Issue 330 | June 2020

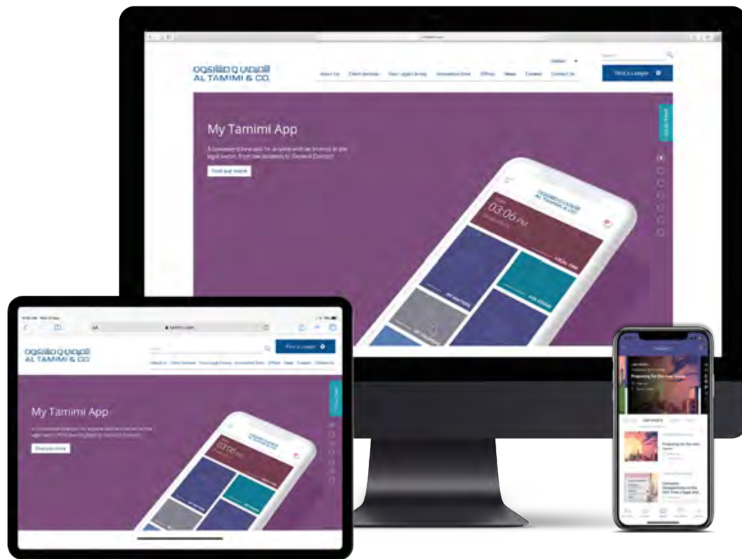
التميمي و مشاركوه
AL TAMIMI & CO.

LAW UPDATE

Latest Legal News and Developments from the MENA Region

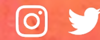
THE 2020 FINANCIAL CRIME EDITION

LAW UPDATE *Online*



Download the My Tamimi App

The contents of Law Update are not intended to be a substitute for specific legal advice on any individual matters. No part of this publication may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher, except for individual use and other non-commercial uses permitted by copyright law. The permission to recopy by an individual does not allow for incorporation of the material in part or in whole of any work or publication, whether in hard copy, electronic or any other form, unless specific mention is made to the source, "Law Update published by Al Tamimi & Company," and written permission is granted by the firm. For more information, please contact us.



@AlTamimiCompany

Al Tamimi & Company

LEGAL EDITORIAL COMMITTEE CHAIR
Mark Brown
m.brown@tamimi.com

LEGAL EDITOR
Siobhan Farrell
s.farrell@tamimi.com

CREATIVE LEAD
Shriya Sanjeev
s.sanjeev@tamimi.com

FINANCIAL CRIME FOCUS

EDITOR
Ibtissem Lassoued
i.lassoued@tamimi.com

Florence Jerome-Ball
f.ball@tamimi.com

CREATIVE
Ibtissem Lassoued
i.lassoued@tamimi.com

Florence Jerome-Ball
f.ball@tamimi.com

Shriya Sanjeev
s.sanjeev@tamimi.com

ARTWORK
Curated by Rebia Naim | Emerging Scene
editor@emergingscene.com

FEDERAL GAZETTES
Zane Anani
z.anani@tamimi.com

TRANSLATION
Vincent Percival
v.percival@tamimi.com

For more information on Law Update
info@tamimi.com

www.tamimi.com

Al Tamimi & Company © 2020

In this Issue

Welcome to Law Update June 2020!

Welcome to our regional Financial Crime Focus special! This month offers a comprehensive roundup of the legal and practical issues that are being generated in this difficult risk area across the Middle East. Covering reinforced anti-corruption provisions in Jordan and enforcement of public protection in Oman, to strategic considerations for global investigations and widespread reform in anti-money laundering frameworks, the specialist articles cover the developments and trends that we are witnessing in the region and how businesses can equip themselves to deal with them.

One theme that appears across the articles in the special focus section is the international nature of financial crime threats, which cross borders and affect the global financial system. We see this in many areas, such as investigations that spread across multiple countries, and through the guidance of international organisations such as the Financial Action Task Force ('FATF').

Looking to our General section, our experts in Abu Dhabi examine the various options of doing business offered by the Abu Dhabi free zones whilst underlining the pros and cons of each (page 24). Also in this section, we consider the new Industrial Qatar Design law which highlights the importance of the concepts of originality and novelty in protecting intellectual property rights (page 34). Our construction team in Abu Dhabi considers the risk and challenges faced by industry stakeholders in successfully performing their obligations against the backdrop of COVID-19. Our lawyers take the view that parties to a contract are best advised to look, sooner rather than later, at their respective positions at law and under the contract in order to mitigate their potential exposure to risk (page 16). Our TMT specialists review various policies under regulations that have been issued by the Telecommunications Regulatory Authority in the past 12 – 18 months and offer a clear overview of when certain businesses servicing the UAE's telecommunications and technology sectors may require a physical presence in the UAE (page 20). Finally in this section, our Transport lawyers explore the concept of force majeure (when triggered by circumstances such as the global health crisis) and discuss when and which parties are responsible in situations where cargo is abandoned (page 30).

In our Judgments' piece, we observe the incisive decision regarding the clarification on travel bans on children (page 10). Keeping with court decisions, our litigators take a closer look at a judgment that distinguished between the role and responsibilities of managers and shareholders in the UAE (page 8).

We hope you find this month's issue instructive. Should you wish to discuss any of the issues raised in this edition, please feel free to reach out.

Best regards,

Samer Qudah

Managing Partner
s.qudah@tamimi.com

Judgments

Dubai Court of First Instance Judgment 207 of 2020: Manager and Shareholders' Liability for Fraudulent Acts 8

Big Battles over Little Ones: A Recent Court of Appeal Judgment on Travel Bans 10

General

Banking & Finance
New Shari'ah Governance Standards for Islamic Financial Institutions 12

Construction & Infrastructure
COVID-19 and Construction Contracts: The Risks and Challenges Ahead 16

Corporate Structuring / Technology, Media & Telecommunications
Being Here: Local Presence Requirements for Telecommunications Equipment and IoT Service Providers in the UAE 20

Corporate Structuring
An Overview of the Abu Dhabi Free Zones 24

Transport & Logistics
Abandoned Cargo during COVID-19 30

Jurisdiction Updates

Qatar
The Qatar Industrial Designs Law of 2020: What Changed and What to Expect 34

Saudi Arabia
Managing Employment Relationships affected by COVID-19 in the Kingdom of Saudi Arabia 36

CONTENTS

The 2020 Financial Crime Edition

Welcome to the Financial Crime Edition 42

Out from Under a Dark Cloud? Risks, Challenges and Evolution in Financial Crime Compliance Culture in the Middle East 44

Showing Its True Colours: Rising to the Challenge After the UAE's FATF Mutual Evaluation Report 2020 52

Tiger Team for Criminal Matters: Powers of the Arab Interior Ministers Council 58

The New World of Tech: Cybercrime and Cybersecurity in the UAE 62

Facing Multiple Fronts: Global Investigations in the Middle East 68

A Green Light to Prosecute: Lessons Learned from the Omani Ministry of Education Embezzlement Case 74

Double Trouble? The Relevance of the FCPA in the Middle East 80

New Life for Anti-Corruption Efforts: Novel Regulations related to Public Procurement in Saudi Arabia 86

At the Heart of the Agenda: Qatar's New Laws on Anti-Money Laundering and Counter Terrorism Financing 92

The Writing is on the Wall: Amendments to the Integrity and Anti-Corruption Law in Jordan 98

Putting the Pieces Together: Anti-Corruption and Anti-Competition Defence Mechanisms 102

Circling Back to Basics: Anti-Money Laundering Regulations for Designated Non-Financial Businesses and Professions in the UAE 108

An Icarian Risk: Ambition and Corruption in Sport 114

UAE Federal Gazette 120

Webinars 124

Firm Profile 126

Dubai Court of First Instance Judgment 207 of 2020: Manager and Shareholders' Liability for Fraudulent Acts

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.

Naief Yahia
Partner
Litigation
Dubai, UAE
n.yahia@tamimi.com

Mohamed ElKholy
Senior Associate
Litigation
Dubai, UAE
m.elkholy@tamimi.com

Zane Anani
Senior PSL
Knowledge Management
Dubai, UAE
z.anani@tamimi.com

Introduction

In a recent Dubai Court of First Instance judgment, the court considered the responsibility of a manager, who was also a shareholder in a limited liability company, to the company's creditor. In summary, the court held that in circumstances where the manager had engaged in fraudulent and deceptive actions he was personally liable for debts purported to have been assumed by the company (as an exception to the general theory of corporate personality).

As a result, our client, the creditor, was able to recover over AED 183 million (US$50 million) notwithstanding that several years had passed since the company's ostensible liability arose and the company's assets had been dissipated, as a result of which the creditor's efforts to collect on the debts were thwarted.

The Facts of the Case

The Claimant (the creditor) secured two favourable arbitral awards against the Defendant company and filed an execution action to compel the Defendant company to pay the amount owed to the Claimant. However, the managers/officers in charge of managing the Defendant company dissipated the company's assets to prevent the creditor from enforcing his awards.

Lifting the Veil of Corporate Personality in the Case of Wrongdoing

It is a well established principle that every limited liability company has its own legal personality, meaning that it has its own legal identity separate and distinct from the identities of its shareholders, directors, or parent company (Article 21 of the UAE Commercial Companies Law, Federal Law 2 of 2015). Accordingly, in the case of limited companies, the liability of shareholders is limited. Shareholders are liable to pay for their shares but they are not liable for the company's debts. Similarly, managers of a company are not liable to the creditors of a company notwithstanding that they represent a company to the outside world and act on behalf of the company in the ordinary course of business. However, there are exceptions to this rule.

Article 22 of the Commercial Companies Law provides that the manager of a company must *"exert the care of a prudent person"* and *"undertake all actions in line with the company's objectives and the powers granted thereto pursuant to an authorisation issued by the company..."* The UAE Commercial Companies Law exposes managers of limited liability companies to claims for personal liability arising from wrongdoing in their management of the company. Article 84 (1) of UAE Commercial Companies Law provides that:

1. *Every manager in a limited liability company shall be liable towards the company, partners and third party for any fraudulent actions he carried out as a manager. Further, he shall be committed to compensate the company for any losses or expenses incurred thereby due to abuse of power or violation of the provisions of any law in force or the company's memorandum of association or his contract of appointment or due to gross error by the manager. Any provision included by the memorandum of association or the manager's contract of appointment contradicting the provisions of this Clause shall be null and void.*
2. *Subject to the provisions of the limited liability company stipulated by this Law, provisions related to the members of the Board of Directors at joint stock companies as stipulated by this Law shall apply to managers of limited liability companies.*

The Dubai Courts' Findings in Dubai Court of First Instance Judgment 207 of 2020

Citing Dubai Court of Cassation Judgment 156 of 2013 [Property]- 24.11.2013, the court held that it is established under the UAE Commercial Companies Law that, upon incorporation and registration, a limited liability company becomes a distinct legal entity with an independent financial liability separate from its partners. The business itself acts and incurs debt and obligations for its own account. Its shareholders are legally responsible for its debts only to the extent of their respective shares in its capital.

As an exception to the general rule set forth in the Commercial Companies Law, the principle that a shareholder in a limited liability company is liable only to the extent of his/her share in its capital shall not apply if the shareholder has exploited the principle of the independent liability of a limited liability company as a means or a front for engaging in activities and practices contrary to the company's Memorandum of Association, to the detriment of his partners or creditors, involving deception, fraud, or gross error. In such cases, a shareholder is liable, not to the extent of his/her shareholding, but personally, from his/her personal assets, for such practices.

Furthermore, citing another Dubai Court of Cassation ruling (Dubai Court of Cassation – Cassation No. 312, 331-2015 [Property] – 30.12.15), the court held that it has been settled

The actions of the managers/ shareholders indicated deception and fraud aimed at diverting the company's assets to prevent the Claimant from enforcing their awards.

by the Court of Cassation that a manager/ shareholder in a limited liability company is not legally responsible for its debts unless he/ she has committed a gross error. It further held that it is settled that a manager of a limited liability company, who acts in breach of his/her managerial duties, the law or the company's Memorandum or Articles of Association, shall be liable, in tort, for his/ her personal errors or any activities involving deception, fraud, or gross error.

In this case, it was clear the Defendant company's assets were dissipated entirely as a result of the actions of the officers in charge of managing the company. They transferred the company's assets to third parties and purchased assets in the names of third parties (i.e. paying a substantial sum to a company without any corresponding benefit, large withdrawals were made from the company's bank accounts without explanation and land was purchased and written off as a loss) without consideration of the company's debts.

Based on the above, the actions of the managers/shareholders indicated deception and fraud aimed at diverting the company's assets to prevent the Claimant from enforcing their awards, especially considering that the events took place at a time when the parties were in dispute and during the execution phase of the arbitral awards.

The court also held the board members in the Defendant company carried out the company's business pursuant to board resolutions and all board members were shareholders in the company. Therefore, it was clear that the above actions were taken with the knowledge of all the board members for their own benefit.

The court held that the managers/ shareholders' conduct amounted to deception and fraud that satisfied the elements of fault (according to Article 282 of the Civil Code). It was established that the Defendant Company's fault had caused gross damage to the creditor who was deprived of the opportunity of enforcing the relevant awards against the Defendant company's assets. Consequently, the managers/shareholders of the Defendant company were held to be personally liable to pay compensation to the Claimant which the court assessed at the value of the full amount the Claimant had been unable to recover, having regard to the value of the funds diverted by the managers from the company's accounts.

Conclusion

This judgment is important because it firmly clarifies that an award-creditor may still recover a debt, even after its failure to enforce a judgment or arbitral award against the corporate debtor from the debtor's managers/ shareholders. Where dissipation of assets by the shareholders/managers has occurred and can be proven, all is not lost.

For further information, please contact Naief Yahia (n.yahia@tamimi.com) and Mohamed Al Kholy (m.kholy@tamimi.com).

Big Battles over Little Ones: A Recent Court of Appeal Judgment on Travel Bans

Dipali Maldonado
Senior Counsel
Private Client Services
Dubai, UAE
d.maldonado@tamimi.com

Ahmed Zohny
Senior Associate
Private Client Services
Dubai, UAE
a.zohny@tamimi.com

Under UAE Personal Status Law, a father has the right to request that a travel ban be imposed on his children preventing the mother taking them outside of the country. This article explores this right from the perspective of whether this right is absolute or whether there are requirements that must be satisfied prior to a travel ban being granted in light of a recent ruling handed down by the Dubai Court of Appeal.

The Dispute

The claimant, the mother, filed a grievance before the Personal Status Court of First Instance seeking the revocation of a travel ban previously granted (on an application made by the respondent, the father) in relation to their only child.

The travel ban was granted on the basis of Article 149[1], of the Personal Status Law ('PSL') which provides that the custodian (mother) is not permitted to travel abroad with the child without the prior consent of the guardian (father). In addition, the father requested that the travel documents of the child be handed over to him as he is responsible, as the child's guardian, for the safekeeping of such documents (Article 157 of the PSL).

The father obtained the travel ban as well as an order that he retain the child's passport on the basis that it would enable him to exercise his rights as the guardian of the child as the mother would then not be able to physically leave the UAE with their child without his prior consent.

---

[1]*Article 149: "The custodian may not take the child for travel outside the state without the written consent of the guardian of the person. If the guardian abstains from approving, the matter shall be referred to the judge."*

The Court of First Instance – the Court of Appeal

The mother clarified before the Court of First Instance that she had moved to Dubai with the child after securing a new job following an amicable divorce that occurred in Oman where the family used to reside.

She stated that after the divorce, the father continued to live and work in Oman whilst she lived alone with the child in the UAE and was solely looking after the best interests of the child in all respects. Furthermore, the divorce settlement agreement entered into between the couple provided that the mother had sole custody of the child and, moreover, that she could take up residency in any country and hence that she could travel freely with the child. As such, she also had the right to retain the travel documents of the child.

The Court of First Instance issued its judgment revoking both the travel ban and the order mandating the mother to hand over the child's travel documents to the father.

The court, in its reasoning, confirmed that the right of the father to request a travel ban for his child and retain the travel documents is not absolute under Articles 149 and 157 of the PSL. Indeed, it further clarified that these rights are enshrined in the law in order to protect the guardianship rights of the father in circumstances where :he exercises his duties; assumes his responsibilities towards his child; and provides the proper and essential care which would otherwise not be possible if the child were removed from the country where both parents reside. In this case, these rights and duties were not being fulfilled by the father since he did not reside in the UAE where the child is located and he could not, therefore, provide the direct care required by the child (a requirement which constitutes the very foundation upon which Articles 149 and 157 of the PSL rest). Therefore, the best interests of the child are better served by authorising the mother to retain the travel documents and to travel with the child who is in her sole care.

The court also cited practical examples in furtherance of this point that the best interests of the child require that the actual caretaker of the child should have in his/her possession all of the child's official documents as it is a basic requirement to produce such documents before government institutions or registering at schools.

The father appealed this judgment before the Appeal Court insisting on his initial claims. The Appeal Court rejected his appeal and upheld the judgment of the Court of First Instance adding that the mother, by virtue of the divorce settlement agreement, had the right to travel freely with the child and thus should keep the travel documents with her. The court further clarified that the guardianship rights granted under Articles 149 and 157 of the PSL were absent in the present case by virtue of the fact that the father lived and worked in a different country to where the child resides.

Key Points of the Judgment

This judgment affirms the following principles:

1. within the realm of the PSL the court in its application of the law, ultimately seeks to protect the best interests of the child; and
2. that the right of the father to impose a travel ban on his children and retain their travel documents or other official documents is not absolute but rather wholly dependent on, and subject to, the father exercising and fulfilling his duties and responsibilities as a guardian of his children.

For further information, please contact Dipali Maldonado (d.maldonado@tamimi.com).

New Shari'ah Governance Standards for Islamic Financial Institutions

Muhammad Ammad Yasin
Senior Associate
Banking & Finance
Dubai, UAE
m.yasin@tamimi.com

Background

A strong and a well-functioning financial system is crucial to any economy. It is therefore imperative to ensure that financial institutions, which play a core role in the economic stability and development of a country, are secure and stable. This can only be achieved through effective internal and external regulation. To this end, the notion of 'Corporate Governance' becomes very important from the perspective of internal regulation.

To put it simply, 'Corporate Governance' is the way an entity polices itself. It comprises a set of internal rules, policies and procedures defining the functions, roles and responsibilities of various stakeholders within an entity, such as the board of directors and the senior management.

Last year the Central Bank of the UAE ('Central Bank') issued the Corporate Governance Regulations together with the Corporate Governance Standards (together the 'Regulations') which are applicable to all banks licensed by the Central Bank. Our previous article on the Regulations can be found here. The Regulations briefly cover corporate governance requirements for banks offering Islamic financial services in Article 14 thereof.

The Central Bank issued the Shari'ah Governance Standards for Islamic Financial Institutions (the 'Standards') on 3 May 2020 ('Effective Date').

Scope and Application of the Standards

The Standards, which are effective from the Effective Date, outline the mandatory minimum requirements applicable to the following financial institutions in respect of their corporate governance framework and practices:

1. all financial institutions in the UAE licensed by the Central Bank that conduct all or part of their activities and business in accordance with provisions of Islamic Shari'ah ('Islamic Financial Institutions'). For Islamic Financial Institutions operating within a group, such Islamic Financial Institutions must ensure compliance with the Standards on solo and group levels; and
2. branch offices of foreign financial institutions in the UAE licensed by the Central Bank that conduct all or part of their activities and business in accordance with provisions of Islamic Shari'ah ('Branch Offices'). Compliance by Branch Offices with the Standards, however is not mandatory if they establish arrangements equivalent to the Standards. Such equivalent arrangements must be submitted to the Central Bank for approval.

It should be noted that the Central Bank and the Higher Shari'ah Authority at the Central Bank ('HSA') previously issued various regulations, standards, circulars, notices and resolutions which deal with some aspects of corporate governance. The Standards make it clear that they should be read in conjunction with the earlier issued regulations, standards, circulars, notices and resolutions of the Central Bank and the HSA.

As per the Standards, Islamic Financial Institutions are required to set a Shari'ah governance framework ('IFI Governance Framework'):

1. in accordance with its size and complexity of its operations;
2. incorporating a three pronged defensive approach independent of each other comprising a business line, internal Shari'ah control function and internal Shari'ah audit function; and
3. containing the minimum requirements specified in the Standards,

within 180 days from the Effective Date and to submit it the Central Bank for approval. All Financial Institutions must fully comply with the requirements of the Standards within one year from the Effective Date.

Key Highlights of the Standards

The Standards comprehensively provide the roles and responsibilities of the Board of Directors of the Islamic Financial Institution ('Board'), senior management and certain committees and departments of an Islamic Financial Institution. Briefly listed below are their main responsibilities.

1. Board of Directors

Ultimate responsibility for ensuring that a comprehensive IFI Governance Framework is put in place and that the Islamic Financial Institution is in compliance with the IFI Governance Framework and Islamic Shari'ah (i.e. resolutions, fatwas, regulations and standards issued by HSA and resolutions and fatwas issued by the Islamic Financial Institution's Internal Shari'ah Supervisory Committee ('ISSC'), in relation to licensed activities and businesses of the Islamic Financial Institution) rests with the Board.

The Board is required to hold at least one meeting with the ISSC each financial year to discuss issues pertaining to Shari'ah compliance.

2. Board's Risk Committee

The Board's Risk Committee is generally responsible for supervising and monitoring the management of Shari'ah non-compliance risk, setting controls in relation to each type of risk and overseeing the implementation of the Shari'ah non-compliance risk framework;

3. Board's Audit Committee

The Board's Audit Committee is generally responsible for evaluating the effectiveness of the policies approved by ISSC, assessing the effectiveness and adequacy of internal

and external Shari'ah audit and reviewing and checking compliance with reports prepared by the Internal Shari'ah Audit Division/Section and external Shari'ah auditors.

4. Senior Management

The senior management is generally responsible for executing and managing the Islamic Financial Institution's activities and business in compliance with Islamic Shari'ah.

5. ISSC

1. the ISSC is the central committee which is responsible for the overall monitoring of and compliance by the Islamic Financial Institution with Islamic Shari'ah and resolutions, fatwas, regulations and standards issued by HSA. The ISSC, accordingly, is generally responsible for supervising and approving all businesses, activities, products, services, contracts, documents and codes of conduct of the Islamic Financial Institution. Any fatwas and/or resolutions issued by the ISSC are binding upon the Islamic Financial Institution;
2. in relation to Branch Offices, the Branch Office must have its own ISSC, which is separate from any Shari'ah committee (or equivalent) of the parent entity. The ISSC of the Branch Office is independently responsible for carrying out the roles and responsibilities set out in the Standards;
3. the ISSC is required to issue an annual report stating the extent of the Islamic Financial Institution's compliance with Islamic Shari'ah. The report issued by the ISSC is to be submitted to HSA for review and approval before presenting it to shareholders at the general assembly of the Islamic Financial Institution;
4. the final annual accounts of the Islamic Financial Institution must be reviewed and approved by the ISSC;
5. the Standards also provide for the composition of the members of the ISSC, their eligibility criteria and manner of appointment as well as the criteria for ensuring independence of ISSC members;
6. the Standards further require an Islamic Financial Institution to develop performance assessment criteria of the ISSC in accordance with the parameters listed therein.

6. Internal Shari'ah Control Division or Section

Internal Shari'ah Control Division/Section supports the ISSC in its duties. The Internal Shari'ah Control Division/Section, however cannot issue fatwas or resolutions.

The Internal Shari'ah Control Division/Section is required to carry out the following functions:

1. ISSC Secretariat Function;
2. Shari'ah Consultations Function;
3. Shari'ah Research and Development Function;
4. Shari'ah Compliance Function; and
5. Shari'ah Training Function, each as detailed in the Standards

7. Internal Shari'ah Audit Division or Section

The Internal Shari'ah Audit Division/Section is generally responsible for undertaking Shari'ah audits and monitoring the Islamic Financial Institution's compliance with Islamic Shari'ah.

The Internal Shari'ah Audit Division/Section is required to submit reports to the ISSC and to the Board Audit Committee at least bi-annually.

Conclusion

The issuance of the Standards is a welcome development as it provides a comprehensive corporate governance framework for Islamic Financial Institutions that was lacking in the Regulations. All Islamic Financial Institutions are encouraged to undertake a full review of their existing internal policies and procedures and develop an IFI Governance Framework in accordance with the Standards.

For further information, please contact Jody Waugh (j.waugh@tamimi.com) or Muhammad Ammad Yasin (m.yasin@tamimi.com).

COVID-19 and Construction Contracts: The Risks and Challenges Ahead

Euan Lloyd
Senior Counsel
Construction & Infrastructure
Abu Dhabi, UAE
e.lloyd@tamimi.com

Leith Al-Ali
Associate
Construction & Infrastructure
Abu Dhabi, UAE
l.alali@tamimi.com

The global COVID-19 pandemic ('COVID-19') has affected practically every aspect of society. The immediate and unforgiving impact that COVID-19 has had on global economies has been well documented throughout the press and has required governments and industry leaders to carefully consider both the immediate and long term impact the pandemic might have with a view to taking strategic, mitigating steps as quickly and effectively as possible.

Needless to say, COVID-19 has created a complex web of risks and challenges for the construction industry, with which employers, contractors and other stakeholders are now having to contend.

In this article we briefly examine some of the key employer and contractor issues in more detail and explore how UAE law and the underlying construction contract can be brought to bear in order to provide some degree of relief to parties trying to navigate this unprecedented period of uncertainty.

Key Issues and Considerations for Employers and Contractors

There are numerous ways in which COVID-19 may impact employers and contractors involved in construction projects. At a basic level, its impact may result in: (i) delays to the completion of projects; and/or (ii) an increase in the cost of completing these projects. Examples of how this might arise include the following:

- the requirement for social distancing might impact not just the number of workers that the contractor is able to

have on site at any given time, but will also limit the number of workers that the contractor is able to transport to and from the site. Coupled with additional requirements for increased health and safety checks (including the testing of workers for COVID-19, temperature monitoring and regular cleaning and sanitisation of work areas and surfaces), such measures are likely to have a significant impact on both the time and cost involved in completing a project;

- due to the now completed UAE National Sterilisation Programme ('Sterilisation Programme'), works which (due to the hot summer weather or for other reasons) were originally programmed by the contractor to be undertaken overnight at a time when the Sterilisation Programme was in effect may have had to be rescheduled to a period during the day when the Sterilisation Programme was not taking place. This may have delayed the progress of such works;
- with many countries in the region and across the globe in total or partial lockdown, supply chains have been severely impacted. The procurement and transport of plant and materials (as well as labour) whether by road, rail, air or marine freight has meant that lead-in times as well as the cost of procuring these resources has increased exponentially, directly impacting both the contract value and the time required to complete a project.

Mitigating your Risk

Given the scale and magnitude of COVID-19, it is critically important that both employers and contractors examine, from an early stage, their respective positions both at law and under the construction contract into which they have entered (as well as, in the case of contractors, examining the third party contracts entered into with sub-contractors and suppliers) in order to determine the scope of each party's rights and obligations during this period, the nature and extent of the relief provided and the procedure for invoking these rights, with a view to mitigating their respective liabilities and risk exposure on projects.

Below we examine further some of the ways in which employers and contractors may go about doing so.

Article 249 of the UAE Civil Code

Article 249 of the UAE Civil Code can provide one form of relief which is unlikely to be contractually addressed. Given that it is a mandatory provision and cannot be contracted out of, it will apply notwithstanding if the construction contract states otherwise. Article 249 provides that:

"If exceptional circumstances of a public nature which could not have been foreseen occur as a result of which the performance of the contracted obligation, even if not impossible, becomes oppressive for the obligor so as to threaten him with heavy loss, it shall be permissible for the judge, in accordance with the circumstances and after weighing up the interests of each party, to reduce the oppressive obligation to a reasonable level if justice so requires and any agreement to the contrary shall be void."[1]

UAE law may therefore potentially intervene to relieve the affected party in certain exceptional circumstances, where its obligations have become particularly onerous or burdensome to perform. The court may reduce any such contractual obligation that has been imposed or otherwise allow the renegotiation of the relevant provision to something more reasonable and capable of performance in the circumstances. This relief is predicated on the aggrieved party submitting a claim before the court, in which it specifically invokes Article 249. However, it should be noted that the UAE courts have generally been reluctant to apply relief under this provision of the UAE Civil Code where it considers it to be an event that occurs frequently, an event which is considered to have been foreseeable or an event which is not considered to be of public concern and thus deemed to apply more within the context of a private contracting relationship.

Force Majeure and Impossibility

The principle of force majeure is a widely recognised legal concept and a common feature in construction contracts all over the world, including within the FIDIC suite

[1] *Unofficial translation*

of contracts. Force majeure refers to an unforeseeable event or circumstance beyond a party's control which prevents (or renders impossible) the completion of its obligations under the contract. The extent of the relief provided to an affected party is dependent on a number of factors, including notably the drafting of the force majeure provision within the contract. This principle therefore may, as a result of COVID-19, potentially enable either an employer or a contractor to obtain some form of relief from the performance of its obligations under the contract.

By way of example, Sub-Clause 19.1 of the FIDIC Red Book 1999 (one of the most heavily used FIDIC forms of contract in the Middle East) ('FIDIC Red Book') details the general requirements for an event to be considered one of force majeure. It does not limit the parties to an exhaustive list of events but rather to a non-exhaustive list, whilst prescribing a set of requirements that must be satisfied in order for the event or circumstance to be considered force majeure. Sub-Clause 19.1 provides that it must be:

1. an exceptional event or circumstance;
2. that is beyond a party's control;
3. which such party could not reasonably have provided against before entering into the contract;
4. which, having arisen, such party could not reasonably have avoided or overcome; and
5. which is not substantially attributable to either party.

It is arguable that COVID-19 satisfies these requirements and therefore may, in this example, be considered a force majeure event. However, as well as the drafting of the force majeure provision, the timing of a party's entry into the construction contract may determine the extent to which the affected party is able to satisfy item (iii). If the affected party was already aware of COVID-19 and its specific impact on the project and could have reasonably taken steps to provide against this event and mitigate its impact before contracting, this may restrict the affected party's ability to invoke force majeure in this instance.

Where Sub-Clause 19.1 has been satisfied, Sub-Clauses 19.2 and 19.4 of the FIDIC Red Book further stipulate that the party must have consequently been prevented, despite the adoption of mitigation measures, from performing its contractual obligations and, if applicable, must cause the affected party to issue to the other party a notice of force majeure detailing the event or circumstance that has arisen and the obligations that have or will be prevented as a result. By way of example, this might include a contractor being unable to complete works on account of the site being locked down.

