at the time of incident is on the person who invokes that and any party to the dispute has the right to contest the parties’ established customs and usage and may also raise objections by presenting other evidence that may prove to be of greater weight.

RELEVANT NEWS

Fujairah: Court accepts Whatsapp evidence for share ownership confirmation

The shareholder claimed an agreement was signed to establish a factory with a capital of two million AED. In addition, he was to hold a 5% share worth 100,000 AED in the business. A receipt was also given to the other defendant who held the biggest share in the company. A cheque was issued and evidence was documented in a Whatsapp message.

It is important to note that when a controversy arises, custom and usage agreed on by the parties to the litigation and in particular custom, shall prevail."

ELECTRONIC SIGNATURES AND DOCUMENTS

"The changes specify that electronic signatures and documents will be accepted and handled as official records under Federal Decree Law No. 35/2022," states Al Marzooqi.

"The law requires that all papers are created and saved electronically. It is also stipulated that they must be kept confidential and cannot be distributed, copied or deleted from the system without the proper consent from the relevant authority."

"In addition, Article 8 of Federal Decree Law No. 35/2022 gives

the court the right to amend the procedures for admitting evidence, either at its own discretion or at the request of either of the parties, upon stating the grounds needed to do so. If this is done it must also be noted in the minutes of the applicable case's hearing."

ADMISSION OF EVIDENCE

"Another significant change brought in by this law is found in Chapter 2 (Article 14-23 of Federal Decree Law No. 35/2022) which sets out the procedure for admission of evidence and questioning of litigants," states Tawawala.

"It defines admission as a person's declaration of a duty they owe towards another person. Other articles of law outline the various requirements for that declaration to be legal and eligible," adds Al Marzooqi.

"Also covered is the fragmentation of the declaration and the circumstances in which a non-judicial declaration can be proven. In addition, the new law includes provisions which enable a litigant's legal representatives to be questioned if the litigant is incapacitated or lacks capacity. Where the litigant turns out to be a legal person, their legal representatives are questioned."

EXPERTS

"Another of the radical changes involves the assignment and mechanism for the work of experts, which is now very detailed and precise," Tawawala continues.

"Under Article 109 of Federal Decree Law No. 35/2022, the court has a right to delegate experts on its own initiative or at the request of one of the litigants subject to certain conditions."

WITNESSES

"The various amendments to witness testimony procedures are found in Chapter 5 (Evidence by Testimony) which now allows the court or supervising judge to receive witness testimony by way of remote communication technology," Al Marzooqi continues.

"The most interesting element of this is how a witness outside of the UAE can now testify in court via video conference if they are not physically present in the UAE (which was not previously the case)."

"So, the court can allow witnesses to attend proceedings via remote communication technology if they are unable to attend in person."

"There have also been significant changes on questioning witnesses and permissibility of the court to ask a witness questions as well as the witness' right, to refrain from answering," Tawawala adds.

"The court can also allow an opposing party to question the witness, and conditions are set down on this. Under Federal Decree Law No. 35/2022 parties to a case or their agents can also ask witnesses direct questions if they are pertinent to the case and would help the witness provide their evidence."

"During cross-examination, the litigant can ask a witness about their biases, friendships and/or other relationships with a party, their credibility, or interest in the cases outcome, as well as if the witness has ever been convicted of a felony or a crime involving moral turpitude or dishonesty. However, under Article 78 of Federal Decree Law No. 35/2022 a witness has the right to refuse to respond if the question is intended to compel them to confess to a crime they did not commit or to testify against themselves."

OTHER CHANGES

"Another area where changes have been brought in has been the further legalisation of electronic hearing minutes which record witness testimony," Al Marzooqi continues.

"In addition, there is approval, and adoption of digital signatures and documents. Federal Decree Law No. 35/2022 also includes changes related to regulating the notary public profession."

"These include simplifying the evidence-giving process for all parties and allowing the use of e-transactions in all notary public procedures."

"This initiative is a part of the government's efforts to create a safe and sustainable environment for conducting business and transactions while using modern technology and e-transactions in the relevant processes," Tawawala adds.

"These amendments also make it easier to register, sign, and pay fees. In addition, they will also permit the creation of memos and the confirmation of identity proof."

"However, it should be noted that in order to permit the use of technology in notarial activities, the Minister of Justice is also expected to adopt the necessary resolutions."



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UAE

WORKPLACE INJURY DECISION



The Human Resources and Emiratization Ministry (MOHRE)

has issued a decision on rules and procedures which will apply when dealing with work injuries and illnesses. The Decision sets out the channels which should be used for reporting workplace injuries and gives details of employer's duties. It also explains how injuries and illness are documented in a database in order to enable access to the data and determine risk factors.

PUBLIC SECTOR SABBATICALS



On 2 January 2023 a new scheme started which allows UAE

nationals to take entrepreneurship leave of one year from their public sector roles in order to start their own projects. Those who do so retain their government jobs and receive half pay. Ministries and authorities considering these sabbatical requests must verify that the project falls under one of the approved categories which include trade, industry, services, or licensed projects. The Human Resources Federal Authority has issued a guidance which sets out 14 standards for projects where sabbatical leave will be granted. The conditions include the project having a license from the competent authorities, the individual having a main management or supervision role, and how current the project is.

PHARMACY LICENCES



The UAE Health Ministry has set out new conditions which must be met when applying for a licence to operate a pharmacy which sells, registers, and imports medicinal products and medical equipment. Licence renewals will only be accepted if the pharmacy is open and operating. The pharmacist must also be working. The main pharmacist must hold a pharmacist licence, and the

establishment must also have a valid commercial licence, a membership registration certificate, and a fire safety regulations compliance certificate.

ABU DHABI

ENVIRONMENTAL INSPECTIONS



The Abu Dhabi Environment Agency (EAD) has launched a new digital system for environmental inspections and evaluating environmental compliance, called Eltezam. The system will give more flexibility to EAD inspectors when they are assessing facilities and projects. With the system inspectors will be able to review any aspect of an organisation's activities for potential environmental harm rather than just the activities that are listed on their environmental licence.

QATAR

TENDER CHANGES



The Qatari Government has amended legislation on tenders and auctions. Among the changes are those intended to make it easier for smaller local businesses to become involved in tender processes. For example, micro companies are now exempt from providing primary and final insurance and for paying for tender documents which are valued at less than 1,000,000 Qatari Riyals. In addition, small and medium sized companies are exempt from having to pay half the fee prescribed for a specific classification.

In order to speed up procurement processes in government agencies a time limit of 60 working days has also been set in which to organise and complete transactions.

SAUDI ARABIA

SCCA COURT ESTABLISHED



The Saudi Centre for Commercial Arbitration (SCCA) has

established the independent 'SCCA Court' to determine administrative matters and technical aspects related to SCCA administered arbitrations and mediations.

The SCCA Court is made up of 15 highly qualified and accomplished arbitration experts who have international reputations in the ADR industry and come from 13 different countries. The Court members include international arbitrators, former leaders of arbitral institutions, retired appellate judges, law professors and partners from international law firms.

The new court's remit will include reviews of emergency applications, determination of jurisdictional objections, administrative appointments of arbitrators and determination of arbitrator challenges. It will also look at initial determinations of the place of arbitration, final determinations on number of arbitrator disputes, the fixing of advance deposits, final payouts for neutrals, and award reviews.

It will not interfere with any powers reserved for the arbitral tribunal under the SCCA Arbitration Rules and, the authority to determine a dispute will still rest exclusively with the arbitral tribunal.

PUBLIC SECTOR CONTRACTS



Authorities in Saudi Arabia have approved controls which will enable government agencies to contract with companies which have no regional offices in the Kingdom.

These controls aim to regulate the relationship between government departments and companies which have no regional office in the Kingdom.

All Saudi government agencies will have to apply these controls, whether they are subject to provisions found in the Government Tenders and Procurement Law or to any other laws or regulations or not. The controls complement provisions applied by government agencies when carrying out their work and making purchases. Statements have been made in the past by the Saudi Investment

Minister that companies wishing to bid for company contracts there would need to show commitment to the country and have major headquarters there.

KUWAIT

SINGLE WINDOW OPEN FOR BUSINESS



Kuwait's Minister of Commerce and Industry has launched the Sahel app, a single window app which will allow business owners to complete transactions with 16 government departments providing 141 services. The app also allows business owners to authorise others to complete these transactions for them. The official launch follows a trial phase during which time 3,800 subscribers registered for the system and received 23,000 notifications and completed around 3,000 services.

TRADE IN JEWELLERY OR PRECIOUS METAL



On 31 December 2022 it became prohibited to trade in precious metals or crafted jewellery which still bore the old stamps in Kuwait. Any such item still bearing the old stamp is now considered to be a used item and would be sold as such. Shop owners have been warned that those displaying items with the old stamp will face the consequences.

OMAN

TRADE FEE CHANGES



Oman's Trade, Industry and Investment Promotion Ministry has announced they are reducing 107 trade fees and cancelling 20 more as part of the second phase of the Government Services Pricing Guidelines. The changes include those to the fees for depositing a patent which have been reduced from ,800 Rials to 660 Rials for companies and from 1,200 Rials to 430 Rials for individuals. In addition, fees for registering an industrial design have been reduced from 1,000 to 100 Rials or from 500 to 50 Rials for small enterprises. The cost of a certificate of registration of an industrial design is also now 50 rather than 500 Rials.

ENGINEER ACCREDITATION



Those operating in the construction sector in Oman have been urged to ensure individuals working in all engineering roles there have put in applications for professional accreditation. These individuals are required to apply to the Oman Society of Engineering to be categorised and obtain or renew a work permit. From 1 February 2023, this professional accreditation system will be a mandatory requirement when applying or renewing a work permit for an engineer in Oman.

TURKEY

OUTDOOR MUSIC LICENCES



Turkey's Environment, Urbanisation and Climate Change Ministry has announced new regulations which state music events in stadiums, parks, squares and other concert and festival areas there can be organised for a maximum of five consecutive days. Activity hours for these events are also limited to between 10am and 1am. Public concerts and music festivals which last more than five days will need permission from the Ministry's provincial directorate. Under the regulations, workplaces and marine vehicles which organise music activities must also obtain a license to do so which is valid for three years. Workplaces which breach maximum sound levels will be fined three times for violating sound level limits and will not be able to obtain a license for two years.

