

LEXIS MIDDLE EAST LAW ALERT

تشريعات الشرق الاوسط

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New Kuwaiti Advertising Regulations

PROFILE HEALTHCARE

Robin Singh of Abu Dhabi Health Services Company (SEHA)

CONTRACT WATCH

Derivative Contracts

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

THE PATH TO PRIVATISATION

Saudi Arabian Privatisation Law Implementing Regulations



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PRIVATISATION ROUTES

It is clear when you look at the strategic roadmaps to economic diversification which have been issued by the various GCC countries, including Saudi Arabia's Vision 2030, not only how wide ranging these plans are, but also how ambitious they are. All the GCC countries are looking to both develop existing industries and become leaders in innovative and emerging sectors. One example of this is the way Saudi Arabia has recently issued legislation which it hopes will enable it to become a world leader in the emerging eSports and gaming industry which we cover in this issue.

However, the GCC countries are also realistic. These ambitious plans will not be achieved without the support of the private sector through public private partnerships and privatisation. In the past public private partnerships and privatisation were often dealt with in project or sector legislation. However, more recently it has been felt more sophisticated legislative frameworks which take a more global approach are also required to ensure this area can be properly and consistently managed.

As a result, in 2021 Saudi Arabia issued a privatisation law (Saudi Arabia Cabinet Decision No. 436/1442).

There is also now a National Centre for Privatisation & PPP. In this issue we look at one of the most recent steps on Saudi Arabia's road to privatisation - the issue of the Implementing Regulations (Saudi Arabia Administrative Decision No. 1/4/2023/1445) to the Privatisation Law. We also explain how the wider legislative and regulatory framework in this area operates in Saudi Arabia. Companies interested in getting more involved in PPP Projects in Saudi Arabia should check these regulations carefully to ensure their policies, technical and financial standards are taking these new legal developments into account.

Claire Melvin - Editor

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THE PATH TO PRIVATISATION

Madawi Mohammed Alfawzan of MOHAMMED ALAQEEL & Co Law Firm explains how recently issued implementing regulations and guidelines are helping to create a better path to privatisation

“Over the last twenty years there has been a significant acceleration in and implementation of Public Private Partnerships (PPP) projects in Saudi

Arabia,” states Madawi Mohammed Alfawzan. “Even before the National Centre for Privatisation & PPP (NCP) was established in 2017 as part of Saudi Vision 2030 and the Privatisation Law (Saudi Arabia Cabinet Decision No. 436/1442) was issued in 2021, several successful PPP infrastructure projects had been initiated under specific Royal Decrees or the Government Tenders and Procurement Law (Saudi Arabia Cabinet Decision No. 649/1440).”

“For example, since the National Water Company, (a Saudi Joint-Stock Company (JSC) wholly owned by the Public Investment Fund (PIF)) was established in 2008 water station services and distribution networks have been opened up to the private sector,” Alfawzan adds. “However, as the use of this approach has expanded into most vital sectors, it has been seen necessary to change the legal framework for PPP projects. The latest of these legal changes took

place in February 2024 when the Privatisation Law’s Implementing Regulations (Saudi Arabia Administrative Decision No. 1/4/2023/1445) were issued.”



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HOW DO PPP PROJECTS WORK?

“PPP projects are directly related to state law, funds, and assets,” Alfawzan explains. “Therefore, PPP divestment is facilitated through a contractual arrangement which aims to ease the transfer of businesses from the public to the private sector and unlock state-owned assets for investment, so they are available to the private sector.”

“In Saudi Arabia Private Sector Participation projects are typically tendered through an open competitive tendering process which follows the criteria set for PPP contracts,” Alfawzan continues.

“These include having a limited contractual period of no less than five years and no more than 30 years, a minimum divestment asset value of 50 million Riyals and a 200 million Riyal minimum project value. PPP contracts can also include other requirements such as the qualitative and quantitative allocation of risks between the government and private sector party.”



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HOW DO THE IMPLEMENTING REGULATIONS FIT IN?

“The Implementing Regulations (Saudi Arabia Administrative Decision No. 1/4/2023/1445) are an important component in the Private Sector Participation framework which also includes the Privatisation Law (Saudi Arabia Cabinet Decision No. 436/1442), its Governing Rules, and the NCP Regulation. These create the Privatisation Programme 2030 framework,” Alfawzan states. “The way these laws work is also affected by a number of other laws, covering areas such as Government Tenders and Procurement, Eminent Domain and Temporary Taking of Property, State Leasing of Real Property, the Civil Service, Foreign Investment, Arbitration Rules in Privatization), Rules Governing Employees in Sectors Targeted for Transformation and PPP and the Labour Law (Saudi Arabia Cabinet Decision No. 219/1426). For example, under Saudi Arabia Cabinet Decision No. 219/1426 it is permissible, with the approval of the Ministry of Human Resources and Social Development, to exclude some provisions regulating employees, including some of those Saudization percentage, contracts terms and termination, where an alternative provision has been developed along with the NCP.”

RELEVANT LEGISLATION

Article 3(3) of Saudi Arabia Administrative Decision No. 1/4/2023/1445

The minimum threshold for a public-private partnership project shall be 200 Million Riyals, based on the total expected nominal value over the project duration as estimated by the implementing entity after calculating each of the following elements independently and achieving the minimum threshold in any of them:

- a. Capital and operational expenditures, in addition to government-owned assets for which any rights are granted to the private sector, including transfer of ownership, if any.
- b. Contingent financial obligations on the state public treasury.
- c. Financial revenues expected to be obtained by the Government.

(Source: Lexis Middle East Law).

“Saudi Arabia Administrative Decision No. 1/4/2023/1445 has amended the previous law on this subject Saudi Arabia Administrative Decision No. Q9/2021/1443,” Alfawzan continues. “Article 23 of Saudi Arabia Administrative Decision No. 1/4/2023/1445 has also brought in changes to Saudi Arabia Cabinet Decision No. 55/1442 On the Rules of the Supervisory Committees for the Sectors Targeted for Privatisation and Their Tasks. However, guidelines

brought in by Saudi Arabia Cabinet Decision No. 114/1443 on Privatisation have remained unchanged.”

MAIN CHANGES

“The most significant change in the PPP project Guidelines has been the reduction in the preparation period for Governmental bodies to develop a target sector plan from 24 months to 13 months,” states Alfawzan. “While the most significant changes to the implementing regulations involve the procedures for studying projects and the mechanisms for approving them. For example, there are now provisions on the assessment of the functional impact of PPP projects on government employees involved in the project which include determining the regulatory requirements and procedures government employee must follow. In addition, the economic, social, and environmental aspects of these projects also have to be studied.”

“However, these changes have not impacted alter the contractual arrangements or elements of privatisation contracts.”

“Saudi Arabia Administrative Decision No. 1/4/2023/1445 also stipulates eleven methods which can be used for Partnerships of this type,” Alfawzan states. “These include but are not limited to; Construction-Operation-Transfer (BOT), Build-Own-Operate (BOO), Build-Own-Operate-Transfer (BOOT), Design-Build-Operate (DBO), Design-Construction-Financing-Operation (DBFO), or any other method that meets the definition of PPP and has been approved by the Competent Authority.”

“With PPP projects there are some contracts which require a PSP Project Company (SPV) to be established so that it is the private party in the privatization contract or the contract affiliated with,” Alfawzan continues. “Without prejudice to provisions in the new Companies Law and the PPP contract between the parties, Saudi Arabia Administrative Decision No. 1/4/2023/1445 has also specified special provisions which regulate the ownership and management of the SPV company during the PPP contract term, so it is not possible to sell or mortgage shares, modify partners’ shares, merge, divide, or acquire, have new partners enter, or transfer ownership by assignment or sale, except with prior approval from the Competent Authority.”

WHO HAS BEEN IMPACTED?

“These Implementing Regulations will have a significant impact on government authorities including the NCP and the authorities specified in Saudi Arabia Cabinet Decision No. 436/1442 and related regulations which have the powers to grant necessary approvals and licenses for PPP projects,” states Alfawzan. “The Contracting Authority and Approving Authority are assigned the responsibility of studying PPP projects and finalising relevant contracts. While a Supervising Authority oversees the signing of PPP contracts valued at less than 500 million SAR per contract.”

“Meanwhile, there are provisions in these regulations on investment assets, whether they are permanent or temporary, immovable or movable, tangible or intangible, including associated rights, which will be relevant to Private Sector entities or entities involved in Private Sector Participation.”

“These amendments apply to all contracts concluded by Saudi Government bodies and Government-owned companies or those in which these bodies hold ownership more than 50% in ownership,” Alfawzan continues. “However, they do not apply to contracts which were concluded before these amendments came into force and effect unless they are appropriately amended.”

“In addition, these changes do not apply to PPP projects which had been approved before these changes were issued or the amendments came into force. These contracts are subject instead to the provisions which were in force at the time their approval was issued, unless otherwise determined by the NCP.”

DISPUTES

“Disputes arising between Private Parties and others on Private Sector Participation projects are not subject to Saudi Arabia Cabinet Decision No. 436/1442’s provisions,” states Alfawzan. “Resorting to arbitration is permissible under Cabinet Decision No. 436/1442 and according to each contract, without prejudice to statutory provisions on real disputes related to real estate within the Saudi Arabia and with the approval of the Approving Authority to include a condition for resolving matters, or from any contract related to it, through arbitration with additional controls such as specifying the governing law applicable to the subject of the dispute.”

“There have also been additional steps taken in Saudi Arabia Ministerial Decision No. 11/4/2022/1444 On the Arbitration Rules for Privatisation Contracts to enhance regulatory oversight and establish guidelines for arbitration, both within and outside Saudi Arabia, detail criteria on determining governing law and circumstances when arbitration is not permissible”