However, relief due to force majeure would generally not extend to an employer's payment obligations, which must continue to be met notwithstanding an event of force majeure. Therefore, employers should note that a failure to pay when required (notwithstanding the existence of a force majeure event), risks the contractor being able to assert its right to suspend or potentially terminate the contract.

Relief for force majeure may take whatever form has been agreed between the parties under the contract. Under Sub-Clause 19.4 of the FIDIC Red Book, where the contractor is the affected party, it may include an extension of time for delay where completion of the works is or will be delayed, but the contractor will have no entitlement to costs. A prolonged period of force majeure may, in certain circumstances, render the contract capable of being terminated. This right is conferred under Sub-Clause 19.6 of the FIDC Red Book where all or a substantial part of the works is prevented for a continuous period of 84 days or for multiple periods totalling 140 days.

Where a construction contract is silent with respect to force majeure, Article 273 of the UAE Civil Code becomes relevant. This provides that, where the performance of all or part of the contract becomes impossible, the entire contract or the relevant obligation to which the impossibility relates, may be rescinded and the parties restored to the position in which they were prior to entering into the contract. This may be effected through the payment of damages. Alternatively, the courts may demand specific performance (which is the preferred option) or grant an extension of time to enable

the affected obligations to be performed. This form of relief is also set out under Sub-Clause 19.7 of the FIDIC Red Book (albeit with a more prescriptive set of requirements for parties to adhere to). Impossibility to perform is however generally considered difficult to prove. Contractors should therefore ensure any such claim is properly substantiated. Employers should query such claims and request that contractors evidence the extent to which an entire contract can really be considered 'impossible' to perform given that only certain elements of the project may have been affected.

Articles 893 and 894 of the UAE Civil Code may also be applied as a result of COVID-19, within the context of a *muqawala* contract (a contract to make a thing or perform a task such as works). Here, UAE law provides that where an event arises that prevents a contract from being executed either party may request for the contract to be rescinded or terminated. If completion of the works is beyond the contractor's control, it will be entitled to the value of the completed works in addition to the expenses it has incurred up to the value that the employer has derived from the portion of the works that have been completed.

Provided that the construction contract does not state to the contrary, Article 287 may absolve a party from liability to the extent that it is able to prove that the loss incurred under the contract arose for reasons beyond its control, due to force majeure or another unforeseeable event.

Although the UAE Civil Code is silent with respect to the procedural requirements to be adhered to by parties when invoking the above provisions, it would be prudent for parties seeking to rely on Article 273 or Articles 893 and 894 to ensure that timely notice is given to the counterparty in order to avoid falling foul of the overarching duty of good faith set out under Article 246(1) of the UAE Civil Code.

Changes in Legislation

Changes in legislation will potentially have a broad and far reaching impact on the procurement of works and services for construction projects.

In recent weeks a raft of new legislation and Government decisions have been introduced in the UAE as part of measures to combat COVID-19, which include the imposition of fines for those failing to adhere to social-distancing measures and for failing to use personal protective equipment (such as face masks) when in public, as well as restrictions on movement. Although, in many cases, they do not appear to amend existing legislation, they are being imposed as a matter of law and therefore must be strictly adhered to. Therefore, this has the potential to have both cost and time implications for construction projects. How this liability is apportioned between the parties is, in the first instance, dependant on the terms of the relevant change in law provision within the contract. If the contract is silent on the issue this may not necessarily prevent a contractor from submitting a claim for an extension of time and/or additional costs (although the contractor's position will be severely disadvantaged in the absence of an expressly contractual right to relief).

At this stage a great deal remains unknown in terms of how the UAE courts will approach construction disputes arising out of COVID-19. No doubt the legislative, judicial and wider regulatory frameworks within which this legislation is intended to operate will be adapted and gradually evolve in order to accommodate the legal and commercial issues that COVID-19 raises. Employers and contractors should be minded to closely monitor official communications from the UAE authorities (whether online or in the press) in order to ensure they are well placed to address and respond to any new or modified legislative requirements in a timely and efficient manner.

Additional Considerations

There are a number of additional important points employers and contractors should consider as a result of COVID-19. These include the following:

- **Time bars:** Non-adherence to contractual time bars can potentially preclude a party from bringing a claim or otherwise asserting its rights under a contract. These, as well as any requirements to notify within a prescribed timeframe,

should therefore be strictly adhered to in order to ensure the affected party does not inadvertently waive its entitlements as a result of a late submission;

- **Third party funding:** Where the development or construction of a project is being funded through external means, COVID-19 may impact each party's ability to continue to meet their financing and repayment obligations. Therefore, the relevant funding agreement should be closely examined to determine whether it provides for any relief as a result of events such as COVID-19. If not, it might be prudent approaching the funder to discuss whether, due to the exceptional nature of this event, a payment holiday or other form of relief may be granted with a view to conserving cash-flow so as to prevent a potential breach of, not only the funding agreement but also (given the knock-on impact it may have), the construction contract. Where additional funding is required this should also be explored internally in order to mitigate its potential impact on the project;
- **Insurances:** Parties should closely examine their respective insurance policies including, but not limited to, the Contractors' All Risks Insurance, Property Insurance, Commercial General Liability Insurance and Professional Indemnity Insurance (as well as any other insurances required under the contract) in order to determine whether these will respond to and provide cover for losses arising due to COVID-19. Certain insurance policies may exclude such cover;
- **Risk assessments:** Employers and contractors should pro-actively engage with each other at the earliest opportunity in order to take pre-emptive steps to agree a way forward with respect to the continuation of works on site, including discussing the viability of undertaking an initial risk assessment of the project given the nature of the risks posed by COVID-19. This might also include subsequently organising regular, periodic risk assessments so as to ensure that the contractor continues to meet any contractual health and safety obligations as well as any legislative and regulatory requirements imposed as a result of COVID-19;
- **Sub-contractors/suppliers:** Contractors should pro-actively engage with their sub-contractors and the wider supply-chain in order to understand and anticipate what impact COVID-19 is having or is likely to have on their ability to satisfy their contractual obligations with a view to managing and mitigating their impact on the project;
- **Document management:** Now, more than ever, parties should ensure they maintain a well-organised (preferably electronic) record of all project documents (whether legal, technical or commercial) as well as a clear, documented paper trail of all correspondence between the parties including, but not limited to, all notifications and claim submissions (including those issued to and from sub-contractors and suppliers) connected to COVID-19, in order to ensure it is well placed to consider and respond to any potential claims or disputes that may arise in the future.

Conclusion

COVID-19 is unlikely to leave many aspects of the construction industry untouched. Employers and contractors must, therefore, ensure they take pre-emptive steps to prepare for and respond to the legal and commercial risks as well as the challenges they might face as a consequence of this unprecedented event. Parties will be vying to mitigate their exposure while also having to contend with the uncertainty of what might follow. As the outbreak and its impact continues to develop, it remains to be seen how this unfolds. One thing that is known for sure, however, is that the lessons learnt from COVID-19 will no doubt continue to inform the procurement process and play an integral part in the development and evolution of the construction industry for many years to come.

For further information, please contact Euan Lloyd (e.lloyd@tamimi.com) or Leith Al-Ali (l.alali@tamimi.com).

Corporate Structuring / Technology, Media & Telecommunications

Being Here: Local Presence Requirements for Telecomm-Unications Equipment and IoT Service Providers in the UAE

Sherif Rahman
Partner
Corporate Structuring
Dubai, UAE
s.rahman@tamimi.com

Andrew Fawcett
Senior Counsel
Technology, Media &
Telecommunications
Abu Dhabi, UAE
a.fawcett@tamimi.com

Krishna Jhala
Senior Associate
Technology, Media &
Telecommunications
Abu Dhabi, UAE
k.jhala@tamimi.com

Certain businesses servicing the telecommunications and technology sector in the UAE may now need to have a physical presence in the UAE under regulations and policies that have been issued by the Telecommunication Regulatory Authority ('TRA') in the past 12 to 18 months.

Under Federal Law by Decree No. 3 of 2003 Regarding the Organization of Telecommunications Sector, as

amended ('Telecoms Law'), the TRA is the competent body to oversee the telecommunications sector in the State and has the power to issue regulations, instructions, decisions and rules in connection with its statutory function.

The local UAE establishment requirements are set out under the following regulations/ policies:

1. Regulation on Telecommunications Equipment Type Approval Regime V2.0 dated 2 October 2018 ('Type Approval Regulations');
2. Internet of Things ('IoT') Regulatory Policy dated 22 March 2018 ('IoT Policy'); and
3. IoT Regulatory Procedures dated 6 March 2019 ('IoT Procedures'); and

Type Approval

Under the Type Approval Regulations approval must be obtained from the TRA before telecommunications equipment can be used, sold, offered for sale or connected to any telecommunications network in the UAE ('Type Approval').

The key objectives of the Type Approval regime are to protect the health and safety of persons, the public interest, property and telecommunications networks (including by ensuring equipment effectively uses the radio frequency spectrum and does not cause damage or harmful interference with other telecommunications networks).

'Telecommunications Equipment' is defined as Radio and Telecommunication Terminal Equipment ('RTTE') made or adapted for use in transmitting and/or receiving and/or conveying any of the Telecommunications Services (as defined in the Telecoms Law) through a telecommunications network.

Type Approval is achieved through conformity of Telecommunications equipment with technical specifications published by the TRA and by registration of the Telecommunications Equipment with the TRA.

To apply for Type Approval the manufacturer, the importer or distributor that is the applicant must first be registered with the TRA.

The Type Approval Regulations, which updated the TRA's requirements for Type Approval in October 2018, expressly state that the 'local' manufacturer, importer or distributor of Telecommunications Equipment must provide a valid trade licence issued by the Department of Economic Development based in the UAE, with an economic activity specific to Telecommunications Equipment.

Accordingly, there is a requirement to have a local presence in the UAE.

The need to be legally established in the UAE to apply for Type Approval is further supported by the definitions in the Type Regulations.

A 'Local Manufacturer' is a manufacturer based in the UAE which can manufacture, assemble, offer or sell telecommunications equipment in the UAE market, provided that it holds a valid trade licence for the relevant telecommunications equipment and is registered in the Type Approval Regime.

An 'International Manufacturer' is a manufacturer based outside the UAE, that can provide telecommunications equipment in the UAE market through an importer based in the UAE and registered in the Type Approval Regime.

A 'Telecommunications Equipment Importer' is any legal person established within the UAE who imports telecommunications equipment from other countries. The Importer can also offer, sell or acquire telecommunications equipment in the UAE market.

A 'Telecommunications Equipment Distributor' is any legal person established within the UAE who offers, sells or acquires telecommunications equipment in the UAE market.

Despite these definitions, the regulations do not use them in the defined form (and also use undefined terms such as 'dealer').

The TRA registration certificate for the registered local manufacturer, importer or distributor is valid for five years and is renewable for a similar period.

The registered manufacturer, importer or distributor of Telecommunication Equipment can then obtain Type Approval for the respective Telecommunications Equipment by conforming with technical specifications published by the TRA along with payment of prescribed fees.

The TRA will issue a Telecommunications Equipment type approval certificate which will contain the Telecommunications Equipment approval number. This Type Approval certificate is valid for three years and is renewable for similar periods.

Certain businesses servicing the telecommunications and technology sector in the UAE may now need to have a physical presence in the UAE.

In addition to the Type Approval, a registered Importer will also have to apply for customs clearance from TRA to import the approved Telecommunications Equipment into the UAE.

IoT Policy

Broadly speaking, the IoT refers to the growing number of physical devices around the world that are now connected to the internet, collecting and sharing data.

The TRA's IoT Policy is intended to allow IoT services to develop in the UAE in a co-ordinated, coherent, safe and secure manner. The TRA implemented the IoT Policy in March 2019 when it issued its IoT Procedures, which cover the registration procedure of an IoT service.

Any business offering an IoT Service to the UAE market, irrespective of its place of establishment, management or operations, is subject to the Telecoms Law and any regulatory framework related to IoT, including the IoT Policy.

Under the IoT Policy, an IoT Service Provider must register with the TRA to provide IoT service and obtain an IoT Service Provider Registration Certificate.

It is a pre-requisite for an IoT Service Provider to have a local presence.

Alternatively, an IoT Service Provider can appoint an official representative who will be responsible for communication with the TRA and other law enforcement agencies in the UAE. Such official representatives must be physically present in the UAE. The qualifications of the official representative, other than being physically present in the UAE, are not clear under either the IoT Policy or IoT Procedure. Can the representative be a chartered accountant or law firm? Could it be an entity registered with the TRA under the Type Approval Regulations (discussed above)?

Sale of eSIM

IoT devices that use cellular connectivity need a SIM. For the purpose of IoT, the TRA will permit the use of both physical SIM (e.g. a legacy plastic SIM card that is removable) and/or an eSIM (an embedded SIM that is physically integrated/soldered in a device).

Although permanent roaming is not prohibited in the UAE, the actual issue with the use of an eSIM is that selling an IoT device with a non-UAE eSIM amounts to a Regulated Activity.

This is because Resolution No. (44) of 2009 Regarding the Organisation of Selling Mobile Phone SIM Cards and Recharge Cards states that the Regulated Activities defined in Article (1) of the Telecoms Law that requires a licence includes the sale of SIM cards (and the TRA does not consider that this law distinguishes an IoT eSIM from any other SIM card).

Consequently, the sale of IoT devices with embedded SIM cards must be done with either the SIM card of an UAE licensee (i.e. Etisalat or du) or with the explicit or implicit consent of the licensees.

In general, if Etisalat or du consent to the sale of SIM cards by a third party, the TRA's policies related to the matter must still be adhered to.

Despite the internet being the 'world wide web', telecommunications equipment manufacturers, importers and distributors and IoT service providers do not operate their businesses in a world without borders.

Under the TRA's Registration of Mobile SIM Cards Points of Sale Policy (issued 18 May 2018) a commercial entity selling SIM must have:

- a business licence for the economic activity of selling SIM cards in the UAE; and
- registration with the TRA as a SIM Cards point of sale.

However, it is not clear if an IoT device manufacturer (or its local distributor) would be selling the SIM in the IoT Device. SIM generally remain under the control of the telecommunications service provider that issues the SIM, so compliance is an issue for the telecommunications service provider that is providing the IoT connectivity for the IoT device. Consequently, there only appears to be an issue if the SIM used by the IoT device is not the SIM of Etisalat or du (i.e. the IoT connectivity provider is a foreign telco and the IoT device is roaming in the UAE).

Conclusion

Despite the internet being the 'world wide web', telecommunications equipment manufacturers, importers and distributors and IoT service providers do not operate their businesses in a world without borders. To provide telecoms' equipment and IoT services in the UAE, having a form of local presence (with an appropriate trade licence) is now necessary under certain TRA regulatory policies.

For further information, please contact Andrew Fawcett (a.fawcett@tamimi.com), Krishna Jhala (k.jhala@tamimi.com) and Sherif Rahman (s.rahman@tamimi.com).

An Overview of the Abu Dhabi Free Zones

Nasouh Raslan
Associate
Corporate Structuring
Abu Dhabi, UAE
n.raslan@tamimi.com

Introduction

When establishing a new business in Abu Dhabi, one of the first decisions one makes is whether to do so on the mainland (sometimes referred to as 'onshore') or in a free zone (sometimes referred to as 'offshore').

Abu Dhabi has five free zones that cover multiple industries and sectors. This article aims to give a broad overview of the different free zone options available in Abu Dhabi. We will also briefly describe the differences between mainland and free zone companies.

What is a Free Zone?

1. In General

A free zone is a defined geographic area that is governed by a set of economic and business incentives that are different from the ones generally applicable in the jurisdiction in which it is based. The aim of a free zone is to support the development of a business or industry cluster, encourage foreign investment, boost employment, promote trade and diversify the economy.

In Abu Dhabi, the free zones form part of The Abu Dhabi Economic Vision 2030 (published in November 2008) plan to support Abu Dhabi's long-term economic growth whilst building a sustainable economy.

2. Differences between Mainland (Onshore) and Free Zone (Offshore)

a. Foreign Ownership

The UAE Federal No. 2 of 2015 Concerning Commercial Companies ('Commercial Companies Law') requires companies incorporated in the UAE to have at least 51 per cent UAE national ownership. The same law excludes its application in the free zones, and allows up to 100 per cent foreign national ownership of the companies incorporated in those zones.

To further boost foreign direct investment in the UAE, the UAE Cabinet issued Federal Decree Law No. 19 of 2018 on Foreign Direct Investment ('FDI Law'). The FDI Law permits up to 100 per cent foreign ownership of limited liability companies seeking to perform activities on the mainland, so long as: (1) the intended business activities fall within a specified 'positive list' as issued by the Cabinet and (2) the companies satisfy certain investment thresholds. For a more in depth discussion on the FDI Law, please see our article entitled 'The Highlight of 2018: A New Foreign Direct Investment Decree in the UAE' and our client update on the 'UAE Foreign Direct Investment Developments'.

b. Applicable Regulation

On the mainland, the Department of Economic Development or equivalent ('DED') in each of the UAE's seven Emirates is the licensing authority and corporate regulator of companies. However, each free zone is established by a decree which also establishes the free zone's own licensing authority and corporate regulator. Each free zone also has its own set of companies' and licencing regulations.

c. Permitted Area for Doing Business

Strictly speaking, companies that are licenced in a free zone should not conduct commercial activities on the UAE mainland. In practice however, free zone companies can conduct certain activities there.

In a recent development, local DEDs and free zones have co-operated and approved a 'dual licensing' concept. With a dual licence, businesses registered in a free zone can be licensed to do business on the mainland of that Emirate. This is granted on a case-by-case basis and is subject to approval by the relevant authorities.

Abu Dhabi free zones

1. Abu Dhabi Airport Free Zone ('ADAFZ')

a. General

ADAFZ is a free zone area covering several of Abu Dhabi's airports. It provides free zone facilities, business parks, a logistics park, and business centres at Abu Dhabi International Airport, Al Ain International Airport and Al Bateen Executive Airport.

b. Permitted Activities

Generally, businesses that can set up in the ADAFZ broadly fall under the following categories (non-exhaustive.:

- aviation, aerospace, aircraft interiors and airport services, and aircraft charter;
- import and export;
- in-flight catering, and flight support services;
- logistics, transportation, warehousing distribution and storage;
- marketing and events;
- MRO (maintenance and repair organisation);
- regional HQ;
- service provider and consultancy;
- technology and ICT; and
- trading, assembly and manufacturing.

c. Types of Entities Allowed

ADAFZ allows for setting up limited liability companies ('LLC') and branches.

d. Other Items

The share capital requirements of the ADAFZ differ depending on the type of activity selected, and whether the shareholder is a corporate entity or natural individual:

- LLC operating in: aerospace, airport services, aviation and manufacturing: AED 500,000 (approx. US$136,000) (if corporate shareholder), AED 1,000,000 (approx. US$273,000) (if natural person);
- LLC operating in other segments: AED 150,000 (approx. US$40,800); and
- Branch company: N/A.

(ADAFZ can change these requirements without notice.)

ADAFZ also requires companies to have at least one shareholder, at least one director, and a general manager.

2. Abu Dhabi Global Market ('ADGM')

a. General

ADGM is a financial free zone that was established in late 2015. It is a common law jurisdiction, with rules and regulations supported by the common law of England and Wales. ADGM is the most recent free zone in Abu Dhabi and it is Abu Dhabi's only financial free zone. In addition, ADGM has a separate court system, the ADGM Courts, that can hear commercial cases of ADGM companies and of other businesses that 'opt in'.

b. Permitted Activities

ADGM allows for a wide variety of financial, non-financial, and retail business to be conducted, including:

- **Financial** includes financial activities such as banks, financial advisers, investment advisers, trust service providers, fintech etc.;
- **Non-Financial** includes non-financial activities such as manufacturing. civil engineering, hotels, real estate, legal and accounting, advertising, marketing. consulting, education, social work activities etc.;
- **Retail** includes the manufacturing of items such as food products, beverages, and jewellery, the retail sale of such items, setting up retail stalls etc.

c. Permitted Entities

ADGM allows for setting up different types of legal structures and corporate vehicles. These include:

- private companies limited by shares (similar to limited liability companies) and special purpose vehicles;
- foundations;
- private companies limited by guarantee (i.e. associations);
- public companies;
- branches of foreign companies and of partnerships;
- partnerships - limited partnerships and limited liability partnerships;
- cell companies – protected cell and incorporated cell companies; and
- investment companies.

d. Other Items

ADGM also approves the use of trust instruments so long as the trust is compliant with ADGM's trust law provisions. These are directly applied from UK trust laws and amended in certain aspects.

ADGM companies have no minimum share capital requirement. They also require at least one shareholder, one authorised signatory, and one director. Appointing a company secretary is optional for private companies. However, if the company is to operate in the financial sector and be regulated by ADGM's Financial Services Regulatory Authority ('FSRA'), it is possible that there may be additional requirements imposed on the company.

3. Masdar City Free Zone ('Masdar City')

a. General

Masdar (Abu Dhabi Future Energy Company), which was founded in 2006, aims to establish the UAE as a global leader in renewable energy and sustainable urban development. It seeks to develop the UAE's role in the renewable and clean energy sectors with the objective of

making sustainability solutions commercially viable. Masdar City Free Zone is a business hub based in Masdar City (the urban community) located just outside the capital of Abu Dhabi.

b. Permitted Activities

In line with Masdar's mandate, the permitted activities at Masdar City broadly fall under the following categories (non-exhaustive.:

- renewable energy;
- clean tech and ICT;
- energy industry; and
- oil and gas services

Masdar City also allows for non-energy activities such as those listed below, aimed at developing a thriving business ecosystem:

- marketing and events;
- human resources development;
- healthcare services;
- service providers (e.g. insurance services, courier, banking, translation, etc.);
- consultancies (e.g. legal, accounting, architecture, management, interior design, etc.);
- property development services;
- regional headquarters, trading and holding companies;
- business centre and data centres; and
- community services (e.g. education, medical, hospitality, retail, food, etc.).

c. Permitted Entities

Masdar City allows for setting up LLCs and branches. It can also issue licenses for association (non-profit) activities.

d. Other Items

The LLC share capital requirements at Masdar City are AED 50,000 (approx. US$13,600).

Masdar City also requires companies to have at least one shareholder, a director, a general manager, and a company secretary.

4. Khalifa Industrial Zone – Abu Dhabi ('KIZAD')

a. General

KIZAD is Abu Dhabi's first integrated, trade, logistics, industrial free zone. It officially opened in 2012 and is part of Abu Dhabi Ports Company, the entity that owns, operates and manages ports and terminals in Abu Dhabi. KIZAD is located at Al Tawila between Abu Dhabi and Dubai, and has access to Khalifa Port.

b. Permitted Activities

KIZAD can issue the following types of licenses:

- **Industrial**

this permits the import of raw materials, and the manufacturing, processing, assembling, packaging and export of intermediate and/or finished products. The list is non-exhaustive and other industrial activities are allowed.

- **Trading Licence**

this permits trading activities that include import, export, distribution, stocking, warehousing of products and items specified on the licence. The list is non-exhaustive and other trading activities are allowed.

Trading activities that can be specified on the licence include trading in agricultural products, flowers and plants, aircraft and trains, building materials, jewellery etc.

- **Service Licence**

this permits service activities such as management and economic consulting services, marketing services, logistical support services such as cargo and freight forwarding, restaurants, retail food outlets, catering services, and travel agencies. The list is non-exhaustive and other service activities are permitted.

c. Permitted Entities

KIZAD allows for setting up LLCs and branches.

d. Other Items

The minimum share capital requirements at KIZAD are AED 150,000 (approx. US$40,800) although the KIZAD registrar may require more.

KIZAD requires companies to have at least one shareholder, at least two directors, a general manage, and a company secretary.

In terms of customs' duties, a KIZAD company is considered to be performing industrial manufacturing activities if:

- it has full non-UAE ownership: it can avoid duties on imported goods kept in bonded status in KIZAD and re-exported from the UAE. The company can also avoid duties on raw materials; and
- in a joint venture with a 51 per cent (or more. UAE partner can claim exemption from import duties on raw materials. Goods manufactured will be exempt from customs duties when exported to GCC countries.

5. Twofour54 Media & Entertainment Hub ('twofour54')

a. General

Twofour54 is a media free zone aimed at building a creative and media cluster in Abu Dhabi. It is a driving force in the development of Abu Dhabi as a filming location, and is a major supporter of developing both local content and local talent.

b. Permitted Activities

twofour54's activities are generally limited to the creative media space. Among others, the activities include:

- advertising;
- animation;
- branding;
- content Management and monitoring services;
- content portal management;
- content production – audio visual/ eCorporate/digital/publications;
- event management;
- gaming development;
- graphic design;
- news gathering services;
- post-production services;
- publishing – book/magazine/newspaper;
- broadcasting – satellite/radio

c. Permitted Entities

Twofour54 allows for setting up LLCs and branches. It can also issue freelancer licenses.

d. Other Items

There are no minimum share capital requirements at twofour54.

Twofour54 requires companies to have at least one shareholder, one director, a general manager, and a company secretary.

Conclusion

As shown above, Abu Dhabi's five free zones broadly cover the aviation (ADAFZ), finance and financial services (ADGM), renewable energy (Masdar City), manufacturing & logistics (KIZAD., media (twofour54) sectors and their related support activities. Each of these hubs endeavours to develop its respective sector in Abu Dhabi, with the aim of building Abu Dhabi into a competitive and world-class business location that attracts local and international business investment.

For further information, please contact Nasouh Raslan (n.raslan@tamimi.com).

Abandoned Cargo during COVID-19

Omar Omar
Partner, Head of Transport & Logistics – UAE
Dubai, UAE
o.omar@tamimi.com

Tariq Idais
Senior Associate
Transport & Logistics
Dubai, UAE
t.idais@tamimi.com

Sabih Medhat
Paralegal
Transport & Logistics
Dubai, UAE
s.medhat@tamimi.com

As the spread of COVID-19 continues to hamper and disrupt the rights and obligations of individuals and legal entities under contracts, a commonly asked question is one that concerns whether parties can seek to rely upon the principle of force majeure in order to be discharged from performing their duties or from executing such duties on time. This concern extends to the maritime industry, particularly in respect of abandoned cargo, where carriers are becoming more exposed to liabilities related to unclaimed shipments, which are piling up on board ships and/or at seaports, globally.

Consigned cargo is the responsibility of the carrier until it is delivered to the consignee. When cargo is abandoned by the consignee, and owing to some reasons or to defaults on the part of the consignee in taking delivery of consigned cargo, it is common that

goods remain under the custody of carriers. Therefore, in order to be discharged from its liability with regard to abandoned cargo, there are a number of options which the carrier may pursue. Article 269 of UAE Federal Law No. 26 of 1981 (the 'UAE Commercial Maritime Law') provides that:

"If the person having the right to take delivery of the goods does not attend or if he refuses to take delivery of the same it shall be permissible for the carrier to apply to the relevant court for leave to deposit the same with a depositee to be appointed by the court. The carrier may request permission to sell the goods in whole or - in part to pay the freight."

Accordingly, in the event of non-attendance or refusal of a consignee to take delivery of goods shipped by a carrier, the goods will remain the responsibility of the carrier. Furthermore, this Article explains how the carrier may make an application to the competent court to assign the custody of the goods to a court-appointed trustee and petition the court to allow the carrier to sell the goods, in whole or in part, in order to pay for freight charges. Further, whilst in other jurisdictions it may be common for the carrier to retain the goods for lien after warehousing, the principle of maritime lien does not exist under UAE law.

However, if the carrier obtains an acknowledgement from the consignee confirming that it refuses to take delivery of the cargo and intends to abandon the cargo, the carrier would legally be discharged from its obligation under the contract of carriage. In practice, rendering the original bill of lading or equivalent shipping documents by the consignee to the carrier without taking delivery of the cargo, would be interpreted as evidence that the consignee's intention is to abandon the cargo. Moreover, the carrier must also seek to be indemnified by the consignee for any claims that arise in relation to or as a result of the consigned cargo. Therefore, in order for the carrier to be discharged from its obligation to remain responsible for undelivered or abandoned cargo, the carrier must first obtain an Abandon & Indemnification letter, and the original bill of lading of the consignment from the consignee – both of which evidence the consignee's intention to abandon the consigned cargo. Moreover, if the bill of lading has been lost, the carrier should obtain an Undertaking & Indemnification letter from the consignee against delivery of the consigned cargo. In the event the carrier is unsure of the consignee's financial position, the carrier may request a bank guarantee against the value of the consigned cargo from the consignee. In spite of that, in unprecedented times like the present, and in order to be indemnified against any legal action that may arise out of or in relation to the consigned cargo because Article 287(a) of the UAE Commercial Maritime Law provides that the period of prescription (time bar) for such claims is 12 months from the date of delivering the consigned cargo, it is vital that the carrier ensures that the bank's guarantee validly factors in any disruptions or delays that may have been caused by the outbreak of COVID-19, and not only the aforementioned period of prescription, in case the consignee seeks to rely on the concept of force majeure in extending the applicable limitation period. However, if the carrier is unable to obtain evidence that the consigned cargo is abandoned by the consignee, then it should comply with Article 269 of UAE Commercial Maritime Law.

That said, although, in theory, Article 269 of the UAE Commercial Maritime Law appears to provide a 'way out' for carriers in respect of abandoned cargo, in practice, there are a few challenges to consider. First, in theory, the court may find difficulty in ensuring that a competent trustee is appointed. However, in practice, because the carrier is the party which makes the court application, the court normally appoints the carrier as the trustee or asks the carrier to provide the trustee, and obliges it to store and secure the abandoned cargo. Normally, the court would accept the appointment of a trustee, as long as the carrier provides evidence of a suitable warehouse in which to store the cargo in addition to providing evidence that it will secure the cargo.

Second, and again in theory, the question of who will bear the trustee's costs and expenses will be raised. However, in practice, the Court would demand the carrier bear the cost.

Third, the judicial process may be a lengthy and expensive one until a final judgment is rendered which allows selling the abandoned cargo.

Fourth, when considering the costs associated with storing and securing the abandoned cargo, the expenses may exceed the cargo's estimated value.