JORDAN

AQABA ECONOMIC ZONE



The Jordan Parliament has approved an amended 2022 Aqaba Economic Zone draft law. The draft law was referred by the Economy and Investment Parliamentary Committee to the Parliament. It will reduce fees collected based on property values in sales and gift contracts. There will also be fee exemptions for land registered through Murabaha sales contracts performed by Islamic Banks.

REGULATORY ROUND-UP

ADGM: The ADGM has published new Guidelines on whistleblowing to provide a benchmark or framework for all ADGM entities to work within....

Oman: Fees payable by foreign investors for commercial registry and licences from the Oman Chamber of Commerce and Industry have returned to pre-COVID levels of 3,000 Rials...

Saudi Arabia: Saudi Arabia's Water Regulator has updated the Water and Wastewater Services Guide to include rules, rights, and duties defining the relationship between service providers and consumers.

Saudi Arabia: The Saudi Real Estate General Authority has defined 60 types of violation under the Real Estate Brokerage Law with a range of punishments....

UAE: A new mandatory unemployment insurance scheme came into force on 1 January 2023...

Kuwait: Non-nationals registered in the health service will pay five Dinars for medicines from pharmacies and 10 Dinars for medicines in outpatient clinics...

Kuwait: From December 2022 to the end of March 2023 application of Kuwait Ministerial Decision No. 35/2022 on controls for exporting products made from subsidised kerosene has been suspended...

Abu Dhabi: The Abu Dhabi Agriculture and Food Safety Authority has announced seven types of penalty for improper food production....

Ajman: Ajman Law No. 2/2022 regulating public-private partnerships has been issued...

Umm Al Quwain: A ban on single use plastic bags came into force on 1 January 2023...

Qatar: The Cabinet has approved amendments to Qatar Law No 18/2017 on public hygiene...

Qatar: The Ministry of Commerce and Industry has launched an electronic platform for investors in the industrial sector to speed up establishing new projects...

UAE: Immigration authorities are discontinuing the process which allowed foreign nationals with visitor status to renew their visas in country..

UAE: Import invoices of 10,000 AED and above will need to be attested by the UAE Ministry of Foreign Affairs and International Cooperation (Mofaic)...

LAW MONITOR

RECENT LEGAL DEVELOPMENTS IN THE GCC

SAUDI ARABIA - TOURISM



A law change in Saudi will enable Airbnb style tourism to operate there. The new bylaw which has been approved by the Minister of Tourism will allow a maximum of three permits issued per property. These permits will be able to last from one to three years. In order to apply for a permit, the property should be part of one designated for either residential or agricultural use, and the applicants must also be Saudi citizens. They should also provide an electronic title deed or electronic lease contract proving the relevant property's usufruct right. If the property is jointly owned, all the co-owners will have to agree to the application.

QATAR - SOCIAL INSURANCE



The Director of Customer Management at Qatar's General Retirement and Social Insurance Authority (GRSIA) has confirmed the Social Insurance Law, Qatar Law No.1/2022's implementation on 3 January 2023. The law expands social insurance coverage to include all citizens working in the private sector. It also adds housing allowances to the salary of subscription calculation and allows civilian pensioners to combine their pension and job salary when they join the private sector.

GAZETTE WATCH

UAE Official Gazette No. 735-741 – These Gazettes contained Federal Decree No. 175/2022 on allowances, retirement pensions and end-of-service gratuities.

Dubai Official Gazette No. 585-599 of 2022 – These Gazettes contained Dubai Decision No. 150/2022 on the regulation of handling complaints filed against experts in Dubai Courts.

Sharjah Official Gazette No. 5-6 of 2022 – These Gazettes contained Sharjah Executive Council Decision No. 30/2022 on ownership of properties by non-nationals and Gulf Nationals.

Saudi Arabia Official Gazette No. 4949 of 2022-4964 of 2023 – These Gazettes contained Saudi Arabia Royal Decree No. 80/1444 on the approval of the power supply law.

Qatar Official Gazette No. 10-15 of 2022 – These Gazettes contained Qatar Emiri Decision No. 52/2022 on the reformation of the Board of Directors of the Regulatory Authority for Charitable Activities.

Oman Official Gazette No. 1460-1475 of 2022 – These Gazettes contained Oman Ministerial Decision No. 5/2023 on replacing the schedule of infectious diseases attached to the Law on Combating Communicable Diseases.

Kuwait Official Gazette No. 1603 -1617 of 2023 – These Gazettes contained Kuwait Ministerial Decision No. 4/2023 on the procedures for determining the identity of an actual beneficiary.

(Source: Lexis Middle East Law)

OMAN - HOLIDAYS



Oman Sultani Decree No. 88/2022 has been issued detailing how the dates for national holidays are calculated. This Decree repeals and replaces the previous law on this subject Oman Sultani Decree No. 56/2020. In the case of the Eids if the first day of both holidays falls on a Friday, there will be compensation for it. In the case of other national holidays including the National Day if one or both days of the weekend fall within these holidays there will be compensation for one day.

UAE - COMMERCE



The UAE's new Commercial Transactions Law, Federal

Decree-Law No. 50/2022 which repeals Federal Law No. 18/1993 came into force on 2 January 2023. The new law defines commercial shops as the total of real or virtual materials and moral assets allocated to operate commercial businesses. In addition, all transactions transferring ownership of a commercial shop or establishing an in-kind interest must be documented and attested by a notary. If a commercial store's elements are subject to specific advertising or registration laws, announcements on the transactions carried out at the store will not replace previously required announcements or registration.

FEATURED DEVELOPMENT

Michel Ruitenbergh, Tax Director at Crowe UAE explains amendments to UAE tax procedures in Federal Decree-Law No. 28/2022 which come into force from 1 March 2023.

Federal Decree Law No. 28/2022, the UAE Law on tax procedures was issued in September 2022, repealing Federal Law No. 7/2017 which had previously covered VAT and Excise Tax Procedures. It aims to streamline tax administration procedures and encourage taxpayer compliance. It covers every Federal Tax administered, collected, and enforced by the Federal Tax Authority (FTA) and will include the new Corporate Income Tax, Federal Decree Law No. 47/2022. Firstly, it brings in changes on the statute of limitations for tax audits. The FTA cannot conduct a tax audit or issue a tax assessment to a taxable person five years after the end of the relevant tax period with certain extensions. If the FTA has notified a taxpayer of a tax audit commencement before the end of the five years, the time limit is extended to four years from date of notification. If the matter involves a voluntary disclosure submitted in the fifth year from the end of the Tax Period, the timeframe is extended one year from submission of that disclosure. Other exceptions include tax evasions cases, where the time limit is 15 years from the end of the tax period in which tax evasion occurred. With non-tax registration, the time limit is 15 years from when the taxable person was required to register. Taxpayers must also submit voluntary disclosures where errors or omissions in their VAT return have not resulted in a difference in the tax due but they have not disclosed their transactions under zero-rated or exempt supplies correctly.

Administrative penalties have also

changed. They are now set at a maximum cap of two times the levied tax amount rather than the current three times the tax amount. The maximum monetary penalty in tax evasion cases is reduced to three times the amount of evaded tax from the previous five times. Certain acts are now treated as tax crimes, rather than tax evasion cases which means they are subject to a different penalty regime. Federal Decree Law No. 28/2022 also includes a number of new articles on tax crime procedures and measures and on reconciliations in tax evasion crime cases. A new stage has been introduced to the UAE tax dispute process mechanism called the Tax Assessment Review Request. Taxpayers can make this request to the FTA within 40 days of being notified of a tax assessment and related penalties. The FTA then issues their decision within 40 business days of receiving the request. After this stage, the taxpayer has the option to submit a reconsideration request as before. The FTA or the Tax Disputes Resolution Committee (TDRC) may extend the periods within which a decision is lodged for a review, reconsideration, or objection request. Taxpayers can request to extend the period for submitting a review or reconsideration request. Extra powers are granted to the FTA under this law, e.g. the FTA can reject refund requests by taxpayers subject to tax audit. They can also now request the issue of an order on a petition from the Urgent Matters Judge in the Competent Court to allow seizure of a person's assets if it appears payable tax might be at risk of non-recovery.

BAHRAIN - MONEY



Bahrain Decision No. 207/2022 has been issued on money disclosures in Customs Departments. The law includes definitions of terms including monies, deceitful disclosure, executing unit, and the competent officer. The decision requires the Competent Officer to take steps to monitor money brought into or out of Bahrain through its borders.

KUWAIT - CONSTRUCTION



Kuwait's Cabinet has approved a proposed law on the establishment of companies to construct and develop residential cities on state land. This follows on from a Housing and Real Estate Affairs Parliamentary Committee report. Under the law, the corporation will be obliged to establish public joint stock companies with varying shares ownership percentages.

TAX AND FINANCE ROUND-UP


COVERING RECENT KEY TAX AND
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CORPORATE INCOME TAX LAW

 The UAE Corporate Income Tax Law, Federal Decree Law No. 47/2022 was published on Government websites in December. Its official date was 3 October. Federal Decree Law No. 47/2022's provisions apply to business profits for financial years starting on or after 1 June 2023. As a result, a Corporate Business Tax Rate of 9% will be levied on applicable businesses and natural persons with taxable income above a threshold which is expected to be 375,000 AED. A different rate may apply to large multinational companies but this has not yet been confirmed. In certain circumstances freezone businesses will be able to qualify for a 0% rate. Taxpayers will be able to deduct losses, form tax groups, implement transfer pricing and take deductions due to credits and losses in foreign jurisdictions subject to relevant conditions being met and limits being applied on these deductions. In addition, some types of businesses will be exempt from paying corporate income tax subject to meeting the necessary conditions. For example, government entities and quasi-government entities will be exempt from paying taxes under the Corporate Income Tax Law. Similarly, businesses engaged in extraction of natural resources and non-extractive natural resources will be entitled to exemptions under Federal Decree Law No. 47/2022. This law also provides exemptions for qualifying public entities and qualifying investment funds.

