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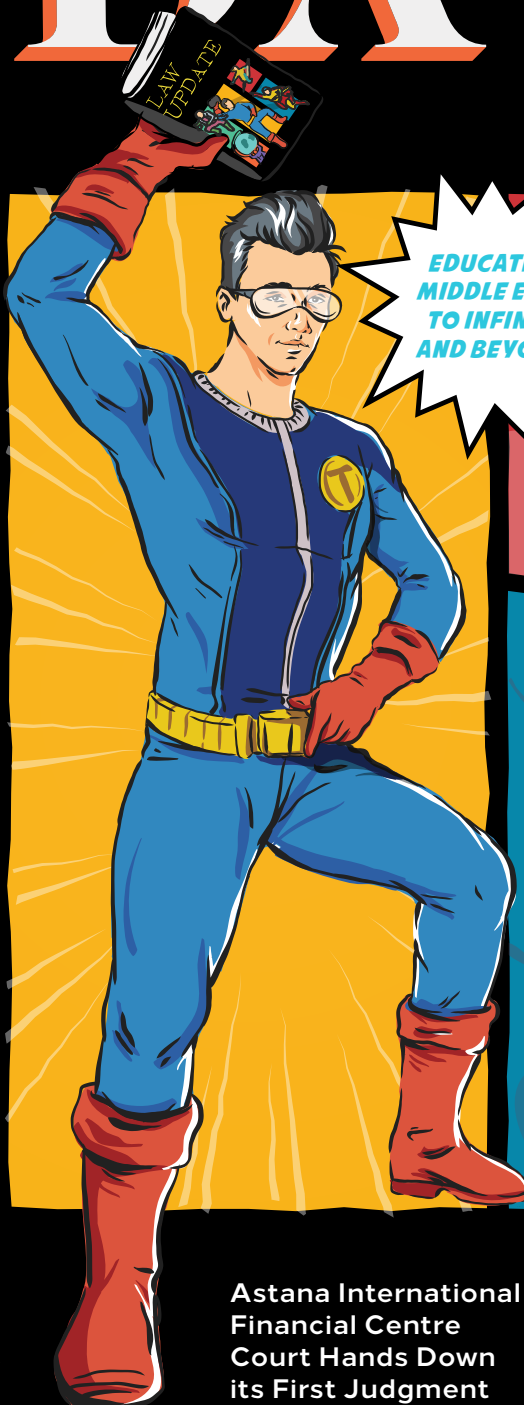
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UPDATE



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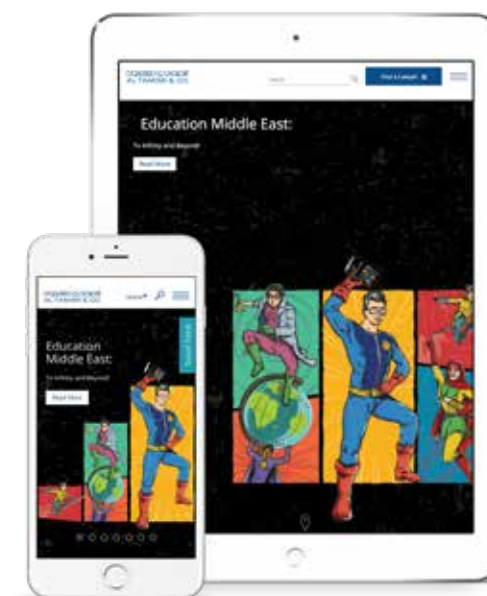
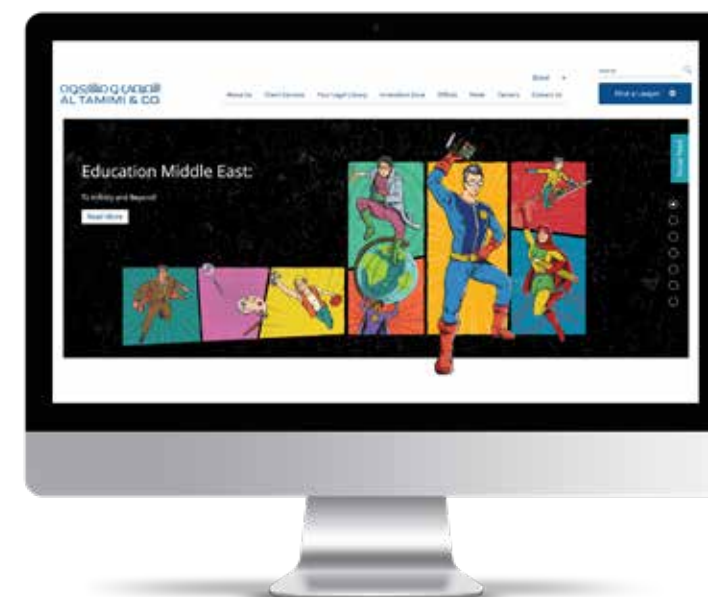
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Welcome to the August 2019 issue of Law Update.

As thoughts of 'Back to School' draw near, this month's focus on education is timely.

As the UAE has evolved as an economic role model in the Middle East, education has become a focal point for a number of reasons including: addressing the increasing numbers of ex-pats who wish to replicate 'home' educational curricula and standards as well as raising the local standard to match international expectations. Expenditure on education is expected to double in the Gulf markets by 2023. The anticipated demand of the future labour market is influencing the shape of classroom activity today. Consequently, the reach of education now stretches beyond the traditional realm of pupils, educators and government institutions as it looks to invite private sector investment as well as opening the door to the latest in innovative technology.

This issue navigates its way through the various views of the key players in the education arena.

The UAE's Vision 2021 prioritises education and emphasises the importance of the development of a first-rate education system.

Leaving aside the lucrative nature of education, Dubai has invested considerable energy into guaranteeing the welfare of students as well as affording all students, including those with special educational needs, the same educational experience. To achieve this the Emirate has promoted education to the forefront of its agenda to become a fully inclusive city by 2022 (page 30). In doing so the Knowledge and Human Development Authority is paving the way to ensure that all educational facilities in Dubai become all-inclusive institutions by that time.

Our Dubai Employment team sheds light on the impact on the world of academia of the new 10-year visas now available (page 64). This is an important step in the Emirate's goal of attracting top academics from around the world thereby ensuring the UAE education sector remains competitive internationally.

Our TMT advisers examine the increasing importance and presence of technology in the classroom as well as in the administration and functioning of educational facilities (page 46). Whilst technology is a valuable tool in preparing students for the future labour market, our experts remind us that technology can also be vulnerable and offer some suggestions on how to secure and protect data and systems.

'Qatar 2022' is not just about football! Recently Qatar launched a Public-Private Partnership initiative which will see 45 new schools built with a planned opening in 2022. This initiative has attracted a lot of interested parties from across the board including, educational providers, the construction industry and financiers (page 42).

Bahrain ups the ante with its exploration of the use of modern technology in the issue of academic degrees and certificates. The University of Bahrain is testing the use of blockchain technology to verify, authenticate and ensure student-data security (page 54).

Our Real Estate team in Abu Dhabi takes us through the significant reforms to foreign ownership of land in the Emirate (page 18). Our Commercial lawyers have drawn up a useful guide regarding which terms of a Memorandum of Understanding should be binding and those which do not need to be (page 14). The importance of seeking professional advice is underlined.

I hope you find this Issue engaging. Should you have any questions on the content or would like to discuss other matters, please do not hesitate to reach out.

Best regards,

Husam Hourani

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Astana International Financial Centre Court Hands Down its First Judgment



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The Astana International Financial Centre ('AIFC') Court ('Court') has issued its first judgment. In *Aurora AG Limited v Star Asian Mining Company LLP* [2019] (25 April 2019), a decision of Justice Tom Montagu-Smith QC without a hearing, the AIFC Small Claims Court considered a contract engaging the claimant contractor to carry out ground-based geophysical works for the defendant in East Kazakhstan. The claimant said that it had completed the works but had not been paid by the defendant.

Background

The contract contained a jurisdiction clause in favour of the Court for the resolution of all disputes between the parties that remained unresolved after negotiations.

The Court had jurisdiction over the claim by virtue of the Constitutional Statute of the Republic of Kazakhstan on the AIFC, Constitutional Statute No. 438-V ZRK of 7 December 2015 (as amended), Article 13(4)(3), which conferred jurisdiction on the Court over disputes referred to it by way of agreement of the parties.

The claimant commenced proceedings by issuing a claim form on 19 March 2019. The Court Registry initially served the claim by delivery to the defendant's registered offices. Those offices were found to be occupied by a third party, so the claimant supplied two e-mail addresses which were then used by the Court Registry for service by electronic means, as permitted under the Court Rules.

The defendant failed to respond to the claim but, as the proceedings had been begun in the Small Claims Tribunal rather than Court of First Instance, the judge had to decide the claim on its merits rather than by default. The claimant provided brief details of the claim in the claim form, which was signed by its in-house legal counsel to whom copies of the material contract, an invoice, a document entitled "Act of Performed Works" and some correspondence were appended. The defendant did not file any conflicting evidence.

The claimant carried out geophysical works in accordance with the terms of the contract and confirmed the works had been completed on or before 15 August 2018.

On 29 November 2018, the claimant submitted an invoice to the defendant along with the Act of Performed Works document, which recorded the value of the completed works and demanded payment.

The demanded sum was less than the full contract sum agreed because, on the evidence of the claimant accepted by the judge, this reflected the value of the actual work performed. The judge inferred that the scope of work described in the contract had been reduced and the defendant was obliged only to pay for the work carried out, in accordance with the terms of the agreement.

The judge found that the claimant had carried out its work in accordance with its contractual obligations and was therefore entitled to be paid. The defendant had, on the claimant's evidence, conceded as much, but had simply refused to pay. The judge awarded KZT 42,747,658.24 (around US\$ 110,800) to the claimant by way of sums due under the contract. The contract was governed by AIFC law, with a term obliging the defendant to pay what was described as a "fine" for late payment of the sums due under the contract, in the amount of 0.05 percent of the overdue sum per day, up to a maximum total of five percent of the overdue sum. The judge awarded the maximum sum, a further KZT 2,137,382.91 (around US\$ 5,500), due under this provision.

Analysis

This decision is the first real test of the AIFC Court Rules and procedures. It is encouraging to see the process running smoothly. Less

than six weeks elapsed between the issue of the claim form and the publication of the judgment. The judgment is directly enforceable throughout Kazakhstan, unlike judgments and orders from the Dubai International Financial Centre or the Abu Dhabi Global Markets Courts, which must be raised before the courts of the jurisdiction outside the DIFC and/or the ADGM where the judgment debtor's assets are sited. However, in a process similar to that available to judgment creditors in the UAE's common law courts, the claimant would be entitled to seek enforcement outside Kazakhstan if necessary.



US\$ 643 million

recorded in bilateral trade making the UAE Kazakhstan's largest Arab trading partner.

As we noted in the June/July 2019 Law Update article titled '[Astana's New Dispute Resolution Institutions: Developing Business Relations between the GCC and Kazakhstan](#)', the Arab world and Kazakhstan have had close and friendly ties for many years; the UAE is Kazakhstan's largest Arab trading partner, with almost US\$ 643 million in bilateral trade recorded in 2017. This had been possible because the mechanisms and institutions that facilitate cross-border trade are in place, and parties to transactions/agreements feel secure in the knowledge that they can avail of tried and tested international dispute resolution processes should the need arise.

Al Tamimi & Company is in the process of becoming a registered law firm with the right to conduct litigation before the AIFC Court. Members of the firm are registered practitioners with rights of audience before the AIFC Court. For more information about dispute resolution in Kazakhstan, please contact Peter Smith (p.smith@tamimi.com), Rita Jaballah (r.jaballah@tamimi.com) or Peter Wood (p.wood@tamimi.com).

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

The New DIFC Insolvency Law



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The DIFC has introduced a new Insolvency Law (Law No. 1 of 2019) ('New Insolvency Law') as a means of enhancing and facilitating a more efficient and effective bankruptcy regime within the free zone. The New Insolvency Law was enacted on 30 May 2019 and came into force on 6 June 2019.

Rather than a wholesale overhaul of the existing law, new concepts have been introduced to provide debtors and creditors a larger toolkit to deal with insolvency situations. We examine three of these new concepts below.

1. Debtor in Possession Regime – Rehabilitation

Where the directors of a company consider that it is likely the company may become unable to pay its debts, they can notify the court in writing (the 'Rehabilitation Plan Notification') that they intend to make a proposal to the creditors of the company and submit a rehabilitation plan (the 'Rehabilitation Plan'). On receipt of such application the court shall convene and an automatic moratorium shall apply to all creditors in respect of the company and its assets wherever they may be located at the time of the Rehabilitation Plan Notification.

Rehabilitation allows the debtor to remain in control and continue to manage its business and assets as the directors are authorised to continue managing the company's affairs except in cases where there is evidence of fraud, dishonesty, incompetence or mismanagement of the company. The board of the company shall

appoint one or more insolvency practitioners as rehabilitation nominee(s) prior to the Rehabilitation Plan Notification and the name and qualifications of such nominee(s) shall be set out in the Rehabilitation Plan Notification.

The crucial benefit of the rehabilitation procedure is that, unless otherwise ordered by the court, an automatic moratorium of 120 days shall immediately apply to all creditors (secured or unsecured and without their consent), thus preventing any enforcement proceedings against the debtor. A Rehabilitation Plan application shall, amongst other matters, have the following effects:

- it shall not render any undue debt due and payable;
- any contrary provision in any contract or applicable law shall be deemed unenforceable during the moratorium period;
- any termination provision in any contract linked to insolvency of the debtor shall cease to have effect during the moratorium period unless the court decides otherwise or the company agrees to such termination; or
- a creditor is precluded from exercising any right of set-off in respect of the obligation due from the company (with the exception of the limitations provided for by the DIFC Netting Law No. 2 Of 2014 in relation to netting agreements).

The creditors are invited to consider the Rehabilitation Plan and if at least three quarters in value of any class of creditors or shareholders agree to the Rehabilitation Plan and it is sanctioned by the court, it then becomes binding on all persons within such class. However, the law also has a 'cram down' mechanism that can apply across the classes of creditors in certain circumstances which has the effect of adding additional flexibility to the procedure favourable to the debtor.

If, following the vote of each class of creditors and shareholders, any member of a class considers the Rehabilitation Plan to be unfairly prejudicial or not in good faith or believes that a violation of the requisite procedures has taken place, an application challenging the Rehabilitation Plan may be submitted to the court.

If the court does not sanction the Rehabilitation Plan the court shall immediately proceed to take steps to wind up the company.

2. Appointment of Administrator in Cases of Mismanagement

An interesting new feature is the introduction of an independent administrator. Where an application for rehabilitation has been made and there is evidence of misconduct, one or more creditors may make an application regarding the appointment of an administrator. Notice of the application for the appointment of an administrator must be given to all creditors of the company. The court may adjourn or dismiss the application or make such other order as it thinks fit.

The administrator must be a person who is registered as an insolvency practitioner in the DIFC and for the period in which the court order is in force, the affairs, business and property of the company shall be managed by the administrator whilst a moratorium shall continue to apply. On appointment of the administrator, any petition for winding up shall be dismissed and any administrative receiver shall vacate their position.

Creditors and shareholders may also apply to the court for protection of their interests if they believe the business and property of the company have been managed by the administrator in a manner that is unfairly prejudicial to them.

3. Adoption of UNCITRAL Model Law

The new law also incorporates the UNCITRAL Model Law ('Model Law') which is designed to assist in cross-border insolvency proceedings in cases involving companies which have assets or creditors in more than one country. The Model Law has been fully adopted into the New Insolvency Law (apart from the insertion of relevant DIFC law concepts).

The Model Law applies where: (i) assistance is sought in the DIFC in connection with foreign proceedings; or (ii) assistance is sought in a foreign country in relation to proceedings under the DIFC Insolvency Law;

The New Insolvency Law enhances and facilitates a more efficient and effective bankruptcy regime within DIFC.

or (iii) foreign proceeding and proceedings under the DIFC Insolvency Law are taking place concurrently; or (iv) creditors or other interested persons in foreign countries are interested in commencing or participating in proceedings under the New Insolvency Law.

The Model Law seeks to ensure that insolvency officials from one jurisdiction are recognised in other jurisdictions and in case foreign proceedings and proceedings under the New Insolvency Law are taking place concurrently, regarding the same debtor, the court shall seek co-operation and co-ordination with the foreign jurisdiction.

The New Insolvency Law seeks to adhere more closely to international best practice, with particular reference to modernisation changes made in other jurisdictions. His Excellency Essa Kazim, Governor of DIFC, stated: "Ensuring that businesses and investors can operate across the region with confidence is crucial to our role in connecting

the economies of East and West. We are committed to continuously enhancing our legislative infrastructure in order to give leading global institutions the certainty and access they need to capture the opportunities within the MEASA region, through Dubai."

The New Insolvency Law introduces the latest insolvency procedures with a view to modernising a law that was only 10 years old. This reflects the DIFC's ability to stay at the forefront of global best practice so that the free zone remains one of the premier financial hubs.

Al Tamimi & Company's Banking & Finance team regularly advises on insolvency related matters. For further information please contact Mamoon Khan (m.khan@tamimi.com), Mark Brown (m.brown@tamimi.com) or Maria Drenova (m.drenova@tamimi.com).

SCA enables Electronic Invitation, Registration of Attendance and E-voting in General Meetings of Listed PJSCs



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What's new?

As part of its efforts to streamline governance requirements and enhance the use of technology in securities markets, the United Arab Emirates Securities and Commodities Authority ('SCA') has issued Resolution No. (03/RM) of 2019 amending Resolution No. (7/RM) of 2016 concerning Standards of Institutional Discipline and Governance in Public Joint Stock Companies ('PJSC Governance Rules').

The new amendments to the PJSC Governance Rules include:

- a. enabling listed PJSCs to invite their shareholders to attend general meetings (other than general meetings postponed for a lack of quorum) via text messages or emails (as opposed to the traditional method, which required the use of registered physical mail) if their articles of association allow; and
- b. allowing shareholders in listed PJSCs to register their attendance and vote electronically in general meetings, without having to be physically present.

The SCA is the second regulator in the Gulf Co-operation Council countries to adopt e-voting after the Capital Markets Authority in Saudi Arabia.

How does it Work?

In order for a PJSC to avail itself of the use of electronic media to disseminate general meeting notices, its articles of association must already allow for this or be amended accordingly.



The SCA is the second regulator of the Gulf Co-operation Council countries to adopt e-voting after the Capital Markets Authority in Saudi Arabia.