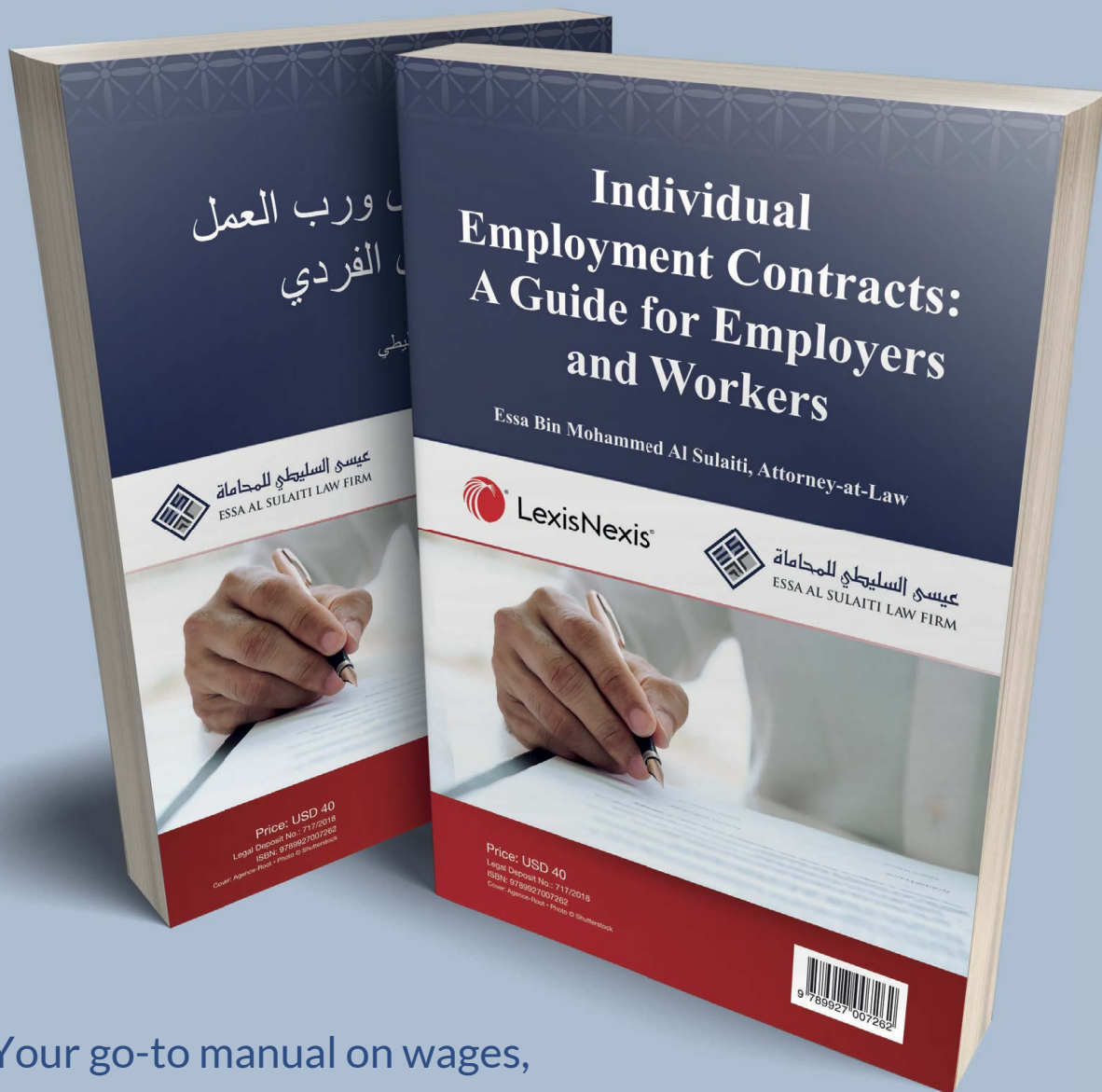
NEXT STEPS

“Companies targeting PPP projects may wish to reformulate their internal policies, and technical and financial standards so that they are consistent with the regulatory and contractual requirements in this area,” states Alfawzan.

“In addition, both foreign and local companies should keep an eye on the opportunities under tender through the investors portal (investors.ncp.gov.sa), To date there have been 100 of these in 16 different sectors. There are also a number of learning resources provided by NCP on their Knowledge Portal (ncp.gov.sa) on a range of areas including best practices in managing PPP contracts between the Public and Private Sectors which are worth watching.”

INDIVIDUAL EMPLOYMENT CONTRACTS: A GUIDE FOR EMPLOYERS AND WORKERS

BY ESSA BIN MOHAMMED AL SULAITI



- Your go-to manual on wages, end-of-service payment entitlements, employee leave, termination, and much more
- A must-have reference for Employment Law lawyers and in-house counsel in Qatar


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LEGAL ROUND-UP


COVERING RECENT KEY LEGAL DEVELOPMENTS – REGION-WIDE

DIFC

DIGITAL ASSETS LAW

 The DIFC has issued a new Digital Assets Law (DIFC Law No. 2/2024). The law defines digital assets as something that exists as a notional quantity unit manifested by the combination of the active operation of software by a network of participants and network-instantiated data, independently of any particular person and legal system and something that is not capable of duplication and use or consumption of the thing by one person or specific group of persons necessarily prejudices the use or consumption of that thing by one or more other persons. It is characterised as intangible property and is neither a thing in possession nor a thing in action. The law explains who will be considered as controlling digital assets and how they will control them. There are also general rules on title, transfer of title and the exercise of rights over digital assets in the event of death, incapacity or insolvency. Control of a digital asset where there is impairment is also covered along with how control of a digital asset can be recovered. The publishing of the Digital assets law has also led to amendments of a number of different DIFC laws including the Contract Law 2004 (DIFC Law No. 6/2004), the Implied Terms in Contracts and Unfair Terms Law 2005 (DIFC Law No. 6/2005), the Law of Damages and Remedies (DIFC Law No. 7/2005), the Law of Obligations (DIFC Law No. 5/2005), the Trust Law (DIFC Law No. 4/2018), the Foundations Law (DIFC Law No. 3/2018), the Personal Property Law (DIFC Law No. 9/2005) and the Insolvency Law (DIFC Law No. 1/2019).

SECURITY LAW

 A new Security Law (DIFC Law No. 4/2024) has also been issued in the DIFC which repeals and replaces DIFC Law No. 8/2005. The new Law is largely based on the UNCITRAL Model Law on Secured Transactions which was issued in 2016. The changes have been brought in, in part, because of rapid developments in international trade and financial markets

because of technological developments. However, the new law also includes additional provisions which are designed to make the new security law regime work efficiently within the DIFC's legal framework and with its new Digital Assets Law. DIFC Law No. 4/2024 regulates security creation and perfection over movable assets and fixtures. It also covers the key aspects applicable to security interests such as the rules of creation, effectiveness against third parties, priorities and rights and obligations of third parties.


DUBAI

INVESTMENT PLATFORM

 Dubai Administrative Decision No. 5/2024 On Adopting the Principles Facilitating the Investor's Journey in the Emirate of Dubai and Dubai Decree No. 13/2024 On Creating a Unified Digital Window for Establishing Companies in the Emirate of Dubai have been issued. As a result, a new Unified Digital Platform (called the Invest in Dubai Platform) is being established which will make it easier for new companies to set up in Dubai. As a result, various licensing processes in Dubai including those managed by the Economy and Tourism Department and the special development zone and freezone authorities, including the DIFC will be integrated in the new system. In addition, other services involving economic activities will also be available via this route. The Economy and Tourism Department will be responsible for operating, managing and developing the new platform. There will also be a Guide which will explain the procedures, requirements, timelines and fees which will apply when requesting licenses and permits via this route.


SAUDI ARABIA

VOCATIONAL TRAINING

 Saudi Arabia Cabinet Decision No. 691/1445 On the Approval of two regulations for Non-Governmental Social

and Vocational Programmes for Persons with Disabilities. The law repeals and replaces Saudi Arabia Cabinet Decision No. 34/1400 and Saudi Arabia Cabinet Decision No. 291/1433. When the Technical and Vocational Training Corporation is approving training programmes for Persons with Disabilities, these have to be adapted to suit their special needs in coordination with the Ministry of Human Resources and Social Development. Those currently running these programmes have to submit to the Ministry of Human Resources and Social Development a plan to adjust them to meet the new requirements within a maximum of six months from the entry into force of the two Regulations. The Vocational Programmes will not be longer than three years and will be targeted at those between 15 and 45. The Ministry will be able to enter into strategic partnerships with relevant government authorities and the non-governmental sector to provide these Vocational Programmes. People with Disabilities will also have the right to benefit from existing strategic partnerships for training that end or begin with employment between the relevant government authorities and non-governmental sector.

E-STORES

 The Saudi Arabian Commerce Ministry has launched an initiative to assess e-stores with artificial intelligence. Eleven consumer standards have been set which include displaying the commercial registry number, necessary licences and the tax number on the e-store homepage. The store link must also be included in the registry and the Saudi Business Centre platform. In addition, e-stores need to have policies on protecting consumer data and privacy, on replacements, returns and refunds, shipping and deliveries as well as dealing with customer complaints and suggestions. E-store websites will be expected to be secure and of a high quality when it comes to speed and ease of use. They will also need to have an HTTPS link with cybersecurity protection.


There will also be checks that e-stores have paid all fines they have been levied.

OMAN

NEW BUILDING CODES

 Oman's Housing and Urban Planning Ministry has signed a cooperation agreement with the International Code Council to draft new building codes which will apply in Oman. As a result six comprehensive building codes will be drafted and will cover a range of areas including safety standards, sustainability, and technology integration. The new Codes will be based on 2021 and 2024 International Codes. It is hoped this work will be completed by 2026.

UNIFIED ADDRESSING SYSTEM

 Oman's Housing and Urban Planning Minister has issued unified addressing system regulations. As a result a geographic description identifying the location of a specific place will be included under Oman Ministerial Decision No. 200/2024. The regulations also cover naming and numbering of neighbourhoods, streets, roads, public squares, residences and facilities. It will be illegal to change or modify the use of approved address data. In addition, the property owner will have to place address plates on their building, residential or commercial complex and internal units. Place names will have to be written in Arabic and if names are written in Latin script, they will have to be transcribed literally and alphabetically from the Arabic based on a method set by the relevant authority.

QATAR

PARTIAL PAYMENT


 An amendment to the Qatari Commercial Transactions Law (Article 585 of Qatar Law No. 27/2006) as a result of Qatar Law No. 1/2024 means that even if a cheque issuer has only part of the amount stated on a cheque as their available funds, those available funds must be paid to the cheque holder. However, the cheque holder is still required to consent to that partial payment.

FOOD SAFETY

 Five new e-services have been launched on the Watheq food safety system. The new e-services include an inspection service of food consignments for export, an inspection service of food consignment for re-export, requests for food export certificates, requests for food re-export certificates and requests for certificate verification.


BAHRAIN

SMALL VESSELS

 Bahraini MPs are to consider amendments to the Small Vessel Regulations which if approved would see changes to Bahrain Decree-Law No. 3/2020. As a result comprehensive licensing and navigation regulations would be introduced for vessels of this type. In addition penalties would increase and offenders could potentially be jailed for up to a year and/or fined up to 1,500 Dinars for violations of these Regulations. These penalties would be imposed on ship captains who were found to be operating a vessel without having a proper licence, ship owners who embarked on voyages without a specific navigation licence and those who ignored prohibition orders or failed to comply with the relevant legal requirements.

TURKEY

DATA PROTECTION

 Amendments to the Turkish Data Protection Law (Turkey Law No, 6698/2016) are expected to come into force on 1 June 2024. The amendments were approved on 2 March 2024, and are awaiting Presidential approval. The changes include new mechanisms for cross border transfers of personal data. The Turkish Personal Data Protection Authority is also expected to publish standard contractual clauses and provide guidance on how these new mechanisms will work together with the existing transfer approaches.

REGULATORY ROUND-UP

Bahrain: Those making residency applications can now do so via the national Bahrain.bh e-government portal...

Oman: A regulatory framework for smart cities is expected to be finalised this year...

Saudi Arabia: A 35% Saudisation rate is to be enforced in the dental profession on employers with three or more employees...

DIFC: Article 65 of DIFC Law No. 2/2019 which covers core benefit contributions to Qualifying Schemes has been amended...

Jordan: Citizens in registration directorates where an administrative value has been determined on properties can review this on the Department of Lands website and submit an objection or request to it be reconsidered...

ADGM: A consultation on a new comprehensive whistleblowing framework ends on 30 April 2024...

Egypt: Egypt's Central Bank has issued a Decision ordering local banks to limit the use of foreign currency credit cards...

Egypt: Egypt's Financial Regulatory Authority has issued rules for registering and deregistering carbon emission reduction certificates on Egyptian stock exchanges...

Bahrain: The Shoura Council will consider a draft Artificial Intelligence Law at its next session...