Fifth, the implications may further be highlighted in the present circumstances arising out of the spread of COVID-19 as the value of some goods may have decreased as a result of the economic slowdown and abrupt shift in market trends; this calls into question the commercial viability of making such an application to court by the carrier (pursuant to Article 269).

In the case of abandoned cargo that is stored at seaports, there may be another option available to carriers to explore. As more abandoned cargo piles up at seaports, many carriers may seek to discharge their liability in respect of unclaimed cargo by looking to the regulations of local ports. For instance, Paragraph 225 of DP World's 2017 Tariff Book for the Ports of Jebel Ali and Mina Rashid ('Tariff Book') provides that abandoned cargo that is unclaimed for a period of more than *"three months for General Cargo, three months for Vehicles and other Road-Moving Equipment, one month for Hazardous Cargo, one month for Refrigerated Containerised Cargo, three months for all other Containerised Cargo, and six months for Empty Containers"* may be sold by Dubai Customs and/or the Port Operator – where the respective port dues and customs' duty have not been paid.

Furthermore, another good case in point is Article 20 of the Port of Fujairah Ordinance of 1982 which provides that if abandoned cargo is unclaimed for a period of three months (given that the respective port dues and customs' duty have not been paid), it may be sold at a public auction. However, with all of the current considerations and delays due to COVID-19, it is likely that there will be lengthier processes relating to accepting delivery, assigning a trustee if the case escalates to proceedings, and receiving shipments. The timeframe for obtaining a court judgment will, indeed, be longer than usual, and both carriers and consignees should expect delays in the delivery and acceptance of consigned cargo.

Although UAE law provides for all of the above-mentioned issues, these problems become more of a concern when considered in light of COVID-19 and the concept of force majeure. Force majeure clauses are contractual clauses which provide a safety net for the contracting parties should a change in circumstances, which is beyond their control, render the performance of the contract impossible. Force majeure is a general legal principle under UAE law – meaning that courts may declare pandemics like COVID-19 as a force majeure event. Article 273 (1) of UAE Federal Law No. 5 of 1985 ('Civil Transaction Law') provides that, if a force majeure event arises in the course of a bilateral agreement, then the contract would, as a result, be rescinded. However, if the force majeure event only partially affects the agreement, then only that part of the contract that is impossible to perform is rescinded. Force majeure events commonly refer to any type of unforeseeable, naturally caused disaster or incident that may occur, thereby altering the legally binding obligations of contracts that had previously been put in place. Due to the unexpected emergence, and subsequent rapid spread, of COVID-19, and because this pandemic is beyond any person's control, it may be considered a force majeure event. This is especially true when government actions, such as lockdown measures and restrictions on the movement of persons, are considered.

Another important factor to consider is the effect of COVID-19, as a force majeure event, on the performance of obligations under a contract of carriage. The flagging world economy, associated with a dramatic decline in demand for certain goods, stay-at-home orders, and the state of total lockdown that was ordered by various governments has pushed many consignees to abandon their cargo. This may have, in turn, caused serious losses to some carriers that may very well end up finding themselves as custodians of stockpiled abandoned consignments of cargo. Furthermore, the uncertainty that surrounds the situation relating to the duration of the current circumstances that arose out of the rapid spread of COVID-19 renders this custody and responsibility burdensome for some carriers that may be forced to bear unreasonable expenses associated with the storage and security of abandoned cargo. Consequently, carriers may resort to difficult/questionable solutions in order to dispose of unclaimed cargo: they may destroy some consignments in order to

relieve themselves of the financial difficulty that comes with maintaining custody of such unclaimed cargo. Moreover, the World Health Organisation declared COVID-19 a public health emergency of international concern on 30 January 2020. Soon after it was declared a pandemic. Therefore, by relying upon the principle of force majeure, consignees may still show up at a later stage to take delivery of their goods and claim that they were physically prevented from fulfilling their obligations under the contract which, in theory, may extend the aforementioned 12-month period of prescription in relation to maritime disputes, and the argument that performance is *"more expensive and less profitable"* may not suffice in absolving the carriers of their liability to perform.

Conclusion

Due to the fact that COVID-19 is sending the world economy into an uncertainty, consignees are more likely to abandon their cargo because of the costs associated with storing, packing, and securing goods that they are unable to sell due to the unprecedented fall in demand coupled. This was manifested in the recent crash of the oil market on 20 April 2020, whereby some oil traders refused to take delivery of their oil which resulted in the severe devaluation and drop in the price of oil.

Therefore, it is advisable for the carriers to confirm delivery and acceptance by the consignee. However, if the consignees do not show up to take delivery of their cargo which, then, results in the carriers being responsible for higher volumes of unclaimed consignments, carriers should seek an explicit undertaking from consignees confirming their intention to abandon the cargo, so the carriers may be discharged of any liability arising out of unclaimed consignments. Alternatively, the carrier should request from the competent court that the cargo be deposited under the custody of a trustee appointed by the same court.

In addition, the non-existence of the principle of maritime lien in the UAE, in the traditional sense, leaves carriers with only one option for legal recourse: making an application to court under Article 269 of UAE Commercial Maritime Law.

Furthermore, trying to bring a claim against consignees in respect of abandoned cargo may be rather costly in light of the financial burden associated with legal costs and maintaining custody of unclaimed cargo. Consequently, carriers are not only likely to face increased difficulty in trying to recover costs, but may also bear considerable expenses in remaining responsible for abandoned cargo until they are discharged from their liabilities. Needless to say, this will place a real strain on the operation of seaports.

For further information, please contact Omar Omar (o.omar@tamimi.com) or Tariq Idais (t.idais@tamimi.com).

The Qatar Industrial Designs Law of 2020: What Changed and What to Expect

Diana Al Adel
Associate
Intellectual Property
Doha, Qatar
d.aladel@tamimi.com

As part of Qatar's Vision 2030 and the active steps taken towards improving intellectual property laws, the long awaited Industrial Designs Law No. 10 of 2020 ('Industrial Designs Law') was recently published in Qatar's Official Gazette (Gazette No. 9 dated 10 May 2020). However, the implementing regulations are yet to be issued which means that design owners still cannot apply for the registration of their industrial designs in Qatar. In the meantime, precautionary measures or alternative ways of seeking protection for their creative designs may still be available.

Previously, before the issuance of the Industrial Designs Law and in the absence of a formal industrial design register, the Copyright Law (Law No. 7 of 2002), in accordance with the Berne Convention, had been applied. This means that an industrial design is eligible for protection as copyrighted work. Such protection does not require formal registration, and remains valid during the lifetime of the author and for 50 years beyond his/her lifetime

The implementation of the Copyright Law on industrial designs as imposed by the Berne Convention will no longer be applicable once the implementing regulations are issued and an official industrial designs register is created. In the interim, designers would be well advised to carefully consider whether protection should be claimed based on the Copyright Law now that the Industrial Designs Law has been issued.

What is Eligible for Registration and Protection under the Industrial Designs Law?

As per Article 1 of the Industrial Designs Law, *"any two-dimensional or three-dimensional composition of lines or colours which gives a special and new appearance to an industrial product or handicraft, and not merely related to the functional or technical aspect of the product"* (unofficial translation), may be registered and protected as an industrial design.

However, in accordance with Article 7, designs that are: dictated by the usual, technical or functional considerations of a product; contrary to public order; or identical or similar to a registered or a well-known trademark may not be registered.

Novelty and Originality

According to the Industrial Designs Law, the most important condition that needs to be fulfilled, in order to register an industrial design, is 'novelty and originality'. This means that the design must be new and not have been previously disclosed to the public. The difficulty of satisfying this condition is not the condition in itself, but rather in the established practice of intellectual property owners who tend to use the intellectual property and then later apply for its registration.

As the novelty criteria is absolute, industrial designs must be filed in Qatar within six months of the earliest filing date as set out in the Paris Convention. Any public disclosure of a design prior to filing an application for registration in Qatar (or the priority date claimed if an earlier application is filed under the Paris Convention) will negate the novelty of the design, thereby compromising its legal protection due to it being part of the public domain. This will lead to a rejection of the application for registration and ultimately the loss of protection of an industrial design, which will no longer be considered to be exclusively owned by the original design owner.

Will Industrial Design Applications be examined as to their Substance?

The Industrial Designs Law does not provide a clear answer in relation to the examination process, and whether design applications will be examined as to the substance, or if the examination will be limited to formality. This is yet to be determined by the implementing regulations.

However, even where a substantive examination is determined, the question remains as to when such an examination will be practically possible.

In all cases oppositions by interested parties, after the initial acceptance and publication of industrial designs applications, and possible later appeals or cancellation actions before the court, will have a significant role in preventing any unlawful registration, in addition to establishing precedents interpreting the law.

Grace Period and Priority

Some countries operate a grace period of six to twelve months' post-disclosure by the designer during which an application for registration may still be filed (and not rejected for lacking novelty as being part of the public domain due to the said disclosure). Unfortunately, a grace period is not available under the Industrial Designs Law, with the exception as set out below.

The new Industrial Designs Law mentions a grace period of six months only if the design is disclosed at national or international exhibitions, leaving the conditions and rules relating to any such disclosure to be determined by the implementing regulations.

Is it Possible to Protect the Design Under other Types of IP?

The Industrial Designs Law, the Copyright Law and the Trademarks Law do not expressly prohibit concurrent protection, however the Courts' interpretation of the various provisions as set out in these laws regarding the application of concurrent protection remains to be seen.

The most important condition that needs to be fulfilled in order to register an industrial design is ‘novelty and originality’.

In theory, an asset or different aspects thereof, may be protected under more than one form of intellectual property when suitable under the applicable laws. This, however, is not automatic and a design (normally protectable under industrial designs) should not be submitted for copyright or trademark protection before carefully considering the potential impact of so doing and, in particular, the possible negative repercussions.

In some cases, it may be appropriate to apply for copyright or a three dimensional trademark to protect a design or certain aspects thereof. For example, when a design is also used as a trademark in commerce to identify the source or origin of products or services, it may be appropriate to consider its protection through a 3D trademark. However, the risk is that should the 3D trademark be cancelled by a court order, the design will already be within the public domain and no longer available for industrial design protection, and therefore both types of protection will be lost.

Conclusion

Key points to keep in mind are:

1. the issuance of the Industrial Designs Law is a positive step forward which reinforces the position of the Qatari authorities in their commitment to the protection of intellectual property rights and strengthening the IP system in general; and
2. until the implementing regulations are put in place, it is recommended that alternative precautionary or protective measures are carefully considered. This may include considering the protection of the design, or certain aspects thereof, under copyright or as a 3D trademark if suitable. This, however, should be considered carefully, strategically and preferably on the advice of expert IP counsel, as doing so without such experience could lead to negative legal repercussions.

For further information, please contact Omar Obeidat (o.obeidat@tamimi.com), Ahmad Saleh (ah.saleh@tamimi.com) and Diana Al Adel (d.aladel@tamimi.com).

Managing Employment Relationships affected by COVID-19 in the Kingdom of Saudi Arabia

Zahir Qayum
Senior Counsel
Employment & Incentives
Al Khobar, Saudi Arabia
z.qayum@tamimi.com

Mohsin Khan
Senior Associate
Employment & Incentives
Jeddah, Saudi Arabia
mohsin.khan@tamimi.com

Employers in the Kingdom of Saudi Arabia ('KSA'), as around the globe, have been affected by the impact of the COVID-19 pandemic across most sectors. In large part, this has been due to measures adopted by the Saudi government to curb the spread of the COVID-19 virus. This has resulted in a number of businesses having to close temporarily, reduce their working hours or change their normal business practices in order to comply with government instructions. In response, the government has introduced a number of measures with the aim of supporting employers during the pandemic whilst also giving some protection to employees. In this article, we set out an overview of the most significant employment related measures implemented by the Saudi government to assist employers in managing employment relationships through the COVID-19 pandemic.

Royal Order introducing Saned Wage Subsidy Scheme

On 3 April 2020, a Royal Order was issued to grant a wage subsidy to Saudis employed in the private sector ('Royal Order'). The subsidy is available for all Saudis working for employers with five or less Saudi employees. It also covers up to 70 per cent of Saudis working for employers with more than five Saudi employees. The employer will be able to select which employees to apply to put onto the subsidy scheme. Assuming that the employees

are eligible to receive the Saned wage subsidy, the employer is then not required to cover the balance of wage difference for the duration of the subsidy scheme.

The subsidy is managed by the General Organisation for Social Insurance ('GOSI') through the Saned unemployment insurance fund. Employees who are selected and are eligible to receive the subsidy will get 60 per cent of their wages or up to SAR 9,000 (US$ 2,400) per month (whichever is less). The Saned wage subsidy scheme covered wages for the months of April, May and June, with the subsidy payments for those months being made in May, June and July respectively. The scheme may be extended should the government deem appropriate. Employers must resume the payment of wages after the GOSI wage subsidy programme ends (at time of writing June 2020).

To be eligible for the subsidy, the following conditions must be satisfied:

- the employer must be registered with GOSI and a subscriber to GOSI's unemployment insurance branch before 1 January 2020 and have continued its subscription;
- the beneficiary employee must be a Saudi national and under 60 years of age;
- the beneficiary employee should not have any income from work or another activity; and
- the employer must have paid the wages of its employees during the first quarter of 2020.

Applications were required to be received by 26 April 2020 in order for salary payments to be disbursed from 1 May 2020. Applications made in May were due to be paid out in June 2020. Employers in the financial services, insurance and banking sectors, communications sector and the food manufacturing sector are excluded from the Saned wage subsidy scheme.

There is some uncertainty with regard to the position of the Saudi and expatriate employees who are not covered by the Saned wage subsidy scheme. According to GOSI, employers must continue to pay the full wages of any Saudi employees who are not entitled to the subsidy as well as all expatriate employees. However, separate measures introduced by the Ministry of Human Resources and Social Development ('MHRSD') suggest that it is possible to apply a wage reduction to all employees where the employer is impacted by a force majeure event such as COVID-19 (subject to certain conditions as set out below).

Ministerial Decision Introducing a New Article 41 to the Executive Regulations of the Labour Law

On 6 April 2020, the MHRSD issued Ministerial Decision No. (142906) introducing a new Article 41 to the Executive Regulations of the Labour Law with the aim of regulating the employment relationship in cases of exceptional circumstances and force majeure events ('Article 41').

Pursuant to paragraph 1 of Article 41, in the event the KSA government implements measures concerning a situation or condition that requires a reduction of working hours or precautionary measures to be taken, including situations of force majeure provided for in Paragraph 5 of Article 74 of the Labour Law, an employer shall, within six months following the commencement of the implementation of such measures, agree with its employees to implement any of the following:

1. reduce an employee's wage on a pro-rata basis proportionate to their actual working hours;
2. grant an employee a period of leave to be deducted from their payable annual leave; and/or
3. grant an employee exceptional leave in accordance with Article 116 of the Labour Law (i.e. unpaid leave).

Paragraph 2 of Article 41 further provides that the termination of an employment contract shall be unlawful should it be proven that the employer benefited from any state subsidy to deal with the situation or condition (i.e. the force majeure event). The MHRSD has since clarified that it will be unlawful for an employer that benefits from a COVID-19 related state subsidy to terminate the employment of any Saudi nationals on the grounds of force majeure.

Paragraph 3 of Article 41 states that the employee's right to terminate employment is not prejudiced.

The MHRSD subsequently confirmed that it would ultimately be for a Labour Court to determine whether any termination of employment (of either Saudis or non-Saudis) was lawful based on the circumstances of the case. Given that these are unprecedented times, and the application of the new government measures are untested in the Labour Courts, it remains to be seen how a Labour Court will consider and determine terminations on the grounds of force majeure in light of COVID-19.

Pursuant to Ministerial Decision No. (146377) issued on 30 April 2020, a failure to comply with the requirements of Article 41 will expose employers to a fine of SAR10,000 (approximately US$2,666) per violation and subject to the number of employees affected, and risks claims being brought in the Labour Court.

Although the Ministerial Decision introduced into law certain measures which undoubtedly assisted employers in managing the response to COVID-19, there was uncertainty as to how the measures could properly be implemented within the scope of Article 41 of the Executive Regulations and, thus, an explanatory note was issued (see further below).

The wage subsidy scheme and the measures made available to employers under Article 41 of the Executive Regulations are much needed but there remains some uncertainty as to the rights of employers and employees despite the issuance of the Explanatory Note to Article 41.

Ministerial Decision Issuing an Explanatory Note to Article 41

On 3 May 2020, Ministerial Decision No. (14662) was issued which provided an Explanatory Note clarifying the application of Article 41 ('Explanatory Note'). The Explanatory Note explains the circumstances in which Article 41 is intended to apply and the measures that employers can take when the state adopts any actions, including any preventative steps or precautionary actions, to mitigate against the effects of a force majeure event.

When will Article 41 apply?

Although Article 41 was introduced with the intention of dealing with the impact of the current COVID-19 pandemic, its application is much wider in scope and can be invoked whenever there are exceptional circumstances that may be described as a 'force majeure' event. The Explanatory Note defines a 'force majeure' event as any event that can neither be predictable or escapable in response to which the state adopts procedures that requires minimising working hours or where it takes precautionary measures to limit the exacerbation of the force majeure event. Article 41 will apply and be effective for as long as the

force majeure event exists. Employers will, therefore, be able to apply the measures set out in Article 41 (as explained further below) within a six-month period following the measures taken by the State to deal with the force majeure event. When it ceases to exist then Article 41 and any measures taken in reliance upon it will also cease and employees must be restored to the positions that they were in prior to the force majeure event in respect of their terms and conditions of employment.

Measures available to employers:

1. **Wage reduction**: Paragraph 1 A of Article 41 stipulates that employers can reduce the wages of employees commensurate with a reduction in their working hours. The Explanatory Note clarifies that employers can unilaterally impose a wage reduction without an employee's consent provided that such wage reduction does not exceed 40 per cent (and any reduction must be in line with a corresponding reduction in working hours);
2. **Setting annual leave:** Paragraph 1 B of Article 41 stipulates that employers have the right to dictate annual leave dates to employees. The Explanatory Note clarifies that employees cannot refuse to take leave once leave dates are set by the employer. Further, annual leave must be paid at the rate of the employee's actual wage before any reductions were applied in response to the force majeure event; and
3. **Granting unpaid leave**: Paragraph 1 C of Article 41 stipulates that an employer may agree a period of unpaid leave with the employee. The Explanatory Note describes this as exceptional leave and, unlike the previous two measures, it requires the agreement of the employee in accordance with Article 116 of the Labour Law.

Terminating Employment for a Force Majeure Reason

Paragraph 2 of Article 41 stipulates that it will be unlawful to terminate employment where it is evidenced that the employer has benefited from a state subsidy. The Explanatory Note now clarifies that the employer has a right to terminate employment in a force majeure case provided that it satisfies the following three conditions:

1. a period of six months should have lapsed following the actions taken to counter the force majeure event that resulted in a reduction in working hours or a cessation of work for a period;
2. the employer should have applied one or more of the measures available under Article 41 such as reducing wages, imposing annual leave or granting unpaid leave; and

The government has introduced a number of measures with the aim of supporting employers during the pandemic whilst also giving some protection to employees.

3. the employer should not benefit from any state subsidy provided to counter the force majeure event.

Paragraph 3 of Article 41 states that an employee's right to terminate employment is not prejudiced. The Explanatory Note prohibits the employee from resigning for a force majeure reason unless the employee can show that a period of six months has lapsed following the actions taken to counter the force majeure event that resulted in a reduction in working hours or a cessation of work for a period and the employee has taken up or complied with all or some of the measures available to the employer under Article 41.

Conclusion

The wage subsidy scheme and the measures made available to employers under Article 41 of the Executive Regulations are much needed but there remains some uncertainty as to the rights of employers and employees despite the issuance of the Explanatory Note to Article 41. For example, it is still not clear whether employers can terminate employment during the six month period referred to in Article 41 for a reason other than force majeure or at all. Also, there is uncertainty about the measures which can be applied to employees who are not benefitting from the wage subsidy scheme or indeed any COVID-19 related state subsidy. There is also confusion as to whether employees who are receiving the wage subsidy can be paid a top up wage if they return to work after receiving the wage subsidy. That said, Article 41 (when read in conjunction with the Explanatory Note) has somewhat strengthened the position of employers to manage employees whilst the effects of the pandemic are being keenly felt and to prepare the way for the end of the government's restrictions and measures to curb its spread.

For further information, please contact Mohsin Khan (mohsin.khan@tamimi.com) or Zahir Qayum (z.qayum@tamimi.com).

Lauris Zailaa'
ONELOVE, El Hayat 003
Digital Creation and Illustration
120 x 120 cm
@lauriszailaa

Curated by Rebia Naim @EmergingScene

THE 2020 FINANCIAL CRIME EDITION

Essam Al Tamimi
Chairman
e.tamimi@tamimi.com

Faced with unprecedented challenges in the current climate, we have witnessed leaders of our nation become bastions of resilience and positivity for the entire UAE nation. Messages of perseverance, ambition and consideration speak to the power of our national pride and strength in our country, and have resonated with members of the community, including myself. If there is one lesson we have learned from these times, it is that we need to be close to our families and friends to keep us strong, and to our colleagues, our community and Clients to keep us positive.

The motivation behind this special regional Financial Crime edition of the Law Update was to rise to the occasion to provide support to one industry amongst too many that have unfortunately been particularly afflicted by the impacts of the ongoing coronavirus pandemic. The art scene in the UAE is a flourishing example of the diversity and creativity that underpins the success of our country, and plays an important role in advancing our cultural expression. Our collaboration with an emerging UAE-based art initiative in this issue shows the diversity of talent and perspectives that are drawn to our country and provides them with a platform to show their work during this difficult time.

I believe that, in the long term, we can forge some sort of silver lining from the challenges we are all facing and return to the optimistic and ambitious trail that the UAE has blazed for decades. We are determined to remain and will come back stronger. We have faith in our community and the good people of the world who have assisted and taken leadership in fighting this pandemic. Al Tamimi & Company continues to support communities across the Middle East and is committed to adapting to the new normal; finding new ways to revamp old practices and moving forward with positive change.

I hope you enjoy this special Financial Crime edition.

Khalid Al Hamrani
Partner,
Head of Financial Crime
k.hamrani@tamimi.com

Ibtissem Lassoued
Partner, Head of Advisory
Financial Crime
i.lassoued@tamimi.com

This year's special regional Financial Crime Edition of Law Update is a first for the firm as we have embarked on a collaborative approach with Emerging Scene in the UAE to produce a novel creative concept to cast a spotlight on a local art initiative. Emerging Scene, founded and curated by Rebia Naim, is a Dubai-based outfit that seeks out up and coming artistic talent and elevates their exposure through innovative digital mediums and platforms.

In line with the ways in which all professional industries are having to adapt to a metamorphic work environment, responding to the various pressures that have been applied by the ongoing coronavirus pandemic, this edition has been produced with the future in mind. Optimised for projecting the exciting creativity of new artists to people working remotely, our special edition matches articles covering an array of relevant financial crime topics to curated artworks provided by Emerging Scene. From developing practices in global investigations, and perpetual Anti-Money Laundering and Counter Terrorism Financing (AML/CTF) reform in Middle Eastern jurisdictions, to reinforced anti-corruption legislation and prosecution approaches, we hope that this publication will provide an insight into the darkly capricious risk landscape of financial crime contrasted by a vibrant visual representation of the UAE's art scene. For any queries on any of the topics included in the issue, please feel free to reach out to us directly.

We would also like to thank Rebia Naim and all of the curated artists of Emerging Scene who have contributed their work to our special edition: Simona Jachimecova, Lauris Zailaa', Tehos, Oliver Schibli, Yana Rusnak, Mozhdeh Zandieh-Grayson, Myneandyours, Yulia Verigina and Nathaniel Alapide. Information on the artists can be accessed directly from each article by scanning or clicking on the QR codes.

Emerging Scene

Myneandyours
Cloud pattern
Digital Creation
Variable dimensions
@myneandyours

Curated by Rebia Naim @EmergingScene

Out from Under a Dark Cloud? Risks, Challenges and Evolution in Financial Crime Compliance Culture in the Middle East

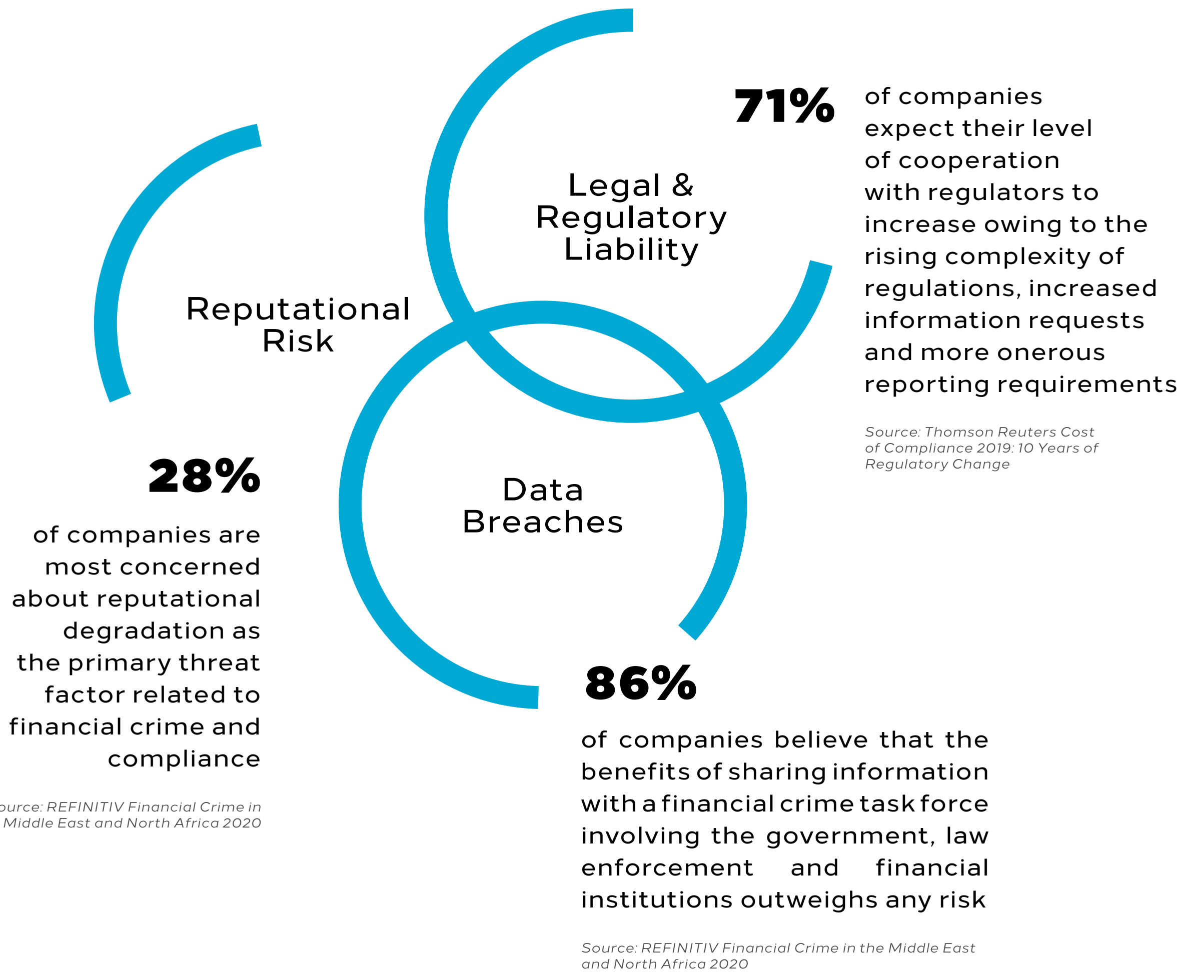
Ibtissem Lassoued
Partner, Head of Advisory
Financial Crime
i.lassoued@tamimi.com

Florence Jerome-Ball
Advisory Consultant
Financial Crime
f.ball@tamimi.com

Attention devoted to compliance trends predominantly gathers around two main elements: cumulating costs, and abject failures. Statistics have charted a consistent rise in budgets dedicated to compliance operations in a trend that is not forecast to change any time soon. More than 55 per cent of companies report that their compliance budget is expected to increase by more than 25 per cent in the next 12 months[1]. In large part, the mounting costs are driven by amassing oversight requirements imposed to prevent financial crime, such as Know Your Client ('KYC') and Customer Due Diligence ('CDD') obligations imposed as part of the Anti-Money Laundering and Counter-Terrorism ('AML/CTF') framework. Combined with stratospheric fines imposed for violations of various laws related to preventing illicit activity, businesses are faced with what can often seem like a dark dualism, with increasing legal and reputational risk matched to more arduous standards.

At the cutting edge of business culture, some changes are starting to clear the clouds, reversing the negative connotations attached to cost and risk heavy operations. After years of operating in the shadow of compliance expenses, companies are shifting their focus, assimilating sustainability and compliance objectives to turn compliance from a cost-centre to a revenue source. With the enhanced capabilities brought by data analytics and innovation, business service functions are, in some cases, able to spin positive value from the burdensome obligations imposed by various regulatory regimes and are investing in technology to automate procedures.

[1] *Refinitiv Financial Crime in the Middle East and North Africa 2020*



Whilst this is a positive development for companies seeking to update their compliance procedures, it is not yet the prevailing approach, and it will likely take some time before this will become a uniform approach for business across the Middle East. In the meantime, financial crime threats are insidious and severe, and authorities across the Middle East showcase a broad range of approaches to combat these issues. Whilst there is no monolithic approach that aligns regulatory development across the region, there are a number of indicators that identify local markets that are progressing towards standards that are more closely aligned with international best practice.

The approach of the authorities to sculpting the legal framework around financial crime issues informs the culture of compliance, creating a reinforcing, symbiotic relationship. The effectiveness of a legal framework is predicated on the extent to which compliance functions are able to implement the requirements, which lies at the heart of private sector participation in financial crime controls. The culture of compliance (and the risks and challenges faced in relation to key financial crime areas) is elemental to efforts in eradicating illicit financing.

Stratified Standards

Mapping the underlying legislative drivers of compliance cultures across countries shows that standards are varied, as each jurisdiction exhibits its own approach to policing financial crime and unmatched pace of change. Cross-border dissimilitude amplifies risk for businesses operating in multiple countries, as uneven requirements create inconsistencies in controls.