In order to implement e-voting, each market regulated by the SCA is required to adopt its own e-voting mechanism. We understand that the relevant markets intend to employ blockchain technology to apply these mechanisms: the DFM already offers the “investor card” that can be used by investors to collect dividends. We also understand that the DFM is likely to also allow investors to use the investor card for e-voting.

What are the Benefits?

The possibility for shareholders to be invited to general meetings via text messages or emails would reduce the cost of using physical mail (especially for PJSCs with large numbers of shareholders) and would ensure that notices would reach a higher number of shareholders (particularly those who might have changed their residential address without updating the PJSC). Please note that PJSCs would still be required to publish the invitation in two local newspapers.

Investors have been eagerly awaiting the ability to vote electronically. It encourages companies to use general meetings for decision-making, saves travel expenses, especially for those holding minority stakes, and improves minority rights by allowing more minority shareholders to register attendance and vote in meetings that, under the previous requirement of physical attendance, they would have most likely decided not to attend. E-voting further increases the chances of fulfilling the required quorum for the first meeting, and so potentially allowing PJSCs to save the expenses required to hold a second adjourned meeting.

The general assembly presents an excellent opportunity for PJSCs to engage with their shareholders and stakeholders and electronic communication and e-voting helps to assist this pillar of good corporate governance.

How can PJSCs Avail themselves of the New Rules?

To benefit from these new rules, the PJSC Governance Rules require PJSCs:

- a. to amend their articles of association to expressly allow for inviting shareholders to general meetings via text messages or emails, electronic registration of attendance and e-voting in meetings; and
- b. to obtain written acknowledgements from shareholders willing to use e-voting confirming that they accept and understand the mechanism applied by the relevant market for such purpose.

How we can Help You?

If you are a PJSC looking to benefit from the new rules, Al Tamimi & Company's Equity Capital Markets Team can assist you in:

- a. updating your articles of association to allow for electronic invitations and e-voting;
- b. preparing the required draft acknowledgement that must be executed by shareholders in relation to e-voting; and
- c. liaising with the SCA and the relevant market to obtain the approvals required to implement the above.

Al Tamimi & Company's Equity Capital Markets team regularly advises on legal and regulatory matters pertaining equity markets and products. For further information please contact Abdelrahman Sherif (a.sherif@tamimi.com)

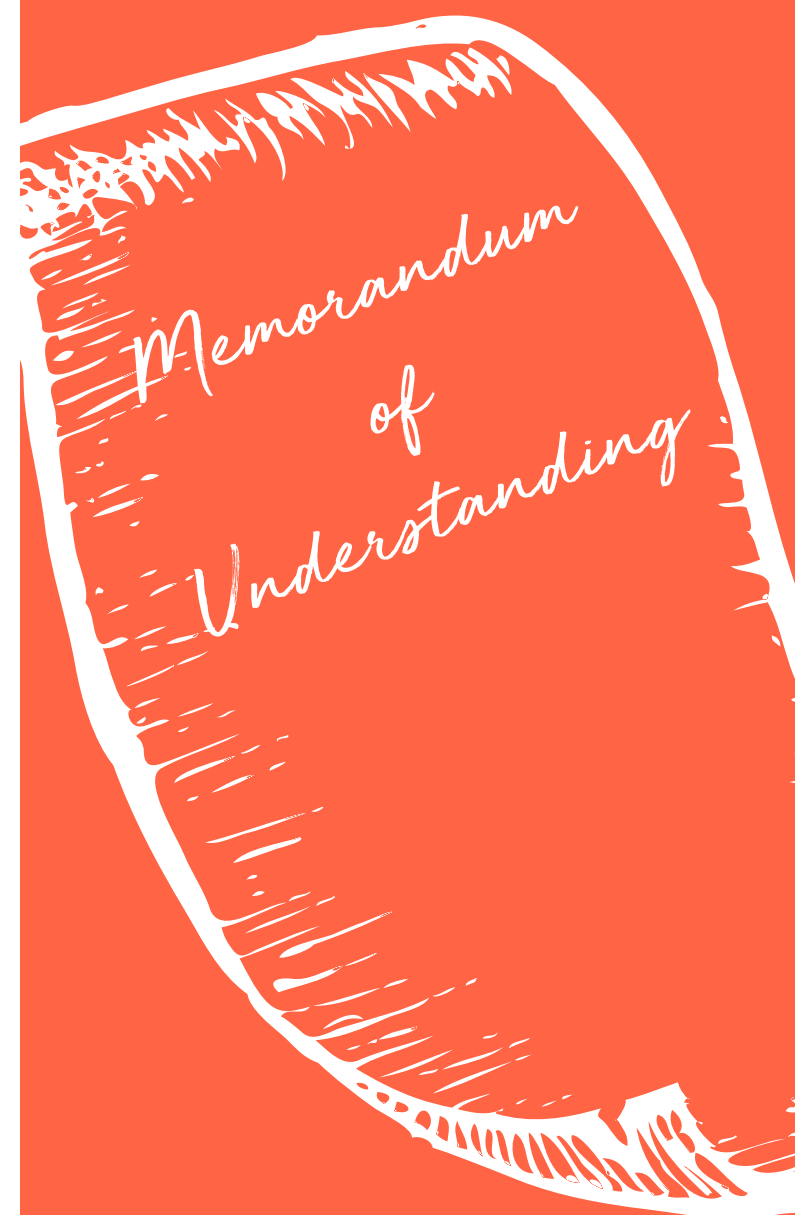
MOUs: to Bind or Not to Bind?



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No matter the commercial collaboration or transaction envisaged, whether it is the establishment of a school, company, appointment of a franchisee, distributor, agent, or service provider etc., it is prudent for contracting parties to agree on the high-level terms, which will form the basis of the final form agreement(s), in writing, at an early stage. Doing so assists the parties in thrashing out the key issues upfront, as well as guiding the lawyers when drafting the final form agreements. These types of preliminary documents that capture the key terms between parties, pending negotiation and agreement on the definitive agreement(s), are often referred to as letters of intent, heads of terms or memoranda of understanding (which are individually referred to below as a 'MOU').

A MOU is not intended to be the final agreement between the parties on the subject matter at hand, nor is it intended to contain all the relevant detailed terms of the transaction, but rather, it gives reassurance to the parties involved that there is a genuine interest, on both sides of the transaction, to collaborate exclusively in progressing matters to a stage whereby definitive final form agreement(s) can be agreed and signed between the parties. In addition, negotiation of a MOU can help identify, clarify and resolve any points of contention between the parties at the outset, which will ultimately facilitate the efficient and cost-effective negotiations of the final form agreement(s). Put simply, if the parties cannot agree on the high-level terms in a MOU, then it is, perhaps, unlikely that any proposed collaboration in relation to the contemplated transaction will materialise.



What should be in a MOU?

Think of a MOU as a foundation upon which the parties will lay the bricks forming the final form agreement(s). Depending on the subject matter of a MOU, the content will vary; however, ideally, the key substantive terms of the transaction should be set out and agreed in principle, for example, the financial terms, payment terms, duration, risk allocation, delivery terms, governing law and dispute resolution forum etc. Additionally, a MOU can also detail certain terms yet to be agreed, which can help focus and structure further negotiations between the parties, post execution of the MOU.

Binding or Not?

Before parties enter into a MOU, a decision should be made as to which provisions they want to be legally binding between themselves and which are not intended to be legally binding. It is imperative that the parties are in agreement in this regard, as any ambiguity can lead to the parties inadvertently being contractually bound to certain terms of the MOU which were still intended to be further negotiated.

Under Article 125 of the UAE Civil Transactions Code No. 5 of 1985 (as amended) (the ‘UAE Civil Code’) a contract is defined as “...the coming together of an offer made by one of the contracting parties with the acceptance of the other, together with the agreement of them both in such a manner as to determine the effect thereof on the subject matter of the contract, and from which results an obligation upon each of them with regard to that which each is bound to do for the other...”

Additionally, Article 141 of the UAE Civil Code provides that “...a contract may only be made upon the agreement of the two parties to the essential elements of the obligation, and the other lawful conditions which the parties regard as essential...” and

“...If the parties agree on the essential elements of the obligation and the remainder of the other lawful conditions which both parties regard as essential and they leave matters of detail to be agreed upon afterwards but they do not stipulate that the contract shall not be regarded as made in the event of absence of agreement upon such matters, the contract shall be deemed to have been made, and if a dispute arises as to the matters which have not been agreed upon, the judge shall adjudicate thereon in accordance with the nature of the transaction and the provisions of the law...”.

As the UAE Civil Code does not define what the “essential” elements of a contract are, there is a risk that where the parties have, in principle, agreed on a number of elements that they regard as “essential”, the parties could unintentionally find themselves legally bound to all the terms of a MOU, unless they expressly state which terms are not legally binding as between themselves.

More often than not, parties will want, at least, certain provisions of a MOU to be legally binding, but not all, hence it is important that the parties pay attention and make it clear which terms of a MOU are to be binding and which are not.

Examples of Provisions of a MOU that are Commonly Binding or Non-binding:

BINDING	NOT BINDING
<p>1. Governing Law and Dispute Resolution.</p> <p>The parties should have certainty on the governing law and dispute resolution provisions, in the event of a dispute arising under the MOU.</p> <p>Another consideration to bear in mind when deciding on a dispute resolution forum is “enforceability”. How easy is it going to be to enforce a favourable judgment or arbitral award against the other party?</p>	<p>1. The Intended Transaction/Collaboration/ Appointment</p> <p>Although there should be a general outline of what the parties are intending to do, the parties should avoid ‘setting in stone’ the detail in respect thereof at this stage. For example, in the context of a joint venture arrangement, the parties may eventually agree on a different shareholding or capital contribution and hence, any term in the MOU which addresses this topic should not be legally binding.</p>
<p>2. Costs</p> <p>There should, ideally, be prior agreement on who is to bear the costs incurred in respect of the negotiations of the MOU. More often than not the parties agree to cover their own costs, but in the event that one party agrees to pay the other party’s costs then, of course, that should be a binding obligation on that party.</p>	<p>2. Commercial Terms</p> <p>It is useful for the parties to reach provisional agreement on any commercial matters, e.g. purchase price (in the context of a transaction) or product prices/royalty payments (in the context of a distribution or franchise agreement, respectively). However, several factors may influence the initial understanding between the parties, as negotiations unfold, such that the parties should avoid being contractually bound to certain figures upfront, and hence, these type of terms in a MOU would normally not be legally binding.</p>
<p>3. Confidentiality</p> <p>Usually, as part of the negotiations, there will be information of a confidential nature disclosed between the parties and hence, there should be binding confidentiality and non-disclosure obligations imposed on both parties in order to protect against unauthorised disclosure to third parties. Therefore, these types of confidentiality and non-disclosure terms in MOUs are legally binding in order to protect both parties from the moment the MOU is signed.</p>	<p>3. Condition Precedent</p> <p>Based on the subject matter of a MOU, there may be certain conditions that the parties envisage having to satisfy at the outset in order to effect the contemplated transaction or commence any intended collaboration.</p> <p>However, these conditions may become irrelevant and/or require further amendment, as negotiations progress, therefore the parties would not wish to find themselves bound to a specific set of conditions agreed at the outset. Accordingly, these types of conditions in a MOU should not be legally binding in a MOU.</p>
<p>4. Exclusivity Provisions</p> <p>It is not uncommon for parties to agree on an “exclusivity period”, whereby each party agrees to cease any negotiations and/or agrees not to enter into any arrangements, directly or indirectly, with a third party in relation to the subject matter of the MOU for a set period of time, thereby granting the parties to the MOU an exclusive period within which they are both bound to negotiate with each other, only, with a view to concluding the final form agreement(s) in respect of the subject matter of the MOU.</p> <p>The parties to a MOU would generally wish to ensure that these exclusivity provisions are legally binding and that, in the event of a breach, they would be able to pursue any potential damages claim.</p>	<p>4. Timetable</p> <p>It is always useful to agree on a rough timeline of events in order to achieve the desired result, but this again could be impacted upon by numerous external influencing factors. Therefore, any timetable specified in a MOU should be indicative only and not legally binding.</p>

...legal advice should always be sought when entering into a MOU to avoid any unintended consequences...

BINDING	NOT BINDING
<p>5. Duration</p> <p>The duration of the MOU should be clearly defined and there should be a specific date by which the MOU will cease to have effect. This date is often referred to as a “Drop Dead Date” or “Long Stop Date” and is the date by which the parties should have entered into the final form agreement(s) effecting the subject matter of the MOU.</p>	
<p>6. Limitation of Liability</p> <p>Parties may wish to agree to limit their respective liability under a MOU (e.g. the parties often agree to exclude any direct, indirect, consequential or incidental losses, which may be suffered or incurred or arise from any failure by either party to enter into definitive agreements) and hence, these terms should be legally binding in any MOU to ensure that the parties are protected as intended.</p>	

Summary

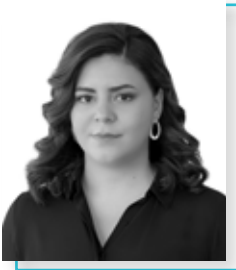
MOUs can be useful in focusing preliminary discussions between the parties, detailing the high-level terms upon which the parties have provisionally agreed and setting the framework within which the parties will collaborate in order to conclude the binding final form agreement(s).

Importantly, care should be taken to ensure that any MOU clearly records that, apart from those matters expressly agreed to be legally binding, each party regards the remaining terms of a MOU as non-binding so that the parties are able to avoid being unintentionally bound to terms which were intended to remain open for further negotiation.

As can be seen from the above, MOUs could have unintended consequences for parties hence, legal advice should always be sought when entering into any MOU in order to avoid any unintended consequences potentially arising, which may not be immediately apparent or appreciated by the contracting parties at the time of signing.

Al Tamimi & Company’s Commercial team regularly advises on memoranda of understanding. For further information please contact Willem Steenkamp (w.steenkamp@tamimi.com) or Robert Roberts (r.roberts@tamimmi.com).

Foreign Ownership of Land in Abu Dhabi: A Major Reform



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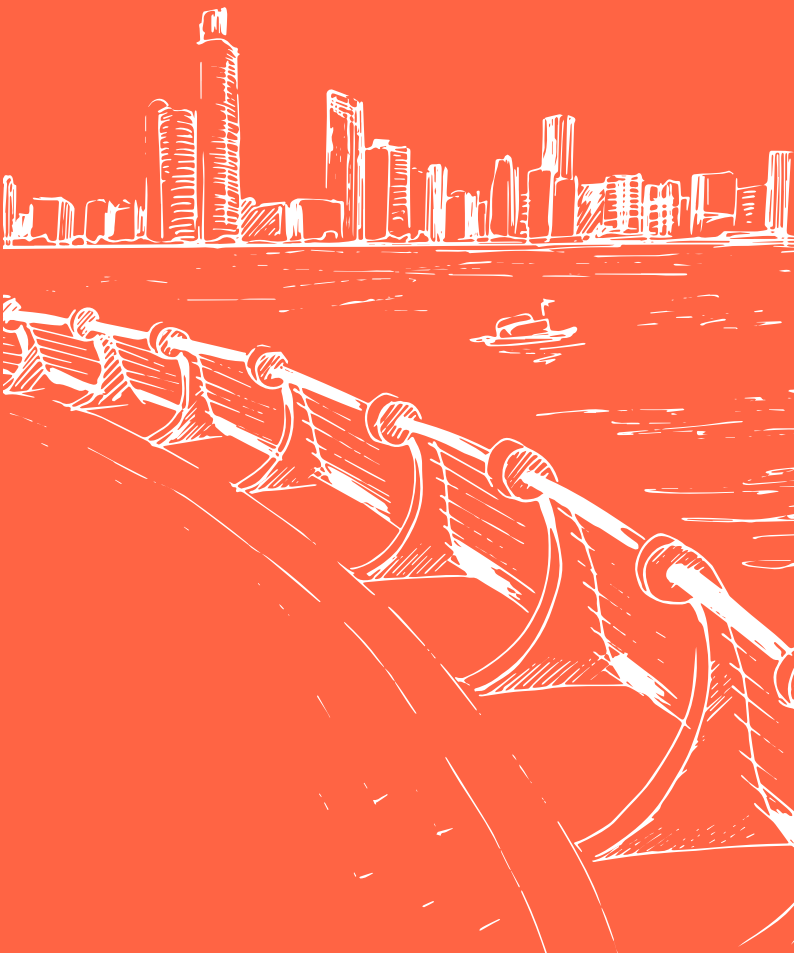
Opening Freehold Ownership of Land within Investment Areas to Foreigners

On 16 April 2019, the Abu Dhabi Government issued Law No. (13) of 2019 amending certain provisions of Law No. (19) of 2005 on Real Estate Ownership (‘Law’). The Law implements major changes to the rules on foreign ownership of real estate in the Emirate of Abu Dhabi (Abu Dhabi city, Al Ain and the Western Region).

Effective from 16 April 2019, foreign individuals (non-UAE/non-GGC nationals) and companies wholly or partially owned by such individuals (‘Foreign Owners’) can now own freehold interests in land located within the investment areas of the Emirate of Abu Dhabi (see list of investment areas below). Freehold ownership means ownership of land to the exclusion of all others, that is unrestricted in time. It is a superior interest to the rights previously available to Foreign Owners.

Prior to the issuance of the Law, while Foreign Owners were able to own freehold interest/title to apartments, offices, villas and other real estate units, a Foreign Owner’s interest, in respect of land, was limited to a Musataha (a concept akin to a long term development right), a usufruct (a long term use right) and long term lease, each for a period not exceeding 99 years.

Accordingly, pursuant to the Law, Foreign Owners may now own, acquire and dispose of all principal real rights (including freehold ownership) and accessory real property rights (including mortgage) over real estate properties located within the investment areas of Abu Dhabi.



6 Foreign Owners can now own freehold interests in land within the investment areas of Abu Dhabi.

The Law also extends the right for public joint stock companies to own a freehold interest in land and property anywhere in the Emirate of Abu Dhabi, provided that at least 51 percent of such companies is owned by UAE nationals ('Qualifying PJSC').

We understand that Foreign Owners and Qualifying PJSCs that currently have a leasehold, usufruct or Musataha interest registered on the Real Estate Register in respect of land within the relevant areas will be able to apply for the conversion of such interests into a freehold title. The Department of Urban Planning and Municipalities will set out the requirements, procedures and fees payable (if any) for converting a leasehold interest into a freehold title.