TAX MISTAKES

 The UAE Federal Tax Authority (FTA) has confirmed that tax payments which are due will not be accepted if a taxpayer, who has registered in the tax system, has made mistakes with the procedures which must be followed on the new recently launched Emirate Tax platform. The FTA have stressed that taxpayers must use the explanatory tools

available on the system to understand how their tax returns can be filed. Some users of the system have reported mistakes and incorrect notifications from it. However, the FTA has said the platform follows best international standards. The Authority has also stated it will continue to include information to help users understand the new system in their awareness campaigns. The authorities have also reminded taxpayers that taxes must be paid no later than the 28th date of the month following the end of the tax period or on the following business day if that date falls on a weekend or national holiday.

ASSET BACKED SECURITIES

 The UAE Securities and Commodities Authority (SCA) has issued details of a draft system for asset-backed securities, or securitisation for consultation. The consultation which is due to end of 20 January 2023 covers the law's scope of application, which assets which may be securitized, and real property sale standards. It also includes details on the parties to the securitization process and definitions of special purpose companies.


ADGM

FACTA REGULATIONS

 The ADGM's Financial Services Regulatory Authority (FSRA) has enacted Foreign Account Tax Compliance (FACTA) Regulations which are related to an intergovernmental agreement between the UAE and the USA. The FATCA Regulations set out due diligence and reporting requirements on in-scope financial institutions and create a consistent schedule of violations and associated administrative penalty regime across the UAE. In addition, the FSRA has also made amendments to the ADGM's Common Reporting Standard Regulations 2017 to bring them into alignment with the new FATCA Regulations.

QATAR

GOVERNANCE CODE

 The Qatar Financial Markets Authority has issued a consultation on potential changes to the Governance Code for Companies and Legal Entities Listed on the Main Market and Procedures Guide. The original code was issued by QFMA Board Decision No. 5/2015. The consultation ended on 7 January 2023. In drafting the proposed amendments, the QFMA has taken into account establishing the principles of transparency and disclosure, acknowledgment of responsibility, justice and equality, protecting investors' and stakeholders' rights in general, and enabling them to exercise these rights. They have also considered upholding minority protection by adopting preferential treatment for small investors and minority shareholders.


QFC

DERIVATIVES MARKET

The Qatar Financial Centre Regulatory Authority (QFCRA) has issued a consultation on new draft QFC Derivatives and Exchange Rules. The draft rules have sought to create a balance between aligning with international standards and ensuring usability for local practitioners in Qatar. The consultation is scheduled to end on 24 February 2023.


SAUDI ARABIA

DESTROYED GOODS

 The Saudi Zakat, Tax, and Customs Authority (ZATCA) are working on amendments to some tax procedures which would allow tax refunds for items which have been returned or destroyed. In addition, it is also understood that as a result of these changes it may be possible for the Authority's Governor to approve a postponement of tax payments the taxpayer has to make for up to 45 days in certain cases, in line with controls set by

the Council.

E-INVOICING


 The second integration Wave of the Electronic Invoicing programme in Saudi Arabia is due to go live on 1 July 2023. The first integration Wave went live on 1 January 2023. The Second Wave will include taxpayers who had taxable revenues exceeding SAR 500 million during the calendar year 2021. ZATCA will notify this second group of selected taxpayers in due course and they will then be required to undertake the necessary steps in order to integrate their billing systems with those of ZATCA. These taxpayers must complete these steps by 1 July 2023. The main steps required are linking their billing systems to the ZATCA system and issuing E-Invoices based on a specific required format. This format includes having a number of specific elements in the E-Invoice XML file (such as the UUID, hash and cryptographic stamp). On 27 December 2022, the tax authorities introduced the Fatoora Simulation portal which enables taxpayers to test and experience the end-to-end E-Invoicing system.

DUTY FREE

 The Saudi Zakat, Tax, and Customs Authority (ZATCA) has confirmed that newly-established duty-free shops now found in the country's entry ports will not sell alcohol as only goods and products which are allowed to be traded in Saudi Arabia will be allowed in these shops. There are duty-free shops currently situated in departure terminals at airports in Jeddah, Riyadh, Dammam and Madinah. However, ZATCA wishes to open more duty free shops as required in the Kingdom's air and sea ports and at land borders.

KUWAIT

FORGED BANK NOTES

 The Kuwaiti Central Bank has introduced a new method for dealing with counterfeit bank notes.

TAX TREATY UPDATE

UAE: The Double Taxation Treaty with Austria is now in force.

Qatar: The Double Taxation Treaty between Oman and Qatar is now in force.


UAE: The UAE and Jamaica have signed a Double Taxation Treaty.

UAE: The UAE Cabinet has ratified a Double Taxation Treaty with Kuwait.

Local banks in Kuwait are to use a unified approach for reporting forged notes when they are found. A regulatory update was issued on 1 January 2023.


OMAN

PERSONAL INCOME TAX

 Oman's Shura Council has passed a draft law introducing personal income tax. Oman is currently the only GCC country to have proposed personal income tax. The tax was originally proposed to control a predicted deficit of \$3.9 billion. However, as a result of increasing oil prices Oman actually had a budget surplus of \$2 billion in the first half of 2022.


EGYPT

VAT AMENDMENTS


 Amendments to Egypt's VAT Executive Regulations found in Egypt Law No. 77/2017 have been enacted. The changes aim at increasing the use of electronic tax invoices by retailers and service providers through an end consumer incentive scheme. The Minister of Finance, with the Cabinet's approval, will be able to establish a incentive system for end consumers. These incentives will include discounts, purchase vouchers, or money or in-kind prizes which will be given to end consumers participating in the scheme. Consumers will receive these incentives when a valid tax invoice or a electronic tax receipt is submitted or if a consumer informs the Egyptian Tax Authority (ETA) that a retailer has not issued them with a valid tax invoice or tax receipt. There will also be incentives given to retailers and services who issue electronic tax invoices. Once the Cabinet has approved this, the Minister of Finance will issue regulations determining the sectors to which this scheme will apply.

TURKEY

DSSPS GUIDELINES

 The Turkish Central Bank has issued guidelines on Data Sharing Services for Payment Services (DSSPS). They provide details on payment order initiation services and account information services which are referred to as DSSPS services. The guidelines explain which common business models used for payment services would need an operating license in order to provide payment order initiation services and account information services. The licensing and certification processes are also detailed. However, it is noted that the guidelines only provide a general framework and final decisions would be made in a particular case when an official application for an operating licence is made to the Turkish Central Bank.

VEHICLE TAX

 A Presidential Decree has been issued which changes the price thresholds for a special consumption tax (SCT) on vehicles. The lower SCT limit has been raised from 120,000 Turkish Liras to 184,000 Liras for vehicles with engines smaller than 1,600cc, while the upper limit has increased from 200,000 Liras to 280,000 Liras. The decree also amends the SCT brackets for electric cars where the lower limit has been increased for electric vehicles with engines smaller than 1,800cc from 130,000 Liras to 228,000 Liras, while the upper limit has been raised from 170,000 Liras to 350,000 Liras. A tax rate of 45% will be levied on vehicles with engines smaller than 1600cc priced below 184,000 Liras. The rate will be 50% for vehicles within the 184,001 Lira to 220,000 Lira price band, and 60% for vehicles priced up to 250,000 Liras. These tax adjustments are expected to reduce prices for some models of car by up to 77,000Liras.

DIRECTOR DIRECTIONS

When Bahraini companies make their AGM Report Submissions, the Ministry of Industry and Commerce (MOIC) will be looking for compliance with amendments to the Corporate Governance Code. Reem Benshams of Zu'bi & Partners explains the key changes.



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Bahrain Decision No. 91/2022 brought in changes to the country's Corporate Governance Code (Bahrain Decision No. 19/2018), which came into force on 23 September 2022," states Reem Benshams. "These changes are designed to both streamline existing processes and ensure Corporate Governance in Bahrain reflects best international practice. The Ministry of Industry and Commerce (MOIC) will be assessing relevant company's compliance with this Code and the changes, as part of a company's Annual General Meeting (AGM) reports submissions, as these reports include the corporate governance report and the agreed upon procedures report."

APPLICATION

"The Bahrain Corporate Governance Code applies to all joint stock companies which are incorporated in Bahrain and registered in accordance with the Bahrain Commercial Companies Law (Bahrain Law No. 21/2001)," states Benshams. "This Code is based on the 'Comply or Explain' Principle, which means a company must comply with its provisions or explain why it has not complied with the Code. Acceptable reasons for non-compliance might include that different action has been taken by the company due to its market size or because it is newly listed or incorporated. However, the importance of ultimately achieving effective and good governance should be



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noted.”

“If a company is not fully complying with the Code it has to clarify these reasons in its annual corporate governance report and also discuss them with shareholders in general assembly meetings,” Benshams adds. “However, following the Comply or Explain Principle does not exempt you from any mandatory element of Bahrain Law No. 21/2001 or any other applicable laws.”

REPRESENTATION OF WOMEN ON BOARDS

“One of the most significant changes to have been brought into the Code is that the representation of women must be considered within the formation of boards of directors of public joint-stock companies,” states Benshams. “MOIC will now monitor representation statistics using the company’s disclosure in the annual corporate governance report. That report must now include the board of directors’ membership statistics and these statistics must be disaggregated by gender. It is hoped this change will lead to increased representation of women on the boards of Bahraini companies.”