In the Middle East, although each market exhibits diverse conditions and opportunities, there is a noticeable affinity in some areas that inform financial crime risk. In anti-money laundering reform, for example, the ongoing second round Mutual Evaluation assessments conducted by the Financial Action Task Force ('FATF') have drawn distinct parallels between the legislation of Gulf Cooperation Council ('GCC') that have recently been subject to assessment. Gulf countries have made a concerted effort in the time building up to FATF scrutiny to align their respective laws with the models of best practice, as prescribed by the international watchdog.

The culture of compliance (and the risks and challenges faced in relation to key financial crime areas) is elemental to efforts in eradicating illicit financing.

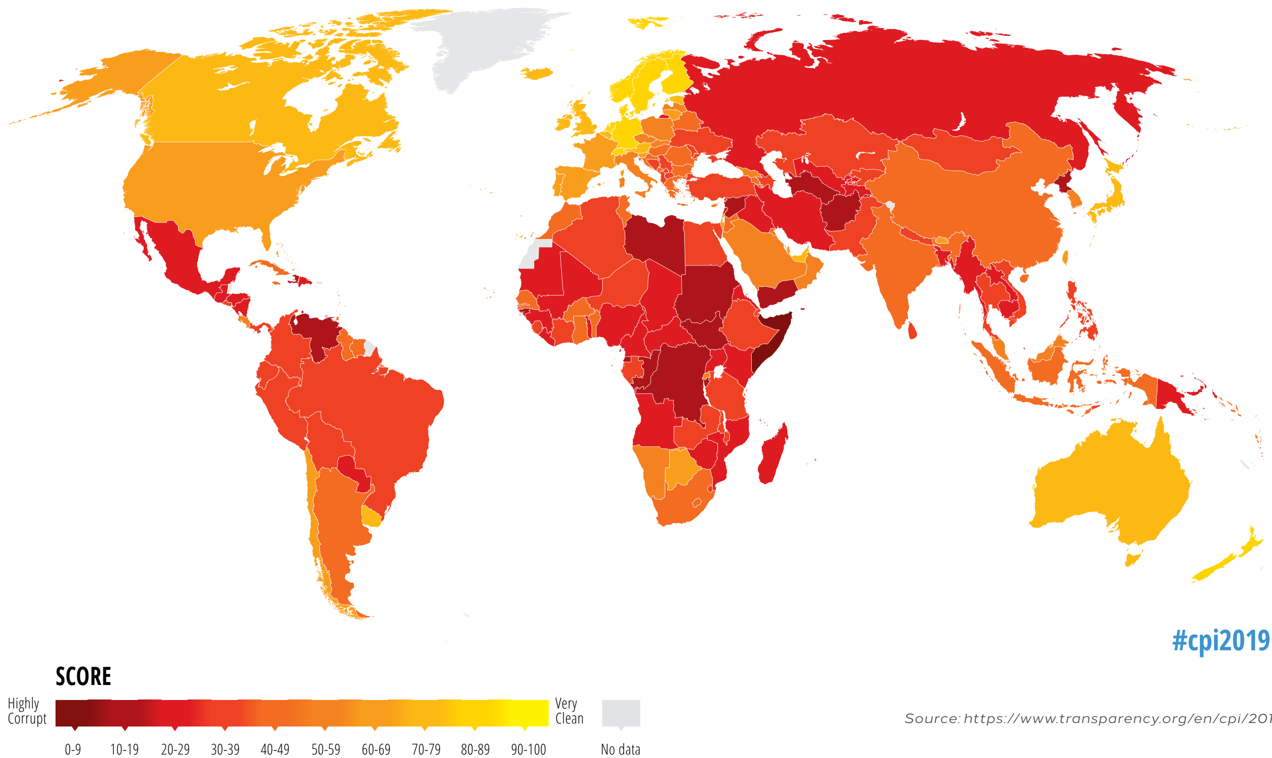
In the UAE, implementation of Law No. 20 of 2018 ('AML Law') and the implementing regulations was accompanied by publication of extensive guidance by the authorities in an attempt to ensure the new provisions of the law were consistently interpreted and applied by private sector entities subject to the regulations. AML/CTF obligations form the cornerstone of financial crime controls and raising standards across the region are emblematic of the demands that will be placed on compliance functions aimed at detecting prohibited activities and gathering financial intelligence.

As these standards are raised, however, companies are forced to contend with increasingly complex obligations, which can inhibit effective implementation. Sanctions compliance represents a particularly nebulous area of restrictions, which is subject to constant change as overlapping listings change and the political agenda of implementing states diverge and combine intermittently. Recent AML legislation in several Middle Eastern countries has introduced new sanctions mechanisms intended to crystallise requirements, but there are still hurdles to clear before perfect implementation is realised. Awareness of domestic sanctions regimes and the potential applicability of international sanctions remains relatively low, and understanding of Ultimate Beneficial Ownership ('UBO') is not consistent. This crisis of confidence is pervasive; less than half of businesses have confidence in their compliance programmes and companies are increasingly looking to co-operate with supervisory bodies to share information on risks and appropriate counter measures[2].

Corruption controls is another area that exemplifies the issues attached to differences in legislative tools, as the legal framework around bribery and corruption has transformed in piecemeal style across countries. Transparency International's most recent Corruption Perceptions Index 2019 ('CPI'), published in 2020, which is a leading measure for perceived corruption globally, indicates notable variations between corruption levels in the Middle East, which range from some of the worst scores in the

[2]Refinitiv Financial Crime in the Middle East and North Africa 2020

Transparency International Corruption Perceptions Index 2019



world (concentrated around conflict zones) to levels like those in the UAE, which surpass even the US and some European countries with a score of 71. The CPI is not a ranking of regulatory conditions but, as an indicator of perceptions and experiences, it is useful in gauging how companies will assess their third-party risks in local jurisdictions and in turn how that may influence their approach to compliance measures. Businesses operating from international jurisdictions are looking to modify their internal compliance procedures in order to account for the increased risks posed by transacting with third parties in jurisdictions that do not have the same regulatory obligations. One of the most common devices used by international companies to protect themselves is the addition of contractual terms that mandate third parties to abide by their internal code of ethics and anti-corruption policies. Although this does not absolve the company of legal liability, it can be an effective way to mitigate against risk of illicit conduct.

Clouded Vision - Where Third Party Risks Thrive

Matching the trajectory of business development, third party risk is a frequently referenced escalatory concern for commercial entities. As economic expansion has fuelled the growth of companies, outsourcing and supply requirements have interlaced companies' operations, creating chains of interdependent enterprises that are linked with a view to maximising capacity. Reliance

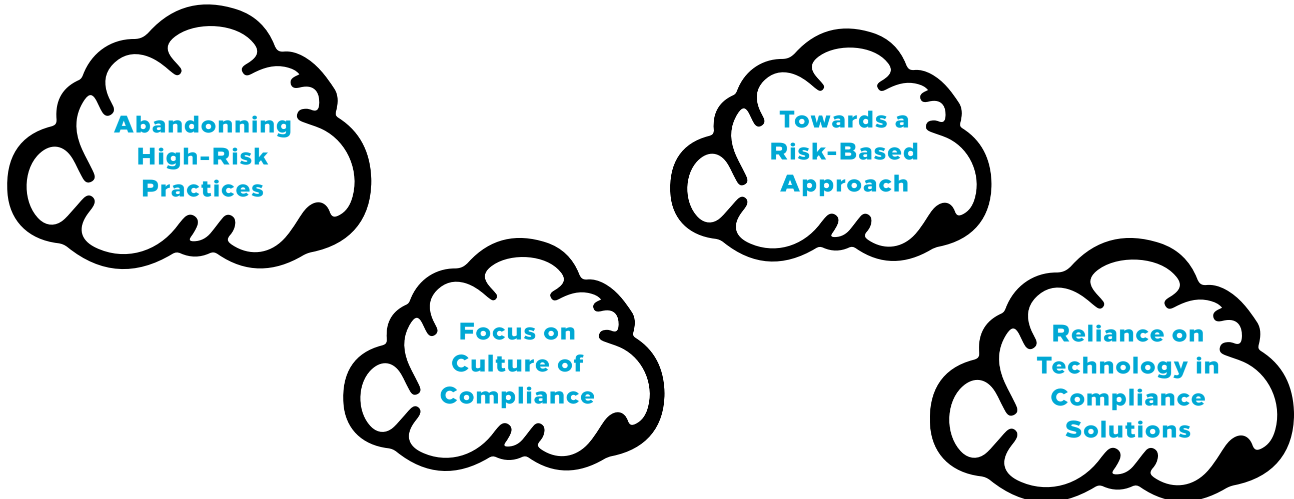
on outsourced functioning can be a double-edged sword, however, increasing business amplitude but also exposing companies to risks caused by the conduct of external parties. In times where reputation is an invaluable asset to companies and scrutiny of operations is intensifying, this triad of contextual factors creates a deluge of considerations for companies when it comes to shoring up their compliance frameworks.

There are a multitude of risks that can rear up during the course of ordinary business with third parties, stemming from different sources. One of the primary difficulties is discrepancies in standards; whilst a company can expend great energy to ensure that its internal systems are watertight, any weaknesses in the defences of suppliers or consultants may spring a leak that causes irreparable damage. For example, in times of economic pressure, financial institutions may contract with external sales teams in an attempt to drive up their revenue, but these sales teams may lack sensitivity to the specific risks posed to the financial sector, unwittingly causing an influx of high-risk customers that may otherwise have been avoided by the financial institution. In other circumstances, contracting parties may be subject to a performance or target-based remuneration schemes, providing financial incentive for certain objectives that may come at the expense of compliance procedures. Increasingly, there are instances where companies are held liable for the actions of third parties where they are viewed to be acting in their capacity as 'agents'. This situation can arise in various circumstances where the third party has been carrying out various functions, including sales and technical consultancy mandates, which only emphasises the need for businesses to balance their compliance and business objectives.

Aside from KYC and CDD measures which are the core of AML/CTF programmes, other financial crime risks require controls that are equally vulnerable to third party risks. With the digitalisation of many commercial activities and back office operations, cybercrime is a potent threat to both the bottom line and public standing of companies and consequently cybersecurity has assumed paramount importance. Where third party services require the transfer of customer data or other sensitive information, companies need to ensure that the security of the contractors is fit for purpose, or else risk leaving themselves exposed to potential hacking or data breach events. The rise in cybercrime is a well-publicised phenomenon, with the volume of funds and frequency of attacks often touted as a cautionary lesson for businesses that are keen to adopt technology but are not yet prepared to adequately defend their systems. As the increased incidence of cyberattacks becomes a more entrenched feature of the risk landscape, compliance requirements in this area are likely to ossify.

Reliance on outsourced functioning can be a double-edged sword, however, increasing business amplitude but also exposing companies to financial crime risks caused by the conduct of external parties.

Trends in Compliance Practices



Source: REFINITIV Financial Crime in the Middle East and North Africa 2020

In recognition of the burdensome requirements of compliance under the UAE AML Law, the authorities have included provisions that allow regulated financial institutions and Designated Non-Financial Business and Professions ('DNFBPs') to outsource their CDD operations to third party service providers. This commercially sensitive approach by the UAE authorities has the potential to significantly improve the efficiency of compliance functions for regulated entities, however it also creates a paradoxical arrangement whereby companies attempting to reduce their third party risk by outsourcing due diligence may be held liable for the failures of the third party conducting its due diligence. Companies choosing to exercise this ability therefore need to proceed with extreme caution in vetting the service provider, as a lapse in judgment could have catastrophic consequences.

Despite the growing awareness of third party risks like those outlined above, models that implement macro level monitoring of risks and adjustment in compliance programmes are not yet commonplace. As the culture of compliance continues to evolve, practices in managing third party risk are likely to occupy central space in revised operating systems.

A Change in Direction

The interrelated dynamics of changing legal frameworks and shifting risks have begun to nudge compliance culture into more stringent practices. Increasing adoption of a risk-based approach means that compliance programmes are concentrated on high-risk activities, and astute business leaders are instilling a culture of compliance from the top to ensure consistent implementation.

Although KYC requirements may have become a recognised and routine part of business procedures for many companies, increasingly companies that work in high risk sectors or with high risk clients are deploying enhanced measures known as Know Your Client's Client ('KYCC'). In self-explanatory fashion, this involves vetting the client base of the business with whom a company is deliberating establishing a commercial relationship, and is a marked intensification of precautionary due diligence. KYCC measures are commonly seen in correspondent banking relationships, for example, where banks assume a certain degree of risk by consenting to act as a channel for funds from foreign banks.

Where reinforcement of controls is deemed insufficient, businesses are also abandoning high-risk practices, favouring risk avoidance over risk management. Practices such as using intermediaries or relationship consultants, which became notorious in certain circumstances for veiling schemes designed to gain illicit advantage, have diminished in use for regulated companies. In perhaps the most significant trend for compliance professions, ballooning investment is being sunk into advanced technological capacities that will ultimately automate the more basic elements of compliance procedures, thereby reducing both human error and practical expense. Other technological developments, such as the introduction of eKYC, also have the potential to dramatically change compliance processes.

Positive changes should be lauded, but there is still vast room for improvement. Data indicates that 51 per cent of external business relationships in the Middle East are not subject to due diligence at the onboarding phase[3], indicative of fatal flaws in modern compliance practices. In light of all of these factors, compliance functions are going to continue to be at the centre of the maelstrom of financial crime risks, and it will be up to them to ensure that the right culture and policies are in place to allow them to manage the exposure and operations of the business. Businesses need to set a tone from the top that ensures that all directives are followed and a cohesive strategy is in place to monitor the development of risks. Notwithstanding the fact that failure to have a strong compliance culture may trigger investigations and legal cases, Middle Eastern companies that recognise the value of compliance programmes that adhere to international best practice, even where not required by local law, are more likely to be successful in engaging with international business partners that expect certain standards of conduct.

[3] *Refinitiv Financial Crime in the Middle East and North Africa 2020*

Oliver Schibli
Elpis
Acrylic on canvas
60 x 50 cm
@oliverschibliart

Curated by Rebia Naim @EmergingScene

Showing Its True Colours: Rising to the Challenge After the UAE's FATF Mutual Evaluation Report 2020

Ibtissem Lassoued
Partner, Head of Advisory
Financial Crime
i.lassoued@tamimi.com

Florence Jerome-Ball
Advisory Consultant
Financial Crime
f.ball@tamimi.com

Reverberations that bounced around critical circles following the publication of the Financial Action Task Force ('FATF') Mutual Evaluation Report ('Report') on the United Arab Emirates' ('UAE') sounded clear alarm bells for proponents of the UAE's legal system. Despite the actions of the authorities and stakeholders to intensify the national Anti-Money Laundering and Counter Terrorism Financing ('AML/CTF') framework, critics of the UAE were quick to paint an excoriating picture of the findings, in some cases obscuring the nuances of the report with broad brush conclusions. Whilst the Report undoubtedly calls for invigorated measures to address key deficiencies, closer inspection of the findings shows that there is more light and shade to the assessment that needs to be accounted for. The areas of achievement and challenge illuminated by the FATF carry equal potential to inform the UAE in its next steps to vitalise its AML/CTF defences.

Matters of Perspective

David Lewis, the Executive Secretary of the FATF remarked to the International Consortium of Investigative Journalists in May 2020 that no country has a report that is *"something to be proud of"*, referring to the less than positive status of the AML/CTF campaign at a global level. According to the UN Office of Drugs and Crime ('UNODC'), approximately 2-5 per cent of global GDP is laundered on an annual basis, equivalent to US$ 800 billion – US$ 2 trillion. Contextualised in this way, the unforgiving portrait of the UAE proffered by critics is mitigated to a more proportionate level. The UAE is just one part in a much larger system that needs widespread recalibration in order to be effective.

Trials faced by the UAE authorities in AML/CTF are further elucidated when situated against the backdrop of its unique risk profile. The national population is approximately

9.3 million, but the expatriate contingent accounts for more than 88 per cent of this number, making the UAE a very porous system in terms of both money and people. Significant financial outflows made up of remittances carry high risks for money laundering which are further exacerbated by the historic use of informal financing networks amongst large migrant communities. The geographical situation of the UAE is also notable; effectively nestled in an area of the world that is peppered with conflict zones, all of which bring unequivocally higher risks of money laundering and terrorism financing, brought about by frequent crime and violence. The UAE has regional proximity to several countries, including Iran and Syria, that are regularly flagged as high-risk jurisdictions for AML/CTF, which can seep into neighbouring countries. Numerous other factors, including there being no income tax levied against the population, and the complexity of the commercial structures of the UAE, can also have an adverse effect on the risk environment. Across the seven Emirates the country is home to two Financial Free Zones ('FFZ'), 29 Commercial Free Zones ('CFZ'), and 39 registries, all operating with regulatory systems that feature significant disparities (driven in part by the pursuit of commercial differentiation). All of these factors create elevated risk for the UAE and it is unlikely that any of these features will abate in the near future. In addition to these persistent factors, the UAE authorities also need to contend with developmental trends that are introducing new facets of risk, such as advanced digitalisation and adoption of new technology.

Viewed in this light, it is easier to appreciate the significance of any extolled progress achieved by the UAE authorities in the ongoing fight against money laundering and terrorism financing. Forward momentum that is gained, inch by inch, gives valuable insight into effective modes of action, and can prove instructive for subsequent strategies centred on addressing the deficiencies identified in other areas.

Mixed Hues – Main Findings of the Report

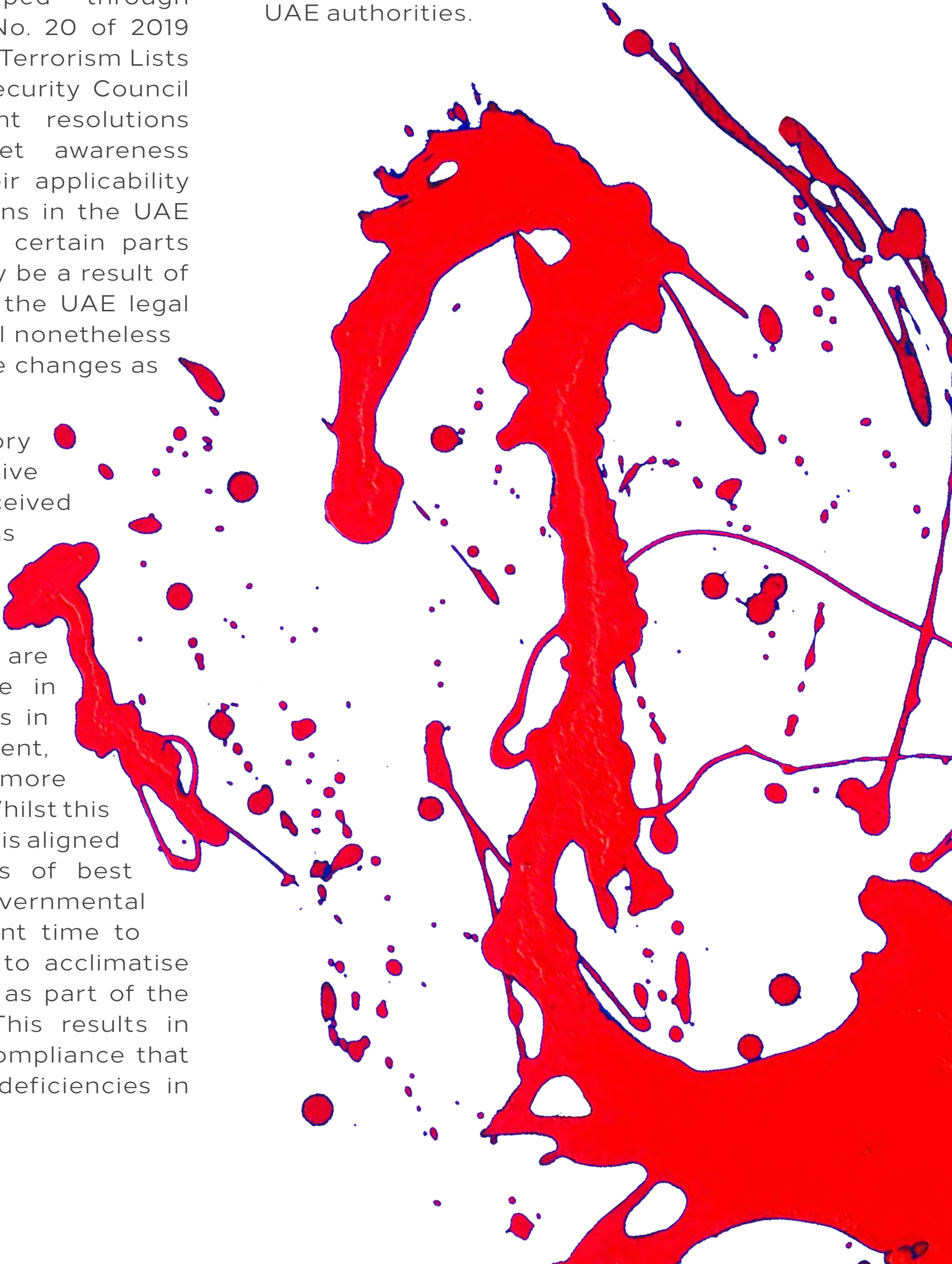
The UAE last underwent the full Mutual Evaluation process with onsite visits in 2008, but risks, legislation, threats and context develop quickly in financial crime and twelve years is a veritable lifetime in the cycle of AML/CTF. The Report clearly indicates that the UAE has not been idle in this time, and has made significant improvements to its systems, particularly in the last few years. Some of the most notable improvements include building out a National Risk Assessment and introducing sweeping new legislation in the form of Federal Decree No. 20 of 2018 on Anti-Money Laundering and Counter-Terrorism Financing ('AML Law') and its implementing regulations, Cabinet Resolution No. 10 of 2019 ('Implementing Regulations'), which have brought significant advancement in several areas. Aside from legislative standards, the UAE was also determined to excel in the identification and investigation of terrorism financing offences, deploying a sophisticated range of tools to identify related activities and achieving a conviction rate of 82 per cent between 2013 and 2019, demonstrating acute effectiveness in this area. In a further area of terrorism financing-related defence, the UAE was also determined to have applied effective protection to the non-profit and charitable sector, which is particularly vulnerable to abuse by terrorist organisations; all fundraising practices are tightly controlled in the UAE in order to prevent corruption of altruistic initiatives, including emerging trends such as the use of social media to solicit funds for specific causes.

Counterpoised to these positive affirmations however, there is no escaping that the Report also raised several areas that require significant improvement. International co-operation, access to beneficial ownership information, elements of investigation and prosecution of money laundering offences and implementation of targeted financial sanctions were all identified as areas of deficiency for various reasons. More specific criticisms such as the: insufficient use of financial intelligence; lack of enforcement action; and inadequate focus on high risk sectors such as real estate and precious metals and stones dealers were also cited as

weaknesses in the supervisory network. The UAE authorities will face intense pressure to improve their capabilities in these areas as soon as possible.

Deficiencies that are identified in the Report are not always a straightforward demarcation of failure. The implementation of targeted financial sanctions in the UAE is an area that, befittingly, typifies the complexity of assessing the strength of the legislative framework. Under the AML Law and its Implementing Regulations, a new mechanism for designating individuals and entities identified both through domestic structure and United Nations Security Council Resolutions ('UNSCRs') was introduced. Clear procedures and parameters for this mechanism have been subsequently developed through Federal Cabinet Resolution No. 20 of 2019 Concerning the Regulation of Terrorism Lists and the application of the Security Council Resolutions and its relevant resolutions ('Sanctions Regulations'), yet awareness of the relevant lists and their applicability to all natural and legal persons in the UAE remains exceptionally low in certain parts of the private sector. This may be a result of recent adjustments made to the UAE legal framework, but companies will nonetheless be expected to embrace these changes as soon as possible.

The apparently contradictory conclusions of notable legislative reform compared to the perceived lack of progress may be progress may be partially due to the weaknesses in the FATF's assessment methodology. More often than not, countries are significantly more productive in their AML/CTF reform efforts in the time leading up to assessment, as evaluation results become a more immediate strategic priority. Whilst this ensures that recent legislation is aligned with contemporary iterations of best practice, it often means that governmental bodies have not had sufficient time to optimise their operations or to acclimatise to new processes introduced as part of the new legislative framework. This results in strong scores for technical compliance that are often overshadowed by deficiencies in effectiveness, and can cloud potential insight into laws that are ineffective, versus laws that are simply not yet fully implemented. Inconsistent knowledge around the risks related to sanctions and the requirements imposed under law, for example, led to conclusions in the Report that the mechanism does not currently function as fit for purpose, despite the efforts of the authorities to strengthen this capacity. Improving both the responsiveness of this system and awareness of its existence, particularly in relation to the local list of entities designated by the Supreme Council for National Security pursuant to terrorism financing restrictions, published by the Executive Office of the Committee for Goods and Materials Subject to Import and Export Control, which be a priority for the UAE authorities.



Golden Opportunity for the UAE and its Businesses

Following on from the recommendations made by the FATF, the UAE authorities will need to demonstrate their resolve to heed the advice of the watchdog and fortify the national AML/CTF framework where necessary. Despite the burden of action on the central government and supervisory bodies, broad based participation is a fundamental part of AML defence, and the public and private sectors will need to act in a mutualistic manner if significant progress is to be made. Both sides will harbour shared expectations regarding steps to correct course: with renewed focus on effectiveness and controls geared towards specific threats, business will be reliant on the supervisory bodies to provide the necessary guidance on the subtleties of the regulations. Meanwhile, the authorities will expect private businesses to abide by the full extent of their obligations under the law and imbibe a suitably responsible ethos as gatekeepers of the UAE economy.

Shifting the culture of AML/CTF agency is a critical precondition for guarding against illicit funds. Systems that construe non-compliance as propitious or at least permissible face risks of a far greater magnitude, both at the national level and within individual corporations. UAE legislation provides significant sanctions for breaches of the AML Law and Implementing Regulations, but the Report indicates that these could be leveraged to a greater extent to create an even more powerful deterrent against current compliance practices which may be less than stringent. The authorities will need to redouble their efforts to cultivate an environment whereby prevailing logic amongst businesses dictates that it is more advantageous to rise to the standards of international best practice, than to do the bare minimum on a black letter reading of the law.

A large part of domestic leadership will also be raising awareness amongst financial institutions and DNFBPs as to the context of AML/CTF controls, the extent of the legislative framework and the rationale that underpins its application. Due to difficulties attached to monitoring pullulating business sectors across the country, and the relative infancy of some of the AML/CTF requirements imposed, the level of familiarity with regulations undulates across the private sector, particularly in respect of targeted financial sanctions. Models for awareness raising and training schemes have already reaped benefits within the UAE's stakeholder structure, accounting for the growth in the number of money laundering investigations over recent months, but amplification of these initiatives to a larger contingent will be an ongoing endeavour for the UAE authorities for the indefinite future.

The UAE was also determined to excel in the identification and investigation of terrorism financing offences, deploying a sophisticated range of tools to identify related activities and achieving a conviction rate of 82 per cent between 2013 and 2019.

Enhanced outreach stratagems by the authorities need to be directed both internally and externally, raising domestic awareness and consolidating channels of co-operation with international counterparts. Although the UAE authorities have demonstrated their aptitude for navigating diplomatic channels, providing informal assistance in international AML matters, the UAE's Report underscored the elevated importance of systematic international co-operation. Open flows of information allow for routine exchanges of information that can dramatically increase opportunities to detect money laundering offences,

and also facilitate proceedings aimed at tracing funds and assets in multiple countries derived from foreign predicate offences. In many instances, informal co-operation can prove an effective way to obtain expedited results, and diplomatic relations have evolved around this concept, remaining common means for countries around the globe to pursue their respective objectives. The UAE already has a strong legislative basis for international co-operation, and the Report recognises budding utilisation of these powers in a formal capacity, but more standardised reliance on these mechanisms is likely to be a trend for future endeavours.

Formalising international co-operation may carry an additional benefit in that it may increase the visibility of the UAE's existing resolve to combat illicit financing flows. Whilst these offences remain sensitive topics and are often downplayed as a matter of national security, greater transparency around the UAE authorities' active stance against money laundering and terrorist financing may go some way to dispelling the illusory impression that criminals are able to use the UAE's financial system with impunity.

Colouring in the Grey Areas

The UAE authorities have not faltered in their high-level commitment to AML/CTF advancement and have already mobilised their response to the FATF assessment, taking proactive steps to address the recommendations raised in the Report. In the context of the taxing conditions precipitated by the ongoing global pandemic, supervisory bodies in the UAE have acted in league with one another to issue advisory notices on the elevated risks propagated by the dynamics of the pandemic and altered workflows. The Ministry of Economy underlined this point when it issued a circular in May 2020 to all DNFBPs impressing the urgency of AML/CTF compliance and encouraging DNFBPs to review the strength of their internal measures. Simultaneously, procedural and structural transitions that had only recently begun at the time of the FATF's onsite visits in July 2019 will continue to mature within the Government branches, boosting effectiveness and efficiency levels.

Businesses in the UAE should prepare themselves to rise to the challenge of AML/CTF, to show the true colours of the country's resolve to extirpate illicit financing.

FATF methodology dictates a one-year follow-up period for countries undergoing the Mutual Evaluation process, imposing a contracted timeline for the most urgent of actions identified during the assessment phase. In recognition of the significance that is placed on the FATF review by the international community, and the potential fall-out that can arise where progress is deemed to be insufficient, the UAE authorities will likely have already formulated a strategy to address the necessary points within the mandated timeframe. Adopting a short term outlook, however, is unlikely to be sufficient to assure long-lasting success in AML/CTF efforts.

The more significant timeline for the UAE authorities to consider is the stretching outline of its strategic vision to become a leading international epicentre for commerce, tourism and innovation. Economic integrity is a climacteric condition for ambitious development, and the successes and failures experienced in this area bear pervasive implications for all parts of the commercial ecosystem. Businesses in the UAE should therefore prepare themselves to rise to the challenge of AML/CTF, to show the true colours of the country's resolve to extirpate illicit financing and propel the national economy to international pre-eminence for security and opportunity.

Yana Rusnak
Ahead
Acrylic on canvas
140 x 90 cm
@rusnak_art

Curated by Rebia Naim @EmergingScene

Tiger Team for Criminal Matters: Powers of the Arab Interior Ministers Council

Omar Al Awadhi
Senior Associate
Financial Crime
o.alawadhi@tamimi.com

Nuha AlKhatib
Paralegal
Financial Crime
n.alkhatib@tamimi.com

The Arab Interior Ministers Council ('AIMC', 'Council') plays an understated but important role in regional and international co-operation in the Arab world, in all areas related to internal security of the Arab States, including criminal issues. The Council was approved at the third conference held in Al Taif in the Kingdom of Saudi Arabia in 1980, and the internal law of the AIMC was presented to the Council of the Arab League and accepted in September 1982.