Investment Areas of Abu Dhabi

A current list of the main investment areas in the Emirate of Abu Dhabi is set out below:

Investment Area	Resolution
Al Raha Beach and Reem Island	Resolution No. (23) of 2005 on the Determination of some Investment Areas in Abu Dhabi.
Al Reef Area	Resolution No. (36) of 2005 on the Determination of the Third Investment Area in Abu Dhabi.
Lulu Island	Resolution No. (9) of 2006 on the Determination of the Fourth Investment Area in Abu Dhabi and Resolution No. (38) of 2008 on the Ownership of Lulu Island.
Saadiyat Island	Resolution No. (14) of 2008 on the Determination of the Fifth Investment Area in Abu Dhabi Resolution No. (68) of 2015 on the Determination of the Fifth Investment Area in Abu Dhabi (Transfer of Ownership of (600) Land in Saadiyat Island from Abu Dhabi Tourism and Culture Authority to Abu Dhabi Government).
Yas Island	Resolution No. (15) of 2008 on the Determination of the Sixth Investment Area in Abu Dhabi.

Controls over Disposals of Real Estate subject to Musataha or Usufruct

The Law also restricts a freehold owner from dealing with land that is subject to Musataha or usufruct rights.

In accordance with the Law, a holder of a usufruct or Musataha right for a term exceeding ten years may, without the freehold owner's consent, dispose of such right, including by way of mortgage, and the freehold owner of the land may not mortgage the same, except with the consent of the holder of the usufruct or Musataha right. In either case, the parties may agree otherwise.

Investment Area	Resolution
Al Sidayra	Resolution No. (49) of 2008 on the Determination of the Seventh Investment Area in Abu Dhabi.
Masdar City	Resolution No. (50) of 2008 on the Determination of Master city as the Eighth Investment Area.
Al Maryah Island	Resolution No. (24) of 2009 on the Determination of Al-Sawa Island as the Ninth Investment Area and Resolution No. (22) of 2012 on the Change of the Name of Al-Sawa island to Al Maryah Island.
Allocation of land to Abu Dhabi Airports Company	Resolution No. (77) of 2009 on the Allocation of Land to Abu Dhabi Airports Company.
Allocation of land to Abu Dhabi Ports Company	Resolution No. (60) of 2010 regarding the Determination of the Eleventh Investment Area.
Allocation of land from Al Falah	Resolution No. (21) of 2011 on the Transfer of Ownership of Plots Nos. (3) and (5), Al Falah Sector (7).
Fahed Island	Resolution No. (143) of 2016 concerning the 13th Investment Area in the Emirate of Abu Dhabi.
Had Al Saadiyat Project	Resolution No. (27) of 2017 on the Fourteenth Investment Area in the Emirate of Abu Dhabi.
Plot No. (11), Al-Jaraf Sector in Al-Jaraf Area	Resolution No. (29) of 2017 on the Fifteenth Investment Area in the Emirate of Abu Dhabi.
Nurai Island	Resolution No. (37) of 2017 on the Sixteenth Investment Area in the Emirate of Abu Dhabi.
Land allocated to the Higher Corporation for Specialized Economic Zones	Resolution No. (45) of 2017 on the Seventeenth Investment Area in the Emirate of Abu Dhabi.
Plots Nos. 1a and 1b, Sector Al Jubail, South Al Jubail Island	Resolution No. (53) of 2018 on the Eighteenth Investment Area in the Emirate of Abu Dhabi.
Plot No. (1), Sector No. (36), Al Shamkha, Abu Dhabi	Resolution No. (313) of 2018 on the Nineteenth Investment Area in the Emirate of Abu Dhabi.
Plots Nos. P1, P2 and P3 in Kaser Al Amouaj, Abu Dhabi City	Abu Dhabi Executive Council issued Resolution No. (9) of 2019 on the Twentieth Investment Area in the Emirate of Abu Dhabi.

Al Tamimi & Company's Real Estate team regularly advises on real estate investment in Abu Dhabi. For further information please contact Maha Dahoui (m.dahoui@tamimi.com) or David Bowman (d.bowman@tamimi.com).

Owning Properties in Dubai by an ADGM Entity



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Entities that are incorporated in Abu Dhabi Global Market ('ADGM') are permitted to own land and property in the areas of Dubai designated for foreign ownership by the Ruler of Dubai ('Designated Areas') pursuant to a Memorandum of Understanding ('MoU') signed between ADGM and the Dubai Land Department ('DLD') on 24 October 2018.

The MoU is a significant development and enables investors to use an ADGM vehicle to own Dubai properties and structure their businesses in ADGM accordingly.

Legal Framework for Corporate Ownership of Real Estate in Dubai

Ownership of real estate in Dubai is governed by Law No. 7 of 2006 concerning Real Estate Registration in the Emirate of Dubai ('Real Estate Law').

Article 4 of the Real Estate Law provides that companies:

- wholly owned by UAE or GCC nationals may own any real estate in Dubai; and
- partially or wholly owned by non-UAE or GCC nationals, may own freehold title, a long lease, a usufruct right of up to 99 years or a Musataha right of up to 50 years (renewable) in the Designated Areas.

Despite the generality of the law, the DLD's policy has long restricted the type of companies that are permitted to own property in Designated Areas to Dubai onshore companies and Dubai offshore companies incorporated in the Jebel Ali Free Zone, the Dubai Multi Commodities Centre Free Zone, Dubai International Financial Centre ('DIFC'), among others.

Pursuant to the MoU, as of 24 October 2018 the DLD now allows the ownership of properties in Designated Areas by companies incorporated in ADGM.

The Registration Authority of ADGM ('RA') has issued guidance on the registration procedures to be followed together with information on the documents which should be provided to DLD in order to register a property within the Designated Areas in the name of an ADGM entity.

Registering a Dubai Property in the Name of an ADGM Entity

Pursuant to the MoU, the guidance issued by the RA and the current DLD policies, the following rules and procedures will apply when registering a property in Dubai in the name of an ADGM entity:

1. the DLD will register properties (or rights related thereto) in the name of an ADGM entity in accordance with its own rules, regulations and conditions (which may be subject to change from time to time) and subject to the Real Estate Law;
2. the DLD will rely on a Certificate of Incumbency issued by the RA for the concerned ADGM entity to ensure that it is duly registered and licensed by the RA as of the date of the Certificate of Incumbency and that it is subject to ADGM rules and regulations;
3. the shareholders in an ADGM entity must either be natural persons or companies whose shareholder(s) can be verified by the DLD. The DLD may request to be provided with additional information by the RA in order to identify the ultimate shareholders of the ADGM entity;
4. the DLD may approve the registration of plots of land or properties in Dubai in the name of ADGM entities which are owned by a combination of natural and corporate persons (subject to compliance with certain DLD conditions and submission of all documents required including a 'No Objection Certificate' ('NOC') issued by DLD approving ownership of the Dubai properties);

5. the directors or all the shareholders of the ADGM entity intending to purchase a plot of land or a property in Dubai must sign and submit to the DLD an 'Acknowledgement and Undertaking Letter' in the form issued by DLD with respect to the disclosure of future shareholding transactions;
6. the full amount of registration, transfer and cancellation fees (as may be amended by the DLD from time to time) should be paid directly to the DLD;
7. ADGM branches of foreign companies and listed public companies are outside the scope of the MoU; and
8. at present, ADGM trusts and foundations are not permitted to own properties in Dubai whether directly or indirectly.

Anti-Avoidance Rules - Transfer of Shares in an ADGM Entity owning a Property in Dubai

In accordance with the MoU and the current policies of the DLD, the transfer of all or part of the shares of an ADGM entity will be treated as a transfer of ownership of an interest in the properties owned by the ADGM entity. Accordingly, a transfer of shares triggers the payment of registration fees at the rate applied by the DLD at the time of the transfer with respect to each property owned by the ADGM entity. The transfer fees payable will be calculated by the DLD based on the percentage of interests in the ADGM entity being transferred.

It is important to note that the DLD's policies are not formally published and are subject to change from time to time. Specific legal advice on a proposed ownership structure should be sought prior to entering into any property transaction.

Al Tamimi & Company's Real Estate team regularly advises on real estate investment in Abu Dhabi. For further information please contact Maha Dahoui (m.dahoui@tamimi.com) or David Bowman (d.bowman@tamimi.com).

EDUCATION MIDDLE EAST: TO INFINITY AND BEYOND!



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Welcome to our Law Update Education edition with a comic twist! We have packed a lot of punch in the coming pages and hope you enjoy it.

The wingspan of the Al Tamimi Education team stretches from Cairo to Bahrain, covering every key market in the region. We have been fortunate enough to be involved in some of the biggest education deals in the region and have an opportunity to share some of our experiences here. We are a full service sector group covering all the sub-sectors including nurseries & KG, schools, Higher Education, vocational training and EdTech.

The sector never stops evolving. Saudi Arabia and Egypt have come out to play and there is huge interest in both. PPP is the buzzword this year (across the region) with lots happening and more in the pipeline.

In this edition, we have a double feature on PPP, in respect of procurement/construction and also specifically in relation to Qatar. We have a delicious smorgasbord of topics covered in our digital transformation article. In Higher Education we look at key employment considerations including tenure and academic freedom.

There is a round-up of developments in Bahrain including blockchain authenticated degrees. Our colleagues in Cairo take a further look at the international branch campus topic, one they are very familiar with having set up a number of them.

From a UAE perspective our Real Estate team considers the property rights available for investors/developers in Dubai and Abu Dhabi. We also look at the latest child protection law which ties in with our 'Children of Tomorrow' project, which is a key part of our Corporate Social Responsibility commitment. We also take a look at accommodation of students of determination and the latest developments in the region.

In relation to Saudi Arabia, there are some important updates in relation to ownership/operation of schools and PPP, which we will report on separately when they are finalised.

Finally, we will be running a full-day [Higher Education Conference](#) in Dubai on Thursday, 10 October, specifically designed for those dealing with legal issues in the Higher Education sector, including GC's, CEO's, senior administrators, provosts, vice chancellors and other people who instruct external counsel.

Over the course of the day, over 20 industry experts from across many disciplines in the Middle East and beyond will form panels to discuss topics such as:

- an overview of the Higher Education landscape in the Middle East;
- key international trends in Higher Education;
- how EdTech is impacting the Higher Education sector;
- regional Investment opportunities in Higher Education;
- HR & Employment essentials for Higher Education; and
- the role of academia in the innovation ecosystem: How to transform research into innovation and legal vehicles for protection and monetization.

The event is by invitation only, however, if you are interested in attending, please contact our organisers for more information at EdSector@tamimi.com.

We hope you enjoy this edition and please feel free to share any ideas for future articles or feedback generally with me at i.mcgettigan@tamimi.com.



SAFEGUARDING 3.0: THE EXECUTIVE REGULATIONS OF THE CHILD RIGHTS LAW



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Guaranteeing the safety and wellbeing of children and young people is of paramount importance to every nation. The UAE Federal Law No. (3) of 2016 (the 'Child Rights Law') embodies this basic principle. Even though the Child Rights Law includes provisions that were already regulated by former existing UAE laws, it is still considered a major development in this area. On the second anniversary of its enactment, the UAE Cabinet issued the Executive Regulations (the 'Regulations') to provide the framework for its application and in effect, strengthen the provisions of the Child Rights Law. It asserts the importance of preventing all kinds of harm to children in educational institutions, as well as preserving their various rights.

Most importantly, the Regulations clarify the competencies of the special Child Protection Units (the 'CPUs') and also stipulate the powers and necessary conditions of Child Protection Specialists (the 'CPS').

CHILD PROTECTION UNITS

Pursuant to the Child Rights Law and the Regulations, the federal authorities concerned with child affairs, shall establish the special CPUs. These organisational units have exclusive authority to implement child protection mechanisms and measures.

Under Article 7, the Regulations empower the CPUs with a wide range of authority, including but not limited to:

- receiving, evaluating and documenting reports on any violations of a child's rights;
- taking preventative measures to protect the child from actual or possible abuse in co-ordination with the competent bodies;
- providing counselling and support to families and those children exposed to exploitation, violence or any other form of abuse;
- providing counselling and guidance to the custodians of the child on socialisation and identifying surrounding risks and the ways to avoid them;
- following up on the families and children during the course of their improvement plan, assessing their condition and progress as well as making the necessary recommendations in this regard; and
- assisting investigations into alleged crimes against children.

The Regulations provide further guidance with regards to violations committed in educational institutions. These institutions naturally fall under the remit of the Ministry of Education (the 'MOE'), therefore, their personnel are required to work closely with and report to the MOE's Child Protection Unit.

In the event of a child being abused in an educational institution, Article (6) provides a procedure whereby the CPU is empowered to:

- inform the police in cases that constitute a crime punishable by an applicable statute;
- hospitalise the child for treatment;
- refer the abused child to rehabilitation programmes at competent facilities if necessary; and
- set out an improvement plan to remove the causes and effects of the violation of the child's rights, in co-ordination with the child's custodian or guardian.

CHILD PROTECTION SPECIALISTS

The Child Rights Law states that any private or public entity that has a remit involving children shall appoint a CPS. This official role is equipped with sweeping power as they are assigned to preserve and protect a child's rights and welfare. Any individuals wishing to apply are required to meet certain criteria to qualify for the position.

The Regulations provide an expanded list of requirements that must be met before a person can hold this position. Article 9 states that a CPS shall:

1. be a citizen of the state;
2. have full legal capacity;
3. be of good conduct and have never been convicted of an offence involving moral turpitude or breach of trust, even if rehabilitated;
4. be a holder of an university degree in social or psychological sciences or in the field of family and childhood, or have a diploma in the said competences with at least three years of experience in the field of child protection; and
5. successfully pass the CPS training programmes approved by the Ministry of Community Development.

Furthermore, the CPS working for the Ministry of Interior is specifically required to be a holder of a university degree in law or police sciences or a diploma with at least three years of experience in the field of child protection.

THE EXECUTIVE REGULATIONS ARE WELCOMED FOR ASSERTING THE CONTINUOUS EFFORTS IN THE UAE TO SAFEGUARD THE INTERESTS AND WELFARE OF CHILDREN.

A CPS is also responsible for: (i) taking preventative measures to minimise the risk of child abuse; and (ii) take the necessary protective measures if there is an actual threat to the child's safety or physical, psychological, moral or mental health.

PREVENTATIVE MEASURES

According to the Regulations, and subject to the approval of the superior body concerned, the CPS will instruct and enlighten children about the risks they may face when visiting some places or carrying out certain activities. They will also teach children how to face challenges they may encounter. In addition, a CPS, through workshops and courses, must be capable of educating and equipping children and their families with the skills necessary for tackling potential welfare problems.

PROTECTIVE MEASURES

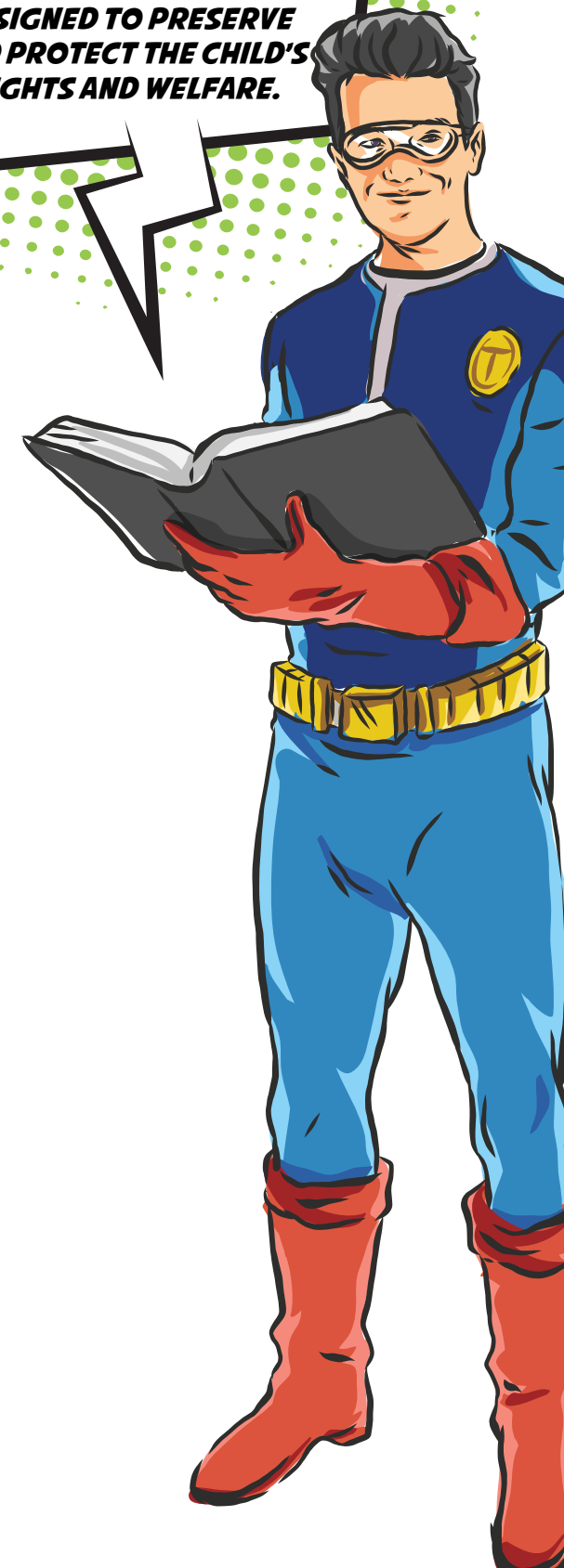
If there is an actual and present threat to a child, the CPS is empowered to:

- remove the child from the dangerous place and relocate them to an area which ensures their safety;
- enrol the custodian in training programmes to ensure good treatment and the appropriate development of the child;
- conduct comprehensive research clarifying the conditions and circumstances surrounding the child who is reported or believed to be abused;
- file reports with the CPU and employers to address the Public Prosecution Office and send warning letters to custodians who are failing to abide by the recommendations provided;
- identify the appropriate foster family for the child and ensure his/her rights will be safeguarded within such a family; and
- prevent the child from engaging in acts that would cause him/her harm and deny his/her access to places that threaten his/her physical, psychological and moral wellbeing.

The Executive Regulations which clarify the roles of CPUs and CPS, are welcomed as they highlight the continuous efforts in the UAE to safeguard the interests and welfare of children.