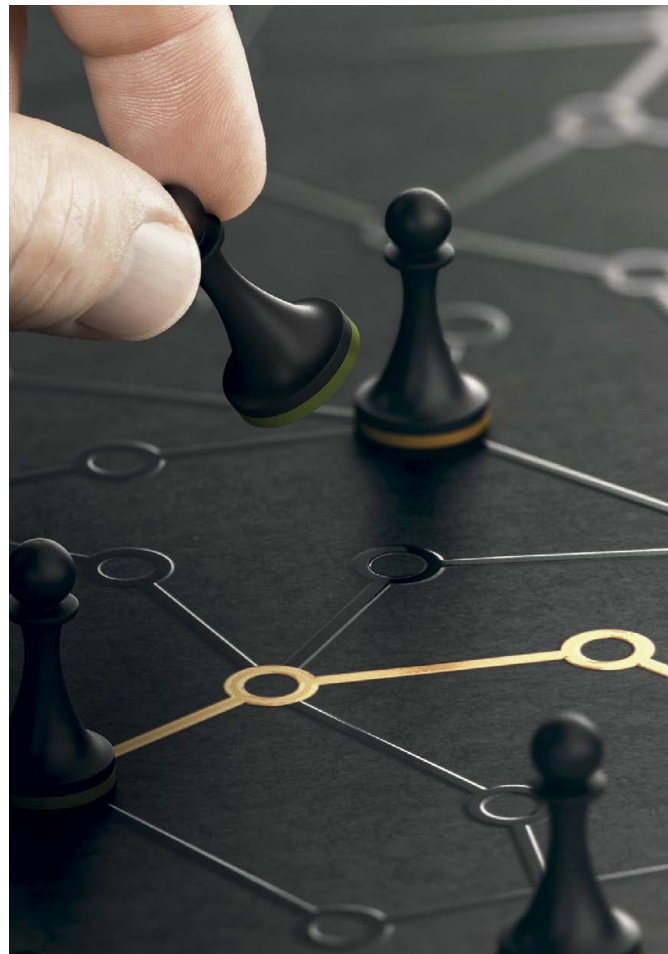
DIRECTORS’ REMUNERATION

“However, this is not the only change in the Code impacting Boards,” Benshams states. “There are also significant changes on disclosure of payments. Companies must also now disclose payments made to the chairman and members of the board of directors in their annual corporate governance report for the relevant year. This must include their total remuneration, benefits, fees, privileges, share of profits, any attendance or representation allowance, expenses, and other payments.”

“There must also be a statement which outlines the payments made to these individuals as employees, administrators, or in return for technical or administrative, consulting, or any other work. Levels of transparency are also increased as the company has to provide a separate comprehensive statement for the chairman and each member of the board of directors.”

EXECUTIVE MANAGEMENT REMUNERATION

“In addition, any payments made to members of the company’s executive management must also be disclosed in their annual corporate governance report,” Benshams adds.



Reem Benshams
Zu’bi & Partners

“In this case the disclosures must include a statement of the total amount received by executive management members with the six highest remuneration levels in the relevant year. This includes any salaries, benefits, privileges, and profit shares they may receive. In particular, the chief executive officer and chief financial officer, or highest financial officer’s remuneration must be included within this disclosure.”

“Both this requirement and the requirement on disclosure of director’s remuneration will increase transparency levels in Bahraini companies.”

CONFLICTS OF INTEREST

“Another area where the Code has increased disclosure requirements is on conflicts of interest,” Benshams continues. “Previously, there were conflict of interest requirements in the Code, but the amendments have emphasised the disclosure requirements and the importance of this area.”

“Strict disclosure is required where an officer or member of the board of directors has a joint or conflicting interest in matters presented to the board of directors for a resolution.”

“The disclosure must be made to the board of directors and proven in the meeting minutes. Details of

RELEVANT LEGISLATION

Section 2 - Principle 2 of Bahrain Decision No. 19/2018

The Directors and Executive Management Shall Have Full Loyalty to the Company.

(Source: Lexis Middle East Law)



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the transaction and its impact on the company's integrity need to be included. As a result, the relevant officer or board member cannot participate in the deliberation or meeting on, discussion, or voting on a resolution about a transaction involving the conflict of interest."

"In addition, approval of the board of directors is needed where an officer or board member has any direct or indirect personal interest in a contract or actions to which the company is a party," Benshams adds.

"The company or its shareholders can also apply to the Bahraini courts requesting the annulment of such a contract or action; or the payment of any profit or benefit to the company which was achieved from that contract or action."

VIOLATIONS

"Without prejudice to any civil or criminal liability, if MOIC establishes a company's violation of the Code, they can notify them by a reasoned decision by any means deemed appropriate, to cease the violation and eliminate its causes and effects, either immediately or within a period specified by MOIC," Benshams states.

"If the company then fails to comply with this order within the specified time, the MOIC can issue a decision to suspend the company's commercial registration for a period no more than six months, or impose an administrative fine calculated on a daily basis, of not more than 1,000 Dinars per day for a first time violation

but 2,000 Dinars per day if any other violation has been committed within three years of the date of the decision on the previous violation against them, had been issued. Fines cannot exceed 50,000 Dinars. They can also opt to impose an administrative fine of not over 100,000 Dinars or strike the company from the commercial registry."

NEXT STEPS

"As MOIC monitors compliance with the Corporate Governance Code using the annual reports. Companies to whom this Code applies should familiarise themselves with both the Code and the detail of these recent amendments," Benshams explains.

"It is important that they identify if there are any requirements in this Code which their company is not currently complying with," Benshams states.

"If that is the case the company should try to reach full compliance with the Code. However, if that is not possible, it will be important that the company prepares an explanation for their failure to comply for the MOIC's consideration before they submit their AGM Report, so MOIC can consider these points," Benshams adds.

KEY POINT

Comply or Explain

Compliance with the Code is based upon the "Comply or Explain" principle, so the company is expected to either comply with the provisions of the Code or provide an explanation in cases of non-compliance. There is further guidance in the Code on what may be considered an acceptable reason for non-compliance.

CASE FOCUS

Case No UAE Case No. 308/2022, 21 June 2022

Jurisdiction UAE

Court UAE Federal Supreme Court

Recommended by Wasel & Wasel

WHAT IS IT ABOUT?

In 2008, the applicant sold an apartment to a purchaser who paid a deposit of around 15%. Despite completion of the agreement, the purchaser failed to pay the remaining instalments to the seller. The seller then requested that the buyer take possession of the apartment, but the buyer rejected the request without justification and issued a notice of termination of the contract to the seller. The seller then sued the purchaser for the remaining amounts owed, plus interest. However, the court of first instance and appeals courts rejected the claim on the basis the contract had been terminated and the purchaser appealed claim before the UAE Federal Supreme Court.

WHAT WAS DECIDED?

The Federal Supreme Court ruled if a contract did not contain an express condition, it was terminated if its elements were not fulfilled. The court was not necessarily bound to terminate a contract based on an implicit termination condition established for the applicant's benefit if the other party failed to implement their mutual obligation. They could compel the debtor to implement their obligation immediately or within a specific period. The court could also reject the termination request if it appeared from the facts, the debtor was no longer in breach of their obligations, by preventing the issue of the judgment for termination, by implementing their commitment before or during the case's consideration and until the final judgment was issued. This delay would not harm the applicant requesting termination or anyone else, and there would be no principle to the extent of the defendant's unfulfilled obligation, or the value of the obligation the applicant had fulfilled in accordance with the contract's terms. The principle would instead be the state of affairs when the case was judged and until the final ruling was issued.

WHY IS THIS IMPORTANT?

The Federal Supreme Court found that the option of the express termination clause was in the seller's but not the purchaser's interest. The Court found the termination notice the purchaser issued was invalid as the termination clause was not in their interest and they did not have the right to terminate the contract unilaterally. The seller had insisted on executing the sales contract and requested the buyer be obliged to pay the rest of the amount due and take possession of the property. The Court's reasoning was where a termination clause was a default termination clause but inured to the benefit of one party and not the other and was read as intending to protect the interests of that beneficial party, the beneficial party must explicitly trigger the default termination clause, or the contract would remain intact. The courts could not terminate the contract without a request by the beneficial party to the termination clause and must grant requests for contract performance.

Case No RAK CA Case No. 89/2020, 12 May 2020

Jurisdiction Ras Al Khaimah

Court Ras Al Khaimah Court of Appeal

Recommended by Wasel & Wasel

WHAT IS IT ABOUT?

In 2017, a defendant sold to a plaintiff 40,000 units of OneCoin at a value of 100,000 AED. The purchaser paid the amount but the seller did not deliver the units and remained in possession of the cryptocurrency from 1 November 2017. The purchaser lost out in terms of appreciation in value from that point. The Ras Al-Khaimah Primary Court rescinded the contract and obliged the seller to return the 100,000 AED and pay 10,000 AED in compensation to the purchaser. The seller appealed before the Appeal Court arguing the sale was valid as it had been conducted through the 'Dealshaker' platform and did not violate the law and public policy.

WHAT WAS DECIDED?

The Appeal Court rejected the appeal. The Court found that 'OneCoin' and its associated companies

and its founder, was a fraudulent method used to tempt investors into joining a Ponzi scheme. Victims had believed profits had come from sales of products or other investments but other investors were in fact the source of funding. The Court concluded the currency that was sold and its circulation constituted a fraud, so this was an invalid transaction which was a violation of law and public policy. The contract did not fulfil requirements for contract formation under Article 129(b) of Federal Law No. 5/1985 that a contract's object must be something possible, specified or specifiable, and negotiable. This invalidated the contract, rendered it void ab initio and restored the contracting parties to their state before concluding it, with the obligation to refund the amount paid. Most cryptocurrencies derive their value and increases from their supply and demand on exchanges, so with this Court's wide definition of a Ponzi scheme there is a risk cryptocurrency transactions could fall foul of Article 129(b) of Federal Law No. 5/1985. The UAE Central Bank, the Securities and Commodities Authority (SCA), the ADGM and the DIFC have regulated digital assets in number of instruments. These regulations and others in the digital asset industry, provide for various forms of licensing depending on the activity in the digital asset economy. Failing to operate within these rules and regulations, or with a license, could invalidate digital asset transactions on the basis they do not conform to Article 129(b) of Federal Law No. 5/1985 or they could be considered to be a Ponzi Scheme as in this case.

Case No DCC Case No. 96/2022, 2 June 2022

Jurisdiction Dubai

Court Dubai Court of Cassation

Recommended by Gordon Blanke, Blanke Arbitration

WHAT IS IT ABOUT?

This case looked at if the old oath-taking requirement in Federal Law No. 11/1992 had survived in Federal Law No. 6/2018, the UAE Federal Arbitration Law. The Dubai courts were also asked to consider the enforcement of an award that had been rendered under the 2007 Dubai International Arbitration Centre (DIAC) Rules of Arbitration which relied on unsworn witness evidence. The parties had not used express language to contract out of Federal Law No. 10/1992's provisions.

WHAT WAS DECIDED?