Kuwait: Jordan and Kuwait are to enact a cooperation agreement to establish and manage industrial zones...

Dubai: The Dubai Roads and Transport Authority has approved a guide non-objection certificates for infrastructure projects...

Sharjah: Sharjah's Executive Council has approved a draft law regulating property leasing there....

DFSA: A consultation on the DFSA fees which will see changes to the FER and GEN Rulebooks is scheduled to end on 15 May 2024...

Saudi Arabia: The Saudi Capital Market Authority has launched a consultation on free float trading so large shareholders can float additional shares in a regulated process...

Jordan: 2018 vehicles scheduled to arrive at the Aqaba port before 31 December 2023 which faced shipping delays will be exempt from an export ban on cars manufactured over five before the clearance year...

LAW MONITOR

RECENT LEGAL DEVELOPMENTS IN THE GCC

QATAR - SPECIAL NEEDS



The Qatari Cabinet has approved a draft law for individuals with special needs which has now been referred to the Shoura Council to consider. If approved, it will repeal and replace Qatar Law No. 2/2004 on individuals with special needs. The new law will ensure individuals with special needs can fully and effectively participate in society. It will enable them to exercise their human rights and fundamental freedoms in the same way others do. Discrimination on the grounds of or because of disability will be forbidden. There will also be a focus on providing equal opportunities both to those with and without special needs.

KUWAIT - DATA PRIVACY



New Data Privacy Protection Regulations Kuwait Administrative Decision No. 26/2024 have been issued which repeal and replace Kuwait's previous Data Privacy Protection Regulations. Kuwait Decision No. 42/2021 which had been amended in 2023. They apply to all Service Providers, licensed by the Communication and Information Technology Regulatory Authority, who collect, process and store Personal Data and user Data content in whole or in part, whether permanently or temporarily by automated means or by any other means that forms part of a Data storage system, whether Processing takes place within of Kuwait or outside it. However, the Regulation does not apply to practices related to security investigations, monitoring of violations, or practices violating the laws, decisions, judicial rulings, or financial claims arising from the subscription contract.

GAZETTE WATCH

UAE Official Gazette No. 769-770 – These gazettes include Ministerial Decision No. 25/2024 on determining the Prices of some Medical Products.

Saudi Arabia Gazettes No. 5016 – 502 – These gazettes include Saudi Arabia Cabinet Decision No. 584/1445 approving the official communications and preservation of documents and information Regulation.

Oman Official Gazettes No. 1529 – 1537 – These Gazettes include Oman Ministerial Decision No. 34/2024 on the regulation of financial transfers for law businesses.

Qatar Official Gazettes No. 2 – 5 of 2024 – These Gazettes include Qatar Decree No. 6/2024 amending the Unified Customs Tariff.

Kuwait Official Gazettes No. 1670 – 1679 – These Gazettes include Kuwait Ministerial Decision No. 56/2024 amending Kuwait Ministerial Decision No. 957/2019 on the Implementing Regulation of the Foreign Residency Law.

(Source: Lexis Middle East Law)

SAUDI ARABIA - WHISTLEBLOWING



Saudi Arabia Cabinet Decision No. 629/1445 has been issued protecting whistleblowers, witnesses and experts in such cases. Issues include concealing the identify of these individuals and work with the court to ensure witnesses are able to testify without delay or being influenced. A special programme called the Protection Programme for Whistleblowers, Witnesses, Experts and Victims will also be established at the Public Prosecution.

BAHRAIN - LEVY



Proposed amendments to Article 3 and 6 of Bahrain Decree-Law No. 25/2015 (the Bahrain Infrastructure levy law) have been shelved. Five members of the Shoura Council had proposed new criteria for the levy be introduced. It is understood however a review of this area is being carried out.

FEATURED DEVELOPMENT

Harry Taylor of Al Tamimi & Co looks at legislative change in the Saudi eSports and Gaming industry.

Sport and eSports have been highlighted by the Saudi Authorities as priority sectors for development which led to the issuing of Saudi Arabia Cabinet Decision No. 436/1445 On the Establishment of an Authority Named Saudi Authority for eSports and Gaming. As a result, the Saudi Electronic Games and Sports Authority (SEGSA) has recently been established.

SEGSA operates as an independent entity, with its own legal personality and financial and administrative autonomy. This organisational structure will give the authority the flexibility and agility it will need to navigate a rapidly evolving sector. The new authority will be headquartered in Riyadh but has been given the power to establish branches throughout Saudi Arabia, ensuring it can support gamers across the country. Key to the strategy is 'Inviting Everyone to Play'. SEGSA's primary function will be to regulate the eSports sector, make it more competitive and attractive and address any existing challenges the sector faces.

In addition, SEGSA will propose specific new draft laws and regulations for the eSports sector, ensuring there

is a well-defined legal framework in Saudi Arabia which fosters fair play and a thriving gaming environment. The new authority is also expected to create economic opportunities which mean that Saudi Arabia will become a global hub for the gaming and eSports industry in areas including tech development and hardware, game production, eSports, and technical and physical infrastructure. The new Authority has ambitious goals including Saudi Arabia becoming the number one event host and hosting the most viewed eSports events in the world. They are also looking to encourage 250 gaming companies to incorporate in Saudi Arabia and have over 30 games created by Saudi based studios reach the Top 300 before 2031.

In addition, Saudi Arabia wants to be in the Top 3 global ranking for the number of eSports athletes per capita. SEGSA will also be actively contributing to the growth of this sector by developing comprehensive strategies, policies, and initiatives for this industry. It also aims to unlock new potential within the eSports sector.

ABU DHABI - AI



A law on the establishment of the Artificial Intelligence and Advance Technology Council (AIATC) has been issued in Abu Dhabi. Abu Dhabi Law No. 3/2024 includes definitions of what is classed as AI and Advanced Technology. The new body will be responsible for everything which relates to projects, investments and research on artificial intelligence and advanced technology in the Emirate of Abu Dhabi. It will also determine the conditions, controls, standards and regulations which will need to be applied when investing in or carrying out research in this sector.

OMAN - MEDIA




The Media, Tourism and Culture Committee in the Omani Shoura Council has been discussing a draft Information Law. The aim of the law is to support journalists, media professionals, media institutions and those operating in both conventional and newer forms of information. The law has been drafted in line with both Article 35 and 37 of the Omani Basic Law which cover areas including freedom of expression and free speech and support the freedom of the press.

TAX AND FINANCE ROUND-UP


COVERING RECENT KEY TAX AND
FINANCE DEVELOPMENTS – REGION-WIDE

UAE

CONSUMER COMPLAINTS


 The UAE Central Bank has established a new Sanadak unit to handle consumer complaints in the financial services and insurance sectors. The new unit will take over the work of the Central Bank's Consumer Protection Department and the Insurance Dispute Resolution Committee. It will act as an ombudsman and consumers will be able to file complaints with it. There will be no charge for using the service. Complaints can be filed with it if they relate to banks, exchange houses, insurance companies and brokers and other licensed financial institutions but must normally be submitted via Sanadak's website or their mobile application. However, the elderly and the disabled will also be able to submit their complaints via the Sanadak Contact Centre, or in person at the Sanadak office in Abu Dhabi. After investigating these complaints the unit will provide recommendations for resolution without the need for arbitration or litigation in the Courts of First Instance.

TAX REGISTRATION

 Corporate tax registration can now be undertaken by a range of taxpayer types, including natural persons, foreign businesses, partnerships, and free zone entities. A new penalty of 10,000 AED for late registration has been introduced for taxpayers who fail to submit their tax registration application within the specified time, which depends on their category. This new penalty came into force on 1 March 2024, and led to the mistaken belief by some that all businesses were required to register by that date. However, the correct registration deadlines vary depending on the business category (i.e. if they are resident, non-resident, or a natural person). Different dates apply for different taxpayer types. For example, in the case of resident juridical persons the deadline depends on the date their license was issued and if they have more than one license the one with the earliest


date is considered. The dates will range from 31 May 2024 to 30 November 2024. A resident juridical person without a license as of 1 March 2024, has three months to submit their application (i.e. until the end of May 2024). A resident juridical person established on or after 1 March 2024 will need to submit their application within three months from the date of incorporation or establishment. Specific rules apply to Non-Resident Juridical Persons and natural persons. From 1 June 2024, qualifying investment funds, regulated pension funds or social security funds, whether public or private and juridical persons that are owned and controlled by a government or government-controlled entity, a regulated pension or social security fund, or any other person specified by the Minister of Finance, will be able to register for Corporate Income Tax. After registering, these entities can submit an application to the FTA for their Corporate Income tax exemption. This application must be made within 60 days from the end of the financial year. If it is approved, the exemption becomes effective from the beginning of the tax period for which they applied.

GLOBAL MINIMUM TAX

 The UAE's Finance Ministry has issued a consultation on the Global Minimum Tax or Global Anti-Base Erosion Model (Pillar Two) or GloBE Rules approved by the Organisation for Economic Co-operation and Development (OECD)/G20 Inclusive Framework on Base Erosion and Profit Shifting or BEPS which ends on 10 April 2024. The Ministry wants feedback on how the GloBE Rules should be implemented in the UAE including how it will interact with the UAE's corporate income tax system, ways to minimise compliance costs and policy options for potential implementation of the GloBE Rules. The consultation covers Pillar Two implementation in the UAE and GloBE implementation, the design of a potential UAE domestic minimum top-up tax and administration matters.


DUBAI

FOREIGN BANK TAX

 Dubai Law No. 1/2024 on the taxation of Foreign Banks operating in the Emirate of Dubai has been issued. As a result, a 20% tax will be levied on the annual taxable income of all foreign banks in Dubai, including those located in special development and free zones. However, foreign banks registered in the DIFC will be exempt from this Law. If a foreign bank is subject to corporate income tax obligations under Federal Decree-Law No. 47/2022, the amount paid under that legislation is subtracted from the annual 20% rate.


DIFC

INSOLVENCY CHANGE

 There have been amendments to the DIFC Insolvency Law (DIFC Law No. 1/2019) following the issue of DIFC Amendment Law No. 3/2024. These include changes to Article 31, 46 and 133 of DIFC Law No. 1/2019 where the term 'Security Interest' has now been replaced with the term 'Security Right' which is defined in the new DIFC Security Law (DIFC Law No. 4/2024). In addition, a number of new and amended definitions have been added to the law including a definition of the term 'Digital Assets' as per the DIFC's new Digital Assets law (DIFC Law No. 2/2024). This term is also included in a new definition of the term 'property'. There is also now a new definition of Financial Collateral included which follows that term in DIFC Law No. 4/2024.


SAUDI ARABIA

PENALTY EXEMPTIONS

 Saudi Arabia's Zakat, Tax and Customs Authority (ZATCA) has reminded taxpayers that the Tax Penalty Exemptions Initiative ends on 30 June 2024. The exemption covers penalties for late registration, payments and submissions across all platforms. It also

includes penalties for correcting VAT declarations, field inspection violations involving e-invoicing and other general VAT provisions. However, it does not cover penalties related to tax evasion or those who have paid penalties before this initiative was launched. To qualify for the exemption taxpayers must be registered in the relevant system, have submitted all required declarations to the Authority and have paid outstanding amounts before the deadline. Outstanding amounts may be paid in instalments, if the request has been submitted within the period this initiative is running.