Al Tamimi & Company's Children of Tomorrow Project team regularly advises on matters relating to children's welfare. For further information please contact Ivor McGettigan (i.mcgettigan@tamimi.com), Alex Ghazi (alex.ghazi@tamimi.com), Omar Khodeir (o.khodeir@tamimi.com) or Maitha Al Hashimi (m.alhashimi@tamimi.com).

ANY PRIVATE OR PUBLIC ENTITY THAT HAS A REMIT FOR CHILDREN SHALL APPOINT A CPS. THIS OFFICIAL ROLE IS EQUIPPED WITH SWEEPING POWERS AS THEY ARE ASSIGNED TO PRESERVE AND PROTECT THE CHILD'S RIGHTS AND WELFARE.



ACCOMMODATION OF STUDENTS OF DETERMINATION



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On a global scale, there has been an array of schemes calling for a movement towards 'inclusive' and 'equitable' education; amongst these, the loudest include the United Nations Convention on the Rights of Persons with Disabilities (2006) and Goal 4 of the United Nations Sustainable Development initiative ('SDG4'). Both of these frameworks strive to achieve a worldwide education system where all students have access to the same opportunities. In order for education to be 'equitable', it should be recognised that not all students have the same needs and hence, diversity must be acknowledged and welcomed. Concurrently, 'inclusive' education ensures that all diverse needs are met without having to build barriers between students and without hindering their prospects of success in today's already cut-throat atmosphere.

Locally, strong efforts have been made to promote the UAE's stance on the global stage concerning education and human development; the country is one of many to ratify the United Nations Convention and become a member of SDG4. Dubai, in particular, has promoted education to the forefront of its agenda to become a fully inclusive city by 2020 and, consequently the nation has sought to protect the educational rights of students with SEND requirements as early as 2006 (see Article 12 of Federal Law No. 29).

Since April 2017, the most notable act in the progression of this sector was Sheikh Mohamed bin Rashed Al Maktoum's announcement that the term 'people with

disabilities' be abolished and replaced with 'people of determination'. The purpose of this change was to put a stop to the physical, mental and intellectual limitations placed upon such individuals just from the mere mention of the word 'disability'. However, today, the focus has shifted to the Knowledge and Human Development Authority's ('KHDA') introduction of the Dubai Inclusive Education Policy Framework. Under this framework, the KHDA's aim is simple: to regulate and ensure that all educational facilities in Dubai become all-inclusive institutions.

OVERVIEW OF THE DUBAI INCLUSIVE EDUCATION POLICY FRAMEWORK

The implementation of this framework came about after several complaints from parents of children of determination who alerted the KHDA that some mainstream schools were rejecting their children solely on the basis that they could not cater to their needs. As a result, these children are left with no choice but to enrol in special needs schools, which generally do not follow any curricula. Thus, this puts them at a disadvantage for their higher education prospects.

Consequently, the Dubai Inclusive Education Policy Framework strives to eliminate the difficulties suffered by students of determination and their parents. The Framework demonstrates a series of procedures, which will be considered in turn:

1. the Framework encourages education providers to carry out assessments upon the admission of new students to identify what kind of support a particular student will need throughout his/her educational career. In addition, schools cannot reject the admission of students solely due to their intellectual or physical capabilities. As a result, institutions are expected to modify their curricula to accommodate a wide variety of student competencies;
2. education providers are to implement policies and strategies to accommodate the new Framework; this includes introducing individualised plans for the successful inclusion of students, ensuring no discrimination is made between students with personalised learning requirements and those who do not require individual programmes. Teachers must also be equipped with the necessary training in order to cater to a diverse student body;
3. perhaps the most problematic issue for schools in Dubai, education providers are recommended to provide a minimum ratio of one support teacher for every 200 enrolled students. Moreover, the Framework recommends one learning support assistant for every 125 enrolled students; and
4. schools are required to provide the necessary resourcing and allocation of funds to accomplish successful inclusion. This includes training of all teachers and educational staff, ensuring all facilities are made as fully accessible as possible and that the cost to families for all additional services is kept as reasonable as possible.

**ITS AIM IS SIMPLE:
TO REGULATE AND ENSURE
THAT ALL EDUCATIONAL
FACILITIES IN DUBAI BECOME
SUCCESSFULLY INCLUSIVE
INSTITUTIONS**

DIFFICULTIES IN IMPLEMENTATION

Some schools in Dubai have already voiced their concerns regarding potential difficulties that they may face as a result of the Framework. In particular, the recommended ratio of specialists to students, it has been suggested, poses a significant hurdle for larger schools. This is especially difficult in a market where a shortage of specialist teachers exists. Furthermore, staff training options are limited as it can only occur in a KHDA approved training institute.

Although the objectives laid out by the Framework are not impossible, it appears that more time will be needed in order to achieve the results that the Framework sets out to accomplish. Thus, with the deadline of 2020 looming for Dubai to become a fully inclusive city, it may be necessary to allow schools an extra amount of time to incorporate these new changes.

INCLUSIVE EDUCATION DEVELOPMENTS IN THE ARAB REGION

Most Arab nations are parties to the aforementioned international initiatives and have been engaged in formulating their own strategies to achieve inclusive education in their jurisdictions. In the GCC, Qatar's Ministry of Education has launched a year-long campaign, in partnership with UNESCO, to promote the concept of inclusive and equitable education in mainstream schools. In Oman, UNICEF has been working alongside its Ministry of Education to develop a training programme on inclusive education, also in the hope of implementing SDG4 of the Sustainable Development Agenda by 2030. In addition, Muscat is set to open its first inclusive private school in September 2019.

Outside the GCC, Egypt has passed the Law on the Rights of Persons with Disabilities in February- the first of its kind in the nation since 1975. The Law requires that educational institutions, including those of higher education, provide equal opportunities to students with SEND; moreover, the law has made it a criminal offence for institutions to reject students on the basis of their disabilities. Although the law has been greeted with great optimism and hope, the timeframe given to education providers will not guarantee that the necessary policies and funds can be arranged in accordance with the Law.

CONCLUSION

The efforts being made by the UAE and neighbouring Arab nations is a testament to the region's devotion and dedication in developing and broadening access to the education sector. It will take time to deliver these goals; it is a moving finish line but their first steps are encouraging.

Al Tamimi & Company's Education team advises education providers on a wide range of matters. For further information please contact Ivor McGettigan (i.mcgettigan@tamimi.com) or Ghazal Hawamdeh (g.hawamdeh@tamimi.com).

**LOCALLY, STRONG EFFORTS HAVE
BEEN MADE TO PROMOTE THE UAE'S
STANCE ON THE GLOBAL STAGE**

**CONCERNING EDUCATION AND
HUMAN DEVELOPMENT**





INTERNATIONAL BRANCH CAMPUSES: LAW *v* PRACTICE



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Law No. 162 of 2018 (the 'Law') and Ministerial Decree No. 4200 of 2018 (the 'Decree') pertaining to the establishment of International Branch Campuses ('IBC(s)') of foreign universities in Egypt provide two paths for foreign universities to establish an IBC in Egypt: (i) by applying directly before the Ministry of Higher Education (the 'Ministry'); or (ii) by applying through an Educational Institution.

Educational Institutions are special purpose vehicles, established by virtue of a Presidential Decree, with a mandate to set up IBCs and handle all administrative issues relating to them. The Law and the Decree expressly prohibit Educational Institutions to grant any sort of academic degrees to students; the degrees are issued by the IBC with which the Education Institution has engaged.

OPTION A: APPLYING DIRECTLY BEFORE THE MINISTRY

In order to set up an IBC directly, the foreign university must present to the Ministry, among other documents: (i) a detailed study outlining the proof of legal ownership of the land, on which the IBC will be established, and the readiness of such land to host the IBC; (ii) a financial feasibility study detailing the IBC's sources of income, flow of funds and budget; (iii) the proposed governance structure; (iv) a detailed study including the academic policies, syllabi, grading and examination schemes to be

implemented in the IBC; and (v) a plan outlining the mechanism to be adopted to allow enrolled students to complete their studies in case the IBC is incapable of continuing its operations.

OPTION B: APPLYING THROUGH AN EDUCATIONAL INSTITUTION

In order to establish an IBC through an Educational Institution, the latter must present to the Ministry the same documents required under option A above as well as: (i) the Educational Institution's name, objectives and proposed structure; (ii) the IBC(s) to be hosted by the Educational Institution and the draft agreement(s) to be concluded with the foreign university or universities; (iii) a list of the Educational Institution's shareholders and their nationalities; and (iv) an undertaking from the Educational Institution's shareholders that it shall not grant any academic degrees and shall not interfere in the academic affairs of the IBC(s).

Additionally, the Decree mandates that a joint-stock company cannot become a shareholder in an Educational Institution unless its constitutional documents set out limitations on the disposal of the shares in any form, the change of the shareholding structure and the change in the company's capital, without the Ministry's prior approval.

TUITION AND FINANCES

The IBC or the Educational Institution (as applicable) will need to pay: (i) licensing fees amounting to five percent of its budget to obtain the licence; and (ii) a yearly service fee, amounting to two percent of the total annual tuition fees, payable to the Egyptian Government. Additionally, the IBC shall have the sole discretion of determining its tuition fees. However, such fees shall be quoted in Egyptian Pounds for Egyptian students. They may be quoted in a foreign currency for Non-Egyptian students. However, tuition fees cannot be raised above the rates of increase outlined to students prior to their enrolment.

THE ACTION PLAN

In order to establish an IBC, the following steps need to be taken:

- presentation of the application to the Ministry;
- obtainment of the Preliminary Approval;
- submission of the supplementary documents to the Ministry within three months;
- obtainment of the Ministry's final approval;
- obtainment of the Cabinet of Ministers' approval;
- issuance of the Presidential Decree; and
- issuance of a Ministerial Decree announcing the commencement of the academic year.

CONCLUSION

Ever since the issuance of the Law and the Decree, many well-renowned universities across the globe as well as Egyptian investors have expressed interest in setting up IBCs. This aligns with the Egyptian Government's development of the New Administrative Capital.

Al Tamimi & Company's Egypt team regularly advises on Education setups. For further information please contact Mohamed Gabr (m.gabr@tamimi.com).

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INVESTORS EXPRESSED THEIR
INTEREST IN SETTING UP IBCs.**



WHAT PROPERTY RIGHTS ARE AVAILABLE FOR THE INVESTORS/DEVELOPERS IN THE EDUCATION SECTOR IN DUBAI AND ABU DHABI?



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Investors looking to develop schools or other education assets in the UAE must consider how they will develop or acquire their facilities and what type of property rights to acquire.

The acquisition of property rights that are limited in time (i.e. other than the purchase of freehold properties) is a financially sound way of reducing the amount of upfront capital expenditure that would need to go in to developing education facilities such as schools.

In this article, we look at how education investors in Dubai and Abu Dhabi can use a Musataha right or a long term lease right to develop school facilities and we discuss the advantages of each property right and the other options available for foreign investors based on the rules of property ownership for foreigners.

1. WHAT IS A MUSATAHA RIGHT?

A Musataha right is a property right that gives the owner of the Musataha the right to build, own and use the building during the term of the Musataha. The maximum term for a Musataha agreement is 50 years as per the rules of the Civil Code. In Abu Dhabi, Law No. 19 of 2005 Regarding Property Ownership provides clearly that this term is renewable for a further term of 50 years.

Article 1353 of the Civil Code defines a Musataha right as “a property right conferring upon the owner thereof the right to build a building or to plant on the land of another.” The Musataha right gives the owner thereof the right to use the property and the right to build and improve the property.

However, the owner of a Musataha right is required to remove the building on the land and return the land to the landlord or may be required

to leave the building on the land if requested by the landlord at the expiration of the term of the Musataha. Article 785 of the Civil Code states:

“If the lessee has constructed a new building or planted plants in the thing leased, even with the consent of the lessor, the lessor may, upon the expiration of the lease, either require him to demolish the building or remove the plants, or he may take over ownership of the new buildings or plants placed there for such value as they would have if removed if the destruction or removal thereof would cause harm to the property, and if the demolition or removal would not cause harm to the property, the lessor may not require that they remain there without the consent of the lessee.”

While dealt with in the Civil Code, we recommend that the ‘make good’ obligations of the owner of the Musataha right are considered carefully by the parties and documented in the Musataha agreement as this is a commercially important issue. Considerations should include who bears the costs of removal, timeframes for removal of the buildings, what condition the land should be returned to the landlord and, if the owner of the Musataha right is required to leave its buildings on the land, what compensation is payable by the landlord etc. If the Musataha agreement is silent on the ‘make good’ obligations of the owner of the Musataha right then Article 785 of the Civil Code will apply.

2. WHAT IS A LONG-TERM LEASE RIGHT?

Dubai Administrative Resolution No. 134 of 2013 defines a long-term lease as a lease for a term of more than 10 years and up to 99 years.

Long-term leases must be registered in the Real Property Register in the Dubai Land Department (the ‘DLD’) pursuant to the requirements of Article 9 of Dubai Law No. 7 of 2006.

It is important to note that the Tenancy Laws are not applicable to long-term leases and the Rental Dispute Settlement Centre does not have jurisdiction over long-term lease disputes.

In Abu Dhabi, leases for a period of more than four years must be registered with the real estate register in Abu Dhabi Municipality pursuant to Article 6 of law No. 3 of 2005 otherwise it will not be recognised and has no legal effect except between the contracting parties.

3. WHERE CAN FOREIGN EDUCATION INVESTORS OWN A MUSATAHA RIGHT OR A LONG-TERM LEASE RIGHT IN DUBAI AND ABU DHABI?

In Dubai, education investors that are incorporated in the UAE and which are wholly owned by UAE or GCC nationals (or are individuals that are UAE or GCC nationals) have the right to be granted a Musataha right, long-term lease or any other type of property rights in any area in Dubai pursuant to Article 4 of Law No. 7 of 2006 concerning Real Property Registration (the 'Dubai Property Law'). The Dubai Property Law also requires registration of a long-term lease right with the DLD in order for it to have any legal effect.

For foreign education investors in Dubai, the option of a long-term lease right is available where the education facility is being developed in those areas designated for foreign ownership as determined by the Ruler of Dubai ('Designated Areas'). Foreign education investors wanting to use premises for schools in areas which are outside Designated Areas must look at other ways to secure premises, e.g. use short-term leases or consider whether an exemption is available. For example, the Dubai Property Law provides that a Public Joint Stock Company is exempt from this rule and can own a property right over premises in any area in Dubai. It is important to note that any side agreement attempting to circumvent the rules of property ownership by foreigners is void and will not be recognised as the court will consider the owner of the property right is the one who has his title registered with DLD.

In Abu Dhabi, foreign education investors (including those entities wholly owned by GCC nationals or who are GCC nationals) will face

similar challenges if they want to use premises for schools outside Designated Areas since they will be limited to taking a four-year lease of the existing premises. A long-term lease agreement, Musataha agreement and all property rights must be registered with the Abu Dhabi Municipality (the 'ADM') pursuant to Law No. 3 of 2005 Concerning the Regulation of Properties in Abu Dhabi (the 'Abu Dhabi Property Law') for it to be enforceable.

4. WHAT IS THE DIFFERENCE BETWEEN LONG-TERM LEASE RIGHT AND MUSATAHA RIGHT?

A Musataha right and a long-term lease right are both property rights conferred by the Civil Code. A Musataha right gives the owner of the Musataha right the right to build, own and use the building during the term of the Musataha, whereas a long-term lease right is limited to a right to use land, or a building, in its current condition.

We recommend that an investor conduct thorough legal and technical due diligence on the plot or building prior to signing a Musataha agreement or long-term lease to ensure that the correct property right is acquired.

5. WHAT IS THE DIFFERENCE BETWEEN A LONG-TERM LEASE RIGHT AND A LEASE?

The DLD and the ADM each recognise both short and long-term leases. Generally, long-term leases must be registered with DLD and ADM and (as discussed below) may be granted as security for project finance.

Conversely, short-term leases are considered to be mere personal contractual rights. In Dubai, such leases are registered in the Ejari system. In Abu Dhabi, short-term leases are registered on the Tawtheeq system.

The grant of a short-term lease poses some challenges for an education investor wanting to obtain financing for initial capital and cover operational costs. This is discussed in more detail below.

6. CAN THE OWNER OF A LONG-TERM LEASE RIGHT REGISTER A MORTGAGE?

Law No. 14 of 2008 Concerning Mortgages in Dubai (the 'Dubai Mortgage Law') provides that Musataha and a long-term lease rights in Dubai can be mortgaged. This is useful in circumstances where an education investor is looking to secure financing to assist with initial capital and operating costs of the facility.

Article 23 of the Dubai Mortgage Law provides that a mortgage over the long-term lease shall terminate and be deleted from the DLD property register upon expiry of the term of the long-term lease. As it is often the case that long-term lease arrangements are renewable, lenders will need to ensure that they are adequately protected in such circumstances.

Foreign education investors wanting to secure financing for initial capital costs and operating costs of the facility in areas which are outside Designated Areas may face difficulty in obtaining finance since they will be limited to taking a short-term lease of existing premises, making these shorter term ventures less attractive for banks. One option to circumvent this issue is to express the term as renewable for further terms, however, this may not provide sufficient comfort for a bank providing finance.

In Abu Dhabi, Law No. 3 of 2015 Regulating the Real Estate Sector in the Emirate of Abu Dhabi provides that in the event that the usufruct (akin to a long-term lease) or Musataha agreement is for a term of more than 10 years, then the owner of such property right has the right to register a mortgage over the term of the Musataha or long-term lease agreement, unless the agreement states otherwise. However, in the event that the Musataha or long-term lease agreement is for a term less than 10 years, the owner of the Musataha agreement or long-term lease agreement must obtain the prior consent of the landlord to register the mortgage.

7. WHAT HAPPENS TO THE BUILDING ON EXPIRATION OF THE LONG-TERM LEASE RIGHT?

On expiration of the long-term lease right, the premises will return to the owner in the same condition as received at the time of registering the long-term lease right, unless otherwise agreed between the parties.