Several bodies currently operate under the supervision of the AIMC, including the General Secretariat of the Arab Interior Ministers Council, the Arab Office of Criminal Police Investigations, the Arab Security Information Office, and the Arab Office for Crime Prevention. Its oversight of these bodies indicates its prominence in matters of high-level multilateral co-operation within the Arab League on matters of law enforcement and internal security. Additionally, in 1999, the AIMC signed a memorandum of understanding with Interpol, providing a scope of co-operation including the exchange of information, mutual investigative projects, database access, and all means of technical assistance in, but not limited to, criminal matters.

Apparatus for Arrest Warrants

As with all high-level multilateral judicial efforts, one of the key precursors for success is the implementation of effective channels for communication and information sharing. To facilitate regional co-operation, the AIMC has established five offices in five member states (namely, Saudi Arabia, Jordan, Iraq, Egypt and Morocco) that specialise in various matters such as, but not limited to, criminal investigations concerning matters related to bribery, embezzlement, fraud, and money laundering, in addition to organised crime and cybersecurity crimes. Additionally, each member state has a communication division

established under the provisions of the statute of the AIMC to facilitate co-ordination between the member states concerning the exchange of information and prevention of crime. These channels for diplomatic and operational co-ordination are vital to the viability of cross-border efforts and are just one part of the organisational infrastructure of the Arab League.

In criminal procedure, in the event of the issuance of arrest warrants and extradition of individuals who are suspected of committing offences, there are three main official routes of communication for international assistance: Interpol; the AIMC; and co-operating jurisdictions that have signed bilateral treaties on judicial assistance in criminal and extradition matters.

Following the arrest of a wanted person, if two countries have an extradition agreement in place, preparations for extraditing the arrested person may take place following the approval of the concerned authority (usually the public prosecution), provided all conditions under the agreement are met and the competent Court in the requested country has concluded any proceedings related to any appeal by the defendant.

In circumstances, however, where an arrest has not yet been made and the whereabouts of a wanted person are unknown, the local arrest warrant issued by the authorities in the country where the individual is wanted will be circulated by the Council's communication division to the corresponding communication bodies in the other member states of the AIMC. This has the effect of amplifying the effectiveness of the arrest warrant, as the order is effectively extended to all 22 jurisdictions, thereby increasing the likelihood of apprehending the suspect. If the wanted person is then arrested in one of the Arab League states, the AIMC is authorised to follow up on the process of preparing the extradition file and its transfer through diplomatic channels: first to the Ministry of Justice in the requesting state for approval; and then on to the Ministry of Foreign Affairs so that it can be exchanged with the authorities in the country of arrest, and the process of extradition can be initiated.

By maximizing opportunities for international co-operation, the authorities in Arab states put themselves in the best position to ensure that criminals who may be able to run from their jurisdictions, cannot hide from justice.

Putting Procedure into Practice

In November 2019, the Iraqi authorities issued a request addressed to the Arab and International Criminal Police, and the AIMC requesting the search and arrest of an individual who was sentenced in Iraq, in absentia, to one year of imprisonment in relation to a fraud case. The search and arrest request was circulated between the communication divisions of the AIMC, resulting in the requested person being located and summoned just one month later in Lebanon, in December 2019. Once

the Lebanese authorities had confirmed the issuance of a judgment against the concerned individual in Iraq via the relevant communication channels, a letter was sent to the General Directorate of Residency in Baghdad to confirm the location of the requested person.

The investigation report sent by the Lebanese authorities to Iraq, as the requesting state, included the wanted person's whereabouts, residence, and the places that he visited in Lebanon. Moreover, the requested person was brought in for investigation, and the Lebanese authorities seized his passport, preventing him from travelling until the case of his extradition had been decided.

Conclusion

The AIMC is an essential part of the Arab League diplomatic apparatus, as it operates as an organisational umbrella under which various authorities co-ordinate matters of law enforcement and national security. Co-operation at this level is diplomatic by nature, but the provision of set procedures and structured communications' channels lends an additional layer of practical effectiveness to the work of the AIMC. Effectively, the Council operates as a centralised link between the Ministry of Interior in each member state, and the ancillary bodies that are responsible for internal security and the prevention of crime.

Although the AIMC represents a lesser-known avenue of co-operation in criminal matters and the efforts of other multilateral organisations receive greater publicity, the procedure for issuing arrest warrants by the Council has proven effective in the past. A decision to reach out to neighbouring Arab countries through the AIMC is also not a mutually exclusive option; for example, as it is an independent procedure, it can be used in parallel with the issuance of Red Notices by Interpol, which can further support and enhance the search and arrest of a wanted person even beyond the Arab world. One advantage of utilising the co-operative and communication links provided by the AIMC is their ability to bypass usual obstacles that often frustrate efforts to locate fugitives who have fled the jurisdiction in which they are wanted. As the AIMC is made up of the Interior Ministries of participating states, and those Ministries operate as an integral organ of the Government in their respective countries, the relevant AIMC subdivisions have the ability to locate individuals within their own countries, without having to wait for them to present themselves to the authorities at, for example, an airport or border crossing.

The AIMC's strategic objectives are contingent on co-operation between member states and the responsible authorities to address the internal security requirements of the Arab region and proactively combat crime at an international level. Security concerns are detrimental to the stability and health of Arab states and measures to protect member states need to be especially vigilant in order to ensure that criminals cannot seek safe haven in Arab states. By maximizing opportunities for international co-operation, the authorities in Arab states put themselves in the best position to ensure that criminals who may be able to run from their jurisdictions, cannot hide from justice.

Lauris Zailaa'
We Are All Visitors I
Digital Creation
Variable dimensions
@lauriszailaa

Curated by Rebia Naim @EmergingScene

The New World of Tech: Cybercrime and Cybersecurity in the UAE

Ibtissem Lassoued
Partner, Head of Advisory
Financial Crime
i.lassoued@tamimi.com

Andrew Fawcett
Senior Counsel
Technology, Media &
Telecommunications
a.fawcett@tamimi.com

It is one of the integral characteristics of technological development that the rate of digitalisation and technological adoption far outstrip the level of awareness and knowledge of how to defend against new threats. The ravenous appetite of businesses and individuals to capitalise on the opportunities and advanced capacities offered by new technology have undoubtedly yielded positive developments, but can come with a heavy price if companies leave themselves vulnerable to cyber-attacks. Naturally, although cybersecurity for businesses is maintained at an individualised level, there is an important role for the authorities to play in devising a flexible legislative framework that is capable of keeping pace with innovative technological development whilst also shielding against opportunism in criminal enterprise.

This challenge has particular significance for countries in the Gulf Co-operation Council, such as the UAE and Saudi Arabia, which are in the throes of strategic drives to transform their markets into internationally leading hotspots of commerce and growth. Part of the transitional process undertaken by both these countries has included embracing new technological and digital faculties, as sophistication in this arena is used to signify the futuristic and innovative vision guiding wider development. Social media offers a prime example of this issue; the UAE has one of the highest rates of social media penetration in the world at 98.98 per cent[1], yet this is a relatively new medium that offers almost unprecedented liberties for consumers and a plethora of new avenues for uncensored and unmonitored activities. From a criminal perspective, burgeoning platforms for clandestine or coded communication, veiled by virtual anonymity, presents an attractive new tool for activities such as co-ordinating illicit payment networks, cyberbullying, propagating disinformation streams, directing traffic to nefarious sites, spreading malware and ransomware.

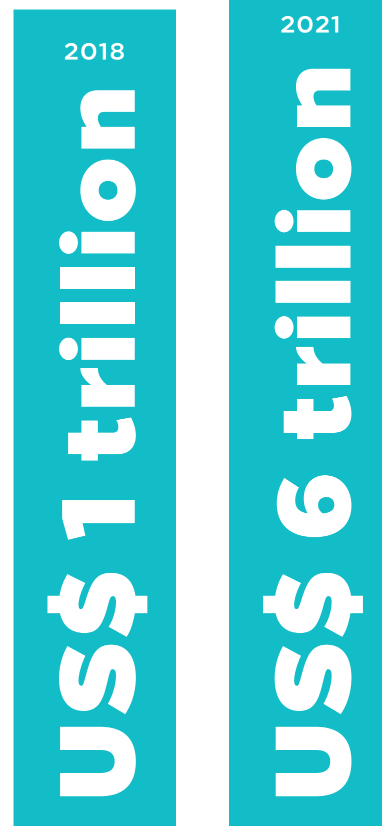
[1] *Global Media Insight - UAE Social Media Statistics 2020*

Even as the world reels from the irrepressible impact of the ongoing health crisis, changes to the threat landscape of cyber-attacks serve as a potent reminder of the amorphous nature of cybercrime risks. Already, the past few months of adaptation in the commercial world have been closely shadowed by increases in malware attacks and eCommerce fraud, as well as espionage and disruption targeting the higher volume in internet communications, particularly Voice Over Internet Protocols ('VOIP'). Far from being unique to the UAE, however, these trends are pervasive at a global level and countries are grappling with finding effective means to slow their assault. Already, some estimates put organised cybercrimes as accounting for more than US$ 1 trillion in stolen assets in 2018, with nearly 20 per cent of that being taken in the Middle East. At the current rate, experts estimate that the annual cost of global cybercrime could reach US$ 6 trillion by 2021, eclipsing the value of the global drug trade[2].

Quantifying the cost of cybercrime is not just a rudimentary exercise in totalling the value of money actually siphoned during attacks as, subject to the

US$ 1 trillion in stolen assets in 2018, with nearly 20 per cent of that being taken in the Middle East.

At the current rate, experts estimate that the annual cost of global cybercrime could reach US$ 6 trillion by 2021, eclipsing the value of the global drug trade[2].



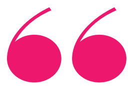
methodology of the attacks, other assets may also be targeted: data is an exceptionally valuable asset for many companies which may be damaged or destroyed during an attack; intellectual property and trade secrets may also be stolen; and theft of personal or financial data may be stolen leaving the victims vulnerable to further attacks. Even once the primary attack has been committed, subsequent disruption caused to normal business operation, forensic investigation, restoration of hacked systems may further depress the bottom line of a victim, not to mention the reputational harm that may be caused if knowledge of the attack is leaked to the wider market. In some situations, the reputational damage caused to a company by failing to prevent a cyberattack could constitute an extinction level-event; in other words, even relatively routine cyberattacks can pose an existential threat to a business.

Part of the problem in defending against cybercrime is raising awareness and ensuring that people are cognisant of the type and level of protection that is needed in modern business practices to protect commerce. Simultaneously, this awareness needs to be reinforced by an effective legislative framework, involving not only criminal provisions but also supporting standards and policies that are capable of acting as guidance for companies in protecting themselves against contemporary cyber threats.

Typical Methodologies for Cyber Attacks

The UAE has had a dedicated cybercrimes law since 2005. The current law is Federal Law No. 5 of 2012 on Combating Cybercrimes (amended by Law No. 2 of 2016),

[2]*Cybersecurity Ventures 2019 Official Annual Cybercrime Report*



In the UAE, the TRA is undertaking the challenge of designing a comprehensive cybersecurity legal and regulatory framework as a pillar of its National Cybersecurity Strategy to better safeguard UAE's digital future.

however, in its current format, the law is largely limited to criminal law articles that criminalise the offences considered as constituting cybercrimes. Whilst criminal laws are a proven and vital measure for deterring undesirable and damaging activity, they are insufficient as a solitary means for creating a secure cyber ecosystem.

On 24 June 2020, the Dubai Financial Services Authority ('DFSA') published a thematic review report on cyber risks and highlighted that "cyberattacks targeting the financial services sector are becoming more frequent and sophisticated", indicating that the UAE still needs to treat the development of an effective cybersecurity system and cyber risk management framework as a strategic priority.

Capitalising on the nascence of cybersecurity awareness within many companies, many of the cyber-attacks perpetrated against companies in the UAE deploy relatively simplistic methodologies involving phishing emails, or fraud schemes whereby criminals assume false identities online to solicit transfer of funds. These methodologies are particularly vicious as they exploit the human weaknesses in cybersecurity systems, bypassing controls by deceiving unassuming human operators instead. This is a commonly recognised ploy in cyberattack methodologies, as compromising people is an easier feat than introducing sophisticated hacking techniques. The GCC is a particularly amenable market for such schemes, as criminals often pose as representatives of wealthy local families or high-net worth individuals and government institutions, targeting international businesses and claiming to offer investment services in line with the entrepreneurial reputation of emerging markets in the region.

One of the main challenges associated with cybercrime is the anonymity that is afforded by the internet. Often it is very difficult to trace the individuals behind online activities and new technologies are providing new ways to further inflame this issue; cryptocurrencies, for example, have added an additional element to ransomware and blackmail crimes and make recovery of funds almost impossible. This in turn increases their appeal to criminal actors.

The international element of cybercrimes is omnipresent, so legislation that facilitates co-ordination between national authorities is paramount. As offenders often are not necessarily physically present in the UAE, principles of jurisdiction and international co-operation need to be considered in order to properly equip the authorities to effectively enforce the laws. Not only do countries need to implement effective mechanisms to report and take action locally, but authorities also need to be able to amplify their capacity regarding cross border measures, in co-ordination with other jurisdictions. Seeming

inefficacy of this option can be a major deterrent to companies taking measures to pursue or report cyber incidents, and where cyber criminals feel they can act with impunity, the risk of further incident is exacerbated.

UAE's Path to Cyber Resilience

In the UAE, the Telecommunications Regulatory Authority ('TRA') launched an updated National Cybersecurity Strategy ('Strategy') in June 2019. The vision for the Strategy is to create a safe and resilient cyber infrastructure in the UAE that enables citizens to fulfil their aspirations and empowers businesses to thrive. To achieve these objectives, the TRA is mobilising the whole cybersecurity ecosystem to deliver initiatives across five strategic pillars: developing a comprehensive legal and regulatory framework; fostering a vibrant cybersecurity ecosystem; establishing a standardised National Cyber Incident Response Plan; protecting critical assets of the UAE in key sectors; and cultivating local and international partnerships to mobilise the entire cyber ecosystem.

As the primary pillar, the plan to implement a comprehensive legal and regulatory framework includes devising legislation that both addresses all types of cybercrimes and secures existing and emerging technologies. Whilst, in principle, these dual goals may seem simplistic, there are multifarious considerations that would underpin their execution. What would such laws and regulations potentially cover? How could they be structured to account for future development and unforeseen applications of technology? Lessons learnt from cybersecurity laws that have been enacted in other jurisdictions may prove invaluable in assisting the UAE's efforts to design a cybersecurity legal and regulatory framework that meets its long-term needs.

Possible Provisions to Assist with Investigations and Prosecutions

One area of potential legislative development is the application of technology to cybercrime investigations and prosecutions. Concurrent with strict criminal provisions, additional laws will likely be needed in order to elaborate on important procedural aspects that are now found in some of the main international laws. Such supplementary laws could cover specific powers for search and seizure of computer hardware or data, for example, access to stored computer data, as well as orders requiring preservation of computer data.

Licensing of Cyber Security Professionals?

Singapore's Cybersecurity Act 2018 creates a framework for the licensing and regulation of certain types of cybersecurity services and their providers. The rationale is that cybersecurity service providers are given broad access to customer systems and networks and could amass an in depth knowledge of system vulnerabilities in the course of providing their services. Consequently, there should be some assurance concerning the fitness and ethical code of conduct of such service providers.

Important considerations around this possibility include questions such as whether licensing would negatively impact the development of a cybersecurity ecosystem, and who should be licensed. Singaporean legislation allows only licensed penetration testing and managed security operations monitoring service providers, as they are already mainstream and widely adopted. Any significant expansion of such provisions would be a foray into unchartered waters for the UAE.

Licensing costs should not be significantly high so that companies are not dissuaded from obtaining the licence and instead deal with the cybersecurity consequences. The legislation would need to strike a balance between mitigating upfront costs and ensuring that the profession is duly formalised and legitimised.

Legalising 'White Hat' Hacking?

White hat hackers, also known as 'ethical hackers', are either employed by companies or contractors who specialise in finding weaknesses in a security system via 'authorised' hacking. The existing UAE legal framework does not explicitly address the

permissibility of white hat hacking, and regulating such activity would be a significant development to the UAE's cybersecurity ecosystem, potentially adding an aggressive capability to existing defence measures.

Hacking Back?

'Hacking Back' allows victims of cyber-attacks to try to track down their attackers by entering the systems of organisations they suspect have been used by the hackers to mount their assault. The potential consequences of allowing such activity, however, would seem to suggest that hacking back is best left to government security authorities.

This is because it can be very hard to determine who is behind a cyber-attack. A computer that appears to be behind an attack, could itself have been hacked. Consequently, harm could easily be caused to innocent parties' computers.

Security by Design?

Applications of emerging technologies tend to be developed with functionality as a priority, and security is often an afterthought. Security by design is an approach to cybersecurity that focuses on preventing a cybersecurity breach at the outset of a project, by building in a way to minimise flaws rather than repairing the issue after a breach. Whilst the TRA's existing Regulatory Policy on the Internet of Things ('IoT') dated March 2018 already requires security by design to be incorporated into IoT devices to provide protection against unauthorised usage, this approach to cybersecurity could be expanded into the regulation of Artificial Intelligence and cloud services.

Brave New World for Cyber in the UAE

Cybercrime and hacking have a material impact on society that needs to be comprehensively addressed by a bespoke and responsive legal framework. All too often, a reactive approach to cybersecurity is applied, taking measures only after a security breach or a vulnerability has been found. The UAE has announced grandiose plans to reform its cybersecurity and cybercrime ecosystem, in recognition of the accelerating effect new technology can have on development, and the counterweighted restraints that need to be imposed to prevent cyber-attacks. In the meantime, the onus is on individual businesses to understand the risks posed to their operations through their cyber infrastructure and the ways in which they can fortify their defences against cyber-attacks. Human error plays an indubitable role in facilitating cyber-attacks, so training and awareness initiatives are an effective means by which companies can reduce their susceptibility to attacks that deploy common techniques such as phishing.

The UAE has one of the highest rates of social media penetration in the world at

98.98

per cent.

Source: Global Media Insight - UAE Social Media Statistics 2020

TEHOS
Matter of choice
Collage and acrylic on canvas
120 x 120 cm
@tehosart

Curated by Rebia Naim @EmergingScene

Facing Multiple Fronts: Global Investigations in the Middle East

Ibtissem Lassoued
Partner, Head of Advisory
Financial Crime
i.lassoued@tamimi.com

Florence Jerome-Ball
Advisory Consultant
Financial Crime
f.ball@tamimi.com

All too often, international headlines bring news of another corporate leviathan facing scrutiny and reprimand for its business practices. From corruption investigations to anti-money laundering breaches and sanctions circumvention, wrongdoing in the name of business is uncovered across countries and continents. In recognition of financial crime's devastating effect on economic security and business integrity, many countries have developed legislative tools for exposing and punishing these offences, even in instances where schemes extend far beyond the borders of their own jurisdictions. As a result, companies can find themselves caught in overlapping investigations, either as a result of joint inquiries launched by co-operating agencies, or facing consequential attention from new jurisdictions sparked by the findings of earlier investigations.

Even in circumstances where settlements are reached with foreign law enforcement agencies, companies must be wary of how authorities in the countries where the wrongdoing took place will respond to the discovery of potential criminal activity within their jurisdictions. When settlements involving record fines are published for the world to see, information about the broad nature and geographical spread of the schemes are also brandished in justification, signalling the weak points where authorities have failed to prevent unethical or illegal business practices. The sums attached to modern settlements have reached heights well into the billions of US dollars, yet rarely do these funds find their way back to the countries that have been compromised by the original act.

When companies that have reached settlements with one or more foreign agencies then become the target of new investigations, agreements with other governments are an ineffective shield against the lancing inquiries of locally aggrieved authorities.

Middle Eastern Methodology

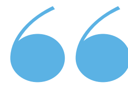
Understanding the approach of the local authorities when conducting an investigation, as well as their expectations, is the first step to managing legal risk, and is critical to

anticipating the challenges that may arise in balancing any competing requirements and obligations deriving from separate investigations. In the Middle East, in particular, the authorities are armed with extensive powers to investigate suspected offences, and a careful strategic approach is required for companies to defend themselves on a new front.

Continent-spanning investigations into alleged corruption offences pose a particularly potent risk to companies due to the titanic pieces of foreign legislation that grant sprawling jurisdiction to authorities of other countries. The United States Foreign Corrupt Practice Act ('FCPA') and United Kingdom Bribery Act ('UKBA') particularly are notorious for both their ability to ensnare the activities of companies across the globe and for the astronomical fines they can bring. In the Middle East, the prevailing model is that corruption investigations are spearheaded by dedicated authorities that are charged with defending the integrity of the national system. National anti-corruption and integrity bodies are granted special powers and authoritative independence to look into allegations of corruption. Each country in the Middle East has its own apparatus to pursue corruption offences and local companies leave themselves exposed to additional risk if they dismiss their relevance in the face of attention from international investigative agencies.

Reporting Obligations and Whistleblower Protection

With advanced transparency measures and protections being enshrined into law in many jurisdictions, whistleblowers are increasingly playing the incendiary role in investigations. US laws particularly are famed for the incentivised approach given to whistleblower protections, creating a culture of reward for individuals who provide information about the potential wrongdoing of companies.



Companies that find themselves caught in the riptides of overlapping or consequential investigations need to pay equal heed to the forces that pull them in different directions to ensure that they can keep their head above water and emerge on the other side intact.

In the Middle East, however, whistleblower protection or 'speak up' policies are at a more incipient stage of development. Saudi Arabia, for example, cuts a solitary figure as one of few jurisdictions that offers limited monetary reward for individuals who report offences but has only recently introduced new legislation that protects whistleblowers against retaliation for reporting offences involving public corruption. In the UAE, Federal Decree No. 20 of 2018 on Anti-Money Laundering and Countering the Financing of Terrorism ('AML Law') contains early indication that whistleblower protections are germinating within the UAE legal framework, empowering the Public Prosecution to protect informants and witnesses in AML/CTF cases where they come under threat for their involvement in ongoing proceedings. Whilst this does not yet address more comprehensive protections propagated by advanced whistleblower legislation, there are indications that the UAE authorities are taking steps to strengthen this capacity. The Federal National Council's Committee of Defence, Interior and Foreign Affairs is in the process of deliberating a draft bill that would protect witnesses and informants in criminal cases, particularly where their physical safety or that of their family may be threatened. Currently, there is no centralised, significantly developed source of whistleblower protection in the UAE, despite there being a positive reporting obligation for those with knowledge of a crime under Law No. 3 of 1987 (as amended) promulgating the UAE Penal Code, so this bill, once introduced, would be a significant advancement in terms of attempts to encourage reporting.

Where international investigations have been triggered by whistleblower reports abroad and evidence of wrongdoing is uncovered in a Middle Eastern country, local companies will need to carefully consider their reporting obligations to domestic authorities.

Access to Information and Confidentiality

The seminal question of every investigation is 'what happened?' Establishing a firm factual background for a course of events that has already been subject to an investigation may seem a relatively simple exercise, but issues around access to information can prove to be highly problematic. Information obtained as part of an investigation, due to its inherent sensitivity and by definition, is often subject to strict confidentiality requirements imposed by the investigating authorities. More often than not, companies will form small internal groups at the very top level to co-ordinate with the authorities on the investigation, and any information and work product derived from this activity is kept locked in a very strict silo. This approach is intuitively sound from both a legal and reputational risk perspective, as strict control over internal access to information is the most effective means in mitigating the risk of any information security breaches. The rationale may also be informed by data privacy considerations, where extraterritorial application of international laws restricts the transfer of certain information by custodians in other countries, and conflated requirements imposed by domestic legislation compounds concerns. Where there is an additional line of inquiry however, probing at other parts of the corporate body and foreign operations, closing internal flows of information runs the risk of leaving a foreign subsidiary dangerously exposed.

This can be a particular issue, for example, where the headquarters of a company, the locus of control and information, is far-removed from the jurisdictions where subsequent investigations are happening. A lack of understanding around the legislative regimes that bind companies operating in foreign jurisdictions does little to alleviate the impression of legal pre-eminence where there is an existing settlement, which materialises as a reluctance to share sensitive information with subsidiaries, despite facing legal requirements to co-operate with ongoing domestic investigations.

As a result of these issues, local subsidiary companies, representative offices or branches can find themselves largely in the dark about the details of the schemes for which they are facing censure, which makes risk management and contingency planning exceptionally difficult. In such circumstances, the importance of transparency between the separate organs of a corporation is paramount. Whilst the nuances of the disclosure strategy can be managed, without

effective information sharing between internal stakeholders and decision makers, efforts to co-operate with the authorities will be curtailed and companies may end up doing more harm than good to their situation.

Managing Expectations and Prioritising Contingency Strategies

Over time, being the subject of a long-term investigation can cause an incurable case of tunnel vision for corporate entities; sustaining a myopic focus on resolving the investigation and satisfying any requirements in that respect can lead entities to overlook their domestic obligations in host countries where an offence has taken place.

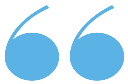
Flagship anti-corruption legislation from countries such as the United States, United Kingdom and France are lauded and infamous in equal parts for carrying significantly heftier fines that can be levied against corporations. Whilst these fines can be effective deterrents against the commission of corruption offences, they can also evince a perception of lower risk in other countries and a de-prioritisation of risk management efforts even where subsidiaries are facing investigation. Whilst many countries across the Middle East have made strides in developing their anti-corruption framework, the penalties applied by criminal provisions in regional countries differ greatly to the international front-runners in terms of both applicability and scale. Where corporate fines are leveraged in international laws as a general rule, Middle Eastern jurisdictions favour approaches that assign culpability to representatives of the companies, i.e. individuals.

Differences in the legislative approach, however, should not deter companies from paying close attention to the local provisions. The existence of ongoing investigations or previous settlements may not be accepted by local authorities as justification for non-compliance with reporting requirements or non-adherence to information requests. Authorities in Middle Eastern countries have strong powers to request and retrieve information; UAE law for example contains strict provisions around the investigative powers of local authorities and no grounds are provided for companies to refuse to comply with requests for information and local entities will face full exposure to the applicable domestic laws if they do not respond to local enquiries in a timely, transparent and co-operative manner. This is true even where there has been a direct instruction by a foreign authority not to disclose information that forms part of an investigation.

Challenges in Crisis Management

Whilst in some circumstances savvy management has taken a decision to create a global response strategy, it is equally frequent that the initial planning of crisis management steps is limited to the immediate risks, and do not adequately cover jurisdictions of secondary concern. Likewise, pre-agreed crisis management responses designed by the parent company following a high-profile settlement often do not integrate different elements of the strategy with legal considerations.

In light of an increasing ability for media to drive responses to international investigations, public relations campaigns often take precedence in mitigating reputational damage. Where this is co-ordinated at the parent company level or with the approval of foreign investigative authorities, it often misses the nuances of the local perspective, and can fail in protecting the reputation of the local entity. Efforts to distance the parent company from the centre of the wrongdoing, for example, may lead to a strategy that concentrates on framing the offences within a specific jurisdiction, without having adequate regard for how this will influence market perception on the ground. Similarly, using language that implicates the complicity of a local entity will likely add further fuel to the appetite of the domestic investigative authority to initiate local inquiries, igniting interest in previous conduct and potentially turning them into a public example. Whilst any investigation is likely to bring about some reputational damage, understanding the extent of the exposure from a legal perspective and the view of the authorities in subsidiary jurisdictions is essential to an effective response strategy.



Where international investigations have been triggered by whistleblower reports abroad and evidence of wrongdoing is uncovered in a Middle Eastern country, local companies will need to carefully consider their reporting obligations to domestic authorities.

Facing Opposing Forces

These menaces to strategic planning are indicative of the issues that may be encountered by international companies facing multiple investigations, but are far from exhaustive in their scope. The kaleidoscope of issues that can arise during periods of inquiry are often difficult to anticipate, and even harder to address in a manner that gives comfort to the authorities without a comprehensive global strategy. Companies that find themselves caught in the riptides of overlapping or consequential investigations need to pay equal heed to the forces that pull them in different directions to ensure that they can keep their head above water and emerge on the other side intact.

Simona Jachimecova
Aurora
Acrylic on canvas
70 x 60 cm
@simonaj.art

Curated by Rebia Naim @EmergingScene

A Green Light to Prosecute: Lessons Learned from the Omani Ministry of Education Embezzlement Case

Khalid Al Hamrani
Partner, Head of Financial Crime
k.hamrani@tamimi.com

Wassim Mahmoud
Paralegal
Litigation
w.mahmoud@tamimi.com

Following in the footsteps of its neighbours in the Gulf, Oman has not been idle in recognising the insidious nature of corruption, and has acted to limit its impact. Oman has ratified the United Nations Convention Against Corruption through Sultani Decree Number (64/2013), and has openly stated its ambition to fight and eliminate corruption. Whilst political statements and sweeping legislation create an impression of high-level progress, examining corruption cases that make their way through the Courts is invaluable in understanding how these issues manifest at the ground level.

One such demonstrative case has garnered considerable public interest in Oman as it concerns public funds and corruption. The case, which has become known as the 'Ministry of Education Embezzlement Case' is considered to be a test case and an indicative precedent as to how the governmental and judicial authorities will deal with such corruption matters.

By chronicling the investigative measures, criminal procedures and approach applied by the Omani authorities in this case, it is possible to gain an insight into how public corruption cases will be treated by law enforcement authorities and the judicial system in future.

Breaking News

Public awareness of the case was first provoked in March 2019, when a flurry of social media activity spread news of the arrest of public employees at the Ministry of Education ('MoE') on charges of embezzlement for an amount in the millions of Omani Riyals. The news was confirmed by official sources on 27 March, by Oman Government Communication Centre ('Centre').

The Centre affirmed that the authorities were expending all possible efforts in compliance with the relevant legal procedures to pursue justice against the perpetrators. Pursuant to the Conflict of Interests Law, promulgated

by Sultani Decree Number (112/2011) and the Oman Penal Code, promulgated by Sultani Decree Number (7/2018), the Public Prosecution was the competent authority for conducting investigative procedures in co-operation with the State Audit Institution and the MoE.