REGIONAL HQ RULES

 The Zakat, Tax and Customs Authority (ZATCA) has published Regional Headquarter Tax Rules which were enacted by the ZATCA's Board Resolution no. (9-1-24) on 4 February 2024. Regional Headquarter licensed entities are able to benefit from a number of tax incentives for 30 years from the date their RHQ license is issued. These include 0% income tax on eligible income (i.e. income from the main activities the regional headquarters is allowed to carry out in line with its regional headquarter license). In addition, withholding tax will be levied at 0% on dividend payments made by regional headquarter entities to non-residents and on payments to related persons (as defined by the Transfer Pricing Bylaws). Any income derived by a Regional Headquarter entity which is ineligible for an exemption under the Regional Headquarter Tax Rules (e.g. income from ineligible activities) will be subject to tax in line with the income tax law rules and their implementing regulations. Regional Headquarter entities will also be able to benefit from double tax avoidance treaties to which Saudi Arabia is a party to, as they are deemed to be Saudi residents.

QATAR

GOVERNANCE AND CONTROLLED FUNCTIONS

 The Qatar Financial Centre Regulatory Authority (QFCRA) has issued a consultation on amendments to its Governance and Controlled Functions Rules 2020 which will end on 6 June 2024. If approved, there will be new rules within

TAX TREATY UPDATE

Qatar: Qatar has signed a double taxation avoidance treaty with Estonia.

Bahrain: Bahrain has signed a double taxation avoidance treaty with Hong Kong.


UAE: A double taxation agreement between the UAE and Guyana has been signed.

Egypt: Egypt's Foreign Minister and the UAE Minister of State for Financial Affairs have signed a double taxation avoidance treaty.

these Rules addressing the growing level of and complexity of operational risks facing authorised firms. There will also be a greater regulatory focus on their operational resilience in the event of disruptions. The specific rules on a firm's risk management framework will also be clarified, simplified and centralised. In addition, the Sharia Supervisory Board requirements found in the Islamic Banking Business Prudential Rules 2015 which duplicate the Sharia Supervisory Board requirements in the Governance and Controlled Functions Rules will also be removed. It is currently expected these changes will come into force on 1 July 2025.


OMAN

BANK ASSETS AND LIABILITIES

 Oman's Central Bank has issued a Decision Oman Central Bank Decision No. MM/201/06/23/22/2024 which amends Oman Regulation No. 20/09/1980. Under the Decision banks must submit statements of their assets and liabilities, including a profit and loss account and details of all their operations and branches within Oman, within their annual budget. These must be reviewed by independent auditors during the first quarter of each year. Local banks must electronically display a summary statement dating back to 31 December the previous year throughout March via the channel they conduct banking business through.

JORDAN

FINANCIAL SERVICES

 The Board of Commissioners of Jordan's Securities Commission has asked financial services companies licensed to deal in foreign stock

exchanges to provide all agreements, annexes, declarations, bulletins, the contents of their websites, and any circulars or bulletins they issue in Arabic. This requirement has been included in a new Decision. These entities should also inform their customers immediately via the contact numbers they have specified, via e-mail and any other means of communication approved by the customer of any amendment to the agreements or policies which the company follows. Details of such amendments must also be published on the company's website and they must also check that any amendments to their agreements or policies comply with the Securities Law and the Law Regulating Dealing in Foreign Stock Exchanges.

EGYPT

ACCOUNTING STANDARDS

 Egypt's Financial Regulatory Authority has announced an update to accounting standards which are applicable there. The changes have included the introduction of a revaluation model for fixed and intangible assets and a fair value model for real estate investments. The Authority has also announced its intention to issue Egyptian accounting standards on the financial evaluation of establishments. It is also currently working on implementing the law on the use of technology in non-banking financial activities.

TRADE TREASURY BILLS

 The Egyptian Exchange has proposed allowing individuals to trade treasury bills in the secondary market there. This type of trading was allowed in October 2023 and since then there has been a spike in interest in it. The proposals will be submitted to the Financial Regulatory Authority.

FOCUS ON ADVERTISING

How have new regulations on advertising in Kuwait changed the way businesses can promote their products? Noura Al-Yaqout of Al Yaqout and Al Fouzan Legal Group look at the key changes.

“At the start of 2024 new advertising regulations Kuwait Ministerial Decision No. 599/2024 were issued, replacing the previous regulations on this subject, Kuwait Ministerial Decision No. 172/2006,” states Noura Al-Yaqout. “The key changes in these regulations are aimed at refining what is defined as advertising to better reflect the way this sector now operates. In recent years advertising has changed dramatically and it is a dynamic industry. Therefore, the authorities in Kuwait felt what was needed was a contemporary and comprehensive regulatory structure and a legal framework which aligned with this sectors’ evolving demands.”

WHAT IS ADVERTISING?

“A significant difference between Kuwait Ministerial Decision No. 599/2024 and the previous Kuwaiti advertising regulations is the way ‘Advertising’ is defined,” states Noura Al-Yaqout. “Previously this was defined very broadly but Article 1 of Kuwait Ministerial Decision No. 599/2024 now confirms it covers, ‘Every means whose purpose is to inform all or a group of people about a commodity, service, industrial or commercial product, or device, whether writing, drawing, an image, sound, light, or other means of expression are used for that purpose, and whether the Advertisement is made of wood, metal, paper,

cloth, plastic, glass, or any other materials used for this purpose.”

“Article 1 of Kuwait Ministerial Decision No. 599/2024 then introduces a number of different types of advertisement each with their own specific definition which are namely - Commercial Advertisements, Informative Advertisements, Temporary Seasonal Advertisements, and Event Advertisements. There are very specific requirements and restrictions for each of these different types of advertising, including where they can be located, their size, what happens if they are electronic advertisements, materials they need to be made from and if they need to be lit in a specific way.”

LICENSING

“Kuwait Ministerial Decision No. 599/2024 has also modernised the approach to the licensing of advertisements,” states Noura Al-Yaqout. “Under Article 3 of Kuwait Ministerial Decision No. 599/2024



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advertisements cannot be placed by any means until a license has been obtained from the Municipality and the necessary fees have to be paid.”

“These licenses specify the trade name; activity; type of Advertisement, its location, the valid period; name of its beneficiary, and fees which need to be paid,” Noura Al-Yaqout continues. “No one apart from the licensee can use the license. If the licensee fails to comply with the Municipality’s conditions the license is revoked.”

“However, Article 4 of Kuwait Ministerial Decision No. 599/2024 has modernised the way these licenses can be applied for and renewed as this can now be done electronically,” Noura Al-Yaqout adds. “It should also be noted if the Municipality decides to revoke a license the license holder cannot claim compensation from them.”

OTHER MUNICIPALITY POWERS

“The Municipality also has the power to specify, in a Licence, the location and size of the Advertisement and conditions and specifications that need to be met,” Noura Al-Yaqout states. “It is also not possible for the license holder to make changes to the Advertisement without the Municipality’s approval.”

“Article 9 of Kuwait Ministerial Decision No. 599/2024 also gives the Director-General of the Municipality the power to adjust these conditions and specifications after consulting the relevant entities and committees” Noura Al-Yaqout continues. “In addition, under Article 9 the Municipality’s executive function must specify advertising locations that are used for non-commercial purposes such as ministry projects and awareness campaigns.”

PROHIBITIONS AND RESTRICTIONS

“The previous Advertising Regulations included a number of prohibitions, for example advertisements that conflicted with Islamic Sharia, or were contrary to public order, or morals, or contained inaccurate information were prohibited. These prohibitions have been continued,” states Noura Al-Yaqout. “There are also a number of new prohibitions in Article 10 of Kuwait Ministerial Decision No. 599/2024. For example, the placement of images of the Emir and Crown Prince on public billboards is expressly prohibited, except



during designated periods such as the Kuwaiti National and Liberation Day. It should also be noted when it comes to responsibility for advertisements both the advertiser and their advertising client are responsible for the content. In addition under Article 6 of



Noura Al-Yaqout
Associate
Al Yaqout & Al
Fouzan

Kuwait Ministerial Decision No. 599/2024, the advertisement licensee must ensure not only the accuracy of the data in the advertisement, but are also responsible for any trademark(s) used in an advertisement. This is an important in terms of protecting intellectual property rights, as there is recourse against trademark infringers through financial penalties which are stipulated under the Regulations. It is also possible to ask the Municipality to use its authority to remove any advertisements which breach these requirements.”

“The old regulations included certain restrictions on advertising specific types of goods and services such as cigarettes and related products, medicines and health-related devices, which the new regulations also have but have built on,” Noura Al-Yaqout explains. “For example, Kuwait Ministerial Decision No. 599/2024 explicitly prohibits advertising of medical operations without prior permission from the Ministry of Health. In addition, content with a negative societal impact, such violent, fear-inducing and bullying material is not allowed. The Director General of the Municipality also has the authority to prohibit additional goods, products, or services beyond these stipulated categories at the request of relevant authorities.”

LANGUAGE

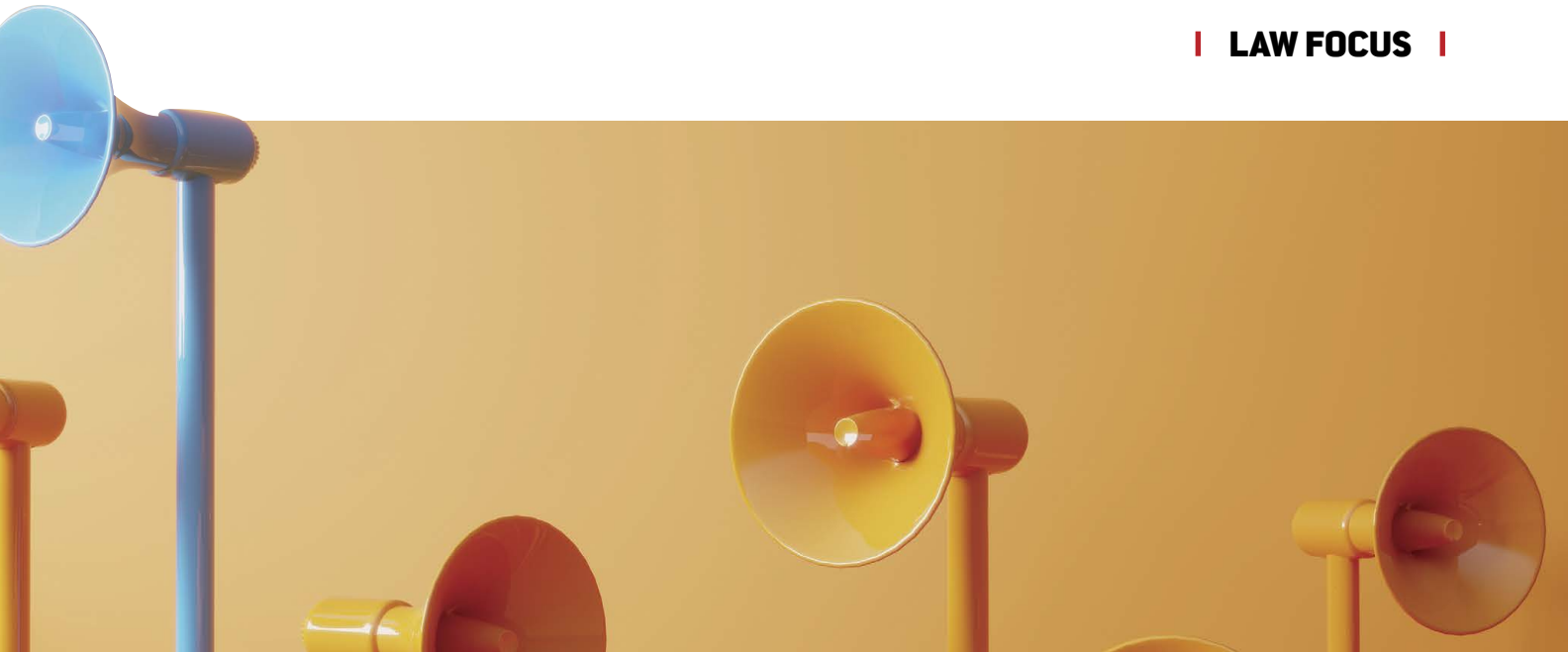
“It is also important to note that Arabic must be the language of any advertisement,” Noura Al-Yaqout states. “However, it is possible for a corresponding foreign language as well as trademarks and commercial agencies to be added to the Advertisement, as long as the owners of the trademarks and commercial agencies agree, and it is part of the activity except in the case of a commercial Advertisement.”