8. WHAT ARE THE LONG-TERM LEASE REGISTRATION FEES?

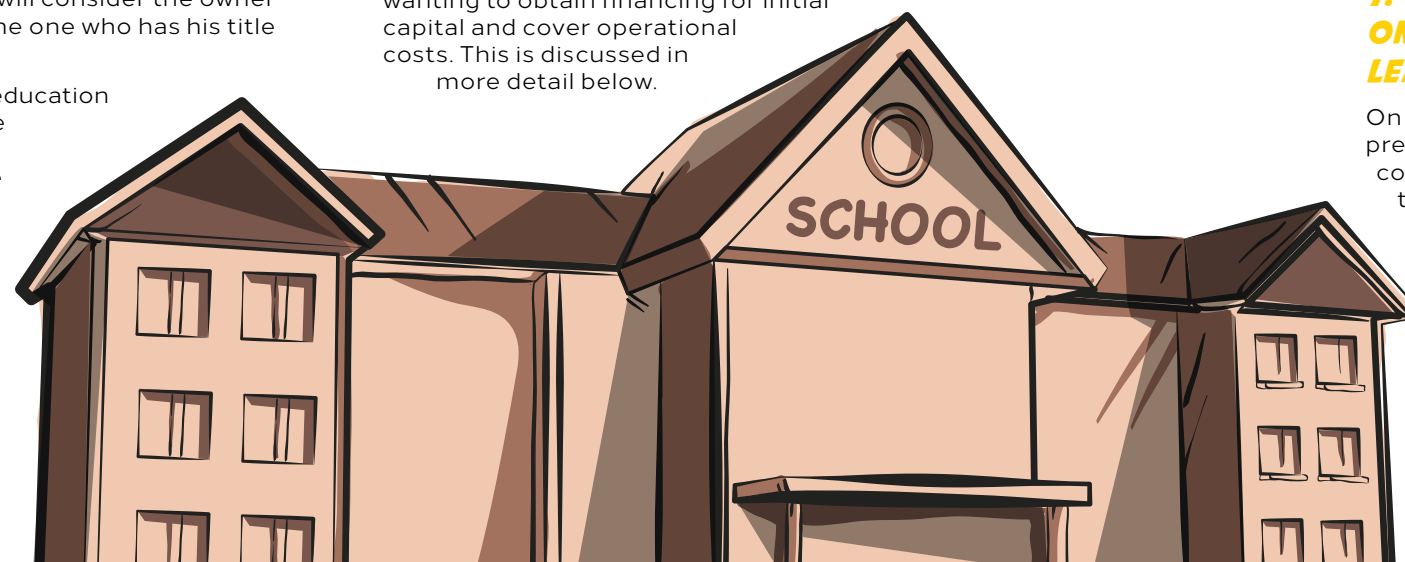
The DLD registration fee payable on a long term lease agreement is four percent of the total value of the lease contract, and one percent of the total Musataha value for Musataha agreement pursuant to Executive Council Resolution No. 30 of 2013 Approving the Fees of the Land Department. This registration fee is shared equally by the property owner and the owner of the long-term lease right and by the owner of Musataha right in relation to Musataha agreement (unless agreed otherwise).

The fee payable on a long-term lease agreement in Abu Dhabi at the Abu Dhabi Municipality is 3.6 percent of the total annual rent of the long-term lease agreement. The fee is usually wholly paid by the tenant of the long-term lease agreement unless agreed otherwise.

CONCLUSION

The grant of a Musataha or long-term lease right for an education investor has many benefits in the UAE. For property owners, they secure revenue in respect of the premises for a long period (typically a period of 99 years and is renewable or 50 years in the case of the Musataha), while retaining freehold ownership. For education investors, long term real property rights (limited in time) can be acquired, without requiring as large a capital outlay. These interests can also be mortgaged which facilitates the development and operation of the education asset on the land.

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QATAR IN FOCUS



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For people living outside of the country, it must sometimes appear that Qatar's sole purpose is to host the next World Cup. There has been a great deal of coverage in the global press relating to the event and to projects related to its successful delivery, such as the construction of an entirely new metro system, the brand new city built around the main stadium and the expansion of the main airport. However, on a day-to-day basis, there are equally significant ongoing developments relating to the social and economic situation within Qatar, one of the most important of which is the government's policy to expand and improve the provision of education.

2022 is a key date in the Qatar calendar for football-related reasons. However, it is also significant because it is the year that the first schools constructed via the new public-private partnership ('PPP') will be opened. The government recently launched the PPP initiative, with plans to build 45 new public schools at a capital cost of QR4billion (approximately US\$1.1 billion) to provide an additional 34,000 student places. The schools PPP, whilst common in many other countries, is the first time this type of partnership has been used in Qatar for social infrastructure. The PPP is attracting a great deal of interest from education providers, the construction industry and financiers as the private sector will design, build and operate the new schools.

There are currently approximately 304 public schools, 541 private schools and 16 universities in Qatar. Fees are forecast to increase from US\$1.4billion in 2016 to US\$2.4billion by 2023. The highly impressive Education City is nearing completion, with its range of campuses of internationally renowned universities including prominent US and European establishments spread over a 12 km square campus.

The key driver for the rapid expansion in education provision is rapid projected population growth in Qatar. Between 2015 and 2030 there is forecast to be a 53 percent increase in population to 3.7million, with nearly 70 percent of this increase coming from immigration. Clearly as the population increases, more school places will be required. More than that however, the government's stated policy is to improve the quality of education provision, not just the spaces. Qatar already has the highest literacy rates in the GCC (at nearly 98 percent according to a recent independent survey), and rates have been increasing year on year. An education conference hosted in Qatar focused on the theme 'Education that matters'; an education of both quality and quantity is what matters. The Qatar Foundation is a non-profit organisation made up of more than 50 entities working in education, research, and community development. Whilst not strictly government run, it is closely aligned with the educational policies and objectives of the country and provides huge resources for the education sector, a sign of the importance of education in Qatar.

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So, what are implications for the education sector in Qatar? The most obvious is the need for more student places. A number of the major educational establishments in Qatar have undertaken significant developments to expand. In a very short term this has presented opportunities for construction companies and the lenders which have financed these works. It is a reflection of the outlook for education in Qatar that a number of lenders (both domestic and international) have been targeting the education sector in the country, committing significant resources thereto. As a result, the financing market has become fiercely competitive, with margins compressed and available debt multiples increasing.

PPP offers an entirely new opportunity to a new range of potential operators in education in Qatar. The significant decentralisation that PPP involves, as well as the possibility

of operators bidding for single or multiple packages should open up the pool of potential operators, to both existing providers and new to the country. The PPP announced to date is divided into six investment packages, to be offered on a staggered basis. The banking sector, which will be vital for the success of PPP, has been enthusiastic in its support.

PPP and the overall need for more places should make Qatar an interesting destination for domestic and international education providers. However, the rapid population increase that underpins the expansion in places also creates challenges. Clearly the forecasts are just that, and external political and economic factors could knock the population growth off its projected curve. Planning and funding places for students who might not yet even be born and certainly do not yet live in Qatar is challenging. PPP

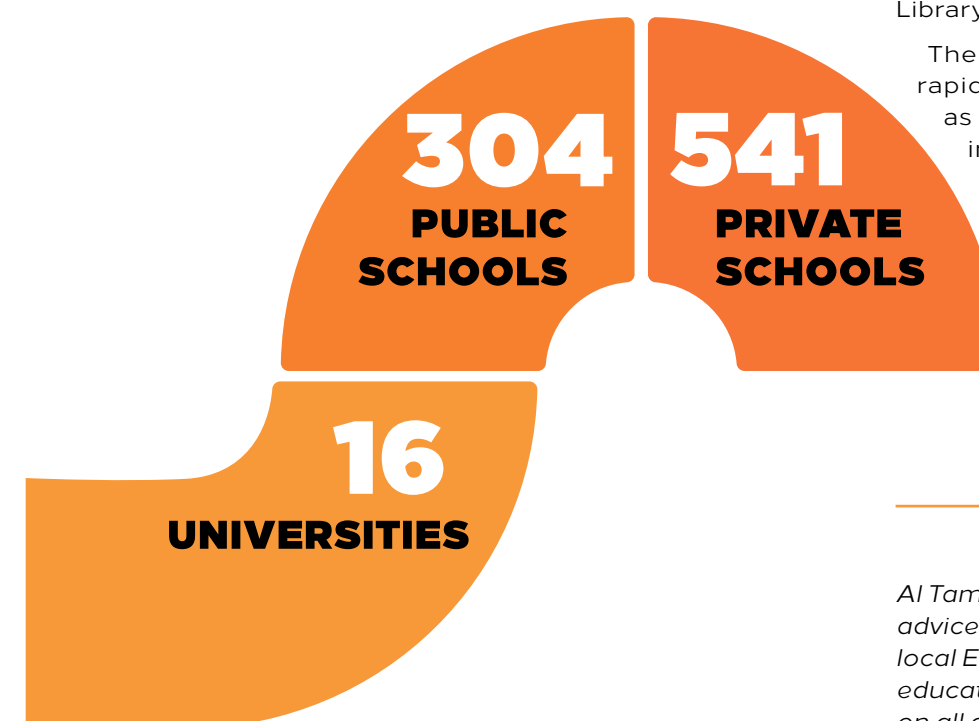
de-risks this to an extent as the government provides certain assurances as to demand and cash flow. However, the government clearly cannot guarantee profitability, and PPP only makes up one part of the overall education sector.

The focus on improved quality of education is also significant; it is a reflection of the maturing nature of the country and its desire to invest in its population and diversify its skills base. In the short and medium terms an increase in spending will be required to achieve this aim. Consistent with other countries in the GCC, Qatar is aiming to make the economy less dependent on hydrocarbons and also rely less on imported skills and experience. As the OECD states in relation to its education work, knowledge and skills 'drive better jobs and better lives, generate prosperity and promote social inclusion.'

their home country, and often in their native language. This has resulted in very disparate provision of schooling, often in small schools. Scaling some of these schools up to meet increasing demand could be challenging.

There is also, of course, the question as to who staffs all of these new and expanded schools. There will be a consequential increase in demand for teachers, assistants, administrative and support staff. As there will be specific language and experience requirements, schools and universities will need to cast their nets wide to attract staff, including those who currently live abroad and who might never have considered moving to Qatar. Qatar has, to date, been seen by some as a poor relative of other parts of the GCC, not a destination of choice. The government has recognised the need to make Qatar an attractive place to live as well as work and there has been a great deal of investment in culture (including the truly world-class National Museum of Qatar and the Qatar National Library), entertainment and retail experiences.

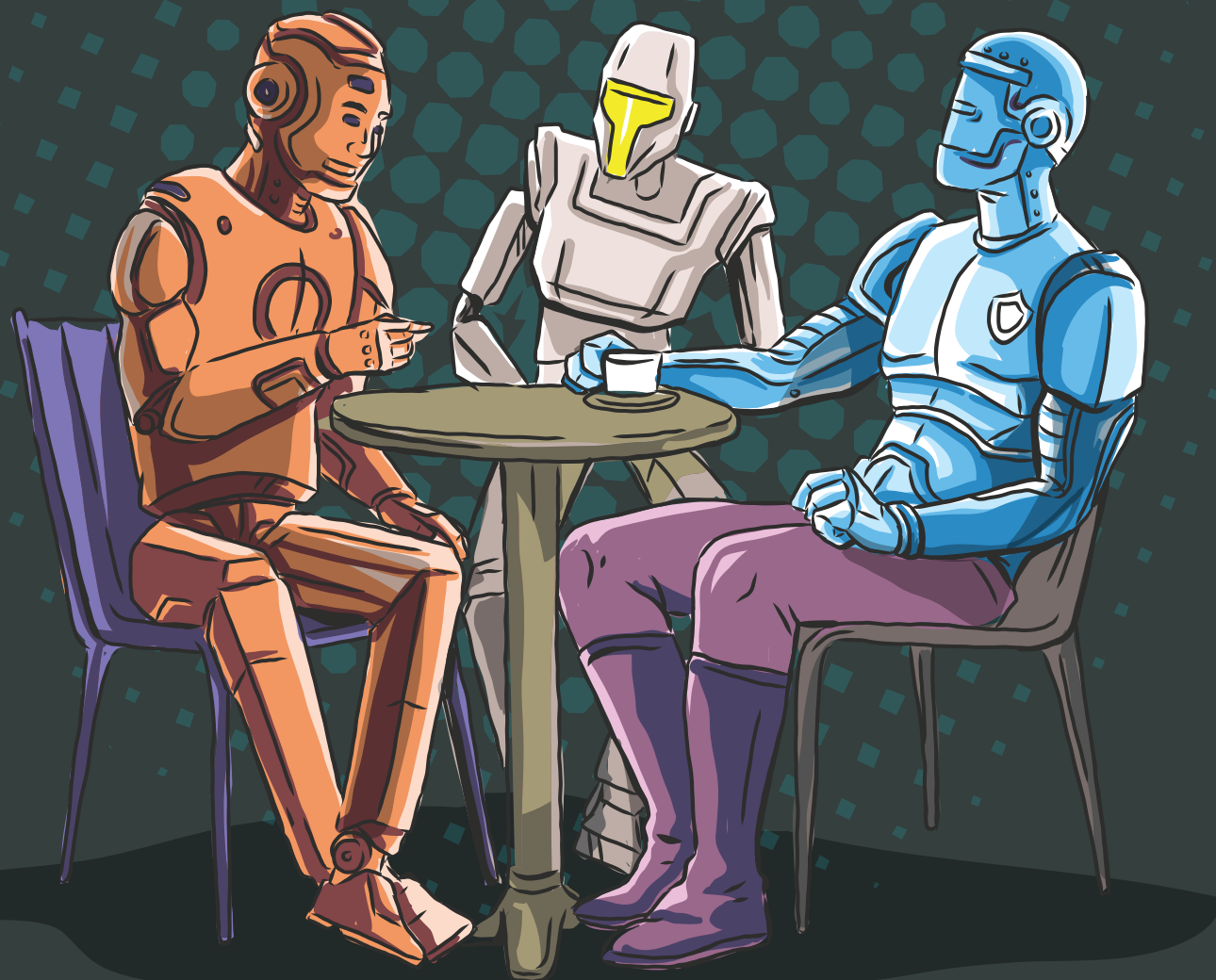
The education sector in Qatar is growing rapidly and maturing alongside the country as a whole. The need for education, both in coverage and quality, has never been greater. The commitment of the government to the sector, as well as the enthusiasm from operators and funders, should mean there are excellent opportunities for those prepared to meet the challenges. It will be interesting to see how education providers respond.



An additional educational challenge that Qatar faces is a consequence of its relatively small population (despite the projected growth) and the fact that a significant majority of its population is made up of ex-pats from a very wide range of countries. Ex-pats will often want their children educated in an establishment that teaches in a manner consistent with

Al Tamimi & Company's Qatar team regularly advises a broad range of participants in the local Education sector. We advise lenders, education providers, constructors and investors on all aspects of transactions across the local and regional Education sector. For further information please contact Matthew Heaton (m.heaton@tamimi.com).

DIGITAL TRANSFORMATION IN THE EDUCATION SPACE: A REVIEW OF THE IMPACT OF NEW TECHNOLOGIES ON MIDDLE EAST EDUCATION



The Middle East Education sector is undergoing huge transformative change as technology is adopted and applied at incredible speed. This article captures a number of these changes with a focus on the adoption of new, and disruptive technologies.

HOW ARTIFICIAL INTELLIGENCE CAN DEVELOP THE NATURAL INTELLIGENCE OF STUDENTS



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In March 2019, Sheikh Mohammed bin Rashid, the Prime Minister of the UAE and Ruler of Dubai announced that a new generation of schools will be built in the UAE at a cost of AED1.5 billion. These schools will include laboratories for machine learning and artificial intelligence ('AI').

This aligns with both the UAE's national strategy on innovation and the UAE's national strategy for AI (which was the first of its kind in the region and indeed, the world), where education has been identified as a priority sector.

However, AI in the education sector is not just about what students are taught, it is about how they are taught. Here are four ways AI and machine learning may change how education looks in the future:

1. Smart Content

'Smart content' such as digitised textbooks and new learning platforms are being developed. Smart content also encompasses other virtual content such as video lectures and conferencing. AI interfaces can enable teachers to create electronic curricula and distribute educative information across a wide range of devices.

2. Differentiated and Personalised Learning

AI will allow personalised electronic tutoring customised to the learning styles and particular needs of the student. The traditional curriculum is designed to suit as many students as possible. For students in the top 10 percent and the bottom 10 percent, AI can be used to provide testing and feedback to those students to give them challenges they are ready for, identify gaps in knowledge and re-direct them to new topics when appropriate.

3. Global and Remote Learning

AI can facilitate learning from anywhere and at any time. Furthermore, AI has the potential to support students with homework and exam preparation at home with advanced tutoring and study programmes.

4. Administrative Efficiencies

Educators spend a lot of time on grading exams and reviewing homework in addition to interacting with their students. AI can expedite teachers' administrative responsibilities. At a minimum, this would give teachers more time to spend with students. Software providers are still coming up with new and improved means of AI assessing and grading work.

Exactly how AI will enhance and change educational system practices remains to be seen but, in a world where students are constantly interacting with technology in all other aspects of their everyday lives, AI's digital and dynamic nature clearly offers opportunities for student engagement that are not always available in the fixed environment of the classroom.

THE GROWTH OF MIDDLE EAST NRENs



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NREN stands for National Research and Education Network. NRENs can operate on a national, regional and also international level, and are responsible for providing networking and e-services to benefit their education and research facilities. They promote collaboration between research institutions and the exchange of resources, as well as connecting research institutions internationally, through interconnecting with other NRENs. Specifically, NRENs provide the high bandwidth (Gbps) connectivity required for particular types of research, such as large-scale simulation, image data transfer, high performance computing, grid computing, etc.

As the Middle East higher education sector increasingly develops its research capabilities, NRENs will become more and more important in driving this development. A number are already well developed. These include, amongst others, Ankabut in the UAE and SARInet in the Kingdom of Saudi Arabia.

Ankabut, UAE

Ankabut is the UAE's NREN, linking the UAE's universities together with others around the globe. The initiative was started here in the UAE by Khalifa University. Its purpose is to provide cutting edge network infrastructure to learning and research centres in the UAE, and engage with other institutions at the international level in the sharing of resources and assistance.

Ankabut is a good example of how NRENs are developing, from previously simply offering connectivity services to now additionally offering innovative research and education centric IT services such as cloud and professional services as well such as IT consultancy and project management services.

ASREN

From a regional Middle East perspective, ASREN is the Arab States Research and Education Network, the organisation that co-ordinates NREN organisations in North Africa and the Middle East. They are responsible for assisting others with and developing network connectivity. Its counterpart in Europe would be the pan-European GEANT network.

SARInet, Saudi Arabia

SARInet is the Saudi Academic Research and Innovation Network, established by the King Abdullah University of Science and Technology (KAUST) and the King Abdulaziz City for Science and Technology (KACST). SARInet is administered and operated by KACST. A link from SARInet to the GÉANT network has been operational since 2011.