The Court found in favour of the application of the oath-taking requirement in DIAC arbitrations under Federal Law No. 6/2018, based on a combined reading of Article 29(7) of the DIAC Rules, which stated the Tribunal should require the witness to swear an oath before them before giving evidence in accordance with any mandatory provisions of the applicable procedural law, and Article 33(7) of Federal Law No. 6/2018, which stated, 'unless agreed by the Parties, witnesses, including experts, shall be heard in

accordance with the laws in force in the State'. Article 53(1)(g) of Federal Law No. 6/2018 also allowed for the setting aside of an award on the basis of procedural irregularities in the arbitral procedure. The Court stated the DIAC Rules required witnesses to give their oath before the arbitrator before giving statements and left regulation of oath administration to the UAE evidence law (then Federal Law No. 10/1992 but now Federal Decree-Law No. 35/2022). This was considered the law which determined proof of evidence and its provisions, including proof by witness statements. The Court referred to relevant Federal Law No. 10/1992, Articles, in particular Article 41(2) of Federal Law No. 10/1992 which prescribed the oath formula. Article 43 of Federal Law No. 10/1992 also imposed a penalty on witnesses who refused to testify under oath without a lawful excuse and Article 46 of Federal Law No. 10/1992 required a competent court to refer a witness providing false testimony for public prosecution. The Dubai Court of Cassation has ended speculation on whether oath-taking is mandatory in arbitration conducted under Federal Law No. 6/2018. Before it came into force, fact or expert witness evidence in UAE-seated arbitrations had to be tendered under oath under Article 211 of Federal Law No. 11/1992 which contained an express oath-taking requirement, that arbitrators must administer the oath to the witnesses and any person who gave false testimony before arbitrators would be treated as being guilty of perjury. This express requirement was not carried over into Federal Law No. 6/2018 and was lost with the repeal of Article 211. There was speculation that the UAE legislator had intentionally removed the requirement from the new law to relieve witnesses of the obligation of giving evidence under oath in UAE-seated arbitrations. Judging by relevant case law precedent (e.g. UAE Case No. 924/3, and DCC Case No. 364/2019) under the old regime, the legal effect of a failure to tender evidence on oath was limited to the parts of the award that relied on the unsworn evidence, resulting only in partial annulment of the award. The Court did not expressly qualify the oath-taking requirement as public policy under UAE law. There is no doubt that oath-taking remains mandatory within the meaning of Article 33(7) of Federal Law No. 6/2018.

The oath-taking requirement survives under Federal Law No. 6/2018 in the same terms as it existed under Article 211 of the former UAE Arbitration Chapter. It cannot be contracted out of by the parties or at least is not contracted out of to the extent that the parties have contracted into the DIAC Rules. Article 29(7) of the DIAC Rules properly construed requires oath-taking on the applicable procedural law. Article 33(7) of Federal Law No. 6/2018 leaves it open for parties to agree otherwise, i.e. hear witnesses in a way different to under UAE law, including the UAE Evidence Law. However, the parties had not used express language to contract out of the provisions of the UAE Law of Evidence, hence relevant provisions of that law continued to apply in relevant part to the hearing of fact and expert witnesses.

IN-HOUSE PROFILE

GENERAL MANAGER LEGAL AFFAIRS – TECHNOLOGY



Linking law and technology

Riyadh Al Habshan, General Manager of the Legal Affairs Division at Solutions by STC, explains the importance of tracking legislative and regulatory change when managing risk and ensuring compliance in the technology sector.

BACKGROUND

I have a Bachelor of Islamic Law from Al-Imam Muhammad Ibn Saud Islamic University and a Master's in International law from the University of Technology in Sydney. I have also studied areas including Mergers and Acquisitions at the London Business School. I am the General Manager of the Legal Affairs division at the Saudi company Solutions by STC, which is part of the STC group. I have always worked inhouse, including as a Legal Advisor with the Al Rajhi Bank and with STC. However, it was the time I spent as the Legal Department Manager at Siemens which has helped me most in the work I do now.

BUSINESS

Our business, Solutions by STC offers customised and comprehensive internet, data communication, ICT, IoT and enterprise solutions to clients, which support network, infrastructure and application needs. We provide a one-stop shop for business and wholesale solutions and our clients include businesses and government entities in Saudi and across the wider region.

We offer connectivity solutions, fixed or wireless services, ICT, IoT and the latest IT services and products, all under one roof. The STC group which we are part of owns and operates a large, reliable and diverse state-of-the-art telecommunications infrastructure. It is a national network covering the Middle East.

WORK

As the General Manager of the Legal Affairs Division, I oversee the work of the Legal Affairs function. This includes reviewing and interpreting the law and regulations in a solutions context, including when there are legal or regulatory changes.

I am responsible for drawing up contracts and ensuring proper adherence and compliance with law and regulation.

We use Governance, Risk and Compliance (GRC) which is a structured way to align IT with business goals, while managing risks and meeting all required industry and government regulations.

In the compliance obligations context keeping up to date with amendments and new laws as they are



published is particularly important. I believe in the future we will see technology lawyers with experience such as mine becoming even more in demand.

My responsibilities include transactions, contract management, advisory and litigation work. I monitor progress with all external legal agreements and provide legal advice, guidance, and recommendations to our business units. In addition, I am responsible for overseeing and directing solutions in legal discussions, lawsuits and other Legal Affairs matters.

I am also responsible for ethics and anti-fraud investigations as well as for the insurance department.

To date the work I have been most proud of has been the successful launch of the Solutions by STC IPO in 2021 and the work I did on the acquisition of GIZA System (Egypt) in 2022.

CHALLENGES

My main challenges tend to be operational pressures rather than legal issues. However, I find that good delegation can help with this.

When it comes to the legislation which is most important to us as a business, I have to be fully aware of all the regulations which are related to IT companies. Saudi Arabia Cabinet Decision No. 98/1443, the Personal Data Protection Law is particularly important to our clients.

This law is currently expected to come into force in March 2023.

However, a public consultation on changes to this law, some of which may be included in the still to be published regulations which implement this law has also been issued.

PRACTITIONER PERSPECTIVE



Lamisse Bajunaïd
Senior Associate,
Dr Qaisar H Metawea
Law Firm

Lamisse Bajunaïd and Amna Usman of Dr Qaisar H Metawea Law Firm explain the main recent developments in Saudi Data Protection Law and what changes are expected when the Executive Regulations are issued.

Data Protection Laws plays a significant role in supporting Saudi Arabia's Vision 2030, which sets a pathway for developing a leading digital economy through innovation which will attract foreign investment and improve the country's competitive economic environment.

As a result, the legal landscape on data protection has been developing rapidly here in recent years, and more changes in the form of Executive Regulations are expected.

Prior to the introduction of the Saudi Data Protection Law (Saudi Arabia Cabinet Decision No. 98/1443) in 2021 there was no unified Saudi data protection law, and this area was instead regulated on a sectoral level and in line with general Sharia Principles. In 2020, the National Data Management Office (NDMO), issued National Data Governance Interim Regulations (NDGIR) to outline general data protection principles in Saudi until a unified law could be issued. Saudi Arabia Cabinet Decision No. 98/1443 was initially scheduled to come into force and effect 180 days from publication, but its enforcement has since been delayed to 17 March 2023. Until that happens, NDGIR remains in force.

However, there have also been further developments which are expected to change the law in this area. In March 2022, a draft of the Executive Regulations which will provide further details on how the law will operate in practice were issued for consultation. In addition, a public consultation ran from 20 November 2022 to 20 December 2022, detailing further proposed changes to the law itself.

These included the addition of birth dates to personal data definition as an explicit form of identifying data owners. A relaxation of the duty to notify the competent authority of any data breach under Article 20 of Saudi Arabia Cabinet Decision No. 98/1443 has also been proposed and that the Executive Regulations will outline cases where a controller becomes obliged to serve notices of data breaches only when they harm the data owner or contravene with their rights and interest. It has also been proposed to limit the requirement to evaluate consequences of data processing to cases where the controller provides services or goods that depend on processing personal data.

However, it should be noted that Article 22 of Saudi Cabinet Decision No. 98/1443 currently vaguely requires this evaluation 'depending on the nature of the activity'.

Another proposed change is explicitly requiring prior consent for processing sensitive data for marketing purposes. It is also proposed to remove Saudi Arabia Cabinet Decision No. 98/1443, which prohibits photocopying identification documents except in certain circumstances.

There are proposals too, to ease the stringent restrictions on international data transfers under Article 29 of Saudi Arabia

Cabinet Decision No. 98/1443, which generally prohibits international data transfers except in very limited circumstances, unless the competent authority grants exemption. It is also suggested that Article 28 of Saudi Arabia Cabinet Decision No. 98/1443 be changed so it takes a two-pronged approach on international data transfers, with a general rule permitting these transfers to jurisdictions that grant equal or better protection to data owners, and certain cases where transfers can be made in an alternative manner, such as transfers preserving public interest or performance of obligations under international agreements.

Many parts of Saudi Arabia Cabinet Decision No. 98/1443 explicitly refer to details which will be set out in the Executive Regulations, so it is expected that many practical details, requirements, and criteria will be clarified in these. Currently it is expected these will include details of the statutory impact assessments for risk and adverse effects of data processing, statutory periods for exercising data owner's access rights; the conditions and form of required consents for processing personal data; and minimum criteria for privacy policies. It is also expected the regulations will have further information on the reporting obligations in the case of data breach events; will clarify the restrictions and conditions governing international data transfers; and provide further details on the competent authority's rights to issue licenses and certifications.

Those wishing to ensure compliance with Saudi Data Protection law must be clear on whether they will be deemed a 'Controller' or a 'Processor', and that they understand the relevant obligations in each case.

It should also be noted that under Article 3 of Saudi Arabia Cabinet Decision No. 98/1443.

The law does not intend to prejudice the position under sector specific regulations or international agreements which may offer data owners more stringent protection. Therefore, in the internet sector, service providers should specifically ensure compliance with the Communication and Information Technology Commission's data protection and other regulations, as well as any other laws that may apply to their activities.

Due to the continuous reform happening in this area in Saudi Arabia it is advisable to appoint a data protection officer and give them responsibility for the implementation of the new Law, monitoring and supervising procedures which are related to it, and to liaise with the competent authorities in this respect. Service providers should also regularly review their terms of use and privacy policies for compliance, and any update in these policies should be notified to data subjects.

Finally, any international data transfers should be compliant with the relevant provisions in force at the time.