RELEVANT LEGISLATION

Article 14 of Kuwait Ministerial Decision No. 599/2024

The licence shall be placed in a prominent place or file in the store, or as determined by the Municipality, and presented to the Municipality employees charged with implementing the provisions of this Decision whenever they request it or according to the procedures prescribed by the Municipality

(Source: Lexis Middle East Law)



© Getty images/Stockphoto

FINES

“Under Article 21 of Kuwait Ministerial Decision No. 599/2024 notwithstanding any harsher penalty available under another law a fine of between 100 and 500 Dinars are imposed on anyone who does not make an introductory Advertisement for the activity, does not place their Advertisement licence in a prominent place or place decided by the Municipality, fails to carry out maintenance of the Advertisement or who creates an Advertisement which violates the approval granted by the Municipality. In addition, anyone who violates the Regulations in any other way can be fined between 500 and 5000 Dinars.”

“The Municipality can also accept a settlement from offenders if the fine is less than 500 Dinars. In this case the Municipality officer must draw up the report, after confronting the offender on the violation.”

“They are then offered a settlement and this is recorded in the report. If the offender wants to accept a settlement they then have to pay, within 30 days from when the settlement is presented to them, the minimum fine for the violation along with fees and expenses due to the Municipality.”

ENFORCEMENT

“Another significant change between the old and new regulations has been on enforcement,” Noura Al-Yaqout explains.

“Under Article 23 of Kuwait Ministerial Decision No. 599/2024 the Municipality can remove a violating Advertisement, confiscate materials used in it, withdraw an Advertisement licence permanently or for a specific period, especially if an Advertisement violates the rules spacing between billboards. They can also correct any violation, restore things to their original state, and require there to be permanent closure of the Advertisement after two warnings.”

“Under the Old Advertising Regulations, in order for corrective measures or penalties to be put in place, a court order was first needed which had to find that relevant conduct had violated Article 23 of Kuwait Ministerial Decision No. 172/2006.”

“The Municipality also had limited authority to remove

violating advertisements under Article 13 of Kuwait Ministerial Decision No. 172/2006.”

PRACTICAL CHANGES FOR ADVERTISERS

“Advertising Professionals in Kuwait will now need to navigate a much more detailed and structured regulatory framework,” Noura Al-Yaqout explains.

“Kuwait Ministerial Decision No. 599/2024 has brought in new mediums and different platforms, and set out the requirements on specifications and licenses in much more detail.”

“There is also now a new approach to licensing fees, which are determined based on the size, type and location of the advertisement. This means advertising professionals will need to carefully consider the financial implications of these new regulations on both their existing and future advertisements.”

“It is also important for advertisers to be aware there are other Kuwaiti laws and regulations which may also impact them,” Noura Al-Yaqout continues.

“These include Kuwait Ministerial Decision No. 87/2022 On the Controls and Regulations Governing the Process of Medical Advertisements in the Private Sector’, Kuwait Ministerial Decision No. 991/2022 On ‘the Regulation of Commercial Advertisements in the Publications of the Ministry of Information’, Kuwait Ministerial Decision No. 992/2022 On the Regulation of Television of Advertisements and Kuwait Ministerial Decision No. 993/2022 On the Regulation of Radio Advertisement.”

“Kuwait Ministerial Decision No. 599/2024 has taken a different approach to its predecessor, by providing a more structured and detailed set of regulations which apply to each distinct activity or industry. Their overall objective is to safeguard consumers from potentially misleading or confusing advertisements which could lead them to make ill-informed decisions and protect the public from eye-sores or public hazards which could result from inappropriate or ill-placed advertising. Hopefully these regulations will achieve this and help ensure there is fair competition between businesses as a result of the greater review and approval of advertisements which should ensure accuracy and uniformity.”

CASE FOCUS

Case No Nureen v (1) Nikir (2) Niplu, DIFC Case No. 298/2023

Jurisdiction DIFC

Court DIFC Small Claims Tribunal

Recommended by Nojoud Abdul Aziz

WHAT IS IT ABOUT?

The claimant, a company registered and located in Abu Dhabi was to acquire a 50% share in another company from the second defendant (registered in Dubai) who owned that company. As a result a letter of intent was signed on 11 April 2022. The claimant argued this letter of intent implied that if the negotiations were not finalised within 90 days, certain conditions within this agreement would not apply. The defendants exceeded this time limit. On 6 October 2022, the plaintiff notified the defendants of their decision to cease negotiations and requested 2,000,000 AED they had paid under the letter of intent be returned. The defendants argued the full payment was unconditional but they refunded the claimant 1,700,000 AED anyway. They stated this was in good faith and due to duress and not because the claimant was entitled to any money. They claimed that the request for the refund contradicted the agreement that the investment was made without conditions. The plaintiff filed a claim seeking payment of the outstanding AED 300,000, plus interest as deemed appropriate by the court, and costs. The defendants argued that due to the plaintiff's actions, they had suffered a loss of income of AED 500,000, missed opportunities and had incurred subsequent damages. However, they failed to provide evidence to support their claim. Paragraph 2 of the Letter of Intent stated 'the parties shall use reasonable diligence to commence good faith negotiations in order to execute and deliver the definitive agreements (including a shares and purchase agreement) which will set out the terms and conditions concerning the transaction'. While Paragraph 4 stated 'the provisions of this letter will terminate and cease to have force and effect (except for any antecedent breach) on the earlier of (i) the date of execution of the Definitive Agreement, and (ii) 90 days from the Effective date'. The Claimant

stated it was an implied term of the Letter of Intent that if the Parties failed to negotiate and execute the Definitive Agreement resulting in the termination of the Letter of Intent, the Defendants would have to return the Claimant's initial investment in full upon termination, which was AED 2,000,000. The Claimant stated the Defendants knew and/or it was obvious at all material times, that in order to give business efficacy to the Letter of Intent, the proposed share acquisition was conditional on the execution of the Definitive Agreement (a share purchase agreement) within a 90-day period. They stated it was known and/or obvious that a failure to execute a share purchase agreement would result in the termination of the Letter of Intent and the Defendants having to repay the AED 2,000,000 in its entirety. The parties had signed the Letter of Intent on 11 April 2022 (which was the effective date). They had 90 days from 11 April 2022 to 10 July 2022, to negotiate and execute the Definitive Agreement. The claimant said in exercising all reasonable diligence and good faith, they had allowed the negotiations to continue beyond 10 July 2022 but on 6 October 2022 they wrote to the Defendants confirming that after a review of the financial documentation, they no longer wished to continue the negotiations or proceed with share acquisition so they were requesting the refund. The Defendants stated that the payment of AED 4,000,000 was unconditional and the parties had agreed in subsequent discussions that there was no need to enter into the Definitive Agreement in order to cement the Claimant's payment obligations under the Letter of Intent. Therefore, the terms of the Letter of Intent had been varied through the parties' conduct. Negotiations had also continued after the deadline.

WHAT WAS DECIDED?

The Court ruled that since the defendants had accepted the termination of the letter of intent and agreed to refund an amount, they were obliged to return the entire AED 2,000,000. They had only refunded AED 1,700,000, so the claimant was entitled to the remaining AED 300,000, and 9% annual interest

from the judgment date until full payment, as well as the claimant's court fees. The Court dismissed the defendants' counterclaim as they had not provided any evidence for the amount they claimed.

WHY IS THIS IMPORTANT

Where there is a letter of intent which is to be followed by a final agreement this case shows the importance of signing that final agreement. Even with letters of intent it can be helpful to explicitly spell out consequences of a breach, especially where a term requires action within a specific time limit. The fact negotiations continue after a time limit will not necessarily mean that condition is irrelevant. Here the defendants had also accepted the termination when it came and had actually made a payment to the claimant after this. There was no clear evidence why the defendants had not paid back the full amount so partial payment was not acceptable.

Case No ... Vision Construction LLC v Banque Misr UAE, DIFC Case No. 049/2022
Jurisdiction DIFC
Court DIFC Court of First Instance
Recommended by M&Co Legal

WHAT IS IT ABOUT?

The Claimant Vision Construction LLC was a limited liability company registered and incorporated in onshore Dubai. The Defendant **Banque Misr UAE** was a branch of a foreign bank operating in onshore Dubai. Through the bank with which they had two accounts Vision invested in Egyptian Government Treasury Bills. Before the maturity date, they instructed the Bank to redeem the Bills early. They claimed the bank delayed paying the redemption amount causing them loss so they filed a Claim against the Bank before the DIFC Court of First Instance in July 2022. Under the Court's Case Management Order, the trial was initially meant to take place on 28 and 29 November 2023. However, at a pre-trial review the Judge ordered the trial dates be vacated. The Defendant stated that the trial dates had been lost, and the Claim had failed to proceed because the Claimant had failed to comply with case management orders and engage with/or proceed with the Claim. By an application notice of 3 October 2023, the Defendant applied for orders that the Claim be struck out under DIFC Court Rule 4.16 and dismissed; and a sanction be imposed on the Claimant under DIFC Court Rule 26.8. In the lead up to the Case Management Conference (CMC) which was ultimately held on 9 March 2023, there had been a number of delays and postponements by Vision. These had included delays on their legal representatives' Part II registration with the Court and delays in filing required CMC documents. After the CMC, delays continued as Vision filed submissions out of time, failed to confer with the Bank in order to agree a revised List of Issues, failed to respond to correspondence from the Bank's

lawyers and, perhaps most seriously, did not make standard production of documents as required by the Court's case management directives.

WHAT WAS DECIDED?

Although the Court agreed Vision's conduct had amounted to an abuse of process, it was not prepared to go as far as striking out the Claim. The Court had the power to strike out claims based on the non-compliance of a Court order but it should always exercise extreme caution when considering doing this. Striking out should only occur in 'clear and obvious cases' or where 'undue prejudice' was caused to an innocent party. With reference to *Denton v TH White Ltd*, various stages needed to be assessed whether the failure to comply with the Court's case management directives was 'serious and significant' including the reason why the default occurred; and the particular circumstances of the case.

A breach of case management directives (and in particular, Vision's failure to make standard production of documents) was serious and significant, and they had provided no adequate explanation for the breach. However, the Court was not persuaded that the Claim should be struck out. The bank had failed to show how it was unduly prejudiced by the Claim having been delayed and it was not proactive in seeking assistance from the Court to compel compliance with the case management directives or attempt to progress the Claim itself.