With the issuance of the new Omani Penal Code, particular importance has been attributed to financial crimes in public office and the financial sector, reflected in the severity of the penalties that can now be applied to any employee or public official that abuses their position or function to achieve personal benefit.

Investigation

The Public Prosecution initiated its investigation by interrogating the suspects in the case in accordance with criminal procedures, and also collected and verified documentary evidence. The suspects were confronted with forged documents bearing their signatures, alongside various other evidence collected by the State Audit Institution and presented by the Public Prosecution. Accordingly, the suspects were arrested and, on completion of all necessary further formalities and investigations, were referred to the Competent Court for trial. In June 2019, the Public Prosecutor declared that the case had been referred to the Competent Court and that hearings would commence imminently.

Generally, in other investigations, the State Audit Institution and the Public Prosecution Office work to obtain information about other, as yet unidentified, collaborators potentially increasing the circle of suspects who might have played a role in a single offence. Additional suspects may be joined as parties to existing proceedings, or new legal proceedings will be initiated against them. This type of information may not be accessible or become known until the interrogation and investigation of the accused takes place.

Legal Proceedings

On 7 July 2019, the first hearing session was held at Muscat Criminal Court where a total of 18 individuals (15 employees from the MoE and three other accused from other authorities) were announced as official suspects in the case.

During the hearing session held on 9, September 2019, the Public Prosecutor displayed the audit report of the State Audit Institution, which demonstrated that one of the suspects issued 256 cheques in total, that were cashed in the name of the MoE, to provide school supplies and bonuses without any legal basis for such payments.

The Public Prosecutor submitted that in the year 2017, a total amount of seven million Omani Riyals (approximately US$ 18.2 million) was embezzled by way of issuing fake

Total amount of salaries paid to the MoE employees for the month of December 2017

83.9 million Omani Riyals
(approximately US$ 218 million)

Actual amount for salaries

79 million Omani Riyals
(approximately US$ 205.2 million)

exchange bonds without any legal support, nor obtaining the requisite internal audit approvals. In addition, the Public Prosecutor revealed, in its assertions that the total amount of salaries paid to the MoE employees for the month of December 2017, amounted to 83.9 million Omani Riyals (approximately US$ 218 million). It was established that the actual amount for salaries for that period should have been only 79 million Omani Riyals (approximately US$ 205.2 million), which was considered to prove, beyond any doubt, that embezzlement had occurred. Moreover, the Public Prosecutor illustrated that the suspects had attempted to conceal the origins of the funds unduly gained through embezzlement by routing them through banking transfers and commercial transactions such as buying shares in international companies and purchasing real estate and vehicles, both within Oman and in other jurisdictions. This was done with the co-operation of other individuals that did not work in the MoE. In attempting to disguise the source of funds in this way, the suspects had committed a further crime of money laundering. On the basis of the evidence obtained during the investigation, the Public Prosecutor indicted all the suspects and accused them of different crimes including intentional negligence, fraud, embezzlement with forgery, money-laundering, electronic fraud, and abuse of public office.

As is common practice in such cases, the Omani government takes precautionary measures before making any allegations against public officials. During the investigation stage, enquiries into the funds and assets of suspects that are located inside or outside Oman are treated as a priority, so that confiscation can be accelerated once legal proceedings are initiated. As a result, it is expected that in most circumstances, unless public officials suspected of committing corruption offences are able to mount a convincing defence, a more favourable judgment will be issued in favour of the government or one of its bodies so it can recover its losses and its functioning is not compromised. The period of imprisonment and the level of fines applied by the Court would depend largely on the severity of each offence and its classification, and would be decided at the discretion of the Judge.

By leveraging a range of offences provided by the Penal Code, the Public Prosecutor was able to increase the extent of criminal sanctions that could be applied by the Courts in the event of a conviction. The Public Prosecutor called for the imposition of severe penalties against the suspects, to include imprisonment and dismissal from public employment, the confiscation of all real estate and amounts obtained by the suspects resulting from the embezzlement, the confiscation of all financial profits accruing from the money laundering process as well as the confiscation of any other private property, registered in the names of the suspects, equivalent to the amount of money obtained by embezzlement and money laundering.

Ruling

On 1 December 2019, the Muscat Criminal Court issued its verdict. The sanctions varied from one suspect to another, depending on the offence in question and the extent of their involvement in and benefit from the embezzlement scheme. The first and second accused, as the predominant perpetrators, were sentenced to 25 years (with a minimum of 20 years) imprisonment, respectively. The Court also sentenced eight of the accused to a prison term ranging between one to ten years,

As evidenced by the MoE Embezzlement Case, the Omani authorities have struck a strong tone in their approach to prosecuting crimes against public funds, but they will need to ensure that this continues to resonate as the needs of the economy are shaped by the status of the international pandemic.

while it imposed a fine of 100 Omani Riyals (approximately US$ 260) for six of the accused as a sanction for intentional negligence, although it declared their innocence of the charge of misusing public funds. Two of the accused were acquitted.

In addition to imprisonment, the Court made restitution a legal obligation and a part of the total penalty for embezzlement and misappropriation of public funds. This is in adherence to the new principles stated in the Omani Penal Code, which entered into force on 11 January 2018 by the Royal Decree No 7/2018. Those found guilty were ordered by the Court to compensate the MoE for its losses caused through the commission of the offences. Commensurate to the losses suffered by the MoE, the Court ordered the accused to pay fines amounting to more than 15 million Omani Riyals (approximately US$ 39 million) and ordered confiscation of any other private property, registered under their names, equivalent to the amount of money obtained as a result of the embezzlement and money laundering. As a further means to protect against the future commission of such offences, and to demonstrate the severity of the conduct in question, the Court further ruled that certain guilty parties be dismissed from public service for life.

Lessons Learned from the MoE Case

With the issuance of the new Omani Penal Code, particular importance has been attributed to financial crimes in public office and the financial sector as is reflected in the severity of the penalties that can now be applied to any employee or public official that abuses their position or function in order to achieve personal benefit. The imposition of elevated penalties is a well-recognised legislative tool that is deployed in countries all over the world to deter individuals, in both the public and private sectors, from committing acts that may compromise the integrity of the economic system. Financial crime offences have substantial impact on commercial activities, undermining the security of transactions and the development of the economy and society in general.

Chapter IV of the Penal Code focuses on offences committed by public officials that cause damage to public funds. The purpose of the provisions is to provide a framework of rules aimed at enhancing transparency within the public sector. The newly introduced provisions criminalise embezzlement, misappropriation of public funds, illegitimate collection of taxes, fees or fines, causing wilful damage to public property, neglecting the maintenance of public property, trickery relating to public

bids or auctions, receiving illegitimate profit or benefit, obtaining illegitimate benefits based on Government contracts, fraud in the performance of Government contracts, and trespass to Government property.

Drawing together the breadth of these offences and the strength of the penalties which they attract, the Omani Penal Code constitutes a qualitative leap in legislation in the Sultanate. It specifically targets financial crime offences that carry damaging effects and ramifications for the Omani system and, in so doing, supports the efforts of the Omani authorities to construe the country as an attractive and safe destination for foreign investment, where business interests are protected by strong rule of law and governmental integrity.

Taking Notes for the Future

With the fall in oil prices and the persistence of the COVID-19 pandemic creating economic pressure in Oman, public funds have amassed, if anything, even greater importance to the continued economic and social health of the Sultanate. As such, the government is likely to take a strict approach to dealing with officials who have abused their powers and misappropriated public funds, taking into consideration the fact that there is no time limitation as to when the Government or one of its bodies may claim such right. This may take the form of an internal investigation into suspected officials, or even freezing of their assets prior to the referral of any allegations to the Courts. The MoE Embezzlement Case has thrown the potential of further similar cases into stark relief.

In this light, fighting corruption has become a necessity in order to further strengthen the position of public institutions in Oman, bolstering the country's resilience in managing public funds and assets, and ultimately improving its ability to deal with any crises that may arise. Misappropriation of public funds, or any other offences relating to public interest, may immobilise the ability of the Government to maintain its financial obligations both internally towards its employees and designated function, and/or externally towards any third parties under contract and the public at large.

This latter category has proven to be a particular area of concern. Most existing cases of offences relating to public funds arise out of or in connection with contracts or sub-contracts with governmental bodies, and as such the Omani government is likely to tighten its policies and legislation regarding the process of public procurement and the budget allocated for such projects. In the context of the current economy, the Government will need to make sure that it can strike a balance between controlling public procurement without stifling the flow of public funds to the economy, which may carry a risk of forcing the closure of existing contractors and sub-contractors and causing job losses for Omani and non-Omani employees. As evidenced by the MoE Embezzlement Case, the Omani authorities have struck a strong tone in their approach to prosecuting crimes against public funds, but they will need to ensure that this continues to resonate as the needs of the economy are shaped by the status of the international pandemic.

Mozhdeh Zandieh-Grayson
#7 from Fractures Series
Ink and pen on paper
@mozhdeh.z.grayson

Curated by Rebia Naim @EmergingScene

Double Trouble? The Relevance of the FCPA in the Middle East

Khalid Al Hamrani
Partner, Head of Financial Crime
k.hamrani@tamimi.com

Marja Boman
Senior Associate
Financial Crime
m.boman@tamimi.com

Generally, emerging markets seem to be in the spotlight when it comes to Foreign Corrupt Practices Act ('FCPA') enforcement. The US law, enacted in 1977, is known for its long arm also encapsulating operations in the Middle East as a result of its broad extraterritorial reach. In the history of the FCPA, several actions have related to FCPA infringements in the Middle East and North Africa with conduct relating to Iraq, Saudi Arabia and Egypt leading the FCPA prevalence figures in the region. In 2018, the Middle East was leading the global enforcement statistics as a region, whereas in 2019 the weight seems to have shifted more towards Africa. Globally, China is the undisputed number one target of the FCPA investigations with 67 cases relating to conduct involving China during the history of FCPA.

Whilst Al Tamimi & Company is a regional law firm and does not advise directly on US legislation, we have commented on the relevance of the FCPA for Middle Eastern operations, as it is of significant import for some local businesses. The purpose of the FCPA is to make it unlawful for certain classes of persons and entities to make payments to foreign government officials to assist in obtaining or retaining business. The FCPA explicitly governs bribery targeting foreign, i.e. non-US, officials, meaning that FCPA related investigations conducted by the US authorities span across the globe. The US Department of Justice ('DOJ') and the Securities and Exchange Commission ('SEC') are jointly responsible for enforcement of the FCPA. The DOJ and SEC partner with the Federal Bureau of Investigations ('FBI') which has a special International Corruption Unit to oversee the investigations involving global fraud against the US Government and the corruption of federal public officials outside of the continental US. The International Corruption Unit oversees the FCPA cases investigated by the FBI and maintains operational oversight of several International Contract Corruption Task Forces investigating and prosecuting both individuals and companies who have

become involved in not only direct bribery but also bid rigging, conflict of interest, items or services invoiced without delivery and other corporate conspiracies.[1]

According to the SEC, the FCPA covers prohibited conduct everywhere in the world. The scope of application of the FCPA includes publicly traded companies and their officers, directors, employees, stockholders, and agents. Agents refers to consultants, distributors, agents and any other business partners.[2]

The network of US authorities working on international corruption matters is rather heavy, yielding an average monthly investigation cost of US$ 1,855,032 for the US Government. Despite the costly organisation, it seems that the investment pays off. In 2020 alone, the total sanctions imposed so far have already exceeded US$ 2.4 billion, whereas the total figure in 2019 was slightly above US$ 2.9 billion. 2016 was a record year in the history of the FCPA, with the total value of sanctions amounting to US$ 6.1 billion. Observing the history of the FCPA enforcement, the sanctions trend has shown a marked increase, which entails a greater risk for companies which fall within the remit of FCPA enforcement. It can be concluded that the FCPA generates a relatively lucrative annual income for the US Government covering illegitimate practices all around the world, including the Middle East.

TOTAL SANCTIONS IMPOSED

2020
already exceeded
USD 2.1 billion

2019
slightly above
USD 2.9 billion

From the perspective of businesses operating in the Middle East, the key take home from the statistics is the fact that in addition to bribery, other misconduct is regularly discovered in connection with FCPA investigations and therefore the most efficient way to tackle corporate crime related risks is to focus on all encompassing compliance policies to prevent all kinds of wrongdoing and avoid costly sanctions.

FCPA-related fines are usually hefty and the cases attract global publicity. The DOJ and SEC both usually publish a press release once a FCPA investigation that attracted significant media attention, is concluded. Subject to the wide publicity, Middle East related FCPA cases will not escape the vigilant eye of the local anti-corruption and law enforcement authorities. Therefore, in the aftermath of a FCPA investigation, it is very common for local anti-corruption authorities to kick off an investigation of their own, provided that a jurisdictional nexus exists.

The Anatomy of the FCPA versus Anti-Corruption in Middle Eastern Jurisdictions

As discussed above, in order for a company to breach the FCPA it does not need to be based in the United States. Jurisdictional considerations aside, it should also be noted that a company may be in breach of the FCPA even if no dirty money has been requested, promised or paid. A mere failure to maintain sufficient records of payments may amount to a FCPA violation entailing criminal liability, which may come as a surprise to companies who are unaccustomed to the provisions of the US statute.

The anti-bribery provisions of the FCPA specifically prohibit the wilful and corrupt use of any *"means of instrumentality of interstate commerce"*, such as emails, in furtherance of any offer, payment, promise to pay, or authorisation of *"anything of value"* to any person, while knowing that all or a portion of such benefit of value will be *"offered, given or promised, directly or indirectly, to a foreign official to influence the same"* in his or her *"official capacity, induce the foreign official to do or omit to do an act in violation of his or her lawful duty, or to secure any improper advantage"* in order to assist in obtaining or retaining business for or with, or directing business to, any person.

The accounting provisions of the FCPA require entities covered by the provisions to *"make and keep books and records that*

[1]*https://www.fbi.gov/investigate/public-corruption*

[2]*https://www.sec.gov/spotlight/foreign-corrupt-practices-act.shtml*

accurately and fairly reflect the transactions of the corporation" and *"devise and maintain an adequate system of internal accounting controls"*. A breach of the accounting provisions alone is a FCPA violation even if there is no evidence of the anti-corruption provisions being breached. In most Middle Eastern jurisdictions, however, anti-corruption is predominantly regulated in penal codes or separate anti-corruption laws which criminalise active and passive bribery. Transparent record keeping obligations, which would render insufficient accounting a criminal offence similar to that of the FCPA, are usually not embedded in the penal codes.

FCPA anti-bribery provisions and accounting provisions entail a different territorial reach. The anti-bribery provisions of the FCPA apply to all US persons and certain foreign issuers of securities. Moreover, since the 1998 amendments to the FCPA, the anti-bribery provisions also apply to foreign firms and persons who cause, directly or through agents, an act in furtherance of a corrupt payment to take place within the territory of the United States. An act that takes place within the territory has a relatively broad interpretation. For example, according to the FCPA Guide jointly published by SEC and DOJ, placing a telephone call or sending an e-mail, text message, or fax from, to, or through the United States involves US interstate commerce. Sending a wire transfer from or to a US bank or otherwise using the US banking system is also enough to create a territorial nexus triggering the application of the FCPA. As a result, the territorial reach of the FCPA may be triggered e.g. by a payment made in US dollars.

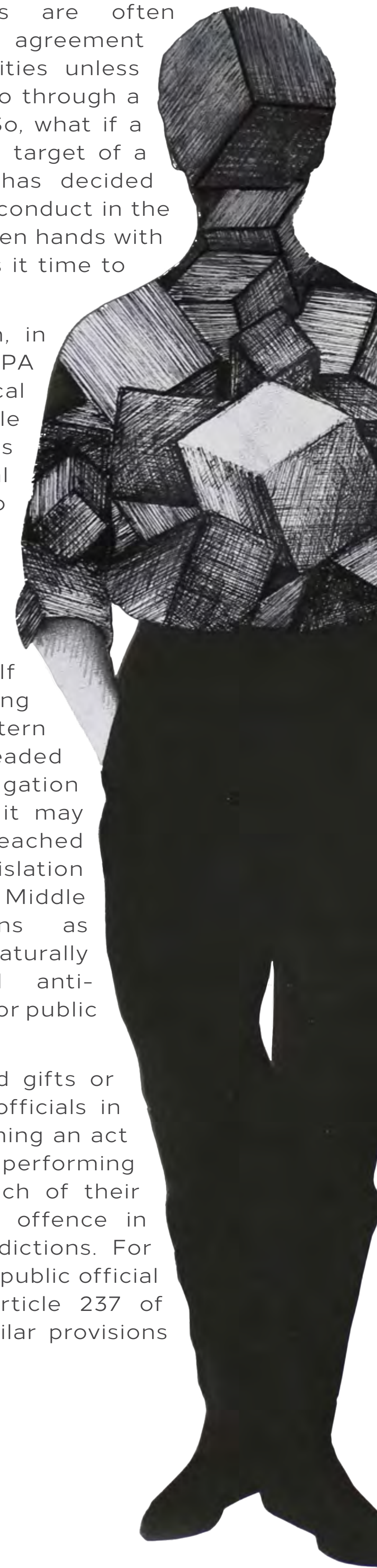
The accounting provisions entail a much narrower scope of territorial application and apply to companies that have securities listed in the United States. Therefore, a company registered in the Middle East the securities of which are not listed in the United States, does not need to comply with the accounting provisions, but depending on the business activities, the company may become subject to the anti-bribery provisions.

Double Trouble: Spin Off Anti-Corruption Action in the Middle East

FCPA investigations are often concluded with an agreement with the US authorities unless the parties wish to go through a full trial procedure. So, what if a company has been a target of a FCPA investigation has decided to plead guilty to its conduct in the Middle East and shaken hands with the US Prosecutor. Is it time to lay back and relax?

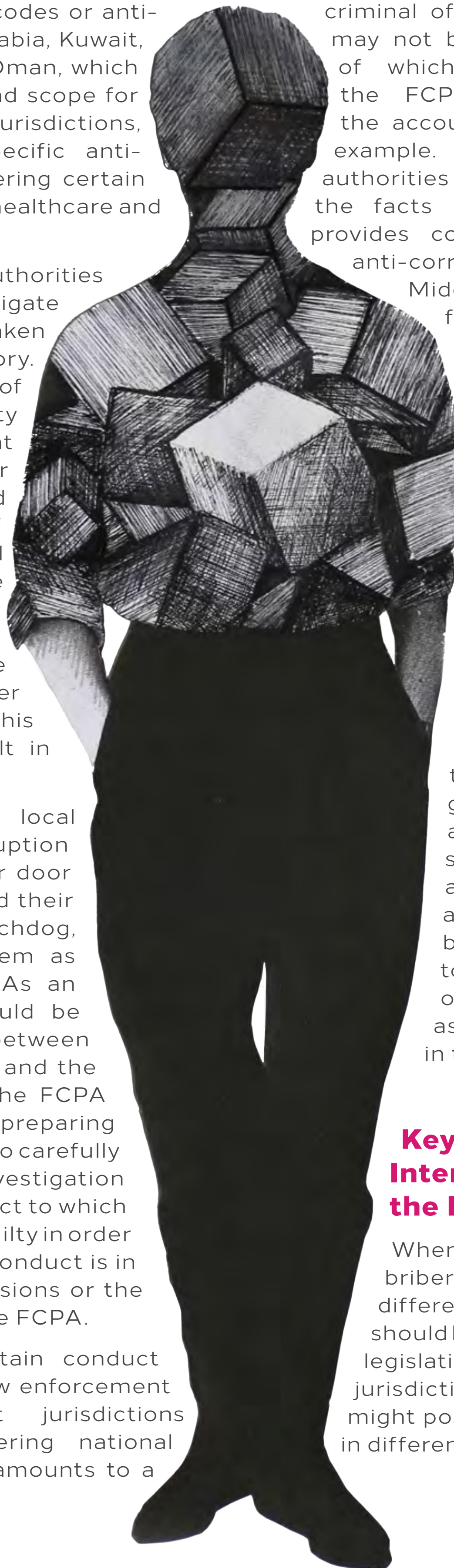
It is not uncommon, in the aftermath of a FCPA investigation, for local authorities in Middle Eastern jurisdictions to initiate local investigation into the conduct of a company that has pleaded guilty or been convicted in FCPA litigation in the United States. If a company operating in a Middle Eastern jurisdiction has pleaded guilty in bribery litigation in another country, it may well be that it has breached the local bribery legislation in the respective Middle Eastern jurisdictions as well, which would naturally interest the local anti-corruption authority or public prosecution.

Providing undeserved gifts or privileges to public officials in exchange for performing an act or abstaining from performing such an act in breach of their duties is a criminal offence in Middle Eastern jurisdictions. For example, bribery of a public official is criminalised in Article 237 of the Penal Code. Similar provisions



can be found in the penal codes or anti-corruption laws of Saudi Arabia, Kuwait, Egypt, Qatar, Bahrain and Oman, which apply similarly drafted, broad scope for bribery offences. In some jurisdictions, there are also sector specific anti-corruption regulations covering certain vulnerable sectors, such as healthcare and public procurement.

Broadly speaking, local authorities have jurisdiction to investigate all offences that have taken place within their territory. This is irrespective of whether a foreign authority has assumed concurrent jurisdiction and the matter has already been litigated abroad. In the absence of a bilateral or multilateral treaty preventing double jeopardy, it is possible that authorities in two different countries may have concurrent jurisdiction over the same matter. At worst, this double jeopardy may result in double penalty.



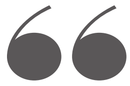
If companies hear the local Middle Eastern anti-corruption authority knocking on their door right after they have settled their matters with the US watchdog, the situation may not seem as desperate as they seem. As an initial step, attention should be paid on the difference between the anti-bribery provisions and the accounting provisions of the FCPA elaborated above. Whilst preparing for the worst, it is advisable to carefully review the facts of the US investigation and, in particular, the conduct to which the company has pleaded guilty in order to determine whether the conduct is in breach of the bribery provisions or the accounting provisions of the FCPA.

As elaborated above, certain conduct may be evaluated by the law enforcement authorities of different jurisdictions that operate under differing national legislations. Conduct that amounts to a criminal offence under one legislation may not be penalised under another, of which the difference between the FCPA bribery provisions and the accounting provisions is a prime example. Co-operating with all local authorities and diligently evaluating the facts pertaining to the incident provides companies, subject to local anti-corruption investigations in the Middle East, an important window for successfully defending themselves and avoiding any further criminal sanctions.

Therefore, a company is not precluded from building a solid defence against local anti-corruption charges in a Middle Eastern jurisdiction by invoking the difference between the FCPA and the local legislation, provided that it is only the accounting provisions of the FCPA that have been breached in the US proceedings. If the company has pleaded guilty to breaching the FCPA anti-bribery provisions, the situation is more complex and the details of the admitted conduct need to be looked at more carefully to determine if jurisdictional or factual arguments could assist challenging the charges in the Middle East.

Key 'Take Home' Points for International Businesses in the Middle East

When caught in the middle of a bribery investigation that spans different jurisdictions, the risks should be analysed in light of the local legislation in all potentially affected jurisdictions. The same conduct might pose different compliance risks in different jurisdictions.



Co-operating with all local authorities and diligently evaluating the facts pertaining to the incident provides companies, subject to local anti-corruption investigations in the Middle East, an important window for successfully defending themselves and avoiding any further criminal sanctions.

Local anti-corruption authorities in various Middle Eastern jurisdictions play an active role in investigating bribery offences that have a connection with their territory. National anti-corruption authorities in the Middle East have excellent international connections and global exchange of information networks. It is also noteworthy that in some Middle Eastern countries, for example Kuwait and Saudi Arabia, the anti-corruption authority is separated from the Public Prosecution, which allows for a better allocation of resources.

It is advisable for companies to internally investigate any corruption related allegations and consider proactively reporting them to authorities. It should also be borne in mind that in various Middle Eastern jurisdictions such as the UAE, a failure to report a crime is a criminal offence. Moreover, the limitation periods in criminal matters tend to be rather long and the authorities may be able to investigate the allegations that date back a rather long time.

Therefore, a truly global and multijurisdictional risk management strategy appreciating the legislative requirements of each involved jurisdiction should be adopted, instead of putting out fires jurisdiction by jurisdiction. It goes without saying that proactive prevention of bribery, paying attention to any potential conflict of interest, training staff and proper record keeping are the best tools to prevent these unpleasant and extremely costly incidents resulting in long investigations and hefty fines.

TEHOS
When flowers die
Pigment ink on fine art paper
100 x 70 cm
@tehosart

Curated by Rebia Naim @EmergingScene

New Life for Anti-Corruption Efforts: Novel Regulations related to Public Procurement in Saudi Arabia

Benjamin Jones
Senior Associate
Financial Crime
b.jones@tamimi.com

Mustafa Abudawood
Associate
Litigation
m.abudawood@tamimi.com

Saudi Arabia is undergoing significant reform, orientated at galvanising the country through its process of large scale regeneration and modernisation as the authorities pursue their strategic vision to move the Kingdom away from its historical reliance on oil.

The boldness and pace of such reform can, however, elicit problematic tangential consequences. As is often the case, such ambitious projects are reliant on a high level of public sector participation and spending to breathe life into plans and sustain their momentum. With an open floodgate of public funds washing through the Kingdom's economy, it is an inevitability that nefarious opportunists will be drawn like bees to a honey trap, seeking to maximise their own personal gain at the expense of public projects. During phases of elevated public sector intervention, the procurement process is particularly vulnerable to attempts to corrupt the system, and procedures can be easily compromised without the application of strong controls around potential areas of misconduct.

The laws governing public sector employment are complicated by a perennial dilemma, as legislation attempts to strike a balance between empowering public officials to exercise their functions and adequately protecting public funds against potential wrongdoing. Where insufficient accountability is written into the law, damaging practices may go unaddressed, even where their commission is brought to light.

In view of this conundrum, the government of Saudi Arabia has recently decided to establish a number of committees that will work side-by-side with several branches of the central

government, such as the Ministry of Transport and Public Transport Authority, that in turn will devolve their powers to the committees to achieve the government's objectives. This is not merely an exercise in proliferating State bureaucracy, as importantly the employees of the newly established committees will not fall within the definition of public officials. Rather, they will be considered as regular employees and subject to the provisions of the Labour Law, without the protections and benefits conferred on public officials by the Civil Service Laws or the Human Resources Implementing Regulations. In essence, this measure will effectively add an insulating layer between public officials and potential corruption schemes, comprising individuals that serve the State's interests with full accountability and transparency measures in place.

The two new regulations are intended to flesh out existing protections applied to public office and State funds that are the lifeblood of Saudi Arabia's drive to modernisation.

This measure is one tile in a mosaic of protections that shield the public procurement process from corrupting influences. The central law governing public procurement is the Government Tenders and Procurement Law, enacted by Royal Decree Number 128/M dated 16 July 2019, which includes provisions for contracting with governmental bodies that are interlaced with transparency and objectivity requirements. Additionally, two new regulations have been passed in order to regulate and strengthen the controls surrounding tenders and procurement in the public sector, and in particular to encourage and enforce a strict code of ethics and conduct and to prohibit misconduct or wrongdoing in this context.

The two regulations were recently issued by the Ministers' Council Decision no. 537 dated 08 April 2020 and are: (1) the Regulations Organizing Conflict of Interests when implementing the Government Tenders and Procurement Law and its Executive Regulations ('ROCOI'). and (2) the Regulations Organizing the Conduct and Ethics of those in charge of Implementing the Government Tenders and Procurement Law and its Executive Regulations (the 'ROCAE').

The Regulations Organizing Conflict of Interests when Implementing the Government Tenders and Procurement Law ('ROCOI')

Article 1 of the ROCOI sets out the criteria to determine whether or not there is a conflict of interest, defining the basic premise of the concept as:

> *"Conflict of personal interest with the government agency's interest, as the personal interest affects the person's ability to perform his duties and professional and occupational responsibilities objectively, with integrity and impartiality, whether it is actual, apparent, or potential conflicts of interest."*

The above definition shows clear intent to encapsulate a broad range of circumstances where a conflict of interest can arise, extending even to circumstances where there is merely a potential conflict. Furthermore,

the test for determining if a conflict of interest has arisen requires an application to be made to the competent authority even in instances where there is simply a 'doubt' that a conflict of interest exists, or even might exist. Imposing such a low threshold for additional oversight indicated a clear intent to bring about the demise of any and all situations that could compromise the vitality of public functions. The relevant government agency is also required to develop a conflict of interest policy regarding procedures to prevent and reduce situations where a conflict could arise.