Associate Amna Usman was the joint author of this article.



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Qatar

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Ref: *IJR-IM-13208*

Saudi Arabia

Senior In-House Lawyer, 5+ PQE, Corporate & Commercial Focus

Our client is offering an excellent opportunity for an experienced lawyer to join their team to advise on the corporate and commercial legal matters of an innovative and unique project. Applicants should be Saudi qualified, preferably with an international LLM, with a minimum of 5 years legal experience gained within international law firms or in-house teams.

Ref: *JRS-IM-13342*

Abu Dhabi

In-House Lawyer, 3+ PQE, IP Focus

We are working on an exciting opportunity for a lawyer at a key UAE entity for a lawyer with an IP and commercial skillset, with experience in commercial agreements, patents, or technology licensing. Applicants will require a minimum of 3 years PQE gained within well-regarded international firms or in-house teams. Arabic language skills and experience working in the GCC are of particular interest.

Ref: *SSK-IM-13434*

Abu Dhabi

Senior In-House Lawyer, 15+ PQE, Government Sector

Our client is seeking to recruit a senior lawyer with experience in corporate/commercial, IP, procurement, or export control matters and policies. Applicants will need a minimum of 15 years of experience working at well-regarded law firms, or within high-quality in-house teams. Arabic language skills and experience working in the GCC are desirable but not required.

Ref: *IJR-IM-13216*

Saudi Arabia

Legal Director, 15+ PQE, Media

This is an exceptional opportunity for a lawyer to head the legal function within the growing media division of one of the world's most dynamic and innovative projects. Applicants need a minimum of 15 years PQE, with experience gained in a well-reputed media organisation and within the field of media production. Previous work experience in the Middle East would be ideal.

JRS-IM-13372

Saudi Arabia

Legal Director, 12+ PQE, Food Production/Farming

Our client is looking to recruit a lawyer with a minimum of 12 years PQE with a background in well-reputed organisations focusing on agricultural production or aquaculture. Previous experience of working in the Middle East would be ideal, but is not a necessity.

Ref: *SSK-PM-13411*

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

MOVERS AND SHAKERS

A ROUND-UP OF THE TOP APPOINTMENTS AND PROMOTIONS

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SCCA EXPANDS ITS REMIT

The Saudi Centre for Commercial Arbitration (SCCA) is expanding into Dubai and opening SCCA Dubai in the DIFC. The SCCA was originally founded in 2016 and its Dubai office will be its first outside Saudi Arabia. The facilities it will operate there will include a hall that can be used by the parties for arbitration and

mediation proceedings. Fatima Balfaqeeh, who is an arbitrator, mediator, legal adviser, former vice chair of the CIArb branch in the UAE, and a committee member of ICC-UAE will act as Director of SCCA Dubai. Meanwhile, Christian Alberti, who will work out of the SCCA headquarters in Riyadh and SCCA Dubai will supervise all case management activities and technical and legal affairs from both locations.

ON THE MOVE

Galdari Advocates and Legal Consultants have recently appointed two maritime and international trade specialists as partners. The first Shani Salim is qualified to practice in India, England and Wales, and the UAE and will work out of the firm's Dubai office. His work involves the trade, transport and logistics space, although he has a particular focus on dispute resolution. He is actively involved in ship arrests and release cases, in which he works closely with the firm's litigation team. His other areas of specialism include contracting, commercial transactions, and agency, work. The second



new partner to join this team in Dubai is Abdelhak Attallah.

Attallah who previously worked at Al Suwaidi & Co, is a British qualified Maritime and International Trade lawyer with 20 years of experience. This

includes handling complex and sensitive litigation and arbitration matters under the rules of various arbitration institutions on commercial matters, ship finance, ship building, multimodal carriage of goods, international sale of goods, marine insurance, ship arrest and enforcement of foreign judgements.

FLYING HIGH

Aviation specialist Nick Humphrey has joined Norton White. In his new role he will work closely with the firm's Oceania teams and will lead Norton White's aviation, transport and trade practice in the Middle East, Africa and Central Asia. Nick Humphrey was previously a partner at Norton White but left the firm in 2010 to work in the Middle East both inhouse and in private practice. He has extensive experience of providing legal services to



the aviation, logistics and defence sectors worldwide. In addition, Senior Associate Rhyley Griffith who is to be Middle East based will support the growth of the firm's aviation practice across the region. The firm intends to open up a new Middle East office shortly.

NEW ADVOCACY UNIT

As a result of the growth in English language common law commercial courts, Al Tamimi has decided to open a new Advocacy unit which will be led by Partner and Head of Advocacy David Holloway. Holloway has 20 years of experience in international dispute resolution working on both litigation and arbitration. He is joined in the new unit by Senior Counsel Hugo Lodge who has particular experience of work in the DIFC's new Digital Economy Court. His work will focus on disputes involving the digital economy, particularly crypto and block chain disputes, and asset recovery.



Another recent appointment at Al Tamimi has been that of

Hamza Al-Haboubi as a dedicated ESG Consultant. This will be the first time anyone has held this role at Al Tamimi, but it follows



on from a report published by the firm on this subject which found 94% of legal decision-makers occasionally or regularly assess ESG risk and compliance within their role. Hamza, who has over 10 years' experience in the ESG area, will work directly with clients to identify the main ESG risks associated with business exposure and develop action plans to address these.

ALSO ADVOCATING CHANGE

However, Al Tamimi have not been the only firm in the region to decide it is time to put Advocacy central stage. Clyde & Co have also launched of a new advocacy unit which will be known as Clyde Counsel.

A new partner, Patrick Dillon-Malone, has joined the firm to lead this new unit. The unit will be made up of a specialist team within the firm which will expand over time, working hand in hand with primary case advisors and colleagues to assist at any stage and for any type of commercial dispute that requires the preparation of pleadings or evidence and the conduct of hearings and trials.

Dillon-Malone, is a senior advocate with over 25 years of experience of working as an independent barrister and in international private practice. He has practiced in Dubai and the wider MENA region since 2017 and has rights of audience before the DIFC Court in Dubai

OTHER CHANGES

HKA: Claims Advisory and Commercial Dispute Resolution Experts HKA have appointed Amanda Clack as Regional CEO of their new Europe, Middle East, and Africa (EMEA) region.

Said Al Shahry & Partners (SASLO): Omani Commercial Law firm Said Al Shahry & Partners (SASLO) has become a member of the Lex Mundi global network of independent law firms.

Al Tamimi: Al Tamimi has appointed six new partners in the region - Aisha Al Marzouqi and Noor Al Rayes specialising in Litigation in the UAE and Bahrain respectively, Mohsin Khan, Specialising in Employment and Incentives in Saudi Arabia, Euan Lloyd, specialising in Construction & Infrastructure in the UAE, Sakshi Puri, specialising in Banking & Finance in the UAE and Ahmad Zaza, specialising in Intellectual Property in the UAE.

I MOVERS AND SHAKERS I

and the ADGM Court in Abu Dhabi. As a Senior Counsel (Ireland) and Barrister (England and Wales), in the past his practice has covered a broad range of international commercial disputes. He has also acted on a number of high profile DIFC cases.

CORPORATE MATTERS

Alex Reid has joined Charles Russell Speechlys in Dubai from HFW. He will take on the role of Partner in the firm's Corporate and Commercial team. Reid has over 20 years of experience as a transactional lawyer and has an established and diverse corporate and commercial practice, focussing primarily on natural resources, transport and logistics, financial services and technology. He regularly advises international and regional clients on a variety of complex corporate matters, commercial contracts, projects, restructurings, and reorganisations.



A LEAD ON IMMIGRATION

Ananth Prasad is one of the latest new joiners at global mobility specialists Vialto Partners - a firm which was established last year after PWC's Mobility, Tax and Immigration services were sold to a private equity firm. Prasad will take on the role of an Immigration Manager and will work on Middle East Immigration. He previously led a team at a global immigration firm in Dubai where he focused on UAE-based business. He has just under nine years' experience of working in the Immigration advisory and legal services industry. As an Immigration Lead, he will partner with business leaders and stakeholders from various multinational and national companies operating in the UAE and will work on areas including risk management, immigration compliance, process improvements, and providing strategic guidance.



RAISING THE BAR ON ARBITRATION

Louise Wright has joined the Arbitration Department at Al Aidarous as a Barrister/



Senior Associate. Louise was called to the Bar of England and Wales. She specialises in common law, construction law, international trade law and international contracts. She works in courts where common law is applicable and leads parallel proceedings in the UK courts and other common law jurisdictions such as the DIFC and ADGM Courts. She also sits as an arbitrator and undertakes international commercial arbitrations as Counsel including in DIAC, ADCCAC and LCIA, ICC).

A CAPITAL CHANGE

Jonathan Fried has been appointed as Linklater's managing partner for the Middle East. Fried has been with Linklaters for over 20 years and was the firm's Middle East head of capital markets. He has considerable experience of supporting sovereigns, government-related entities, financial institutions and companies with their international financing. He replaces Scott Campbell who held the role since 2014.



INTERNATIONAL OUTLOOK

Antonia Birt has joined Reed Smith in Dubai as a partner in the firm's International Arbitration practice. Previously Antonia worked at Curtis Mallet-Prevost Colt & Mosle as a partner in Dubai. However, she has also spent time at Freshfields' London and Dubai offices and has over a decade of arbitration, mediation and expert determination experience in the Middle East. This has included work on a range of industries and sectors, including oil and gas, energy and water, construction and engineering, project development, and distribution. She will be joined at Reed Smith by Senior Associate Matthew Harley whose work focuses on commercial disputes, particularly those involving Africa and the Middle East.



GOOD NEWS FOR M&A

Of the 46 global partnership promotions to take effect from 1 January 2023 at White & Case, four have included lawyers operating in the Middle East. They include three Mergers & Acquisitions specialists - Sonia Abdul-Rahman and Stefan Mrozinski, who are based in Dubai and Mohammed Bashir, who is based in Riyadh. In addition, William Watson who works in the firm's Debt Finance practice in Dubai and whose work includes complex, multijurisdictional corporate finance transactions, including leveraged and structured financings and restructurings has also been promoted to the role of partner.