In line with the 'proper use' identified in *First Middle East Distribution DMCC v Orange Chameleon Ltd*, although it was clear Vision had delayed in progressing their Claim, the Court was not persuaded they intended 'never to conclude it' or see it through to trial. Instead, the Court decided to compel Vision to comply with the case management directives as they had undertaken to do so in a timely way. If they failed again to comply with the Court orders, the Court stated they may issue an order striking out the Claim as Vision would be unable at that stage, to say they had not been warned of the consequences. The Court awarded the Bank its costs for the Application, on an indemnity basis as they had had to bring the Application because of Vision's conduct. The Court held it would not 'tolerate a party disregarding case management orders'.

WHY WAS IT IMPORTANT?

This case shows the Court will be very reluctant to strike out claims even where a defaulting party has failed to comply with the Court's orders. In deciding whether a claim should be struck out, the Court will always weigh up the prejudice suffered by the innocent party and proportionality. However, even if a claim is not struck out, the Court may still find that the defaulting party's conduct is an abuse of process and even if an innocent party's strike out application is dismissed, the Court may still order the defaulting party pays their costs on an indemnity basis.

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IN-HOUSE PROFILE

HEAD OF REGULATORY AFFAIRS AND PRIVACY – HEALTH CARE



Tech, law and healthcare

With technology playing a greater role in healthcare Robin Singh Head of Regulatory Affairs and Privacy in the Legal Affairs Department at Abu Dhabi Health Services Company (SEHA) explains what it is like working in uncharted waters.

YOUR BACKGROUND

As a member of the in-house legal team at one of the largest healthcare systems, I provide a distinctive combination of legal expertise and technological proficiency. I have a Bachelor of Laws (LLB) from the University of London and a Master of Studies in Law (MSL) from Northwestern University - Pritzker School of Law. Throughout my career, I have specialised in privacy law and technology within the dynamic healthcare sector. As well as my legal education, I have a bachelor's degree in technology and dual masters' degrees in information technology and management from Virginia Tech (VT), USA and SP Jain School of Management and Research, Mumbai, India, which helps with my multifaceted role. With over 15 years of hands-on experience, I have refined my skills through a variety of roles in Fortune 500 companies across range of jurisdictions including India, Singapore, Germany, the UAE, Kuwait, Bahrain, and Afghanistan. I am also the author of an acclaimed book #MyPrivacy and #MyRight, which was featured in The New York Times, and have published over 28 articles on privacy law, technology law, and regulatory compliance and ethics. I was also awarded the Healthcare Top 50 Smart Leaders' Award in the Middle East and included in the GC Power list by Legal500.

YOUR ROLE

I am the Head of Regulatory Affairs and Privacy in the Legal Affairs Department at the Abu Dhabi Health Services Company (SEHA), which is a leading healthcare system. During the pandemic, our legal team played a pivotal role in establishing state-of-the-art COVID-19 testing and quarantine centres with regulatory bodies, and treatment facilities, as well as collaborating with key pharmaceutical stakeholders around the world. My function operates across the full spectrum of legal services. I have teams which cover legal tech, privacy regulatory, Health Information Management (HIM) and Compliance and Ethics (C&E) reporting to me, who address issues such as safeguarding digital assets, protecting intellectual property, and navigating emerging technologies like the Internet of Medical Things (IoMT), the cloud, blockchain, artificial intelligence, and language-based models. We collaborate closely with stakeholders to ensure legal compliance and address emerging



challenges. SEHA, has an extensive healthcare network which includes clinics, hospitals, and joint ventures with top international hospitals. Some of the hospitals are managed by globally renowned healthcare operators. We operate in Abu Dhabi and the Northern Emirates. SEHA's work includes helping regulators implement ground-breaking laws and pioneering the adoption of cutting-edge technology including remote surgery, artificial intelligence and teleconsultation. We provide outpatient and inpatient care, emergency, mental health work, day-care, and long-term support for patients of all ages. We run public hotlines and awareness campaigns, and help to promote healthcare tourism. Our in-house counsel team covers a diverse range of specialties.

We have section heads who deal with areas including M&As, carveouts, employment laws, insurance consultation, investigations, contractual obligations, advice, regulatory compliance, and offer legal expertise on the adoption of advanced technology. We have legal teams stationed in all primary health care facilities and a corporate team which I and a colleague head up. My work covers both Health and Tech Law so we can cope with emerging technology in the healthcare sector.

I also deal with ensuring our privacy functions are in line with international standards and aid decision making.

I run a team of eight who work on Health Information Management (HIM) and Compliance and Ethics (C&E). My responsibilities include providing advice and legal guidance when adopting emerging technology, work on M&A, on cross-border contracts, joint ventures, advising on privacy across all legal services, regulatory compliance and carveouts. I also

PRACTITIONER PERSPECTIVE



Andrea Tithecott
Head of Healthcare Group

Al Tamimi & Company

Andrea Tithecott of Al Tamimi & Company looks at the law on health data.

The UAE has a comprehensive legal framework for the protection of health data. Federal Law No. 2/2019, Concerning the Use of the Information and Communication Technology (ICT) in Health Fields sets out the principles, obligations, rights and responsibilities of entities involved in processing electronic health data in the UAE. There are also health authority standards and other guidelines that protect privacy in this area. Federal Law No. 2/2019 was the first UAE federal law to specifically address data protection principles in the healthcare sector. It covers the use of ICT in health and includes the collection, storage, processing, exchange, and transfer of this data. It has established a central system under which health sector entities can exchange electronic health information. Federal Law No. 2/2019 protects all types of health data and information from unauthorised access, use, disclosure, modification, or destruction. The law also classifies health data and information into four categories - open, confidential, sensitive, and secret data which have different data protection requirements and controls. Under Federal Law No. 2/2015 health data and information must be processed in a lawful, fair and transparent manner. Data subjects must be informed of the purpose, scope, and recipients of any data processing. It must be collected for specified, clear, and legitimate purposes and not further processed in a manner which is incompatible with these purposes. This data must be adequate, relevant, not excessive, and limited to what is necessary for its processing purpose. It must also be accurate, complete, and up to date, and any inaccurate or incomplete data must be rectified or erased without delay. It must be protected from unauthorised or unlawful access, use, disclosure, modification, or destruction. In addition it should not be kept for no longer than necessary and must be securely erased or anonymised when no longer needed. Data subjects also have the right to access, correct, delete, restrict,

object, or transfer it, subject to certain conditions and exceptions. All entities which use ICT in health must have appropriate technical and organisational measures in place to ensure health data is secure and reliable. Their information security policies and procedures must comply with health authority and the national electronic security authority standards and guidelines. They must have a designated data protection officer who oversees compliance with the requirements and reports data breaches or incidents. They must conduct regular risk assessments and audits to identify and mitigate any potential threats or vulnerabilities in their processing systems and networks. Encryption, anonymisation, or pseudonymising health data and information is also needed based on its level of sensitivity and confidentiality.

They should have access control and authentication methods in place to prevent unauthorised or unlawful access, use, disclosure, modification, or destruction of this data. They should also provide training and awareness programmes for staff, contractors, and third parties who are involved in the data processing. They must also report breaches or incidents to the health authorities and data subjects without undue delay and take appropriate remedial action. Federal Law No. 2/2019 prohibits the disclosure of health data and information to any party without the consent of the data subject, unless disclosure is permitted by law or authorised by the health authorities. Some of these exceptions include where disclosure is necessary to provide health services or protect public health, where it is required by a judicial order or a law enforcement authority, if it is for scientific or clinical research (subject to the approval of the health authorities and ethical and professional standards being observed); if it is for health insurance or claims management purposes (subject to the verification of the financial entitlements related to health services); if it is for health statistical or quality improvement purposes (subject to anonymisation or pseudonymisation of the data); and if it is for pharmacovigilance or adverse event reporting, subject to protection of the data subject's identity.

work with local regulators and implement international best practice.

UAE Privacy law including Federal Law No. 2/2019 which covers use of information and communication technology in health and the UAE Data Protection law (Federal Decree-Law No. 45/2021) are important. We have to comply with the Abu Dhabi Health Information and Cyber Security Standard (ADHICS) and other relevant regulations, e.g. UAE Cybercrime Law (Federal Decree-Law No. 34/2021).

The regulations prioritise patient rights and responsibilities (see Patient's Rights and Responsibilities Annex to Ministerial Decision No. 14/2021).

Global privacy laws like the EU General Data Protection Regulations (GDPR), and Health Insurance Portability and Accountability Act (HIPAA), and other

conflict of laws provisions also influence our work, particularly with large multi-jurisdictional healthcare providers.

Legislation on children's health and rights (Wadeema's law – Federal Law No. 3/2016) and Mental health (Federal law No. 10/2023 and the DOH Circular No. 30/2023) are also centre stage in our sector, supported by regulators and district attorneys.

Care legislation also plays a part including Federal Decree-Law No. 4/2016 on medical liability, the insurance and civil service law.

We also collaborate with the federal General Authority of Islamic Affairs and Endowments (Awqaf) and local regulatory authorities on issues not always addressed by the law, particularly those with religious implications or involving patient consent.

MOVERS AND SHAKERS

A ROUND-UP OF THE TOP APPOINTMENTS AND PROMOTIONS

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TAKING IT TO THE BANK

Al Tamimi & Company has appointed Ali El Hawary as a Partner in their banking and finance practice. Hawary will join the firm's Cairo office. He has over 20 years' experience, and specific expertise in banking, energy, and infrastructure projects. Previously, he worked as General Counsel for a leading Abu Dhabi based bank. He has been involved in nearly every major bank merger and acquisition deal in Egypt over the last 14 years and has advised on significant energy and infrastructure projects, such as the Feed-in Tariff Programme in Egypt.

In addition, Amr Namek has been appointed as a new corporate commercial Partner in Egypt. Namek also has over 20 years' experience in advising multinational and regional



clients on various transactions and projects in Egypt. His past work has included advice on investments, capital markets, and mergers and acquisitions. He has also overseen litigation and arbitration proceedings and has worked on projects and transactions in several African jurisdictions, including Sudan, Kenya, Uganda, Ethiopia, and Algeria.

In addition another new appointment at the firm is Richard Bell who is now a Partner in their dispute resolution practice. Bell has over 25 years' experience in the MENA and Asia Pacific regions and has advised clients in domestic and international arbitrations across the Middle East. He has significant knowledge of local law in the UAE and Saudi Arabia and has led disputes arising out of foreign direct investment into the UAE and Saudi Arabia.

MARKET EXPERT

Leah Weldon-Evans has joined Simmons & Simmons in Dubai as Of Counsel. Leah previously worked for HSBC Dubai as Associate General Counsel, and has extensive experience in Debt Capital Markets and Islamic Finance.



In her new role in Simmons & Simmons' Financial Markets team, she will work closely with Partner Lee Irvine and will offer strategic counsel to clients navigating market dynamics in the MENAT region and the complex regulatory frameworks there.

She has extensive knowledge of the Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI) standards and Higher Shari'a Authority requirements. In addition, she has a detailed understanding of sukuk structuring solutions, which helps her to provide insightful guidance to clients which helps them achieve their financing goals efficiently and effectively.

In addition, Simmons & Simmons have also announced plans to open a new office in Riyadh which would be their first office in Saudi Arabia when they have the necessary regulatory approval.