Middle East NRENs, like their international counterparts, face a number of challenges. The provision of high bandwidth connectivity services is expensive. As research demands grow, along with the size of the datasets needed for such research, the cost of running and developing these networks increases. Universities and research centres are not customers with deep financial pockets. As a result, NRENs are challenged to build and develop their network infrastructure, and related services, as cost effectively as possible. Added to this is the changing face of data privacy in the Middle East. As new laws and regulations come into force covering everything from the handling of particular types of data (e.g. health data) to new data localisation requirements, NRENs' management and sharing of data needs to be carefully reviewed. Finally, as the value of research to Middle East universities increases, NRENs need to be fully aware of, and prepared for, cybersecurity threats and issues.

EDTECH STARTING UP



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Technology use for education of school children is becoming integrated into curricula in the Middle East as it is worldwide. No longer is there a single class for computing; there are classes for coding, and children use computer games to learn spelling, comprehension and mathematics, among other things. Children also participate in pen-pal type applications to communicate with their peers on tailored cloud-based electronic mail, message boards and chat rooms, and can learn skills like origami and chess using apps and websites just for them.

The EdTech sector that supports this increasing technology usage is growing rapidly in the Middle East. According to Forbes, there are around 270 such start-ups in the MENA region.^[1]

Best practice for adopting EdTech in schools will help not only to protect the interest of schools, students, parents and teachers, but may be a valuable marketing tool for potential EdTech start-ups selling into this space.

In considering best practice, schools and EdTech providers will need to consider data protection issues like any planned targeting or profiling of students using data submitted to EdTech applications. Related issues to consider will include the right of inspection, review and correction of student education records, provision for the electronic transfer of student records in the event a child moves to another school; and setting out when information may be disclosed to third parties

more generally. The issue of parental consent is also important and EdTech providers and schools should consider how to manage this. Enabling parents to opt-out of commercial use of children's information or third-party use, without any disadvantage to the student, needs to be factored in.

In the absence of EdTech-specific data protection legislation in the MENA region, being compliant with international best practice (e.g. US EdTech requirements), may be a point of differentiation for EdTech companies bidding for work in schools in the region.

The cost of dealing with a technology security breach is high given the sensitive setting, with potential civil and criminal penalties attached in addition to the reputational and brand damage for education providers (and the technology providers). Technology providers and schools need to agree responsibility for cybersecurity, adequate training and awareness for teachers, children and parents, along with appropriate protections, regular monitoring and updating of the computing equipment and software, supported by clear accountabilities.

In terms of agreements between EdTech start-ups or mature firms with schools, they should cover at a minimum the use, deletion, or porting of student records/data in case of any future discontinuation by the school, or a merger or acquisition of the company; payment model and terms; ownership and use of intellectual property including any moral or analogous rights of children as authors; and any local law or school-specific procurement requirements (also discussed in this article).



[1] Suparna Dutt D'Cunha, Forbes.com, "Why The Middle East's Booming Student Population Makes It A Perfect Site For Education Tech Startups" 19 March 2018 (<https://www.forbes.com/sites/suparnadutt/2018/03/19/edtech-startups-are-plugging-an-innovation-gap-in-education-in-the-middle-east/#7b8c85c84fa4>).

USING SOCIAL MEDIA FOR GOOD, INSTEAD OF EVIL – SOME TIPS FROM A MEDIA LAWYER



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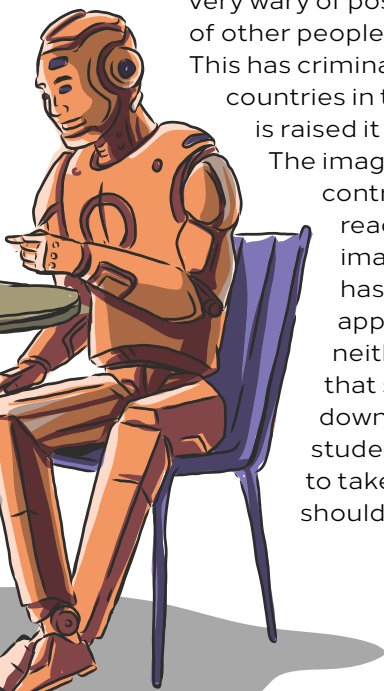
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There can be no doubt that the advent of social media has provided a boon in relation to opening communication channels for students. They can use social media to connect with any person in their class about the curriculum, post queries directly to a teacher without waiting for an appointment and generally share their learning experiences with each other. Any tool that promotes such positive interactions amongst students must be encouraged.

However, social media use comes with responsibilities, particularly in the Middle East.

Students must understand that there are laws that affect their daily online interactions. To help parents and teachers with this discussion, here are our top 5 tips for online responsibility:

1. **BE CAREFUL WITH ALL PHOTOS:** Be very wary of posting or sharing images of other people without their consent. This has criminal implications in many countries in this region. If a complaint is raised it will be taken to the police. The image need not be, of itself, controversial to trigger this reaction. Obviously posting images of a teenager who has been drinking is not appropriate nor is it legal, but neither is posting a photo of that same teen simply walking down the street. Remind your students that if they are asked to take any image down, they should do so immediately.



2. **GOSSIPING CAN HAVE A HEAVY PRICE:** Students love to gossip, but placing rumours or even true stories about another person online, in such a way that their reputation is harmed, can have serious legal consequences. Remind students to keep it offline; if they absolutely must say anything at all.
3. **PORNOGRAPHY HAS A BROAD MEANING:** Any images that are sexual in nature, including partial nudity, will be considered to be pornographic. Pornographic images are not tolerated in the region. If such an image is of an underage person (that is, under 18) then the law takes an even more serious view of the actions. Note that, for this law to be triggered, the offending act can be as benign as simply receiving and keeping the image on a phone. A person does not have to take the image, or even distribute it, to be caught by the terms of the law. If such content is sent to a student, tell them to delete it and immediately ask the sender not to repeat that action.
4. **EXTORTION IS A CRIME ONLINE AS WELL:** The simple act of telling someone that there will be repercussions if they do not (for example) send a certain type of selfie will, in itself, constitute criminal activity. This sort of activity is extremely common with the perpetrators often feeling that they are not breaking the law. They are.
5. **ANTI-SOCIAL BEHAVIOUR IS NOT ACCEPTABLE:** It is imperative, in all communications, to be mindful of the social standards of the region. Behaviour such as excessive swearing, spreading rumours about unbecoming conduct or generally encouraging sinful activity will be considered to be illegal and can be considered to be criminal in extreme cases.

With fines ranging up to one million dirhams and jail time being prescribed for many of these matters, it is always a good idea to remind students of their responsibilities under the law, and to each other. Social media content lives forever, and the conduct of the person that instigated the activity will also remain as part of their reputation for a very, very long time.

IoT IN THE EDUCATION SPACE



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With the implementation of the Internet of Things ('IoT') Regulatory Policy in the UAE in March 2019, all services and products involving IoT in the education sector will be governed by the IoT Policy.

The IoT Policy applies to all persons concerned with IoT in the UAE, including but not limited to: (1) Licensed telecommunications service providers (i.e. Etisalat and du); (2) IoT Service Providers (as defined in the IoT Policy); and (3) IoT Service users including individuals, businesses and the government.

Key features of the IoT Policy include:

- an IoT Service Provider has to register with the TRA to provide IoT Services (with providers of "Mission Critical IoT Services" having additional registration requirements);
- there are data localisation requirements. Data that is classified as 'secret; sensitive; and/or confidential' is to be stored primarily in the UAE. However, such data may be stored outside of the UAE if the destination country meets or exceeds any data security and user protection policies followed in the UAE.
- there are additional requirements for Radio and Telecommunications Terminal Equipment ('RTTE') which provide IoT Services.

A good example of the application of IoT in the Education space is the Robot Avatar designed by Avatarion, a Swiss company, that builds robots connected to the Microsoft Azure IoT Hub. It provides students with connectivity to the classrooms when absent from school via full video and audio connections. The student

uses a tablet to control the robot's movements, speech, send images to classmates and answer questions by raising the robot's hand and speaking through a connected microphone and speaker.

CAN'T FAKE IT ON THE BLOCKCHAIN



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Readers may recall a Law Update article written last year titled '[Faking It: The Fall-out from the Bogus Degree Epidemic](#)'. The article highlighted the surge in people passing off fake degrees worldwide, including in the MENA region, and the risks to employers who have staff holding fake academic qualifications, as well some measures taken by regulators and employers to address the issue.

There is real potential for the use of blockchain platforms by universities, colleges and schools to counter this problem by building institutional trust in the authenticity of their qualifications through the immutability and time stamping functions of the distributed ledger technology. Here are some of the reasons why:

1. a private, closed blockchain solution is like a globally shared database except it does not have two of the four classical database functions (i.e Update and Delete) so as to preserve a record of all transactions/events that have taken place on the platform;
2. its private nature provides only for a limited number of users (in this case, the legitimate educational institutions) to write data/upload records or documents to the blockchain; and
3. its closed (permissioned) nature means only a few users (for example, in the case of a university, the graduates and specific potential employers to whom

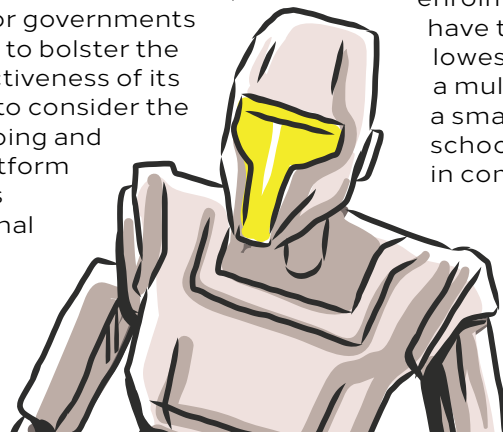
they allow access) can read the data on or documents uploaded to the blockchain. An open (public, permission-less) blockchain platform that allows the general public to access the platform, read the data and view the documents would increase a candidate's chance of being discovered; however, that could also give rise to privacy issues and risk to their personal data (e.g. name appearing on qualification) being misused, or even worse, result in identity theft.

A great example of the application of blockchain can be found in Bahrain where the University of Bahrain ('UoB') has stepped up as a leader in its field by utilising blockchain technology to verify, authenticate and ensure student-data security. See our article titled ['Education Bahrain: A Round-up of some Key Developments in the Kingdom'](#) on this.

Start-ups are increasingly looking to leverage blockchain technology to provide verification of university degrees, employment history, and other professional credentials, thereby giving employers reliable information about a given candidate. The platforms will allow recognised universities, employers, and training service providers to upload source-verified credentials about an individual each time that individual completes a qualification or undertakes employment. The information will be time stamped and any changes to a qualification linked, creating a historical chain of education that cannot be faked.

These business models can be based on a token payment system (based on a crypto-currency) that is intended to incentivise educational institutions to upload credentials about its students. By paying a tokenised fee, hiring businesses can use the platform to view the credentials of, and recruit, suitable candidates. Universities, colleges and schools are given some of the fees so as to encourage them to continue uploading the information about its students to the relevant platform.

The ultimate success of what may end being a plethora of such competing platforms remains to be seen and questions around data protection yet to be resolved. However, it may make sense for governments in the region looking to bolster the credibility and attractiveness of its educational system to consider the possibility of developing and operating such a platform for the qualifications granted by educational institutions based in their respective territories.



INCENTIVISING EDUCATION ENROLMENT WITH BLOCKCHAIN TECHNOLOGY



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Blockchain technology has the potential to serve as a powerful tool in promoting enrolment in educational institutions located in underprivileged communities, where families often keep their children out of school to work and contribute to the household income. Such families value short-term monetary incentives over long-term education for their children thereby perpetuating the cycle of poverty. Blockchain technology allows tokenising the education system with crypto-currencies to incentivise education in such communities. The mechanics are simple. Attend and participate in school to receive crypto-currency reward tokens.

Automated systems and biometric technology are able to track and record students' attendance and participation in schools. In return for attendance and participation, students can be rewarded with crypto-currency tokens which they are able to use for purchasing food, healthcare services, financial aid amongst other things, from partner organisations. Having such an incentive in place will not only help increase attendance and participation of students in educational institutions in underprivileged areas; but will also pave the way for greater socio-economic prosperity. Since different levels of education have varying student enrolment rates (i.e. primary schools generally have the highest rate and high schools the lowest), education can be incentivised with a multiplier. Primary school students will get a smaller reward in comparison to middle school students who will get a smaller reward in comparison to high school students.

This system will help blockchain based education incentives to operate with maximum efficiency in achieving the objective, i.e. to promote education and reduce poverty. If

done on a scalable level, the results can be exceptional. Although one major limitation of this incentive system is the small number of partner organisations which, in turn, limits the variety of commodities and services which can be exchanged in return for crypto-currency tokens by the students. Greater participation from partner organisations can help ensure the effectiveness of such blockchain based incentive programmes.

PROCUREMENT OF EDUCATION TECHNOLOGY BY THE PUBLIC SECTOR



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In most countries across the Middle East, and elsewhere, the public sector is primarily responsible for the provision of primary and secondary schooling, and for much of the tertiary education sector. In this context, where most 'clients' will be government sector education providers, vendors of educational technology solutions need to be aware of the types of issues they may encounter in a government procurement context. For vendors investigating opportunities in Middle East markets, it is important to be aware that different requirements may apply depending on the jurisdiction or the entity involved.

We regularly work with educational technology vendors seeking to supply software and related services to government entities, or negotiating the terms of government contracts they have already been awarded. Such vendors are often unaware of local government procurement rules that prescribe specific requirements for contracts entered into by government entities. As a result, a lot of time and effort is spent on trying to negotiate points that are basically 'non-negotiable'. It is essential that vendors contracting with government entities take into account the local government procurement laws, so as to properly manage their own expectations and commercial risk.

Ensuring compliance with government procurement requirements can be made all the more difficult because of the fact that such requirements have typically been drafted with civil construction type projects in mind, rather than software licensing or sophisticated information technology services. As a result, and in combination with a client who is adamant that their terms must be accepted 'as is', it can be very difficult to find common ground. Additionally, where variance from the government's standard terms might require approval at a very high level (such as Ministerial approval, approval from the Ruler or some sort of Royal Decree), it can be very difficult to convince a client that its terms are not 'fit for purpose' in the context of a technology project.

Examples of the types of issues that vendors may encounter include:

- a need to go through a formal bid process – sometimes after the vendor has been told that the client is happy with their solution and wishes to sign;
- a requirement to submit bid bonds and performance guarantees via a local bank;
- a requirement to grant licences or perform services via an entity set-up in the jurisdiction; and
- a requirement that the governing law of the contract be the local law of the relevant government entity, and that local courts within such jurisdiction have exclusive jurisdiction over disputes.

These are a snapshot of the types of issues that may need to be considered more closely in the context of contracting with government entities on technology projects in the education sector. Fortunately, in some instances, there is a realisation that old fashioned procurement rules are not suitable for technology projects. Revised rules or greater flexibility may arise in some jurisdictions or circumstances, although it cannot be said that this is as widespread as would be ideal. Any businesses looking to contract with government entities in the Middle East would be well advised to make sure that their contracts have been considered with local government procurement rules in mind.

Al Tamimi & Company's TMT team regularly advises customers and suppliers in the Education sector across the Middle East region. For further information please contact Martin Hayward (m.hayward@tamimi.com) or Nick O'Connell (n.oconnell@tamimi.com).

EDUCATION BAHRAIN: A ROUND-UP OF SOME KEY DEVELOPMENTS IN THE KINGDOM

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A century has elapsed since Al Hidayiah Al Khalifiya first opened its doors to Bahraini pupils. Since 1919, the government of the Kingdom of Bahrain has consistently demonstrated its commitment towards the development of the educational sector, and this forward thinking approach continues to be demonstrated today.

The Ministry of Education is harnessing Al Hidayiah Al Khalifiya's centennial event to upgrade this historic institute's status to an institute for higher studies, including an increased focus on implementation of disruptive technologies and their application in the information age. In this article we will examine some of the recent, positive developments in the educational sector in Bahrain which coincide with this historic year for the Bahrain educational sector.

BLOCKCHAIN DEGREE CERTIFICATION

Adopting a modern approach towards issuing academic degrees and certifications, the University of Bahrain has stepped up as a leader in its field by utilising blockchain technology to verify, authenticate and ensure student-data security.

The president of the University of Bahrain, Professor Riyadh Hamzah is quoted, "We at UOB are delighted to be the trailblazers in using blockchain in the MENA region in order to better serve our students."

Initially designed at the MIT Media Lab and by Learning Machine, Blockcerts is a globally recognised open standard for recording

certificates or other information on a blockchain in a secure, verifiable manner. The University of Bahrain data stored on their systems is to be securely signed using cryptography and is freely available to view and share online. These digital records are registered on a cryptographically signed, tamper-proof, and shareable blockchain, giving individuals the capacity to possess and share their own official records. Going forward, blockchain issued certifications also have the potential to make the hiring process more straightforward for employers, enabling them to more easily verify the credentials of graduates.

The Head of Strategy at the University of Bahrain, Cameron Mirza said, "The potential of blockchain goes far beyond cryptocurrency and its potential use within education is both fascinating and exciting."

See our TMT article '[Digital Transformation in the Education Space: A Review of the Impact of New Technologies on Middle East Education](#)' which also explores this interesting topic.

INDUSTRY-ACADEMIA COLLABORATION

Universities are responding to calls from industry for greater collaboration and have issued tailored programmes in response. The University of Bahrain and the Sustainable Energy Centre in Bahrain launched a programme in environment and sustainable development. The programme is in collaboration with the Prince's Foundation for Building Community, UK

and has been designed to attract students who combine postgraduate study with their professional practice.

Another recent example can be found in the Tech Valley programme recently launched by Injaz Bahrain, in collaboration with the Bahrain Labour Fund (Tamkeen) and the Bahrain Institute of Banking and Finance. The programme is designed to enable young Bahrainis learn to harness the proliferation of disruptive technologies and to better furnish them with the skills to succeed in the increasingly digitised business world. Digital literacy skills can also be paired with developing soft skills such as critical thinking and numeracy skills in order to develop a strong “digital citizenship” among students.

With the Kingdom of Bahrain recently ranking as one of the top ten start-up ecosystems globally with the largest number of female founders (2019 Global Startup Ecosystem Report (GSER)) such locally led initiatives look set to further cement Bahrain’s position as a country committed to providing its workforce with the skills needed to succeed in the digital age.