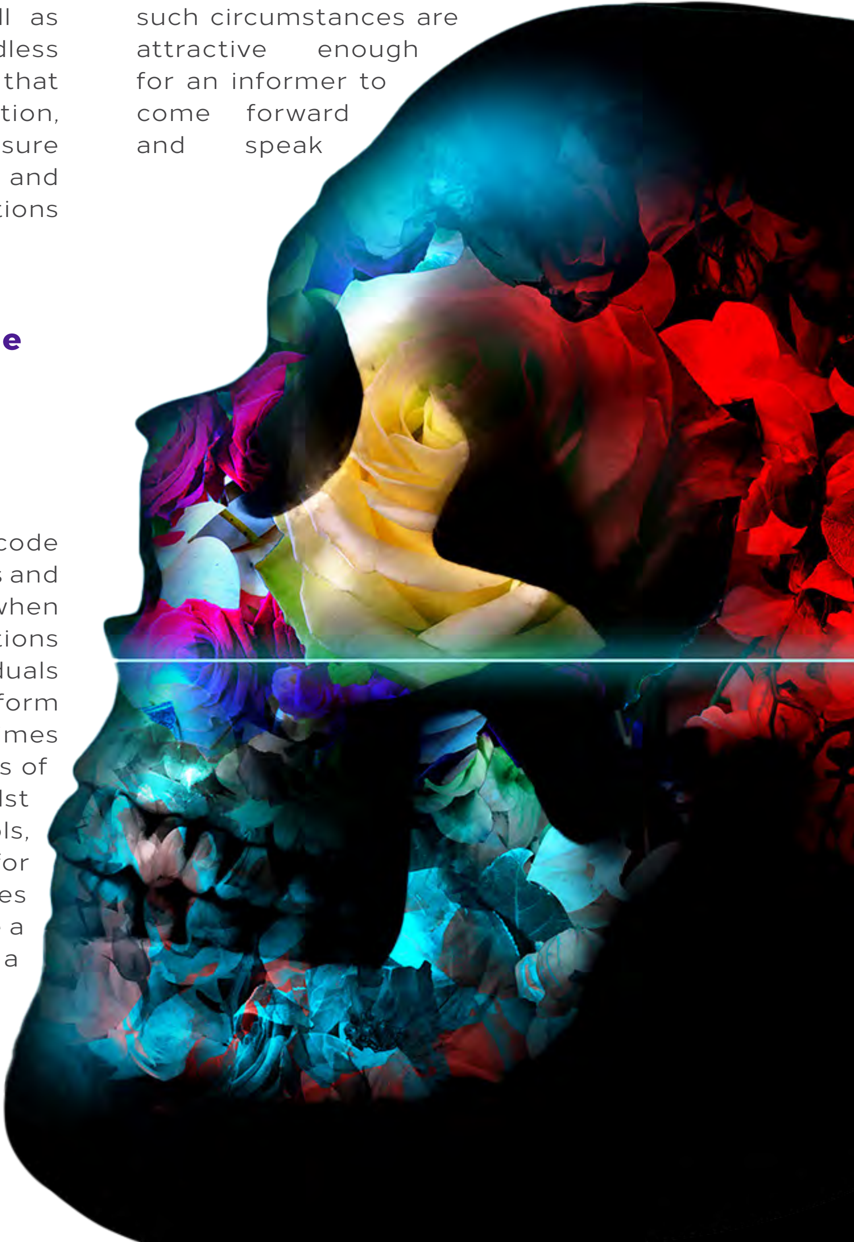
Whilst the regulation is too new to judge whether it has been effective in achieving its objectives, from a technical perspective it has undoubtedly fortified the layers of regulation and oversight designed to abate misconduct and corruption in government procurement projects. Past incidents of bribery and corruption worldwide, however, as well as conflict of interests, have shown the endless resistance of malpractice to the controls that attempt to eliminate pervasive corruption, and Saudi authorities will need to ensure they can sustain constant oversight and enforcement measures if their protections are to be effective.

The Regulations Organizing the Conduct and Ethics of those in charge of Implementing the Government Tenders and Procurement Law ('ROCAE')

The ROCAE has enshrined into law the code of ethics and conduct that public officials and employees are now required to follow when carrying out their duties. The regulations apply sweeping requirements for individuals to maintain upstanding morals, and perform their duties and responsibilities at all times in accordance with the highest standards of integrity, impartiality and objectivity. Whilst the ROCOI impose negative controls, prohibiting specific circumstances for individuals charged with carrying out duties in the public interest, the ROCAE impose a general positive duty to act in line with a normative code at all times, regardless of the specific circumstances that may arise during the conduct of work.

Enforcing regulations that are culturally orientated can be challenging, but the ROCAE also provide a mechanism of transparency to assist the authorities in monitoring adherence to the requirements. Article 6 of the ROCAE offers protection to an informer who speaks out against a violation of ethical standards, comparable to whistleblower protections offered by many authorities for other criminal matters. Protection for anonymous whistleblowers, whether he or she is a public official, employee or a customer, will be a valuable asset to the authorities in enforcing the anti-bribery and corruption framework, and on a much higher level to the country in preventing and deterring such behaviour.

As with the ROCOI, until the protections offered by the ROCAE have been tested, it is not possible to determine whether or not the safeguards afforded in such circumstances are attractive enough for an informer to come forward and speak



The Control and Anti-Corruption Authority ('Nazaha') in Saudi Arabia announced in early July 2020 that it had initiated 105 criminal cases in its most recent period of data collection. The authorities in Saudi Arabia are actively investigating instances of corruption in Government, and the new regulations will be an additional layer of protection against further cases like those highlighted below:

Amount wrongfully obtained by a hospital owner by defrauding the system designed to provide support to private sectors affected by the coronavirus pandemic

30k SAR

Bribe received by an employee of the Public Prosecution in exchange for delivering a case files and clearing records of the case from the system archives

264k SAR

Financial benefit obtained by five officials with the General Authority of Customs through forgery and bribery offences

1.365m EUR

Total paid in bribes by a French company to employees of the Saudi Electric Company in exchange for preferential treatment in the procurement process, travel expenses and supply contracts

400k SAR

Inflated proportion of a project valuation, manipulated by employees and engineers of an electric company.

During phases of elevated public sector intervention, the procurement process is particularly vulnerable to attempts to corrupt the system, and procedures that have habitually been conducted behind closed doors can be easily compromised without the application of strong controls around potential areas of misconduct.

out. Either way, modernisation of governance controls and transparency can only be seen as a step in the right direction for establishing a more robust anti-bribery and corruption framework.

New Life for the Anti-Corruption Campaign

The new regulations form part of an on-going anti-corruption campaign by the Saudi authorities that is central to plans to invigorate Saudi Arabia's economy into a diverse and multifaceted market. The two new regulations are intended to flesh out existing protections applied to public office and State funds that are the lifeblood of Saudi Arabia's drive to modernise, and reflect the higher standards of accountability in governance that are a requisite for effective leadership in all countries.

Saudi Arabia is at a pivotal point in its development, and despite the pressures that are currently afflicting nations throughout the world, the government will likely set its sights on the horizon and maintain a positive outlook for the long term. Anti-corruption laws are a vital but ancillary part of the legal reform process in the Kingdom, and there are other areas of large scale reform that are designed to protect the Kingdom's economic stability and integrity. Saudi Arabia has expended considerable effort on overhauling its Anti-Money Laundering ('AML') framework, transforming its regime through new legislation in 2017 into a model that has been lauded by the Financial Action Task Force ('FATF') for its technical compliance with international best practice. Anti-corruption and AML legislation are symbiotic tools leveraged by the Saudi authorities to control the legitimate flow of funds within the Kingdom, preserving the sustainability of its economic development as it moves to become a global hub of tourism and commerce.

As the Kingdom continues on its accelerated trajectory, investors looking to capitalise on its progressive vision will be keen to understand the measures in place to protect their business interests. Whilst there is no certainty as to how the future will unfold, it seems likely that the government will continue to strive to keep up with global best practice in order to encourage and promote its sustained growth.

Mozhdeh Zandieh-Grayson
The Weight of War 1st. Narration (from THEM series)
Photo-Sculpture
Cardboard, Ceramic Clay, RGB Lights and Mirror
@mozhdeh.z.grayson

Curated by Rebia Naim @EmergingScene

At the Heart of the Agenda: Qatar's New Laws on Anti-Money Laundering and Counter Terrorism Financing

Ibtissem Lassoued
Partner, Head of Advisory
Financial Crime
i.lassoued@tamimi.com

In the next phase of the seemingly inexorable march of Anti-Money Laundering and Counter-Terrorism ('AML/CTF') reform in the Middle East region, Qatar was due to face assessment by the Financial Action Task Force ('FATF') during the summer months concerning its controls against the illicit flow of funds. Replicating a pattern that has become the recognized approach for countries facing impending evaluation by the FATF, Qatar has concentrated its efforts over the past 18 months to introduce significant updates to its AML/CTF framework. In light of the monumental pressure that has rocked the global economy since the onset of the current health crisis, however, reform in this particular area in Qatar has been brought into a confluence of contextual factors that increase its importance, as the government attempts to balance the demands of cash flow in its economy against the need for stricter controls.

Adaptations provoked by the ongoing global health crisis, however, do not fall squarely on one side of the FATF assessment process. Whilst compliance functions grapple with new risks and vulnerabilities raised by altered working practices and alterations in macro flows of funds, FATF assessors are equally compelled to amend their evaluation methodology to accommodate the health and safety precautions required by all private business. The FATF has adjusted both its methodology and its timeline for on-site visits, meaning that Qatar will undergo the most substantive part of its examination via desk-research at a later date yet to be confirmed, with possible plenary discussion slated for June 2021; four months later than originally planned. In the grand scheme of AML/CTF evolution, four months can hardly be considered a sufficient length of time for a country to implement substantial change to its AML/CTF system.

But, in the context of Qatar's recent efforts to overhaul its legislative framework, the delay may provide critical time for the authorities to improve the effectiveness of new systems and protocols; a key metric of assessment under the FATF methodology.

Changing the Anatomy of the System

Judging by the extent of the legislative reforms that have been introduced, Qatar is evidently keen to show that it has taken the necessary steps to address the deficiencies in its AML/CTF framework identified by the FATF in its previous Mutual Evaluation Report ('MER'), published in 2008.

Law No. 20 of 2019 Promulgating Law of Anti-Money Laundering and Combating the Financing of Terrorism ('AML Law') came into effect in September 2019 as the first standalone update to Qatar's AML/CTF framework in almost 10 years, replacing Law No. 4 of 2010, with a central focus on implementing international best practice. Many of the provisions within the AML Law (and the Executive Regulations issued by Cabinet Resolution No. 41 of 2019) have been intentionally drafted to adopt identical language and structure of provisions used in the FATF 40 Recommendations to ensure that the full extent of the FATF standards are reflected within domestic legislation. From a high level, the new provisions are orientated towards providing broadened scope and stronger powers for the authorities to prosecute money laundering and terrorist financing offences, introducing stronger sanctions for deterrence, widening the extent of criminalised activity and enhancing the ability of the authorities to co-operate with international counterparts in cross-border efforts.

Whilst the modernisation of its legislation is an important development for Qatar, many of the provisions replicate measures that have already been implemented in other countries at a more advanced stage in enshrining AML/CTF protections into law. The risk based approach that is required for Financial Institutions ('FI') and Designated Non-Financial

Replicating a pattern that has become the recognized approach for countries facing impending evaluation by the FATF, Qatar has concentrated its efforts over the past 18 months to introduce significant updates to its AML/CTF framework.

Businesses and Professions ('DNFBPs') is a landmark feature of contemporary AML/CTF best practice, and other requirements such as the maintenance of records for financial intelligence purposes has also become par for the course in many more developed systems. The replicative outline of the provisions is an inevitable consequence of closer adherence to the FATF's 40 Recommendations, as countries across the world attempt to align their systems with the prescribed practices as closely as possible. Whilst the skeleton of the

laws may be somewhat genericised, however, requirements such as those that refer to the National Risk Assessment simultaneously maintain a broad awareness and better management of Qatar's specific money laundering and terrorism financing risks amongst key stakeholders.

Counter-Terrorism Financing and Sanctions

Some of the most significant changes have been brought about by Law No 27 of 2019 on the Issuance of the Counter-Terrorism Law ('Counter-Terrorism Law'), which goes a long way to strengthening Qatar's focus on internal and external threats from terrorist organisations. Under the new law, Qatar has established a new National Counter-Terrorism Committee, tasked with co-ordinating the efforts of all relevant stakeholders responsible for implementing defences against terrorist activity. This is a new centralised approach, involving active participation in international delegations, preparing and supervising a national strategy for combating terrorism and raising public awareness of the risks related to terrorism.

The Counter Terrorism Law also encapsulates Qatar's revised framework for imposing targeted financial sanctions. Whilst Qatar has been a member of the UN since 1971 and its obligation to implement United Nations ('UN') sanctions is not novel, the level of transparency and accessibility around a comprehensive sanctions framework has been a key deficiency. Under previous legislation, Qatar was criticised by the FATF for having an incomplete framework, which lacked provisions for designating terrorists, or freezing funds under specific UN Security Council Resolutions. Supplementary legislation has also been brought in to support Qatar's efforts to improve transparency by imposing additional reporting and disclosure requirements and record keeping for financial intelligence purposes.

Arterial Legislation

The authorities have taken an holistic approach to legislative evolution, introducing not only new flagship legislation but also a tranche of supporting regulations that disseminate the impact of the new AML/CTF laws throughout the financial system. Effectively creating a trickle-down effect, supervisory bodies in Qatar have issued various decisions imposing direct obligations on regulated entities and clarifying the procedures and responsibilities of the supervisory bodies themselves in order to reinforce the requirements of the AML Law and Counter-Terrorism Law.

By way of example, the Board of Directors of the Qatar Financial Markets Authority ('QFMA') has issued the new Anti-Money Laundering and Counter-Terrorism Financing Rules which entered into force in February 2020 and are applicable to all financial markets, listed companies and funds, and private business supervised and/or licensed by the QFMA. Whilst the rules largely echo the requirements of the AML Law, they also offer additional regulations and guidance on specific AML/CTF compliance aspects to enable subject companies to form and maintain robust control programmes that are reflective of best practice. The role of the QFMA in mandating high standards of AML/CTF compliance is especially important given its overall objective of attracting foreign investment to the country and protecting the interests of investors.

Likewise, the Qatari Public Prosecution also issued Decision no. 1 of 2020 ('Decision'), relating to the implementation of a mechanism for targeted financial sanctions against terrorism financing and proliferation financing, under the provision of the Counter Terrorism Law. The procedures outlined in the Decision scope out a clear role for the Public Prosecution to designate individuals and entities pursuant to UN Security Council Resolutions or on the recommendation of the National Counter Terrorism Committee or relevant foreign authority. This legislative reinforcement is designed to introduce more transparency and efficiency to the sanctions framework and, particularly in the case of its domestic sanctions list, will grant more autonomy to the Qatar government to implement its own restrictions within its system, co-operate with foreign counterparts, and also the provide an effective remedy for legal or natural persons that wish to challenge their listed status.

The authorities have taken an holistic approach to legislative evolution, introducing not only new flagship legislation but also a tranche of supporting regulations that disseminate the impact of the new AML/CTF laws throughout the financial system.

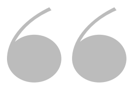
In other jurisdictions, the role of overseeing sanctions designations lists is commonly carried out by other authorities, such as those concerned with import and export matters. By installing the Public Prosecution at the centre of efforts to enforce counter-terrorism provisions and sanctions, however, Qatar has created a mechanism that may prove to be more responsive when it comes to criminal matters involving the enforcement of targeted sanctions which, in turn, has the potential to act as an effective deterrent for criminal or terrorist actors seeking to abuse Qatar's financial system.

Beyond the implementing measures of the AML Law and Counter Terrorism Law, Qatar has sought to introduce reinforcing legislation in ancillary parts of its legal framework. For example, the Cabinet recently issued Resolution No. 18 of 2020, introducing a Code of Conduct and Integrity Charter for Public Officials ('Charter') in order to increase efficiency and transparency of state functions, which are responsible for a considerable proportion of funds that flow through the Qatari commercial and financial sectors. The Charter codifies some of the commitments made by Qatar as a ratifying member of the United National Convention Against Corruption and, whilst it does not directly relate to AML/CTF controls, is fundamental to preserving the underlying integrity in governance that it critical to maintaining a stable AML/CTF framework.

Maladies in Implementation

Whilst piecemeal changes constitute relatively minor revisions in isolated contexts, the combined impact of modifications is a more robust level of defence against financial crime and can represent an opportunity for authorities to capitalise on a more sophisticated capacity to detect and prevent the illicit flow of funds.

The process of bringing legislation in line with international best practice is not unique to Qatar; all countries that have undergone FATF assessment have emulated this pattern of transformation to varying degrees. Previous examples of countries attempting to maximise their evaluations have given rise to several trends that we can expect to see over the coming months on the periphery of the FATF assessments in the Middle East. One of the most fundamental elements of an effective framework is the ability of the authorities to raise awareness around the specific threats related to money laundering and terrorism financing, and the way in which emerging trends interact with these risks. Considering that Qatar's new laws are in their relative infancy, it is likely that there will be a degree of disparity between Qatar's current levels of technical compliance with AML/CTF standards and its effectiveness score (which is the score the FATF awards



The process of bringing legislation in line with international best practice is not unique to Qatar; all countries that have undergone FATF assessment have emulated this pattern of transformation to varying degrees.

based on its practical immediate outcomes). Closing this gap will likely be a key priority for the Qatari authorities over the coming months before the start of the assessment. Qatar does not stand alone in facing this issue, however. As mentioned, other countries that have recently undergone their Mutual Evaluation assessment also show the signs of Governments needing to bring practical transformation up to speed with the pace of legislative reform, as authorities race towards best practice and their long-term strategic visions.

Keeping a Steady Rate – Next steps for Qatar's AML/CTF

Irrespective of the FATF assessment, effective implementation of Qatar's new laws will require a stringent and proactive approach by the Qatari authorities in order to provide the intended protection for the national economy. Inevitably with such extensive alterations to practices that permeate so many life systems of the state – the private sector, the financial system, law enforcement, supervisory bodies and the judiciary – there is a period of adjustment, as operations are perfected and efficiencies are created. But as stronger controls osmose into the everyday functioning of Qatar's system at the cellular level, these changes will provide the authorities with the necessary tools to maintain a much tighter grip on the flow of funds that rush through the national financial infrastructure.

It is not enough for the Qatari authorities to punctuate their AML response with brief spells of attention and activity, treating the FATF assessment as a curlicue to round off their efforts of the past 18 months with a flourish. The authorities will need to ensure their finger is kept on the pulse and their efforts are sustained at a steady rate for the remainder of the revised FATF assessment period and beyond, if they are to be successful in their efforts to protect the health of the financial system.

Lauris Zailaa'
We Are All Visitors II
Digital Creation
Variable dimensions
@lauriszailaa

Curated by Rebia Naim @EmergingScene

The Writing is on the Wall: Amendments to the Integrity and Anti-Corruption Law in Jordan

Khalid Al Hamrani
Partner, Head of Financial Crime
k.hamrani@tamimi.com

Mohammed Al Shobaki
Senior Associate
Litigation
m.alshobaki@tamimi.com

In 2019, the Jordanian Integrity and Anti-Corruption Law No. 13 of 2016 as amended ('JIAC Law') introduced critical amendments to the legislation that governs the Integrity and Anti-Corruption Committee ('JIACC', 'Committee'), the primary authority responsible for combating and preventing corruption in Jordan. The JIAC Law emphasises the Committee's administrative and financial independence, and enhances its ability to be an objective authority. Independence and objectivity are two of the fundamental principles required to ensure an effective oversight function, and efforts to enshrine these qualities in law are symbolic of the underlying resolve to combat illicit practices in Government.

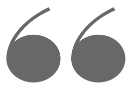
Whilst the 2019 amendments did not introduce widespread reform, developments were concentrated on particularly significant facets of the JIAC Law and, as such, have the potential to disproportionately strengthen anti-corruption controls in Jordan.

Financial Independence

The eponymous and defining characteristic of financial crimes is the element pertaining to the flow of funds; whether it is an issue of money laundering to hide the proceeds of crime, financing illegal organisations, or embezzling funds from organisations, the nature of the crime revolves around the ways and means in which funds have moved from one party to another. Likewise, in corruption cases, whilst bribes are broadly defined, financial or material benefit is the most common incentive that is leveraged as a bribe in order to influence the actions of the recipient. As such, financial independence is crucial to protecting the integrity of agency for anti-corruption authorities, as it ensures that the work of the JIACC is not reliant on the fiscal support or approval of other Government bodies.

Article 3 of the JIAC Law was amended to allow the JIACC to own both moveable and immovable assets, expanding on previous articles that only allowed the JIACC to own moveable assets. In practice, the new ability of the JIACC to own immovable assets such as land and real estate will allow it to accrue greater funds and assets without the assistance of other governmental entities, thereby reducing its dependence on favourable will in Government to sustain its funding and activities.

In addition, Article 6 of the previous JIAC Law was amended to specify that the remuneration of JIACC members is aligned with that of the Chief Justice Council and deputies, where previously it was assigned by the Prime Minister. By cementing parity between the JIACC and another branch of the judiciary, there is a reduced risk that salaries can be used in isolation as a tool to pressure the members into complying with external wishes.



Independence and objectivity are two of the fundamental principles required to enable an effective oversight function, and efforts to enshrine these qualities in law are symbolic of the underlying resolve to combat illicit practices in Government.

Administrative Independence

It should go without saying that administrative independence is the bedrock of any oversight function.

In recognition of this crucial capacity, Article 7 was revised to dictate that, as a general rule, a member cannot be removed from their position in the JIACC until expiry of the membership period. By reducing the opportunity for dismissal of members during the course of carrying out their responsibilities, the likelihood of disciplinary action as a form of retaliation for decisions taken during investigations is diminished.

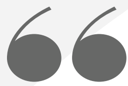
Article 9 introduced a new provision granting authority to the Chief of the JIACC to enter into contracts and agreements with third parties, as well as the right of direct management of the JIACC's funds, thereby allowing the JIACC to enter into an agreement or contract without requiring the approval of any other body.

In addition, Article 10 was amended to award the JIACC the right to appoint a Secretary General, stating that the responsibilities and authorities attached to the position would include the right to prepare yearly budgets, manage the executive body of the JIACC, and suggest restructuring of the executive body of the JIACC.

Stricter Rules for More Effective Protection

Whilst measures that protect the independence of the JIACC are important, the amendments to the JIAC Law also enhanced the operational powers of the Committee to bolster its effectiveness.

Article 5, for example, was amended to widen the scope of the JIACC's authority to investigate any kind of activity that it



Amending anti-corruption legislation to encapsulate the activity of foreign officials and employees of international organisations in addition to domestic public officials is now considered best practice for legislation.

considered to be corrupt. In effect, this will allow the JIACC almost unfettered discretion to initiate investigations into a wider range of conduct, without being prohibited by limitations in the definitions provided by the JIAC Law. Likewise, Article 16 was also amended to award the JIACC the authority to investigate complaints that are being overseen by the Court, or complaints where a final judgment has already been issued. This amendment is significant as it grants the JIACC authority to investigate claims and complaints even if judgment has already been issued, thereby adding a layer of protection to the efficacy of the judicial system where investigative measures may not have been applied to detect potential instances of corruption.

Article 20 enhances the investigative capacity of the JIACC by extending its authority to request documentary evidence from both natural and legal persons during the course of an investigation. Previously, this provision had been limited to legal persons, creating a potential lacuna that may have allowed corrupt individuals to conceal vital evidence from the JIACC during its enquiries. Article 29 has also extended the investigative reach of the JIACC as it has removed any statute of limitation on crimes related to corruption, leaving liability for life for those who commit corruption offences.

One further area of development that has been targeted by the amendments to the JIAC Law is the inclusion of foreign officials and employees of international organisations within the scope of public officials to whom corruption offences are applicable under Article 23. Amending anti-corruption legislation to encapsulate the activity of foreign official and employees of international organisations, in addition to domestic public officials, is now considered best practice for legislation, as it ensures that countries do not become attractive hosts for corrupt officials from overseas who harbour the belief that they can compromise the integrity of foreign countries, and gain unjust enrichment at their expense, with impunity.

Conclusion

The latest tranche of revisions to the JIAC Law introduced targeted, but effective, adjustments to the functioning and capacity of Jordan's primary anti-corruption body. By augmenting the financial and administrative independence, the investigative reach and scope of officials, subject to oversight by the JIACC, the legislation in Jordan is reflective of an amplified aversion to corrupt practices in government and a magnified capacity to combat it.

Oliver Schibli
Time is Precious
Acrylic, gold metal leaf on canvas
170 x 150 cm
@oliverschibliart

Curated by Rebia Naim @EmergingScene

Putting the Pieces Together: Anti-Corruption and Competition Defence Mechanisms

Ibtissem Lassoued
Partner, Head of Advisory
Financial Crime
i.lassoued@tamimi.com

Mariam Sabet
Senior Associate
Competition,
Intellectual Property
m.sabet@tamimi.com

The old adage of crises providing useful opportunities for reform posits a bright outlook for dark times, but businesses trying to sustain their livelihood through difficult periods often face more confronting circumstances. Irrespective of the source or scale of a crisis, all such events have the potential to cause significant disruption to businesses that are attempting to operate within the affected vicinity. This can be through interruptions to the supply chain, diminution in consumer demand, collapse of operations infrastructure, or severance from consumer markets. Whether these obstacles occur suddenly or are looming on the horizon behind an impending catastrophe, businesses are faced with serious cash flow problems, and in some cases existential threats to their survival.

Companies that are affected by such circumstances are put under exceptional pressure to find ways to sustain their business and, in some instances, this can be sufficient to persuade them to compromise their values, attempting to gain undue advantage over market competitors by crossing the ethical line. The nefarious methods available to companies that vie for advantageous position are multifarious, with schemes that can include both anti-competitive and corrupt practices. Despite the divided nomenclature, both anti-corruption and anti-competition risks arise in similar circumstances and often plans involving one will contain elements of the other. Procurement processes in particular, for example, exhibit significant linkages between anti-competitive practices and corruption methodologies, whereby bids can gain more favourable responses by way of paying bribes or by colluding with other companies for example.

The laws that govern these two separate types of wrongdoing are divided: UAE Federal Law No. 4 of 2012 sets out the initial competition protections with its implementing regulations passed in 2014 and further Cabinet Resolutions

Anti-corruption and competition policies are interrelated pieces of a company's defence, and companies need to make sure they are locked in place and functioning effectively.

passed in 2016 with respect to market share thresholds; in Saudi Arabia, more recent legislation was passed in September 2019. Anti-corruption provisions, meanwhile are contained in widespread laws in both the UAE and Saudi Arabia. In practical terms, however, there is significant overlap in the defences that are deployed against them. The primary measure that is used by companies against such practices, which carry significant legal implications under the law, is internal compliance programmes that prohibit certain types of behaviour that would invoke liability for anti-competitive practices or corruption offences.

Internal policies need to be robust, but they also need to be user friendly and understood by employees in order for implementation to be effective. Controls that address the relevant points under the law in Middle Eastern countries but which fail to take into account the risks and scenarios that arise for employees on a daily basis are rarely effective, as they fail to demonstrate to employees how they should be applied to routine occurrences in the course of operations. For example, if the internal code of ethics of a UAE company prohibits employees from accepting any improper benefit (in compliance with Law No. 3 of 1987 (as amended) promulgating the Penal Code) yet it does not offer any guidance to employees on how to assess and/or identify gifts that may constitute a bribe (and those that do not), the effectiveness of the policy will be fatally undermined. Likewise, internal competition policies may demonstrate a general commitment to avoiding behaviours that would exploit market power, but this is only fractured protection if the policy does not also identify and explain how certain commercial decisions, such as pricing and discount, may trigger accusations of abusing a dominant position.

The specific competition and corruption risks that arise in the course of business vary between sectors and countries, shaped to the wider context of the regulatory environment, business and compliance culture and economic conditions. As such, it is important that policies are tailored to anticipate the specific risks and scenarios they are designed to prevent, and that employees are properly trained on how to understand and implement them. In the event of crisis, internal controls are put under intense stress as external conditions ramp up the pressure and companies are driven to look for new ways to navigate the market. Anti-corruption and competition policies are interrelated pieces of a company's defence, and companies need to make sure they are locked in place and functioning effectively to keep themselves running, even during a time of crisis.

Common Mechanisms Used to Gain Advantage

CORRUPTION

1. Inflated Purchase Prices and Kickbacks

Where large-scale supply agreements are available, vendors may agree to charge inflated sums for the goods, assuring the award of the contract in exchange for diverting a portion of the funds back to key individuals within the company that have requested the bribe.

2. Manipulating Procurement Process

Large-scale projects, particularly in construction, often feature extensive procurement requirements that are vulnerable to corruption offences. Key stakeholders with familiarity in the processes may concoct any number of schemes designed to circumvent these rules, orchestrated with the involvement of an inside employee who is complicit in the scheme and receives personal benefit from his or her involvement in awarding the contract.

3. Gifts and Hospitality

Bribes may be offered in the guise of corporate hospitality or honorary exchanges, as part of a quid pro quo exchange. Ultimately, it can be difficult to identify where gifts depart from acceptable corporate practices and are being used to disguise an ulterior motive, and employees must be trained on a regular basis on how to recognise red flags and kept appraised of any relevant legislative changes in the Middle East.

COMPETITION

1. Cartels

Cartel behaviour arises when horizontal relationships form between competitors in order to manipulate market conditions. This can involve any agreement or arrangement amongst competitors to prevent other parties entering the market or joining existing coalitions. Cartel behaviour can price other suppliers out of contention or, where suppliers are limited, may drive up the price for consumers.

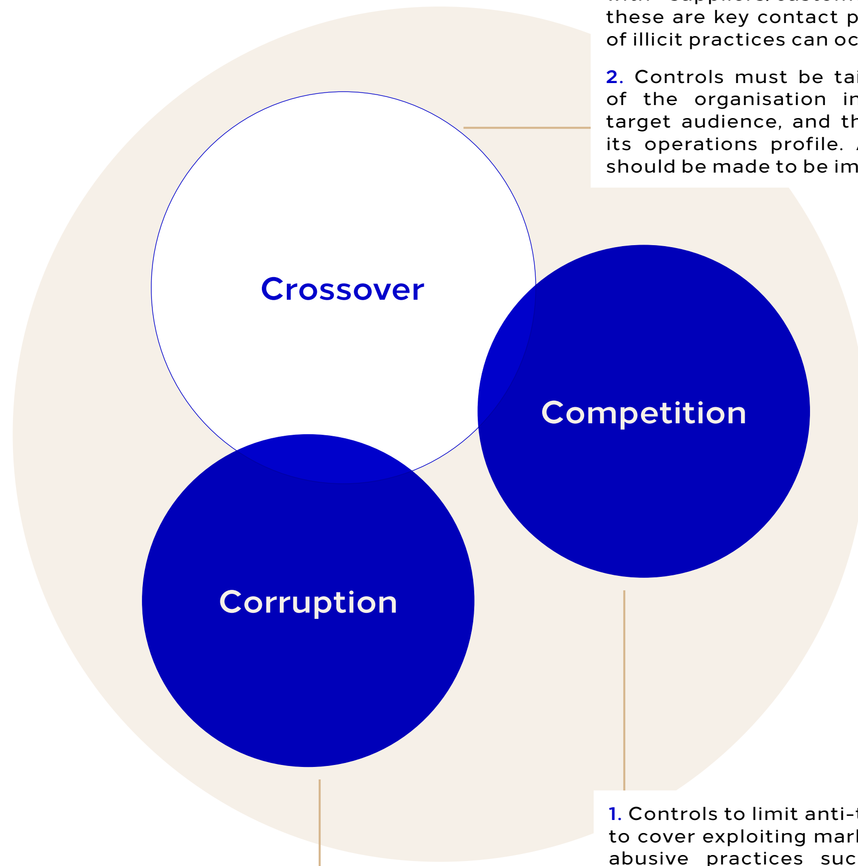
2. Vertical Restraints

Vertical restraints arise between non-competitors operating at different levels of the production or distribution chain, and restrictions may be imposed on the conditions under which the parties may purchase, sell resell certain goods or services. One of the most common types of vertical restraint is that of Resale Price Maintenance ('RPM').