CORPORATION CLIMBERS

Over in Riyadh, Noor Al-Fawzan who works in Latham & Watkin's M&A practice and corporate department has become a Partner, just over ten years after completing her LLM at Duke University School of Law and LLB from the Prince Sultan University College for Women. Noor who has a New York Bar qualification specialises in advising companies and government entities on M&A, joint ventures, and other corporate transactions both in Saudi Arabia and internationally. In addition, she has experience of working on a range of industries including healthcare, life sciences, energy, technology and infrastructure. However, Noor is not the only corporate specialist in the region to be promoted, as over at Hadeef & Partners, Mahmoud El Gharabawy is also beginning a new role as Partner in the firm's Abu Dhabi office from January 2023. El Gharabawy is part of the Hadeef's corporate practice and has local and international experience in areas including corporate finance, capital markets, M&A, banking (including Islamic finance), project finance and public-private partnerships. Before joining Hadeef, he worked at Sarie El Din & Partners in Cairo and also at Nadoury & Nahas Law Office in Alexandria. He is currently studying for a Diploma in Islamic Finance with the Chartered Institute of Management Accountants and has been involved in the negotiation and drafting of a number of the most significant project finance and capital markets transactions in Egypt.

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: claire.melvin@lexisnexis.co.uk



LEXISNEXIS EVENT CALENDAR

RECENT EVENTS AND UPCOMING EVENTS FROM AURIFER AND LEXIS

RECENT EVENTS

INTRODUCTION TO VAT IN THE UAE

24 November 2022

Aurifer conducted a training on the introduction to VAT in the UAE in conjunction with the global translation and localisation agency, Kwintessential. To find out more about this subject contact: lovely@aurifer.tax.

UAE CIT WEBINAR

14 December 2022

Following the public issue of the new UAE Corporate Income Tax Law Federal Decree-Law No. 47/2022 Aurifer organised and hosted a webinar on 14 December 2022 covering all aspects of UAE Corporate Income Tax. This law is due to be implemented as of 1 June 2023. Topics discussed included the definitions of a taxable and an exempt person, who will be regarded as a Qualifying Free Zone Person, and deductible and non-deductible expenses. Also considered was exempt income and relevant conditions, groupings and loss transfers, transfer pricing implications and administrative and anti-avoidance issues. The next steps and preparing for the rollout of this tax were also covered, along with procedural issues and registration on the EmaraTax system. To find out more contact: lovely@aurifer.tax.

FORTHCOMING EVENTS

BREAKFAST EVENT FOR FMCG SECTOR

3 February 2023

For more details on this Aurifer breakfast event which will focus on the new Corporate Income Tax Law, Federal Decree-Law No. 47/2022 contact: lovely@aurifer.tax.

PILLAR 2 TRAINING

10 February 2023

For more details on this Aurifer training event, including costs contact: lovely@aurifer.tax.

DOUBLE TAX TREATY TRAINING

24 February 2023

This Aurifer training event will look



at double taxation conventions and their impact on businesses. For more details contact: lovely@aurifer.tax.

WITHHOLDING TAXES TRAINING

10 March 2023

This Aurifer training event will provide an overview on managing withholding taxes in the Gulf. For more details, contact: lovely@aurifer.tax.

BREAKFAST EVENT FOR THE INSURANCE SECTOR

17 March 2023

For more details on this Aurifer breakfast event which will focus on the new Corporate Income Tax Law, Federal Decree-Law No. 47/2022 contact: lovely@aurifer.tax.

UAE LABOUR LAW AND IMMIGRATION CHANGES

1 February 2023 - 8.30am to

10.30am, Capital Club Dubai

The immigration team from Vialto Partners and the Baker McKenzie Employment Law Team will provide a full update at this free session. As well as details of key labour law changes, there will be an Emiratisation update, information on the introduction of visa

categories to support flexible work arrangements and on the widening of the Golden Visa programme. To register sign up at <https://www.lexis.ae/events/uae-labour-law-immigration-changes/>

LEXISNEXIS WOMEN IN LAW AWARDS 2023

2 March 2023 - 7pm to 10 pm, Capital Club Dubai

The second annual LexisNexis Women in Law Awards event celebrating women's achievements and innovations in legal practice in the Middle East will be held in March. These awards recognise organisations which have promoted women and gender equality within their teams. There are a mix of both law firm/company categories including the Equality Initiative of the Year, and individual categories which honour success by individual women in particular areas of the legal profession. There is also an award for the Rising Star, Law firm leader and Legal Services Innovator of the year and a Professional achievement award. Nominations have closed. However, it is still possible to book a seat or a table at the event. For further information or to enquire about sponsorship opportunities, contact mailini.dean@lexisnexis.com.



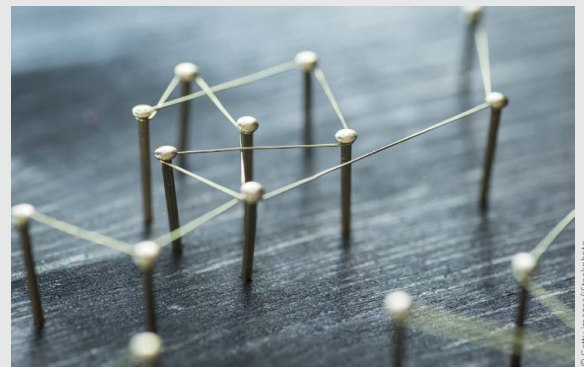
A long and illustrious career

Ali Al Aidarous of Al Aidarous Advocates & Legal Consultants talks about some of the highlights in his 35 years in advocacy work.

ABOUT YOU

I have been practising law for over 35 years and specialise in advocacy work - including both dispute resolution and arbitration. I have full rights of audience before all UAE onshore courts (at Emirate and Federal level) and before the English language common law DIFC and ADGM Courts. I am one of the few Emirati lawyers to have full rights of audience under Part 2 of the DIFC Court Rules. I speak Arabic, English, and French and some Russian. I specialise in dispute resolution in the construction sector, and on real estate development, infrastructure projects, joint ventures, and corporate matters. I began my career as a loan officer in Emirates Industrial Bank where my work involved preparing legal documentation and reviewing project feasibility studies. I was in charge of updating the bank's legal documentation including their letter of credit. One of the most memorable parts of my work there was adopting a new electronic letter of credit system. I then took up the role of an in-house counsel for a local bank which was affiliated to the leading French banking group, Société Générale. This helped to further develop my knowledge of banking facilities and arrangements. Through this work I learnt a lot about both the financial and the legal side of business. As well as appearing in court as a lawyer, I have also provided expert witness reports on UAE law in foreign courts, including in common law courts such as the Courts of England and Wales, Australia, and the US, and civil law courts in jurisdictions such as France, Norway, and Spain. As the UAE law is a civil system heavily influenced by Egyptian and French law, in these expert reports I provide courts and arbitral tribunals (particularly common law ones) with an interpretation of UAE legal issues based not only on UAE legislation and court rulings, but also on Egyptian and to some extent, French jurisprudence on issues where the UAE authorities are limited or absent. In addition, having studied Sharia Law I am also able to provide insight on the Sharia Law areas of UAE law.

One of the cases I am proudest of was our successful representation of the engineer in the Address Hotel fire case which was an action brought by the insurance company for more than one billion AED, based on their alleged liability for the spread of



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the fire in 2015. We have also represented a client in a landmark case before the DIFC Court determining the DIFC court's jurisdiction following the 2011 amendment of Dubai Law No. 12/2004 (the DIFC Judicial Authority Law) which expanded the DIFC Courts' jurisdiction.

ARBITRATION WORK

As well as my court work, I am also active in arbitration. This includes appearing as an expert witness before domestic and international arbitration forums. However, I also act as an arbitrator, including as a sole arbitrator, member of a tribunal or chair, and along with my team provide counsel on international arbitration.

I have served as a UAE representative at the court of the ICC and as part of this work I was a member of an ICC committee which reviewed and scrutinised ICC administered arbitral awards. This meant that I got to be on the other side of the arbitration process and benefitted from being part of the decision-making process.

I have also been the chair of the UAE Commission on Arbitration and Alternative Dispute Resolution for the ICC-UAE, which is a very active committee. This involved promoting ICC arbitration and making recommendations to the ICC Court in Paris for arbitrator nominations. During my term in office, we developed the Committee charter and set up a mechanism for nominating arbitrators.

The ICC-UAE Committee also organises conferences (including the popular ICC MENA Conference on International Arbitration in the UAE) and works with national arbitration committees worldwide.

RECENT KEY DISPUTE RESOLUTION CASES

Case No DCC Case No. 621/2021 on 24 May 2022
Jurisdiction Dubai
Court Dubai Court of Cassation
Recommended by Al Aidarous Advocates & Legal Consultants who acted for the investor

THE DISPUTE

A leading real estate developer brought an action against an investor before the Dubai Courts seeking an order to terminate the sale and purchase agreement for a plot of land between the parties on the grounds that the investor had breached his obligations, including, to develop the plot within the agreed period.

The Court decided in the first instance, appeal, and cassation in favour of the developer and issued a judgment terminating the agreement and also declared the right of the developer to repossess the plot.

SEPARATE ACTION

The investor was then advised by their counsel to file a separate action before the Dubai Courts seeking ownership of the plot based on Article 1270 of Federal Law No. 5/1985 and as an alternative, to claim the cost of the construction work pursuant to Article 1271 of Federal Law No. 5/1985.

Article 1270 of Federal Law No. 5/1985 stated, "If a person places a building, plant or other installations with materials of his on the land of another alleging a lawful cause, then, if the value of the things placed and standing is greater than the value of the land, the person who has placed them there may acquire ownership of the land at a fair value, and if the value of the land is not less than the value of the things placed there, the owner of the land may acquire ownership thereof at their value as standing."

While Article 1271 of Federal Law No. 5/1985 stated, "If a person erects installations with materials of his on the land of another with the consent of the other then, if there is no agreement between them as to what shall happen to the installations, the owner of the land may not require that they be removed, and he must, if the owner of the installations does not require them to be removed, pay him the standing value thereof."

RESPONSE TO DEVELOPER'S DEFENCE

In their defence, the developer argued that the Investor's Action was barred by the res judicata effect of original judgment.