Amer Al Amr, a Saudi-qualified lawyer with over 20 years' experience of working in Saudi will help set up the new

office. Disputes Partner, Niall Clancy will also be joining this new team.

TAX AND CORPORATE

George Abou Jreich has been made a partner in the Corporate Practice at Galadari Advocates & Legal Consultants. Jreich is an expert in corporate, commercial, construction, and tax law. He has experience of advising clients on areas including fintech, international business transactions, sanctions and commercial litigation.

He specialises in licensing and foreign investment issues. In the past he has worked in the MENA region with clients from sectors including oil and gas, healthcare and hospitality. However, he is not the only new appointment in the Corporate practice, as Charbel Fadel who joins from Ince & Co is also now Partner in here. Fadel specialises in corporate, finance and commercial law matters.

He has extensive experience of advising on UAE law in the real estate, energy, international trade and finance sectors.

He also assists with the



restructuring and sale of companies and advises on joint ventures, agency and franchise, security, and facility agreements.

VENI, VENI, VASI

Vasi Papadopoulos has been appointed by Ashurst as Partner in their corporate practice. Papadopoulos who has extensive experience of advising

OTHER CHANGES

Lawyers on Demand: Mark Dodd who currently leads their Global Insights Centre of Excellence is their new UAE Country Manager.

Pinsent Masons: Pinsent Masons has secured a licence from the ADGM Registration Authority to open a new office there.

Latham Watkins: Latham Watkins has opened an office in Riyadh after their request for a licence from the Justice Ministry was accepted.

ADNOC Group: Kyle Knight is now General Counsel, Upstream there.

Abion: Legal services firm, Abion is to open an office in Dubai.

Addleshaw Goddard: Addleshaw Goddard has opened an office in Riyadh.

Clyde & Co: The Saudi Arabian Investment Ministry has approved a Regional Headquarters request from Clyde & Co.

Kennedys: Tania De Swart is now a Partner in the Dubai office.

Fareya Azfar & Araoui LLP: Jade Al Araoui is now a Partner and Head of the firm's M&A and Private Capital practice.

I MOVERS AND SHAKERS I

international and UAE corporates, financial institutions and private equity firms will be based in the UAE. However, her work will focus on cross-border and local M&A, joint ventures and restructuring.

Her sectorial specialisms include technology, energy, financial services and e-commerce. Other recent appointments for Ashurst include Andrew Robinson and Maroun El Hachem who have joined the firm's Dubai office as Senior Associates and Dasith Vathanage is now an Associate there.

SPACEMAN

Baker Botts has appointed Alexander Hendry as a Partner in their corporate department in Dubai. Hendry previously worked at Latham & Watkins in Dubai. He has been based in the Middle East for five years but advises clients globally on complex corporate and commercial issues relating to space and satellites, digital infrastructure, enterprise IT, outsourcing, fintech, and payments. He is an expert on commercial contracts in defence, entertainment, sport, media, intellectual property, technology regulatory compliance and data privacy. In the past he also has advised governments, project companies, multinational financial institutions and multiple Arabian Gulf-based companies on projects in a range of jurisdictions.

He also provides strategic advice on business-critical, first-of-their-kind technology projects.

NOT IN CONTENTION

Over at Morgan Lewis, Rebecca Ford has been appointed a Partner in the firm's Dubai office. Rebecca previously worked at Clyde & Co. In her new role she will continue to handle contentious and non-contentious employment matters across the UAE, Saudi Arabia and the wider region. In the past she has represented clients in high-stakes employment disputes and advised on a range of employment issues.

She has also managed cases before the UAE and DIFC and in the high courts of England and Wales in London. In addition, she has overseen workplace investigations and advised on employment law and immigration issues stemming from employment in the Middle East.



KEEPING UP WITH THE JONESES

DLA Piper has appointed Natalie Jones as a Partner in the firm's employment group. Natalie who previously worked at PwC Legal will be based in Dubai.

Natalie has considerable experience and a proven track record in a wide range of contentious and non-contentious employment law matters.

In particular, she is known for her expertise in niche, complex areas, including pensions, privatisation and large-scale restructuring.

SANCTIONS AND INVESTIGATIONS SUPREMO

Lauren Talerman has joined Akin as an International Trade Partner and will work in the firm's Dubai office.

Talerman advises on export controls, sanctions, anti-corruption, and anti-money laundering laws and regulations.

She also supports clients who are conducting internal investigations and risk assessments and represents those facing government investigations and enforcement actions involving trade controls, including sanctions regulations administered by the Treasury Department's Office of Foreign Assets Control and US export controls.

In addition, her work includes the International Traffic in Arms Regulations and the Export Administration Regulations.

RETURNING TO HIS ROOTS

Haris Meyer Hanif has rejoined Allen & Overy as a Partner in the firm's restructuring and insolvency practice after time spent with Freshfields Bruckhaus Deringer LLP where he was Head of Finance - MENA for more than 11 years. In the past Hanif worked in Allen & Overy's Dubai office.

He specialises in complex restructuring and insolvency matters, leveraged and acquisition financings and private capital transactions across the



Middle East and Africa. In the past he has acted on some of the most innovative restructuring and financings in the region.

In his new role he will establish a senior bench of restructuring and capital solutions specialists which will cover the UAE, Saudi Arabia and the wider Middle East region along with Adam Banks, who is the Middle East Restructuring & Insolvency Partner.

WHEN IT IS REALLY ALL ABOUT DISPUTES

James Abbott has been appointed by CMS as a Partner in their Dubai office. Abbott previously worked at Clifford Chance, where he led the firm's Middle East disputes practice for more than six years.

He has over a quarter of a century's experience in the area, and specialises in commercial litigation, arbitration, and investigations. However, he focuses on cross-border banking and financial litigation, including fraud and asset tracing, regulatory investigations, sanctions issues, joint venture and shareholder disputes.

BUILDING A NEW APPROACH

Rabih Tabbara is now Construction Arbitration Partner in the Arbitration and Litigation Department at Habib Al Mulla and Partners.

His previous positions have included time spent as the Head of Dispute Resolution, handling complex legal challenges in arbitration and litigation, in the UAE and internationally at a range of firms including Ince and DWF (Middle East) LLP.

However, this is not the only change at Habib Al Mulla as Mohamed Elbaghdady has also been promoted and is now Partner in the firm's dispute resolution practice.

Others with new positions there include Ezzat Gharep who is now Counsel and Alia Al Mulla and Ali Dakhallah who are now Senior Associates.



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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





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Contractual Termination

Sadique Mohd and Gago Rigga of Al Aidarous explain contract termination in construction contracts.

Termination of an agreement is viewed as a remedy which can enable a party to mitigate running up costs and losses and is recognised both under common law and civil law. In UAE, the Civil Code (Article 892 of Federal Law No. 5/1985) states, 'a contract of muqawala shall terminate upon completion of the works agreed or upon cancellation of the contract by consent or by order of the court'.

Therefore, it is usual for construction contracts to contain a termination clause which gives the parties the right to terminate the agreement in certain stipulated circumstances.

However, exercising this remedy brings with it associated risks which require very careful consideration of any given situation. Usually there are two types of termination clause - those dealing with termination for convenience and those dealing with termination for defaults or breaches.

TERMINATION FOR CONVENIENCE

A termination for convenience clause typically allows a party to terminate the contract at will (for whatever reason or for a specified reason that does not involve performance by the other party. Usually, this occurs in situations where the contract has become economically unviable.

TERMINATION FOR DEFAULT

A termination for default clause typically allows for termination where there has been a default on the part of one of the parties.

The termination rights, in case of termination for default, may be exercised only upon a breach of an obligation and where the requirements stipulated under the contract are satisfied. Termination for default, is one of the most common contractual rights of termination in construction contracts and one of the specified breaches of the contract ought to have occurred for this clause to kick in.

Termination under this clause normally involves a material breach of the agreement, i.e. a breach that goes to the root of the contract, frustrating the contract's commercial purpose or depriving the non-defaulting party of substantially the whole benefit of the contract. From the employers' perspective, material breaches may generally include contractor's abandonment of works, major delays in the project



with the completion date being far beyond the parties' original expectations. From a contractors' perspective, non-payment of money owed under the contract is almost always considered to be a material breach as it prevents the contractor from completing the project and leads to a delay.

OTHER KEY POINTS

It is also worth noting that proper termination usually requires notice and an opportunity, following preliminary notice, to rectify or remedy the breach of contract. Therefore, any well drafted contract should have this mechanism in place, or any party who fails to give an opportunity to cure will most likely be found to have wrongfully terminated the contract.

Article 271 of Federal Law No. 5/1985 also states that parties may include a provision in the contract that if one party fails to perform their obligations, the contract may be cancelled automatically without the need to obtain a court order.

However, it is also expressly stated that such an agreement will not release the parties from serving a formal termination notice unless the contract states that notices are not required.

While termination is sometimes the only suitable way forward, before taking that decision, there should be full analysis of the relevant legal and commercial issues as risks of wrongful termination are potentially high.



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Gago Rigga
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Construction Arbitration: Pitfalls

Arbitration may be a preferred method for resolving construction disputes but as Sadique Mohd and Safia Abdalla of Al Aidarous explain there are also errors which can prejudice a party's interest.

When it comes to construction disputes, arbitration appears to be a preferred resolution method, particularly as greater specialist knowledge and understanding of the industry's intricacies appears to be needed when resolving disputes in this sector. Not all mistakes are fatal, some errors do prejudice a party's interest more than others.

INCOMPLETE OR UNCLEAR ARBITRATION AGREEMENTS

Parties must safeguard their contractual agreement to arbitrate and ensure the clause does not contain any ambiguities that would result in it being void and eventually referred to litigation. Construction disputes are sensitive and technical, and a high level of expertise is needed to analyse the project including how the dispute originated so arbitration may appear more suited to addressing these matters. Parties might appoint arbitrators with industry knowledge who will potentially better understand the dispute's nuances.

IGNORING PRECONDITIONS

It is vital to comply with the preconditions of arbitration before filing the RFA and not to ignore contractual notice requirements. Arbitration is based on the principle of party autonomy, and parties are expected to follow the agreed rules and procedures. Arbitration rules and national laws often require parties to fulfil certain procedural requirements before initiating arbitration. When parties disregard these obligations, it can undermine the integrity of the arbitration process and lead to a range of issues, including delays in the process, damage to the credibility of the party failing to comply with the requirements, and the risk of being perceived as acting in bad faith or attempting to gain an unfair advantage. However, the main risk is that the adversary will challenge the validity of the claim in arbitration, potentially leading to its dismissal.

DELAY IN INITIATING ARBITRATION

Delaying the initiation of arbitration can have severe consequences, and potentially result in a party losing its right to arbitrate or even make its claim due to the expiration of the relevant time-bar. This may be deemed as a party waiving their right to arbitrate, which would allow the other party to object to the arbitration on the grounds of delays and result in the dispute being prevented from being arbitrated.

In addition, a delayed arbitration may have practical difficulties, such as the loss of relevant evidence or the fading memories of fact witnesses, which can impair



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the ability to present a strong case. It can also increase the costs and complexity of the arbitration, as parties may need to expend additional resources in gathering and presenting evidence that would have been more readily available if arbitration had been initiated in a more timely manner.