THE MINISTER OF EDUCATION RECENTLY ANNOUNCED THAT ALL FORMS OF HOME ASSIGNMENTS FOR STUDENTS ARE TO BE REPLACED WITH DAILY PRACTICAL APPLICATIONS.

HIGHER INSTITUTES FOR LEARNING AND R&D

The Higher Educational Council’s (‘HEC’) National Research Strategy Plan 2014-2024 aims at ‘creating a smart Bahrain based on knowledge & innovation’ by increasing:

1. the number of patents and industrial designs filed in Bahrain and internationally; and
2. the funds available for research and development for both academia and the private sector.

Last month the HEC enacted a research organisational chart requiring higher education institutions to allocate not less than three percent of gross annual revenues to scientific research. The Resolution also allows natural and legal persons to provide academic institutions with grants, endowments and even fundraising for research purposes (whilst complying with Decree No. (21) of 2013 which regulates fundraising).

AMERICAN UNIVERSITY OF BAHRAIN OPENS ITS DOORS

As of the next academic year, the American University of Bahrain has received the approval of the HEC to open its doors to pupils in its faculties of Engineering, Architecture and Business.

The founder of American University of Bahrain stated that “higher education plays an integral part in advancing economies by addressing the skills needed for the next generation of workforce. The American University of Bahrain will provide the necessary academia to support the Kingdom’s 2030 vision while enriching students with a holistic university experience.”

A FINNISH APPROACH TO HOMEWORK

The Minister of Education recently announced that all forms of home assignments for students are to be replaced with daily practical applications to be carried out under the supervision of each respective tutor at the end of each study session, with the aim that this will better allow for the consolidation of knowledge, the honing of skills and to better facilitate the opportunity for open dialogue and positive interaction between students and tutors.

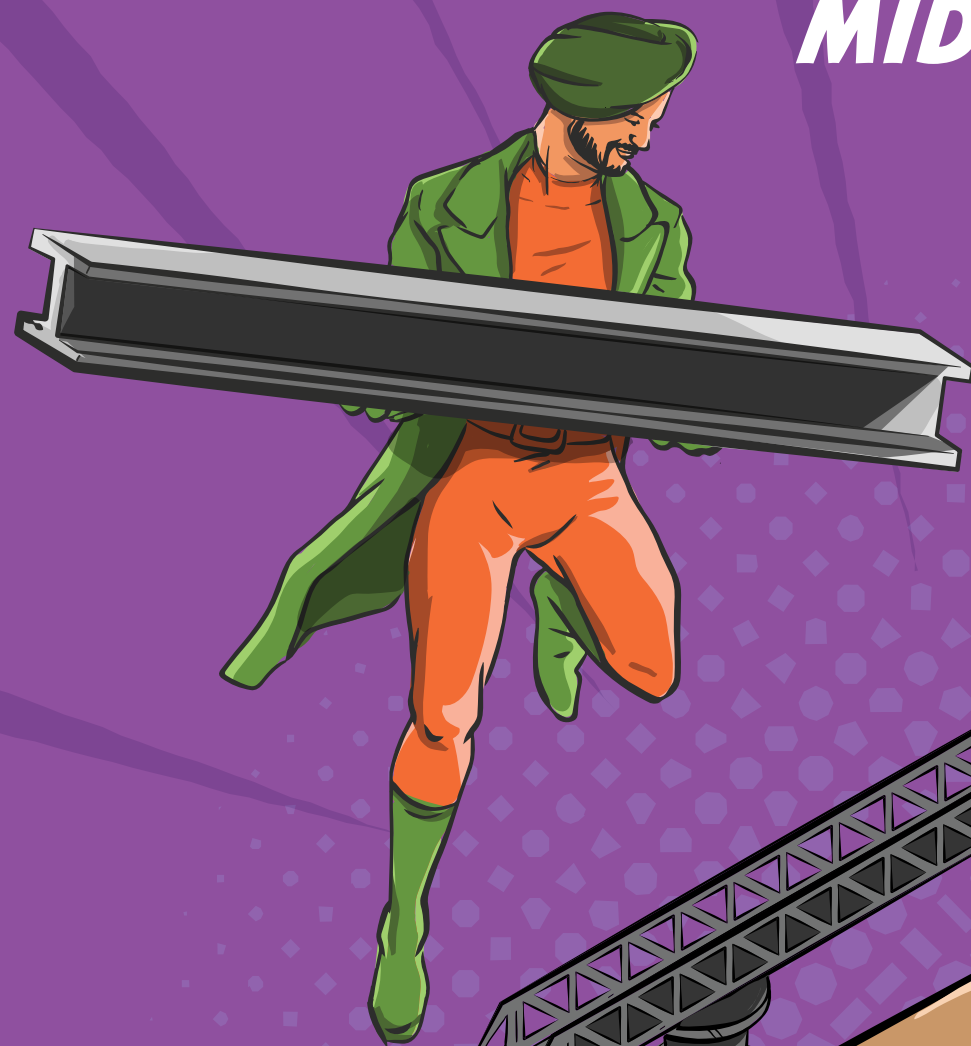
The Minister said cd: “The decision will be reinforced by a number of alternative measures based on increasing interest in practical applications, under the supervision of the teachers, to connect the theoretical side with the practical aspect. The Ministry of Education has been working for several months through various committees to develop curricula and other areas and to enhance the skills required from graduate students. The education process across all the stages is cumulative, with special attention to boost the students’ aptitudes in the principal courses, including mathematics, science and languages in accordance with international standards”.

Al Tamimi & Company’s Corporate Structuring team regularly advises on corporate structuring and restructuring related projects and specialises in design and implementation of corporate structures in the field of education. For further information please contact Rad El Treki (r.eltreki@tamimi.com).

THE HEC ENACTED A RESEARCH ORGANISATIONAL CHART REQUIRING HIGHER EDUCATION INSTITUTIONS TO ALLOCATE NOT LESS THAN THREE PERCENT OF GROSS ANNUAL REVENUES TO SCIENTIFIC RESEARCH.



PROCUREMENT IN THE EDUCATION SECTOR IN THE MIDDLE EAST

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INTRODUCTION

The education sector in the Middle East has often been widely perceived as a lucrative investment opportunity for developers looking to expand their portfolio of investments. Despite some arguing of an oversupply in the market, many still believe there are opportunities for new entrants looking to offer quality education at competitive prices. This is particularly the case in a region where the UAE and other Gulf nations (such as Saudi Arabia and Oman) have become increasingly focussed on enhancing the quality of education being provided. The UAE Government has reportedly allocated AED 10.3 billion for education as part of its 2019 budget with school spending in other Gulf markets expected to double by 2023. This is further reaffirmed by a number of strategic plans that have been introduced by the UAE Government, including the Ministry of Education's Strategic Plan 2017-2021 to develop an innovative education system to meet future labour market demand, the National Strategy for Higher Education 2030 aimed at building and achieving the highest scientific and professional education standards to serve the UAE's future generations, and the Education 2020 Strategy designed to bring qualitative improvements in the education system in the UAE.

The UAE has one of the most buoyant and mature private school markets in the world, with consistently high levels of occupancy coupled with year-on-year

growth in demand, in large part as a result of the UAE's growing expatriate population. It has been estimated that Dubai will need 134 new schools to be constructed over the course of the next 10 years in order to accommodate the estimated 200,000 pupils that will need seats by the 2027/2028 school year. It is a similar story in other parts of the Middle East. This will therefore require a concerted effort by developers, contractors, funders and the relevant regulatory bodies in order to facilitate the construction of such developments, in a manner that meets the ever-increasing demand within the region.

The costs associated with investing in school infrastructure are significant. There are various reasons for this, one of which is the potential complexity of issues faced when embarking on such projects, such as the need to integrate the programme of works around the day-to-day activities of the school system (applicable for example where refurbishment works are being undertaken on an existing school).

The procurement route adopted on any construction and engineering project is one of the key considerations for developers, which will allow them to assess whether the relevant works and moreover the project as a whole can complete on time, be of the required quality and be within budget. Another important consideration is ensuring that the tender process allows for a close examination of contractors' experience within the sector. Given the specialist nature of school construction projects, developers should

not only examine pricing but also consider whether the bidding contractor has sufficient knowledge and experience of working on such specialist projects in the region.

A number of procurement options are available to developers operating within the education sector when procuring works and services from third parties. Each of these has its own advantages and disadvantages. In this article we discuss the following key procurement routes and explain the main advantages and disadvantages associated with each:

- i. traditional contracting;
- ii. design and build contracting; and
- iii. public-private partnerships.

Finally, we will briefly examine the important role that a well drafted operation and maintenance agreement has in addressing the ongoing operational demands of a school, following completion of a project.

It should be noted that in addition to procuring works directly, an alternative option for developers is to enter into a 'build to suit' arrangement with educational facility operators. This essentially involves landowners, ground lease owners or developers undertaking the construction of an educational facility provided that they have a long-term tenant (whether a school,

educational institution or an operator) who wishes to enter into a long-term lease of the facility. Although beyond the scope of this article, build to suit education projects are an important consideration and examined in greater detail in the article titled '[Build to Suit Education Projects](#)' authored by Partner, Jeremy Scott.

TRADITIONAL CONTRACTING

This is probably one of the most often encountered forms of procurement adopted by developers in the education sector. Essentially the developer (also known as the 'employer') will engage a professional team of consultants (usually an architect, mechanical and electrical engineer, civil and structural engineer and perhaps other specialist consultants) to prepare designs and specifications for the works that are to then be constructed by a building contractor. Such designers typically have a proven track record and experience in operating in the education sector and this provides comfort that the designs will be well suited for an education facility and will be readily accepted by the relevant authorities.

The contractor will be engaged separately by the developer under a construction contract and will be responsible for engaging sub-contractors to the extent required in order to allow them to complete the required works in accordance with the approved designs.

The building contract will only be responsible for the construction of the works (as design responsibility remains vested in the design team). Given that school projects may concern the expansion of existing facilities (as opposed to 'green field' projects), it is likely that the construction works will need to be carried out in accordance with a detailed programme to ensure that interference and disruption during school time is minimised. Additionally, the construction contract needs to contain a specific procedure for the rectification of defects, again to ensure that construction works do not encroach on the day-to-day running of the school.

Some of the advantages of traditional contracting include that the employer retains control over the design of the

project and therefore can monitor quality and ensure their requirements in this regard are met. This is a potentially telling advantage on account of the planning and design nuances that are applicable to school designs. There is, however, a greater risk of the building contractor being delayed and of them incurring cost overruns due to the additional oversight and involvement that the employer will have in the project. Delays can be particularly harmful as they may result in the school not being completed in time for an academic year and this could result in significant losses being incurred. In addition, there will be multiple points of responsibility, which can make the employer pursuing a claim in respect of defects that arise, more complex, costly and time consuming.

DESIGN AND BUILD CONTRACTING

The design and build procurement route generally involves the design of the works being undertaken entirely by the building contractor/its professional team of design consultants. Alternatively, the initial design will be developed by the employer/its professional team of design consultants, subsequent to which responsibility for these designs will transfer to the contractor by way of novation of the design consultant appointments.

Here the building contractor takes single point responsibility and thus is liable to the employer for both the design and construction of the works.

The advantages associated with design and build contracting include that it offers greater certainty in terms of time for completion and cost, as such projects are usually for a defined duration and priced on a fixed, lump sum basis (this is of course provided that the employer does not make any changes to the required scope of works). As noted above, delays can be very damaging in the context of a school project so developers (and their funders) typically address this issue in detail in the construction contract. For example, the building contractor may be entitled to an early completion bonus while the employer will often insist on the ability to instruct the building contractor to accelerate the works if they fall behind schedule. Although delay

damages are a 'last resort', thought should be given to the quantum of delay damages so that they correspond (as far as possible) to the loss that the employer will suffer arising out of a delay (i.e. if the facility is not ready for the start of the school term).

The presence of single point responsibility makes it more straightforward for the employer and other parties with recourse to the building contractor, to seek redress should any design defects or workmanship issues arise, as opposed to having to pursue the relevant design consultants individually.

Disadvantages of this procurement route include the fact that there may be added scope for delays to the project due to the changes that might be requested by the employer during the construction of the project or otherwise as a consequence of a delay in novating the design consultants to the building contractor. Such changes can also have an impact on costs. The employer also loses a degree of control over the project and therefore is less able to maintain oversight over quality, when compared to the traditional procurement route. This can have a significant impact in the context of an educational establishment on account of the typically prescriptive Employer's Requirements. It is therefore important that the design and build contractor is closely supervised.

PUBLIC-PRIVATE PARTNERSHIPS

Public-Private Partnerships (or 'PPPs') structures have been used to procure schools, including in the United Kingdom and Australia but are less common in this region. In the traditional sense, the public authority would engage a private entity (usually in the form of a Special Purpose Vehicle) to design, construct, operate and maintain a school for a term of usually between 15 to 25 years, in exchange for which usage payments will be made to the private entity.

The introduction of the recent PPP Law in Dubai in addition to the proposed enactment of the draft Private Sector Participation Law in Saudi Arabia, arguably underlines the growing emphasis being placed on PPPs by governments throughout the region. This



may help facilitate the gradual adoption of this private sector focussed approach within the Middle East. For the time being however, 'quasi' PPP structures are more likely to be adopted, whereby a private entity may grant a long-term concession to a specialist school to design, construct, operate and maintain an educational facility.

An important advantage of PPPs is that it allows the procuring entity to leverage efficiencies and expertise in the private sector in order to enable it to attain its development objectives. For the private sector, PPPs can assist in helping to secure the third party funding necessary to enable the project to proceed, due primarily to the involvement of a public authority.

Disadvantages of this method of procurement include the fact that the procurement and tendering process can be lengthy and expensive, when compared to the traditional procurement process.

The article '[Qatar in Focus](#)' authored by Matthew Heaton, Head of Office, Banking & Finance – Qatar, provides an informative, extensive view on PPP's in Qatar.

OPERATION AND MAINTENANCE AGREEMENT

Once a school has been constructed, in order for it to remain in good working order and attractive to the market, it must be properly operated and maintained. This is usually undertaken by the developer who will appoint an operation and maintenance contractor ('O&M Contractor') under an operation and maintenance agreement ('O&M Agreement', otherwise also known as a 'facilities management contract'). Some of the more important provisions of an O&M agreement, that the parties should ensure are adequately addressed, include the following:

- having a clear and detailed scope of works specifying exactly what is required of the O&M Contractor in addition to the key performance indicators (or 'KPIs' against which their performance will be measured). These KPIs should be SMART (Specific, Measurable, Achievable, Relevant and Time Based);

- a warranty that the O&M Contractor has carried out all reasonable investigations and inspections of the school facility and that the asset is capable of being managed to the standards prescribed by the O&M Agreement. This will reduce the risk of the O&M Contractor seeking to blame the building contractor for any deficiencies in the services they perform;
- from a practical perspective, where the school is being newly constructed, it may be a good idea to have the O&M Contractor inspect the asset prior to Take Over and to attend any tests on completion under the construction contract. The contractor may also be required to provide the O&M Contractor with training for the operation and maintenance of the school. This will need to be addressed at the earliest stages of a project so that it is possible for the construction contract to include clauses to address issues of this nature;
- penalties where the O&M Contractor does not achieve the KPIs or for example, where there is an interruption to the operations of the school during school and non-school hours; and
- termination rights which may be linked to a breach of the KPI regime.

There is, of course, a suite of other important considerations of which the parties should be mindful when negotiating an O&M Agreement, such as insurance, force majeure, performance security and payment. In any event the contract should be closely examined to ensure it is tailored to the specific commercial arrangement between the parties, in addition to the laws of the jurisdiction or Emirate which will govern the contractual relationship.

Al Tamimi & Company's Construction & Infrastructure team regularly advises on all elements of the construction procurement process. For further information please contact Euan Lloyd (e.lloyd@tamimi.com).



THE EDUCATION SECTOR IN THE MIDDLE EAST HAS OFTEN BEEN WIDELY PERCEIVED AS A LUCRATIVE INVESTMENT OPPORTUNITY FOR DEVELOPERS LOOKING TO EXPAND THEIR PORTFOLIO OF INVESTMENTS.

EMPLOYMENT CONSIDERATIONS FOR HIGHER EDUCATION INSTITUTIONS IN THE UAE



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The UAE has a higher education sector that has developed and matured significantly over the past 20 years with more than 70 universities operating locally, many of which are branches of international universities based in the UK, US, Europe or elsewhere globally. Universities in the UAE are striving to attract top academics from around the world to help position the UAE as an internationally competitive hub for higher education for both students and academics. The search for and retention of world-class academic faculty is highly competitive and employment considerations have a material effect. This article will consider some of the issues and considerations from an employment perspective for universities and academics in the UAE.

TENURE AND LONG-TERM JOB STABILITY

In universities around the world, a key tenet of employment for academic faculty is security of tenure. The US system, variations of which are widely used internationally at leading universities, involves both a non-tenured and a tenured phase. Once they have completed their PhD, aspiring academics are typically recruited as a tenure-track member of faculty. They then proceed through an initial period (typically 5-7 years) during which they develop their research and teaching programmes.

Subject to successful qualification of the non-tenured phase, involving rigorous internal and external review, the faculty member would

then be offered tenure with the university which effectively means a permanent role. This is a very significant milestone for university academics as it provides them with security and stability going forward, and gives them reassurance that their employment relationship with the university will be long-term and essentially guaranteed.

Implementation of a tenured faculty system (i.e. permanent employment) does not fit neatly with the local immigration and employment framework in the UAE. As expatriates require a valid residence visa and work permit in order to lawfully live and work in the UAE, the ongoing employment of a faculty member is largely dependent on the relevant UAE university obtaining and maintaining the individual's UAE residence visa. Depending on whether the UAE university is on the mainland or in a free zone, employee residence visas expire and need to be renewed every two or three years and are subject to approval by the local authorities. If the academic's residence visa is not issued or renewed for any reason, and unless alternative visa sponsorship arrangements can be made, this would have existential implications for the academic's ability to lawfully work for the university in the UAE.

Further, depending on the terms of their employment contract with the university, an academic may have little recourse or protection under UAE law in the event that the university decides to bring the employment relationship to an end. If the employment contract is for a fixed term, which is a common

approach in UAE universities, there is no legal obligation for the university to renew the academic's contract (or residence visa) on the expiry of the fixed term. Renewal of contracts is subject to review of performance and the willingness of the university to renew the contract. Even if the employment contract is for an unlimited duration with no specific expiry date, the university could nevertheless terminate the contract at any time by providing notice to the individual (and ultimately the maximum amount of compensation which could be awarded to the

academic is three months' salary if they had been dismissed by the university without a valid performance-based reason).