However, it was argued there was no res judicata effect as all elements of the three-legged test for res judicata had not been met as the cause of action in the Investor's Action was different from the subject of the Termination Judgment.

This was because the Developer's Action was

related to the termination of the sale and purchase agreement, while the Investor's Action was to either acquire the land or recompense for the cost of the construction work, they had undertaken following the termination of the agreement.

COURT DECISION

The Court accepted the Investor's defence on res judicata.

It was argued that Article 1270 and 1271 of Federal Law No. 5/1985 were applicable as the parties' agreement was not merely a sale agreement, but also included an obligation to build in it.

In fulfilment of this obligation, the investor had carried out construction work before the Termination Judgment was issued.

COURT OF CASSATION DECISION REASONS

The Dubai Court of Cassation considered Article 1270 of Federal Law No. 5/1985 and explained that this article applied where a person built on land belonging to another person with a justifiable and lawful reason.

The key test for the application of this article was the timing of the construction.

If a person was aware at the time of the construction that the land belonged to someone else, then that person would be considered as acting in bad faith. However, if they believed, as was the case here that they were either the landowner or that they had the right to build on the land, this would be regarded as acting in good faith.

The Dubai Court of Cassation also considered Article 1271 of Federal Law No. 5/1985 in line with which the landowner was obliged to pay the cost of the construction carried out by a party if that construction was carried out with the owner's express or implied consent.

Applying these Articles to the Investor's Action, the Court found that construction on the plot had been carried out prior to the Termination Judgment was issued and with valid reason was therefore, carried out in good faith as the investor had acted under the terms of the sale and purchase agreement under which they had an obligation to build.

However, as the market value of the plot was higher than the cost of construction carried out by the investor, the Court granted the investor's alternative claim based on Article 1271 of Federal Law No. 5/1985.

KEY TAKEAWAYS

This judgment has created a new precedent under which the termination of an agreement does not extinguish a party's right to ownership of the land or the cost of construction if the investor has carried out construction work in good faith and with a valid right under the agreement prior to the termination of that agreement.

CIVIL CHANGES

A new UAE Civil Procedure Law came into force at the start of the year, Waleed Hamad of Al Aidarous Advocates & Legal Consultants looks at its main provisions.

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From 2 January 2023, a new UAE Civil Procedure Law, Federal Decree Law No. 42/2022 (Promulgating the Civil Procedures Law) came into force. This law which was issued on 3 October 2022 has replaced the UAE's previous civil procedure law Federal Law No. 11/1992 and its Executive Regulations (which were found in Cabinet Decision No. 57/2018).

The new law has 338 Articles which are split into three separate books.

Book 1 covers court attendance including court competence and jurisdiction, filing cases, and the session process. It also has provisions on orders, challenging judgments and discontinuation or stay. Book 2 looks at different types of actions, while Book 3 focuses on the execution.

APPEALS

Federal Decree Law No. 42/2022 has brought in a new process for filtering appeals. Under Article 167(2) and (3) of Federal Decree Law No. 42/2022 there is now an 'in chambers' review of Court of Appeal appeals. Following an appeal referral, the Court of Appeal has 20 working days to issue a reasoned decision for rejecting the appeal for either substantive or procedural reasons or to set a date for the appeal.

This should filter out appeals which lack merit. However, it also means it will be important for appellants to make sure they have not done something which could potentially lead to a procedural or substantive dismissal.



Waleed Hamad,
Head of
Litigation
Al Aidarous
Advocates & Legal
Consultants

SERVICE OUTSIDE THE JURISDICTION

One of these areas is service outside the UAE jurisdiction. Under Federal Law No. 11/1992 this could be an uncertain area, particularly where there was no treaty between the jurisdiction where service was to take place and the UAE.

Under Article 11(2) of Federal Decree Law No. 42/2022 service outside the UAE is now effected 21 days after the date of correspondence between the Ministry of Foreign Affairs and the diplomatic mission in that country.

That correspondence must contain the notice and/or documents which are to be served. It is no longer necessary for the overseas diplomatic mission to report back that service has been effected.

TIME LIMITS

Another change has been on the time limit for an appeal to cassation. In the past this was 60 days, but it is now 30 days. However, as Federal Decree Law No. 42/2022 came into force on 2 January 2023, Federal Law No. 42/2022 does not apply to court of appeal judgments which were issued before 2 January 2023.

In addition, in the case of ongoing proceedings provisions which involve time limits will not apply if the time limit began before the new Civil Procedure Law came into force. A new time limit will also not apply to judgments which were issued before Federal Decree Law No. 42/2022 came into force.

For further details on this topic see the UAE Dispute Resolution Q&A on Lexis Middle East

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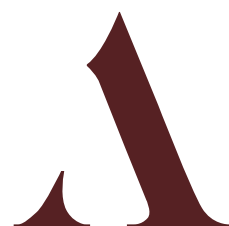
One minute you're navigating the legal landscape of the UAE... and the next you're in uncharted territory.

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- ▶ **Qualified and bilingual lawyers** to help you easily navigate the legal intricacies across all courts and arbitral tribunals in the UAE.
- ▶ **Optimal cost structures**, thanks to our integrated, one-stop offering.
- ▶ **A seamless experience**, ensuring our clients work with a single legal firm from start to end.



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For more information, visit www.alaidarous.ae

Patent filing



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In the past if a non-UAE based applicant wished to file a UAE patent or design application considerable documentation was needed including a Power of Attorney (PoA); a Deed of Assignment (DoA); and an extract from the commercial register or their commercial license. In addition, as each legalised document could cost up to USD 1,500 in associated fees, over and above the costs for filing the patent, this could be a costly process.

However, new requirements, have been put in place which make this process much cheaper for non-UAE based applicants.

CHANGE OF APPROACH

Supporting documents now required are a notarised PoA from the applicant, a notarised DoA signed by the inventor(s) (if the inventor is not the applicant); and a certified copy of the Certificate of Incorporation for the applicant (if the applicant is a company).

These documentary requirements are largely the same whether the applicant is UAE based or based outside the UAE.

EMPLOYEE INVENTORS

In the case of UAE based applicants, if the inventor is also an employee, it is possible to submit proof of employment (for example a certificate of employment or a copy of their employment contract) instead of a DoA, as these rights are automatically transferred to the employer under the law, unless it has

been otherwise agreed in writing.

However, if the inventor is not an employee, a UAE based applicant must either file a notarised DoA or the inventor(s) can sign an official document (known as a Witness of Conveyance Form) confirming the assignment of the invention before a UAE Patent Office Official.

PENDING PATENTS

This option is available as there are challenges in notarising assignments involving pending patent applications in the UAE.

Notaries have rejected assignment documents on the basis of no 'proof' of the underlying right (for example a certificate of grant). As this is only issued some years after filing an application, many UAE based applicants faced issues in obtaining a DoA, as they could not always secure notarisation in the UAE.

Unfortunately, this remains an issue for UAE applicants who want to file a patent or design application outside of the UAE, in countries where there are requirements for notarised and/or legalised supporting documents.

US APPLICATIONS IN SUPPORT OF UAE APPLICATIONS

As a result, some UAE based applicants have opted to file US applications first and then record a simply signed assignment at the USPTO.

This means that once the assignment is recorded, the applicant can then submit a certified copy of that assignment issued from the US, in support of their UAE application.

This assignment would need to be signed by the inventor and the applicant and would also need to be worldwide, so that it will cover the UAE.

This is now less of an issue if the inventor is an employee of the UAE applicant, and their employment contract can now be used as proof rather than needing a DoA to do so.

NOTARISED DOCUMENTS

It should be noted that the UAE Patent Office does not require notarised documents where the UAE based applicant is a UAE government organisation (which would include UAE Federal universities).

However, the documents must be signed and include the entity's official stamp on every page.

In addition, with foreign applicants or if a UAE applicant's inventor is based outside the UAE, there will still be a requirement to submit a notarised DoA from the inventor(s) which includes as a minimum the title of the invention, the UAE application number (if signed after the date of filing the UAE application), and a description of the invention (or a copy of the application).

It must be signed by the inventor, and it is important that the inventor's details are consistent with those in their official ID or passport. The application must also cover the UAE which means there must either be a worldwide assignment or a specific reference to the UAE.

Where a UAE applicant is the inventor, no DoA will be required, until or unless, the patent or design ownership is transferred to a third party.

IMPACT OF THE CHANGES ON COST AND PROCESS

It is hoped that these changes to patent and design filing in the UAE will bring cost savings in particular for foreign applicants and over time will lead to more filings taking place in the UAE.

However, it should be noted that while the documentary requirements for filing patents and designs have changed, legalised PoAs are still needed for trademark filings and copyright records. In addition, with patent enforcement or litigation, or other actions outside of the UAE Patent Office, a legalised PoA is likely to be required for non-UAE applicants or patent holders.



Contributor
Noor Hassan, Associate
Gowling WLG



عيسى السليطي للمحاماة
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“

At our firm, our priorities are to advance your interests, cater to all your legal needs and significantly minimize your legal risks and liabilities. When dealing with our team, expect to receive extensive support and expert advice on the legal issues you face.

”

MR. ESSA MOHAMMED AL SULAITI
FOUNDER & CHAIRMAN

WHAT MAKES US DIFFERENT?



PRO BONO

Pro bono initiatives are an essential part of our work culture and a critical component of our profession. At our firm, our lawyers make the time to provide impactful legal services to non-profit entities within our communities and to employees faced with negligence claims (or other serious claims) by employers or third parties.



OUR CLIENT-CENTRIC APPROACH

We pride ourselves on delivering uncompromising quality and value. Our diverse team of legal professionals offer astute legal counsel and representation to Qatari and international entities in a wide variety of practice areas. We make sure to keep our clients up-to-date on the regulatory and legislative changes that impact their businesses.



TECHNOLOGY

At Essa Al Sulaiti Law Firm, we bring value to our clients not only through our expertise and dedication to our practice, but also through our use of smart-tech solutions that improve overall client experience and increase the efficiency of our service.



ETHICAL & PROFESSIONAL OBLIGATIONS UPHELD

We are unified in our commitment to upholding our ethical and professional obligations towards our clients, legal team, community and marketplace. To that end, we carefully assess all incoming tasks to ensure that there are no ethical concerns or conflicts of interest involved; we immediately disengage under such circumstances.

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