NOT SEEKING THE RIGHT LEGAL ADVICE

Failing to seek legal advice from experienced construction arbitration lawyers can have significant, far-reaching consequences, and lead to costly mistakes and bad outcomes. Construction is a complex area of law where a deep understanding is needed of legal principles, industry practices, standards, and regulations. Without the help of experienced legal professionals, parties can make critical errors which jeopardise their case. One of the most significant risks is the potential to misunderstand or misapply relevant legal principles and procedures. Construction involves complicated legal issues related to contracts, construction law, and arbitration rules, which can be challenging for non-specialist professionals to navigate effectively. Without proper legal guidance, parties can fail to suitably present their case which can weaken their position in the arbitration. In addition, without suitable legal advice potential legal defences or arguments can also be overlooked. These may not be as apparent to legal professionals with less industry experience.



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ADGM EXPANSION

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Waleed Hamad and Myriam Simon of Al Aidarous explain the implications and legal challenges created by the ADGM Court's Jurisdictional expansion and coverage of Al Reem Island.

The ADGM which is governed by Abu Dhabi Law No. 4/2013 underwent a significant jurisdictional expansion with the inclusion of Al Reem Island by Cabinet Decision No. 41/2023 with a grace period for companies to comply with the law by December 2024. This extension has significant implications, as the ADGM Courts hold exclusive jurisdiction over two specific categories of claims defined in Article 13(7)(a) and (b) of Abu Dhabi Law No. 4/2013. In Article 13(7)(a), the ADGM Courts are empowered to adjudicate civil or commercial claims and disputes involving the Global Market, its Authorities, or Establishments. In Article 13(7)(b) the ADGM Courts have jurisdiction over civil or commercial claims and disputes which stem from contracts executed or performed within the ADGM, transactions conducted there or incidents that occurred within its boundaries. Effective from the issue date of Cabinet Decision No. 41/2023 on 24 April 2023, jurisdiction was immediately transferred from the Abu Dhabi Courts to the ADGM Courts for companies located in Al Reem. In the case of disputes stemming from acts or contracts which predate this date, the Abu Dhabi Courts relinquish their jurisdiction automatically in favour of the ADGM Courts unless a final judgment has already been issued. The Abu Dhabi Court of Cassation has affirmed this transition, and pending cases have been redirected to the ADGM Courts as a matter of public order. This approach has been echoed in numerous cases, such as Case No. 987/2023 dated 28 December 2023, which involved the sale and purchase of units in Al Reem. This was also the position for Case No. 158/2023 dated 17 November 2023 which focused on a service provided within the bounds of Al Reem and Case No. 1100/2023 dated 29 November 2023 involving a construction contract executed in Al Reem. In addition, Case No. 957/2023 dated 20 October 2023 on a bank finance arrangement for the acquisition of units in Al

Reem, was also scrutinised, highlighting the ADGM Courts' jurisdictional reach. Case No. 29/2024 dated 6 January 2024 on the validity and enforceability of an investment agreement that dated back to 2008, involving a plot in Al Reem which was inked long before even the inception of Al Reem itself has also been considered.

CHALLENGES

However, a significant challenge arises when disputes involve companies located in Al Reem in the one-year transitional period which have not yet obtained an ADGM License. Although the ADGM Courts handle claims involving 'Global Market Establishments' the status of companies in a transitional period or those who have failed to obtain an ADGM license remains unclear - should jurisdiction be vested in the ADGM Courts or retained by the Abu Dhabi Courts? This issue came to light in the Abu Dhabi Commercial Court of First Instance ADCFI Case No. 450/2023, where the court ruled it lacked jurisdiction to adjudicate the dispute solely because one of the parties was located in Al Reem.

Initially, the court deferred to the jurisdiction of the ADGM Courts, but this decision was later overturned by the Court of Appeal in Case No. No 2350/2023. The party in question did not fall within this category, as the company was not licensed by the ADGM, so the dispute was deemed to fall under the Abu Dhabi Courts' jurisdiction. Regrettably, the judgment was not appealed before the Court of Cassation, leaving this issue unresolved and posing a continued challenge.

The jurisdictional issue underscores a broader concern: the correlation between court jurisdiction and a company's adherence to ADGM laws. While jurisdiction is undoubtedly a matter of public order, it is imperative to ensure that a party's choice of court jurisdiction is not solely dictated by its compliance with ADGM regulations.



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Derivative Contracts



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In 2023, the Qatar Financial Centre Regulatory Authority (QFCRA) introduced the Derivative Markets and Exchange Rules (DMEX), which have provided new business opportunities in the capital market in Qatar. Section 1.2.1 of DMEX defines an ‘approved derivative’ under these regulations as an arrangement or product (such as a future, an option, a warrant, or a contract for differences) whose value derives from, and is dependent on, the value of an underlying asset, but only if the arrangement or product: (a) relates to a specified product within the meaning of FSR, Schedule 3, Part 3; and (b) is determined by the Regulatory Authority, by notice on an approved website, as an approved derivative. However this is only if the arrangement or product: relates to a specified product (within the meaning of the QFC Financial Services Regulations (FSR)). The QFCRA is the main regulator of the derivative market, and under Section 10.1.3 of the DMEX, entities licensed by the Qatari Central Bank, or the Qatar Financial Market Authority (QFMA) can carry out derivative activities if their own regulator authorises them to do so and they meet the QFCRA requirements.

In addition, financial services

firms with appropriate licenses in other jurisdictions listed in the DMEX, including the GCC, EU states, UK, and USA, are also eligible for this recognition.

DERIVATIVE CONTRACTS

Derivative contracts allow their participants to hedge against price fluctuations and market volatility, reducing their exposure to potential losses and providing some insurance. They also provide opportunities to diversify investment portfolios, as they facilitate exposure to a range of asset classes, markets and risk profiles which may not be readily available in traditional markets. They can help improve liquidity as participants to enter and exist positions more quickly. They also allow investors gain exposure to more prominent positions with a relatively small capital outlay.

CONTRACT TYPES

The main types of derivative contracts traded in exchanges are futures contracts and options contracts, while swaps are typically traded as OTC.

Future contracts are contracts where parties agree to fulfil their obligations in the future, e.g. a construction company might agree on the price of concrete it will need in the future and the buyer and seller of the concrete agree that the price now, but deliver the concrete (the underlying asset) on a specific date in the future. This type of contract can be traded as derivative contract.

Meanwhile an option contract provides the option for the buyer to decide in the future if they want the assets or not so they have the option to decide that, but a seller of an option contract receives consideration for selling their obligation to execute regardless of what the buyer decides.

CLEARING COUNTERPART

Both the sellers and buyers in derivative contracts face the risk of the counterparty’s default (which is known as counterparty credit risk).

However, exchange-traded derivatives have an intermediate body known as the Counterparty Clearing (CCP). The CCP acts as the seller to all buyers and the buyer to all sellers of derivative contracts because it conducts a novation contract with the seller and the buyer. CCP significantly reduces counterparty risk, through netting and by imposing risk controls on all participants.

REGULATION

In the QFC derivative contracts are subject to regulations issued by the QFCRA. However, international organisations such the Committee on Payments and Market Infrastructure (CPMI), the International Organisation of Securities Commissions (IOSCO), and the Basel Committee on Banking Supervision can also impact derivative regulations. Derivatives can be traded both on exchanges or Over the Counter (OTC). Derivatives listed on exchanges use standard contracts and operate under the rules of an exchange and a clearing house. While with OTC, derivatives work as an alternative option to standard contracts offered in the exchange. The derivative market in Qatar is going to adopt the listed market model by establishing a derivative exchange and a central clearing house. The derivatives market in Qatar will be set up to trade options and futures on financial instruments, including individual shares, and indexes.

The views in this article do not necessarily reflect the views of the Qatar Stock Exchange.



Contributor

Aiman A Khair

Legal Counsel, Qatar Stock Exchange



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If you would like to hear more about how our lawyers can help you throughout the Middle East from our offices in Qatar, the United Arab Emirates, Saudi Arabia and our network across the region, please contact the individual below who would be delighted to tell you more about our services and introduce you to colleagues across the region.



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Oman

Bilingual Disputes Senior Counsel, Investment Fund

A leading investment fund based in Muscat is looking to hire a Senior Counsel to manage all financial and legal disputes regarding the fund and its subsidiaries. Suitable candidates will be qualified lawyers, fluent in both English and Arabic, with 10+ years' PQE in litigation relating to large scale financial services.

Ref: *RPG-IM-15546*

Qatar

Exploration & Production Senior Counsel, Energy Company

A highly regarded energy company is seeking to hire an experienced lawyer to advise on the company's E&P ventures, encompassing all matters relating to E&P activities including due diligence, budgeting, drafting/reviewing documents, and regulatory compliance. Interested candidates will ideally have 10+ years' experience with a focus on the energy sector and E&P activities, and be qualified in the US, Canada, UK, Australia, or New Zealand.

Ref: *IJR-IM-13178*

Abu Dhabi

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We have an excellent opportunity for an Arabic speaking lawyer with Gulf experience to join the expanding legal team of a leading investment fund in Abu Dhabi, focusing on M&A and general corporate work, along with supporting the fund's existing assets. Applicants will ideally have at least 12 years' legal experience with a specialism in M&A work and previous experience at an investment organisation.

Ref: *IJR-IM-15411*

Qatar

Senior Legal Counsel, Aviation/Engineering

Our client, an internationally renowned company based in Doha, is seeking a senior lawyer with significant experience in engineering in the aviation sector to join its legal team. Reporting to the Head of Legal, this role will focus on technical expertise, as well as providing legal advice on finance matters. Candidates should ideally possess 10+ years' legal experience and be qualified either in England & Wales, Canada, Australia, or New Zealand.

Ref: *RPG-IM-15138*

Saudi Arabia

Downstream Commercial Counsel, Global Energy Company

A prominent entity is looking to hire a Saudi-qualified lawyer to advise on downstream corporate commercial matters. The ideal candidate will have a strong background in the oil and gas sector, and at least 3 years' experience gained either in-house or at a distinguished law firm. Previous corporate secretarial experience at a multinational company would be advantageous but is not essential.

Ref: *TME-IM-15596*

Saudi Arabia

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We have been instructed on an outstanding, client-facing role at a legal consultancy business within a successful international law firm in Riyadh. The ideal candidate will have experience of process automation, design workflows, contract lifecycle management, and building new use cases for onboarding new technology solutions. Candidates will ideally be fluent in Arabic and English, and have previous experience working in Saudi Arabia.

Ref: *PML-PM-14605*

Saudi Arabia

Senior Legal Counsel, Regulatory & Compliance

A leading organisation is seeking to hire an experienced lawyer to advise on the company's regulatory and compliance matters. Candidates should have gained ideally 8 or more years of legal experience working for leading international law firms and/or within in-house legal teams for an international company. Candidates with prior experience working in Saudi Arabia and Saudi-qualified lawyers are particularly encouraged to apply.

Ref: *SSK-IM-15652*

Saudi Arabia

Head of Legal, Projects & Infrastructure

We are working on an exciting opportunity for a versatile projects lawyer to join a major conglomerate reporting directly to the General Counsel, focusing on matters relating to power and water projects, along with a range of other infrastructure projects. We are keen to hear from lawyers with ideally 8+ years' legal experience working for leading global law firms or in-house teams, with deep knowledge of EPC agreements, O&M agreements, and JV and corporate matters.

Ref: *JRS-PM-15592*

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.