The local immigration and employment framework in the UAE is therefore not fully conducive to a tenure-type arrangement, and in particular the long-term job stability and security which are associated with tenure at universities in other countries. It is the same in the GCC generally. This represents a challenge for the region particularly in the sciences and engineering. World-class research in these fields requires the



UNIVERSITIES IN THE UAE ARE STRIVING TO ATTRACT TOP ACADEMICS FROM AROUND THE WORLD TO HELP POSITION THE UAE AS AN INTERNATIONALLY COMPETITIVE HUB FOR HIGHER EDUCATION FOR BOTH STUDENTS AND ACADEMICS.

development of advanced laboratories, the attraction of high-quality PhD students (whose study will take at least five years) and the long-term employment of laboratory staff and researchers. The gestation period for breakthrough discoveries is often measured in decades.

These issues could hinder the efforts of UAE universities to attract and retain the top academics from around the world. In the face of competition from universities in other countries (where security of tenure may be better accommodated within the local employment and residency framework), leading academic researchers may give preference to working and seeking tenure at universities elsewhere globally where they

may feel more confident in building a research programme, hiring their own PhD students and furthering their long-term research efforts.

It is therefore a very welcome development (for UAE universities and academics alike) that the UAE Government has recently introduced a new category of long-term residence visas. One of the categories of individuals who may be granted a 10 year residence visa are those with "specialised talents" including "researchers in the fields of science and knowledge" including specialists, scientists and inventors. While the issuance of a 10 year visa is subject to various conditions and UAE Government approval, this is a promising development which will hopefully help attract top academics to live and work in the UAE going forward.

FLYING FACULTY

Another challenge that universities face is compliantly bringing in academics who primarily work overseas but are visiting the UAE for short periods of time to teach at an UAE university.

As mentioned above, an individual is only permitted to work in the UAE (which would include teaching at a local university) if they have a valid UAE residence visa and work permit. While it is possible for some universities in the UAE to obtain a "mission visa" which would lawfully enable a visiting academic to work for them for a short period of time the process and costs are akin to getting a full residency visa. Further, the option of a mission visa is not available for universities which operate in any of the UAE free zones including Dubai Academic City and Knowledge Village, where many local universities are based.

As a result, visiting lecturers may resort to teaching at UAE universities while visiting the UAE on tourist visa, which is not compliant with local immigration requirements and could potentially expose the university and the individual to monetary fines or other penalties.

ACADEMIC FREEDOM

An important consideration for academics around the world is academic freedom and the ability to undertake research and express their viewpoints and ideas without undue interference, censorship or discipline. However, care must be taken to avoid espousing any views which may contravene local legal requirements particularly in relation to defamation and discrimination. As is the case in other countries, academic freedom cannot be viewed in isolation and must instead be considered in the overall context of UAE legislation, customs and norms.

NOTICE OF TERMINATION OF EMPLOYMENT

Where a faculty member wishes to leave a particular university, it is fairly standard (globally) for them to be required to give the university at least six months' prior notice.

This helps avoid the sudden departure of faculty members which would otherwise leave the university in a difficult position in terms of the continuity of their research activities and teaching/lecturing for students.

While the UAE Labour Law itself does not impose a maximum notice period, a 2016 Ministerial Decree states that employee notice periods may not exceed three months. Accordingly, even if a faculty member's employment contract with a UAE university includes a six month notice period, the individual could potentially seek to rely on this Ministerial Decree if they are resigning and do not want to serve the full six month contractual notice period. This would put the university in a difficult position as it may require more than three months to find a suitably qualified replacement, and could lead to significant disruption particularly if the individual's departure falls part way through an academic year.

Some universities put in a place a 'carrot rather than stick' structure in order to dampen the appetite of academics to serve a shorter notice period and there are a number of ways to achieve this.

SUMMARY

Given its geographical location and unparalleled diversity of nationalities and cultures, the UAE is uniquely positioned to take full advantage of the global higher education sector and all the opportunities it brings. There remain some challenges to navigate as outlined above however the UAE is moving in the right direction and we have no doubt that it is only a matter of time until the remaining gaps will be closed.

Al Tamimi & Company's Employment & Incentives and Education teams regularly advise education providers on the full spectrum of employment issues that they face. For further information please contact Anna Marshall (a.marshall@tamimi.com).

Beyond the Basics: Proposed Changes to the Telecoms Licensing Regime in Saudi Arabia



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Saudi Arabia's Communications and Information Technology Commission ('CITC') is responsible for regulating the information and communications technology sector in the Kingdom. In the March 2019 Law Update article '[An Overview of Telecoms Licensing in Saudi Arabia](#)' we provided an overview of the Saudi telecoms licensing regime. CITC recently issued a public consultation paper outlining proposed changes to the Saudi telecoms licensing regime. In this article, we summarise key aspects of CITC's proposal, and the potential impact on current and prospective market participants.

Background to the Consultation

In the consultation paper, CITC cites multiple considerations to provide context to its decision to review the Saudi telecoms licensing regime. It identifies a strong domestic ICT industry as key to meeting Saudi Vision 2030 objectives, reducing the Kingdom's dependence on hydrocarbons and diversifying the national economy. It further notes that the current telecoms licensing regime has developed over time, resulting in something of a patchwork of regulations and licences. This has resulted in the perception of a complex and fragmented approach to telecoms regulation, and potential for a market imbalance resulting from different licence requirements for comparable services. Additionally, changes in technology (and technological convergence), consumer demand, market development, and government policy, mean that the current regulatory regime is not as suitable

as it once was. CITC has identified that the Saudi telecoms market has matured, and it is appropriate to move from a telecoms regulatory regime that goes beyond the delivery of basic services, towards technology-neutral and, ultimately, service-neutral regulation.

Current Framework

The current licensing framework broadly provides for two types of telecommunications licences: 'Individual' Licences and 'Class' Licences.

Individual Licences, also referred to as 'Facilities Based Provider' Licences, essentially permit the licensee to operate public telecommunications networks, provide fixed voice telephone services, public mobile cellular telecommunications services, and national and international fixed and mobile data communications services. These can be broadly understood as the type of licence a 'full service' telecoms service provider would typically hold. Very few of these Individual Licences have been issued.

In contrast, Class Licences permit a large number of service-based providers to offer one of a variety of specific services. The range of services in respect of which Class Licences are issued is diverse, and includes: voice call resale services; Very Small Aperture Terminal ('VSAT') satellite services; radio paging services; Internet of Things-Mobile Virtual Network Operator ('IoT-MVNO') services; Internet Service Provider ('ISP') services; Value-Added Network ('VAN') services; Global Mobile Personal Communication by Satellite ('GMPCS') services; Automated Vehicle Location ('AVL') service; broadband satellite services; call centre services; electronic wallet services; leasing utilities communications facilities; network operation centre; providing internet services on aircraft; providing mobile communication services on-board aircraft; bulk Short Messages Service ('SMS'); and wholesale infrastructure services.

Individual Licence holders who wish to provide services that are the subject of a Class Licence are also required to hold the applicable Class Licence.

In CITC's assessment, the current licensing framework and market landscape could be perceived as complex, and potentially unfair and inequitable, deterring prospective market participants.

Proposed Approach

The proposed licensing regime set out in the consultation paper contemplates replacing the existing regime with three new licences: the 'Unified Licence'; the 'Wholesale Licence'; and the 'General Class Licence'. The CITC has proposed an approach to the transitioning of existing telecoms licences to the proposed new regime. It notes that supporting parallel licensing regimes is best avoided, and that the migration should occur promptly.

Unified Licence

Under the proposed framework, a Unified Licence holder will be permitted to provide any and all telecommunications services (be they fixed or mobile, voice or data), including, subject to notifying the CITC in accordance with the regulations, and compliance with the associated requirements, those the subject of a Wholesale Licence or a General Class Licence. Unified Licence holders can provide their services to retail end-users, as well as wholesale customers (namely, other Unified Licence holders, Wholesale Licence holders and General Class Licence holders).

Wholesale Licence

Under the proposed framework, a Wholesale Licence holder can build, own and operate a public telecommunications network for the provision of public telecommunications services to Unified Licence holders and other Wholesale Licence holders. A Wholesale Licence holder cannot hold a Unified Licence or a General Class Licence. It cannot provide its services to General Class Licence holders or to retail end-users.

The type of services a Wholesale Licence holder can offer include establishing, operating and maintaining a public telecommunications network in the Kingdom.



This can relate to infrastructure such as: towers and masts; small cells, distributed antenna systems, in-building solutions and wireless access points; dark fiber and ducts; fixed wholesale data connectivity, including vertical cabling and in-building wiring; international cable landing stations; and provision of services based on surplus capacity from existing infrastructure and utility providers.

General Class Licence

Under the proposed framework, a single General Class Licence would replace the multiple Class Licence approach under the current regulatory regime. The services contemplated under the General Class Licence category are as follows:

- Internet Service Provider (ISP) Services
- Network Operations Centre Services
- Automated Vehicle Location (AVL) Services
- Call Centre Services
- Mobile Virtual Network Operators (MVNOs) Services
- Internet of Things - Virtual Network Operator (IOT-VNO) Services
- Broadband Satellite Services
- Provision of Global Mobile Personal Communications Services (GMPCS)
- Operation System and Networks of GMPCS
- Mobile Communication Service On-board Aircraft
- Internet Services on Aircraft
- Short Messaging Service (SMS)
- Audio Text Services
- VSAT System Communication Service
- Digital Certification Services
- Internet Exchange Point (IXP) Services
- International Cable Landing Station Services
- Fixed Voice Reselling Services

CITC has identified that the Saudi telecoms market has matured, and it is appropriate to move from a telecoms regulatory regime that goes beyond the delivery of basic services, towards technology-neutral and, ultimately, service-neutral regulation.

Absent from the list of services under the General Class Licence are electronic calling services, electronic wallets and pre-paid cards. Class Licences for these services are available under the current licensing regime, but the proposal is to cease licensing these activities on the basis that they are obsolete.

Generally, for each service that the holder of a General Class Licence wishes to provide, it will also need to obtain a 'service authorisation' from the CITC, and comply with the 'service regulations' specific to each authorised service. (There is a limited exception, in that CITC has proposed that all General Class Licences will automatically include service authorisations for ISP services, network operation centre services, automated vehicle location services, and call centre services.) General Class Licence holders will need to continue to meet all the service regulations applicable to any particular service that they launch.

A General Class Licence holder would only be able to provide its services to other General Class Licence holders or to retail end-users. It would not be able to provide services to Unified Licence holders or to Wholesale Licence holders.

Conclusion

In its consultation paper, the CITC identified the following expected benefits of the revised proposed revisions to the telecoms licensing regime in Saudi Arabia:

- increased regulatory framework clarity;
- simplification of the regulatory and licensing regime;
- swifter access to new services for consumers;
- improved fairness and market transparency;
- clearer service provider appreciation of terms, conditions and obligations;
- increased market attractiveness for new investors; and
- reduced potential market distortion between facilities-based providers and service-based providers.

We expect that the proposed approach will go some way towards reaching these objectives. We wait to see the outcome of the public consultation process, which closed in mid-June 2019, and whether the proposed approach as originally set out in the consultation document will be revised as a result of feedback from the market.

Al Tamimi & Company's Technology, Media & Telecommunication team regularly advises on telecoms licensing related issues in Saudi Arabia and across the Middle East. For further information, please contact Nick O'Connell (n.oconnell@tamimi.com).

United Arab Emirates
Ministry of Justice

49th Year
Issue No. 658
12 Dhu al-Qidah 1440H
15 July 2019

FEDERAL DECREES

87 of 2019	Appointing UAE representatives to the Advisory Board of the GCC Supreme Council.
88 of 2019	Establishing a UAE consulate general in India.
89 of 2019	Terminating the duties of the UAE Non-Resident Ambassador to the Comoros.
90 of 2019	On performing the duties of the UAE Ambassador to the Comoros.
91 of 2019	Appointing a UAE non-resident ambassador to Burkina Faso.
92 of 2019	Appointing a UAE non-resident ambassador to Swaziland.
93 of 2019	Appointing a UAE non-resident ambassador to Togo.
94 of 2019	Transferring the Undersecretary for Community Development to the Federal Authority for Government Human Resources.
95 of 2019	Appointing judges in the federal courts.

DECISIONS OF THE PRESIDENT OF THE UAE

4 of 2019	Amending Decision No. (5) of 2015 on formation of the Board of Trustees of Khalifa International Date Palm and Agricultural Innovation Award.
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REGULATORY DECISIONS OF THE CABINET

38 of 2019	Repealing Cabinet Decision No. (42) of 2006 establishing the National Conference Committee.
39 of 2019	Adding “formulation of rules and procedures for organizing exhibitions and conferences relating to community development” to Ministry of Community Development responsibilities.
40 of 2019	On the executive regulations of Decree-Law No. (4) of 2016 on Medical liability.
46 of 2019	Regulating the exchange of insurance benefits between pension funds operating in the UAE.
47 of 2019	Service fees and administrative fines of the Ministry of Human Resources and Emiratization.
48 of 2019	Fees for licensing services provided to private security companies.
49 of 2019	Fees for services provided by the Ministry of Energy and Industry.
50 of 2019	Amending Cabinet Decision No. (24) of 2012 regulating civil defense services in the UAE.
51 of 2019	Fees for services provided by the Ministry of Economy.

- From the Ministry of Justice

547 of 2019	Authorizing certain officials at the Sharjah Directorate of Human Resources’ Social Services Department to enforce the law as judicial officers.
559 of 2019	Authorizing certain officials at Saaed for Traffic Systems to enforce the law as judicial officers
580 of 2019	Authorizing certain officials at the Ajman Tourism Development Department to enforce the law as judicial officers

ADMINISTRATIVE DECISIONS

- From the Emirates Authority for Standardization and Metrology

20 of 2019	Chairman’s resolution on the replacement of the tola unit used in the UAE perfume trade with recognized international measurement units.
21 of 2019	Chairman’s resolution approving UAE standard specifications.
22 of 2019	Chairman’s resolution approving amendments to Chairman Resolution 20 of 2018 on the technical requirements for registration of products and systems for unmanned aerial vehicles and systems.

- From the UAE Central Bank

04/COMMEMORATIVE COIN/2019	Issuing a commemorative silver coin and a commemorative one Dirham coin to mark the 50 th anniversary of the establishment of Commercial Bank of Dubai.
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- From the Securities and Commodities Authority

63/RT of 2019	Chairman’s resolution on assessing in-kind shares in investment funds.
-	Certificate of approval of amendment of the Articles of Association of Arkan Building Materials Company PJSC.

March
2020

The 5th Arab Lawyers Forum is going to London!

Over the past four years, Al Tamimi & Company has successfully hosted the Arab Lawyers Forum ('ALF'). When we first initiated the ALF, the aim was to create a platform which would allow senior and young lawyers from across the Arab League States to exchange ideas, discuss the latest developments and most importantly profile the advancement and growth of the Arab legal system.

The Arab legal community is a diverse and dynamic market with rich opportunities and the Forum provides a valuable opportunity to create a platform for Arabic lawyers and the business community to come together to debate and share ideas that can lead to the continued development of the legal landscape in the region. Year on year the ALF has grown from strength to strength and continues to attract increasing interest from members of Arab legal communities around the world. One of the key ingredients of the success of the Forum is its informative format. Through a range of interactive panels, a window to the latest trends and developments in the legal world will be opened.

With keynote presentations from industry leading experts as well as the opportunity to network, the Forum offers a fertile platform for the exchange of knowledge and ideas on issues relevant to the Arab world.

Building on the success of previous forums held in Morocco, Egypt, Bahrain and Italy, together with the overwhelmingly positive feedback from delegates, sponsors and speakers, the 2020 Forum promises to attract over 200 Arab lawyers from across the globe.

This event is not to be missed! Register and find out more on the official website: www.arablawyersforum.com.



4th Arab Lawyers Forum, Rome, Italy.



4th Arab Lawyers Forum, Rome, Italy.



3rd Arab Lawyers Forum, Manama, Bahrain.



Welcome Dinner, 4th Arab Lawyers Forum, Rome, Italy.

News & Events

Tuesday, 2 July 2019
Abu Dhabi, UAE

Client Seminar
Payment Issues and Key Pressure Points
in the Construction Sector
Abu Dhabi Office

Speakers:
Euan Lloyd
Senior Counsel, Construction & Infrastructure

Leith Al Ali
Associate, Construction & Infrastructure

Steven Graham
Associate, Construction & Infrastructure

29th
JULY

Managing An Anti-Money Laundering Investigation – Regional Financial Crime host a joint breakfast seminar with FTI Consulting

On 29 July, against the backdrop of the recently concluded Financial Action Task Force Mutual Evaluations, the Regional Financial Crime practice and FTI Consulting teamed up to host an exclusive breakfast seminar on the niceties of 'Managing an Anti-Money Laundering Investigation'. The seminar was attended by compliance, risk and management professionals from a range of local, regional and international financial institutions, each of whom brought a disparate perspective of anti-money laundering risks and manifestations.

The seminar took an interactive and sequenced approach to highlighting a selection of incidents related to anti-money laundering investigations. By introducing phased developments within a contrived scenario, the mock case incorporated both the legal and technical aspects of an investigation and highlighted the key issues for Financial Institutions to consider to ensure that the Bank's interests are protected at all times and on all fronts. The Regional Financial Crime team and FTI offered their expertise and guidance as to a broad (but not exhaustive) range of important elements encompassed by an investigation, such as the communication approach with authorities, disclosure obligations, data management and analysis requirements, mitigating strategies to manage liability, issues with culpable employees and several of the myriad considerations that are required to direct and adjust the scope of an investigation.

Financial Institutions can encounter a legion of challenges and obstacles when undergoing an anti-money laundering investigation, and face potentially existential risk in terms of liability. Key take-aways from the seminar revolved around the critical considerations that key personnel should bear in mind to ensure that they are prepared to implement a rapid and effective response should the alarm be raised.

Ibtissem Lassoued, Adam Wolstenholme and Florence Jerome-Ball from the Regional Financial Crime Practice were joined by Yaser Dajani, Muthmainur Rahman, and Henry Duggan from FTI Consulting to host the event and lead discussion.



Managing An Anti-Money Laundering Investigation Seminar jointly hosted by Regional Financial Crime, Al Tamimi & Company and FTI Consulting

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“We appreciate the diversity of the lawyers’ backgrounds - there’s always someone qualified to answer any query.”

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