3. Abuse of Dominant Positions

Whilst it is not illegal to hold a dominant market position, anti-competition laws prohibit abuse of such positions, which attracts a higher level of scrutiny. Abuse of a monopolistic or an oligopolistic position can involve various practices, including quantitative manipulation creating false supply or demand, or refusing to deal under customary commercial conditions.

Assembling Effective Defences



Crossover

1. Both anti-competition and anti-corruption policies need to offer guidelines in dealing with competitors and guidelines in dealing with suppliers/customers/distributors, as these are key contact points at which risks of illicit practices can occur.

2. Controls must be tailored to the needs of the organisation in question and its target audience, and the vulnerabilities of its operations profile. An effective policy should be made to be implemented.

Corruption

1. Policies must cover requirements that strictly abide by the tender process as well as how to handle circumstances whereby improper conduct is solicited. Checks and balances need to be imposed on employees with control of the bidding process as well as a proper oversight and record mechanism for all communication with the potential Client.

2. All circumstances where gifts and hospitalities are permitted to be exchanged must be clearly outlined, in addition to indicators that signify where a gift or offer of hospitality may be construed as a bribe under the broad provisions of anti-corruption laws.

3. From a practical perspective, policies must offer guidance on scenarios that pose higher risk of corruption and correct procedures for responding to them. High-risk scenarios may include points in operations that engage with the public sector, which is commonly subject to stronger protections, or specific activities that involve bidding for commercial contracts.

Competition

1. Controls to limit anti-trust exposure need to cover exploiting market power, including abusive practices such as high pricing, refusals to supply, price discrimination, and setting discounts at predatory levels or in a manner aimed at foreclosing the market.

2. Anti-competitive typologies often involve collaboration between companies. Whilst collaborative efforts in areas such as research and development can be hugely productive, safeguards need to be imposed against the exchange of competitively sensitive information. All forms of collaboration must be vetted to avoid cartel behaviour.

Yulia Verigina
Crossroads
Acrylic on canvas
120 x 100 cm
@yulia_v_artist

Curated by Rebia Naim @EmergingScene

Circling Back to Basics: Anti-Money Laundering Regulations for Designated Non-Financial Businesses and Professions in the UAE

Mohamed Kenawy
Senior Associate
Financial Crime
m.kenawy@tamimi.com

For decades, jurisdictions worldwide have spent significant efforts on combating money laundering and terrorist financing. Most protective frameworks focus on introducing new regulations/obligations to the relevant Anti-Money Laundering ('AML') national legislation in a way that aligns with international standards. The leading international standards are the 40 recommendations of the Financial Action Task Force ('FATF'), an inter-governmental body responsible for setting international best practice in this area by developing and promoting control policies so as to protect the global financial system against illicit flows of funds.

In the last 10 years in particular, there has been significant development of the recommendations and standards established by FATF in response to the threats and activities of the contemporary financial system. Amongst these important developments is the increasing importance of non-financial sectors, also known as gatekeeping industries that play an important role in controlling the flow of funds. A broad range of activities undertaken in non-financial sectors is covered by the recommendations of the FATF, which require the regulation of services provided by sectors termed Designated Non-Financial Businesses and Professions ('DNFBPs'). Regulations applicable to DNFBPs involve requirements to identify, assess and take preventative actions to mitigate any risks of being involved facilitating the transfer of illicit proceeds for money laundering or terrorist financing purposes.

One of the main requirements that is applicable to both Financial Institutions ('FIs') and DNFBPs is the completion of Customer Due Diligence ('CDD') when dealing with a new client. This process involves obtaining and verifying specific details, whether they are an individual or legal entity, referred to as Know Your Client ('KYC') requirements, as well as some other elements where there is an elevated risk. Additionally, FIs and DNFBPs should maintain a record of all transactions with their Clients and must ensure that the information is readily available in the event that they are subject to an information request from the authorities in the event of an investigation. Where any of these activities are outsourced to a third party service provider, if permitted under the law, third party involvement should be closely monitored by FIs and DNFBPs and any suspicious transactions should be directly reported to the competent authorities.

In parallel with regulatory developments however, criminal actors have also developed their tools for obscuring the flow of funds via non-financial sectors, in order to benefit from the comparatively relaxed restrictions imposed on DNFBPs compared to FIs. This remains an area of ongoing reform however, authorities in many jurisdictions, including the UAE, are continuing their efforts to include DNFBPs within the scope of their national AML frameworks.

Steps Taken by the UAE

The UAE has extended some obligations contained within Federal Decree Law No. 20 of 2018 on Anti-Money Laundering and Combating the Financing of Terrorism and Illegal Organizations ('AML Law') to apply to DNFBPs in an attempt to prevent the involvement of those sectors in money laundering operations.

Most recently, in March this year the UAE Ministry of Economy issued a circular relating to the AML obligations of DNFBPs ('Circular') in an effort to reflect the recommendations of the FATF. The timing of the Circular is significant, as it follows the recently published UAE Mutual Evaluation Report ('MER') published by the FATF summarising the results of its on-site evaluation of the UAE's compliance with the 40 Recommendations.

In the MER, the FATF urged the UAE to take immediate action to address the financial crime risks it faces, which are elevated by its status as a major global financial centre and trading hub. The report highlighted the significant risks resulting from its extensive financial, economic, corporate and trade activities, as a global leader in oil, diamond and gold exports, in addition to its geographic location between high-risk countries and its financial and commercial free zones.

In this context, the obligations outlined in the Circular aim to mitigate the risks of specific sectors being used as conduits for money laundering and terrorist financing operations, in response to points in the MER that highlighted that such activities have involved DNFBPs (in particular the real estate and precious metals' sectors, the gold and diamond trade sector, corporate service providers as well as accountants and auditors), and that these groups are more likely to be susceptible to money laundering and terrorist financing operations.

In March this year the UAE Ministry of Economy issued a circular relating to the AML obligations of DNFBPs ('Circular') in an effort to reflect the recommendations of the FATF.

What are DNFBPs and Why are they Covered?

DNFBPs are defined in Article 3 of Cabinet Resolution No. 10 of 2019 Concerning the Implementation of the AML Law ('Implementing Regulations'), encompassing a range of activities and sectors.

The scope of DNFBPs includes certain activities involving the sale and purchase of real estate, dealers in precious metals and precious stones, trust and company service providers, auditors, accounting service providers and lawyers.

Although the above categories fall outside the scope of FIs, their defining similarity is that they all conduct specific financial activities on behalf of their clients that may be used to obscure the ultimate beneficiaries or source of funds behind transactions.

There is general consensus, therefore, that DNFBPs' practices are exposed to several risk areas relating to money laundering and terrorist financing activities which certainly have negative impacts on the global financial system. Those risks vary according to the money laundering methodology related to such professions, and take different forms depending on the profession itself.

One clear area of risk, for example, is where DNFBPs may be involved in assisting individuals or corporate entities to establish companies that, unbeknownst to the DNFBPs, are intended to be used as a conduit for the proceeds of crime. Another area of risk would be assisting clients in transferring assets/ funds, for example, in the purchase of real estate or other precious commodities using illicit funds.

For criminal actors, the sale and purchase of real estate can be an attractive way to conceal 'dirty' funds and store large sums of money in a safe investment. Where real estate is purchased through a proxy actor or associate, the ultimate beneficial owner can add an additional layer of concealment to protect their anonymity and their investment should they become the subject of 'freezing or seizing' measures as part of criminal proceedings.

Likewise, the purchase of precious metals is another common tool used by criminal networks for converting, transporting and cleaning funds, and lawyers and accountants may be used as intermediaries to transactions in order to conceal the identities of their clients and their involvement in specific transactions. This may take several forms subject to the type of services provided by lawyers and accountants, such as assisting clients in corporate structuring, establishing funds etc. Ultimately, DNFBPs can unwittingly be used in many ways to either conceal the involvement of criminal actors or facilitate a transaction that obscures the criminal nature of funds.

In particular, DNFBPs must be familiar with the risks associated with transferring funds without verifying the identity of the client and/ or a legitimate source for those funds. Also, DNFBPs should be well prepared to respond to any suspicious transactions by reporting to the competent authorities and maintaining diligent records of all client-related activity.

What does the Circular Cover?

The main obligation imposed by the Circular on DNFBPs in the UAE is to follow the provisions of the Federal AML Law No. 20 of 2018 and its executive regulations. Particular emphasis is given to reporting any suspicious transactions to the supervisory authorities, as this is one of the main tools at the Government's disposal to gather financial intelligence, detect illicit activity and take the necessary preventative action. Very limited exception is given to lawyers, notaries, other legal professionals and independent legal auditors where the information related to these operations has been obtained subject to professional confidentiality.

Other obligations applicable to FIs and DNFBPs by virtue of AML Law are as follows:

- identify the crime risks within its scope of activity, whilst continuously assessing, documenting, and updating such an assessment based on the various risk factors established in the Implementing Regulations and maintaining a risk identification and assessment analysis with its supporting data to be provided to the Supervisory Authority upon request;

DNFBPs should assess their internal operations to ensure that they have implemented the full extent of their legal requirements under the UAE's legislative framework.

- take the necessary due diligence measures and procedures and define their scope, taking into account the various risk factors and the results of the National Risk Assessment on money laundering and terrorist financing, and retain the records received during the implementation of this process. The Implementing Regulations specify the cases in which such procedures and measures are applied, and the conditions for deferring the completion of customer or real beneficiary identity verification;
- refrain from opening or conducting any financial or commercial transaction under an anonymous or fictitious name or by pseudonym or number, and maintaining a relationship or providing any services to it;
- develop internal policies, controls and procedures approved by senior management to enable them to manage the risks identified and mitigate them, and to review and update them continuously, and apply this to all subsidiaries and affiliates in which they hold a majority stake;
- promptly apply the directives of the competent authorities for implementing the decisions issued by the UN Security Council under Chapter (7) of United Nations Convention for the Prohibition and Suppression of the Financing of Terrorism and Proliferation of Weapons of Mass Destruction, and other related directives;
- maintain all records, documents, and data for all transactions, whether local or international, and make this information available to the competent authorities promptly, upon request, as stipulated in the Implementing Regulations; and
- follow any other obligations stipulated in the Implementing Regulations.

FIs and DNFBPS that fail to abide with these rules shall be subject to various administrative and financial penalties. These penalties range from warnings to fines between 50,000 dirhams (approximately US$ 13,600) to 5 million dirhams (approximately US$ 1.36 million) for each violation, banning the violator from working in the sector related to the violation for a period determined by the supervisory authority, constraining the powers of the board members or executive managers or owners who are proven to be responsible for the violation including the appointment of temporary inspector. Also, penalties could amount to cancelling the licence of the institution.

In addition to the obligations imposed by the Federal AML Law, the Circular goes one step further and stresses the importance of all the recommendations and standards prescribed by the FATF.

These obligations also include other restrictions and requirements related to the licensing and registration of DNFBPs, establishing internal audit policies and other regular reporting requirements.

In introducing these obligations on DNFBPs, it is evident that the relevant regulatory bodies in the UAE are trying to increase the scope of supervision over financial operations linked to DNFBPs. Whilst these obligations may seem onerous and complex at first, the cost of non-compliance is potentially much higher and guidance is available for DNFBPs that are looking to increase the efficiency and effectiveness of their compliance functions.

DNFBPs can unwittingly be used in many ways to either conceal the involvement of criminal actors or facilitate a transaction that obscures the criminal nature of funds.

What DNFBPs Should Do in Light of the Recent Circular Issued by the UAE Ministry of Economy

As a first step, DNFBPs should assess their internal operations to ensure that they have implemented the full extent of their legal requirements under the UAE's legislative framework. Keeping in mind the context of specific AML risks that are posed to gatekeeper industries, DNFBPs are an essential part of the system defending against illicit flows of funds, and all entities need to implement appropriate defences against the risks posed to their sectors. As the fundamental operatives of any DNFBP, employees are a central part of this solution, and companies should also take all necessary measures to ensure that all employees are aware of the risks and the relevant response procedures.

Improving the compliance framework and boosting employee awareness are core elements of an effective internal AML system and, in future, DNFBPs can expect the UAE to be much more proactive in supervising these functions. The recent Circular issued by the Ministry of Economy, as the supervisory body of most DNFBPs in the UAE, is indicative of the new, more vigilant tone from the top that has been triggered by the FATF MER report. DNFBPs that were previously outside the scope of regulated entities will need to get to grips with at least the basic elements of effective compliance or face punitive measures by the UAE authorities.

Nathaniel Alapide
Untitled
Acrylic on canvas
85 x 65 cm
@alapide_creator

Curated by Rebia Naim @EmergingScene

An Icarian Risk: Ambition and Corruption in Sport

Marja Boman
Senior Associate
Financial Crime
m.boman@tamimi.com

At its best, sport brings people together, setting aside cultural, political, racial and religious differences between people. Major sporting events have grown to become massive international spectacles, attracting athletes and spectators from all over the globe. It is difficult to find a place in the world in which, for example, the FIFA World Cup would be unknown.

Alongside the popularity of major sporting events and leagues, professional sport has become a serious business, providing opportunities for, amongst others, marketing and media companies, sponsors, and merchandisers in addition to the sports clubs and athletes themselves. Despite allowing sporting events to grow and prosper, providing spectators with phenomenal experiences, on the darker side of this burgeoning global industry, lucrative business opportunities may entail illegitimate practices that may have a harmful impact on society as a whole.

Corruption in sport can be understood in many ways. For some, it raises the idea of match fixing or use of performance enhancing substances in relation to a single sporting event or competition. For others, corruption in sport represents a wider phenomenon in society, covering not only the illegitimate practices of a few athletes but also irregularities relating to the wider commercial ecosystem around sports events.

In practice, deliberate attempts to distort the outcome of contest for personal gain can take many forms. Referees and players can take bribes to fix matches; club owners can demand kickbacks for player transfers; companies and governments can rig bids for various sports-related contracts such as organising large-scale sporting events; media rights are sold against kickbacks; athletes acquire and utilise forbidden substances to improve their performance. The list is long.

In recent years, media has been reporting sports-related corruption scandals whirling around various large-scale sporting events. Disciplines like soccer, tennis, snooker and cricket also feature in various research papers addressing corruption, with match-fixing scandals featuring frequently.

Why is it a Big Deal?

One must bear in mind that sport is a billion-dollar business, not only providing a nice daily hobby for people at a grass- root level but also entailing lucrative business ventures and consequently attracting organised international crime. Financial crime yields proceeds which need to be hidden. As a result, sports related money laundering is widespread.

Generally, a high level of corruption hampers the efficiency of governmental operations and decreases prosperity in society, causing suffering for the whole population. Corruption results in unfair competition between businesses that have established illegal connections with government officials and companies that have not had the means to do this, including market entrants, which in turn leads to uneven distribution of wealth. Whilst there are exceptions to the rule, new emerging markets generally feature elevated corruption levels compared to developed countries due to vulnerabilities in legislation, organisation of law enforcement authorities and, sometimes even, political instability.

With the sports industry growing at such a prolific rate in the region, the stakes are high for Middle Eastern countries to ensure that they are viewed as safe and effective hosts of sports events.

Global Efforts Needed

Corruption in sport has become a global policy issue causing organisations like Interpol, Transparency International, and the European Commission to focus on the topic. Interpol has set up a special match-fixing task force to bring together law enforcement authorities from 82 jurisdictions, providing a platform for cross-border investigations and international case co-ordination. Interpol also operates a joint capacity building and training programme with the International Olympic Committee, focusing on competition manipulation. According to Interpol *"the programme is provided to law enforcement, government agencies, sports, betting operators and regulators, and integrates them into our global network"*. Moreover, Interpol conducts media monitoring addressing manipulation of competitions.

Transparency International is a global organisation working in over 100 countries to end the injustice of corruption. Transparency International frequently publishes reports addressing corruption in sport, including contributions from leading experts in the fields of corruption and sport, from sports organisations to governments and sponsors as well as athletes themselves, providing essential analysis for understanding the corruption risks in sport. According to Transparency International, attempts to stop corruption in sport are still at an early stage. In connection with publishing the Corruption Perception Index 2019, Transparency International has highlighted that corruption in sport remains a problem even in the top scoring countries, such as Switzerland.

The European Commission included sport integrity as an important element of its policy agenda. According to a research report on corruption in sport published in 2019, the vast majority of cases identified from recent years in the sample countries were identified as either doping or match-fixing cases, which seem to be the most prominent

Despite numerous international efforts to tackle corruption in sport and local law enforcement in various jurisdictions stretching their extraterritorial powers to indict offenders, corruption in the sports sphere remains an irrefutable reality.

forms of corruption in sport. The European Commission is highlighting fairness in sport, not only from a business perspective, but also as a reminder that tackling corruption ensures access to sport on a level playing field for all.

The Middle East has become a significant playground, as an international sports venue, attracting mega events across a number of disciplines, including Formula 1 racing in the UAE and Bahrain, tennis and horse racing as well as the FIFA World Cup to be held in Qatar in 2022. Coupled with the presence of multiple international sports federations in the region, the attraction of the Middle East as a sports events hub is growing at a phenomenal pace.

Individual Countries Policing the World

When investigating cross-border offences, national authorities play a significant role. The United States is particularly active in prosecuting many sports related corruption offences. For example, in the recent FIFA World Cup corruption cases, the United States is actively prosecuting various FIFA officials sitting in Switzerland who will be facing justice in the United States. The alleged connection of the matter to the United Stated has raised eyebrows among critics, as football (or 'soccer') is a sport that attracts relatively little attention in the US compared to their more popular sports, such as American football, basketball, ice hockey and baseball.

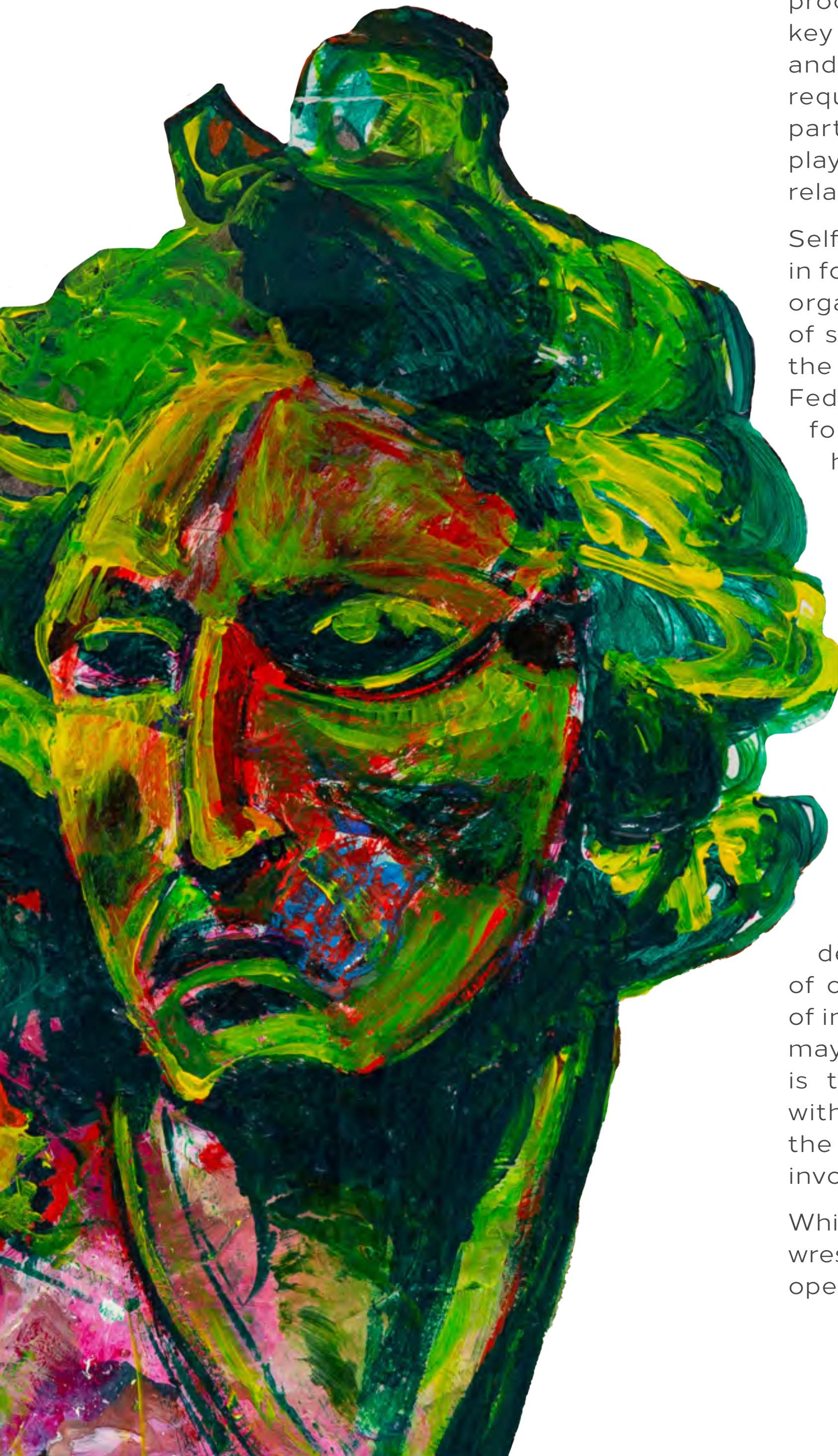
Another prominent jurisdiction for sports related corruption cases is Switzerland, which hosts the headquarters of various sports federations. France also plays an active role, particularly in relation to investigating the allegedly corrupt media rights deals around the FIFA World Cup in Qatar.

Irrespective of which jurisdiction will jump on the case, tackling corruption in sport ultimately benefits the common good of society across borders. In order to obtain the best results, optimising resources and efforts and co-ordinating multilateral investigations should be encouraged. This is only achievable, however, if authorities from different jurisdictions are allowed to share information, taking joint ownership of the investigation and law enforcement action.

How to Tackle the Invisible Rival?

Despite numerous international efforts to tackle corruption in sport and local law enforcement in various jurisdictions stretching their extraterritorial powers to indict offenders, corruption in the sports' sphere remains an irrefutable reality. While law enforcement across the world is suiting up to take the fight to would-be illegal actors, there are also measures that sponsors, media industry and various operators within sports organisations can take in a proactive manner to promote integrity, prevent bribery and detect wrongdoing.

Many sports federations have independently developed self-regulation methods in order to do their part in protecting the integrity of competition. Some of these efforts were initiated as far back as 10 years ago; for example, the International Olympic Committee' Basic Universal Principles of Good Governance of the Olympic and Sports Movement, which focuses on governance structures that preserve integrity in sports organisations.



In the wake of certain scandals in 2016, the Executive Committee of FIFA unanimously approved a set of proposals made by the Reform Committee highlighting multiple elements including: the integrity of the game; avoiding conflicts of interest; independent audits; rejecting discrimination or political interference; separation of powers and religious and political neutrality. FIFA has adopted a comprehensive Compliance Programme to build transparency, foster ethical behaviour, identify risks, define policies to promote integrity and create applicable procedures. FIFA is also co-operating with key stakeholders to prevent match-fixing and fraud. Moreover, widespread reporting requirements are imposed on many interested parties that experience wrongdoing or foul play in the course of conducting football-related business.

Self-regulation and whistleblowing practices in football are only one example. Many sports organisations have discovered the efficiency of self-regulation and proactive measures in the fight against sports related corruption. Federations, such as International Federation for Equestrian Sports and World Athletics have developed codes of conduct of their own, including disciplinary proceedings. The Court of Arbitration for Sport located in Lausanne, Switzerland, operates as the ultimate dispute resolution body having jurisdiction over appeals on disciplinary measures imposed by federations provided that the jurisdiction has been granted in the rules and regulations of the federation in question.

Corruption in sport can be prevented with similar best practices as applicable in any corporate governance environment. These include: timely and detailed record keeping; transparency in decision making; sufficient due diligence of contracting parties; and avoiding conflict of interest etc. What makes sport unique, and maybe even more vulnerable for wrongdoing, is the interplay between grass-root sport with non-profit organisations benefiting the general public and professional sport involving highly lucrative business interests.

While national law enforcement authorities are wrestling with regulations allowing them to co-operate with their foreign homologues, sports

organisations, media companies, sponsors and athletes themselves play an important role in building an ethical environment within the sport. Law enforcement alone cannot act as the safety net in the fight against corruption in sport without self-regulation catching the ball as well.

The Future of Sports Investigations in the Middle East

In light of self-regulation, the growing presence of international sports federations implementing their internal anti-corruption policies and providing whistleblowing channels in the Middle East is excellent news. With recent legislative changes criminalising offences such as private sector bribery, strategic focus on anti-corruption work through specialist anti-corruption authorities, as well as the early emergence of whistleblower protection, extends the impact of national legislation on the sports industry. Middle Eastern jurisdictions have expressed political willingness to address corruption issues in sports and will add their significant might to the fight to ensure a level playing field. With the sports industry growing at such a prolific rate in the region, the stakes are high for Middle Eastern countries to ensure that they are viewed as safe and effective hosts of sports events, and future enforcement action in this area can only help in building important credibility when compared to other countries and international sporting organisations.

Rebia Naim
Founder
Emerging Scene

It has been a long journey from starting out as one of the first champions of the UAE art scene to joining this collaboration with Al Tamimi & Company after I was contacted by the Financial Crime team. When I landed in Dubai on a hot and humid evening in September 2004, I was full of anticipation for the future, facing a journey that, at that time, I had no idea would unfold into such an exhilarating experience. I was 23, French born of Syrian-Bolivian origins and the recipient of a Master's degree in Arts & New Technology of Communication from the University of Nice, Sophia Antipolis (France), and eager to start my foray into all the Middle East's art scene had to offer.

After spending some time as a successful marketing professional, in 2008 I was offered an irresistible opportunity to launch the first art gallery dedicated to emerging photographers in Dubai's industrial area known today as Alserkal Avenue. Despite the timing, during the turbulence of the economic crisis, I had an insatiable passion for art which I still harboured since leaving the French Riviera and I threw myself into the opportunity. As the collective of creatives and artists based in Dubai flourished, I was privileged to witness the power of art first-hand; showing insights into the world we live in, cultural diversity, and unique expressionism.

In 2011, I founded Emerging Scene with a single initiative; the International Emerging Artists Award, which was the UAE's first contemporary art award open to visual artists, providing world class recognition for both Emirati and international emerging artists and career development on the global art scene. In 2016, after five successful years, the award blossomed into more inclusive events based on art calls such as group shows at local and international galleries, brand collaborations, participation in art festivals, community activations at key landmarks and government entities. The vibrancy of these initiatives including Quoz Art Fest and DIFC Art Night, as well as the support of companies such as Meraas and the central government, particularly through the Ministry of Culture and Youth Development, are invaluable to the continued growth of the UAE art scene.

One of the developments that I have sponsored through Emerging Scene is the advancement of digital art shows, which originally were a means to highlight the work of artists that had been sidelined by limited gallery space. Back in 2011, Elevision Media, the UAE's largest broadcast network of digital screens had just been created, and we took the leap together to transition to digital platforms for art. In 2020, particularly in light of the global COVID-19 pandemic, this risk has paid off. Our steady partnership has led us to the creation of the largest digital art gallery, curating the work of 120+ emerging artists on 1,000+ digital screens located in Dubai's and Abu Dhabi's key landmarks, business and residential buildings.

In the 15 years that have elapsed since that first autumn evening, the UAE's creative industry has thrived, and evolved into an unrecognizable hive of artistic talent. Looking back at the development, I am proud to have had a role in this part of history, both as a witness and as an active player in fostering an open canvas for creative and ambitious entrepreneurs to fill with life and opportunities.

United Arab Emirates
Ministry of Justice

50th Year
Issue No. 678
21 Ramadan 1441H
14 May 2020

FEDERAL DECREES

68 of 2020	Appointing a UAE non-resident ambassador to Andorra.
69 of 2020	Appointing a UAE non-resident ambassador to Iceland.
70 of 2020	Appointing a UAE non-resident ambassador to Slovenia and Slovakia.
71 of 2020	Appointing a UAE ambassador to Iraq.
72 of 2020	On the transfer and appointment of a UAE ambassador.
77 of 2020	Repealing Federal Decree No. 129 of 2019 on performing the duties of the Permanent Representative of the UAE to the North Atlantic Treaty Organization (NATO).
78 of 2020	Appointing a UAE non-resident ambassador to Malawi.
79 of 2020	Appointing a UAE consul-general in Milan, Italy.
80 of 2020	On a CEO assignment for the National Counselling Centre.
81 of 2020	Terminating a secondment.
82 of 2020	On loaning an employee to fill the position of Undersecretary of the Ministry of Energy and Industry.

REGULATORY DECISIONS OF THE CABINET

35 of 2020	Approving the Federal Government Staff Performance Management Regulations.

MINISTERIAL DECISIONS

- From the Ministry of Health & Prevention

242 of 2020	Updating the Schedule of Reportable Communicable Diseases.

ADMINISTRATIVE DECISIONS

- From the Emirates Authority for Standardization and Metrology

2 of 2020	Chairman’s resolution approving UAE standard specifications.
5 of 2020	Chairman’s resolution approving UAE standard specifications.

- From the Insurance Authority

17 of 2020	Chairman’s resolution amending Insurance Authority Board Resolution No. 30 of 2016 promulgating the Motor Vehicle Insurance Rate Regulations.
18 of 2020	Chairman’s resolution approving the Electronic Insurance Regulations.
19 of 2020	Chairman’s resolution approving the Guidance Manual for Insurance Companies and Related Professions on Submitting Data, information & Supervisory Reports.

- From the UAE Central Bank

-	Transfer of Significant Shareholding Regulation.

- From the Securities and Commodities Authority

13/R.M of 2020	Chairman’s resolution on the procedures for dealing with listed public joint-stock companies in financial distress.

United Arab Emirates
Ministry of Justice

50th Year
Issue No. 679
8 Shawwal 1441H
31 May 2020

REGULATORY DECISIONS OF THE CABINET

36 of 2020	Concerning the fees for registering on the Federal Suppliers and the Federal Contractors Registers.
37 of 2020	Amending Cabinet Decision No. 4 of 2019 on the Procurement and Warehouse Management Regulations of the Federal Government.
38 of 2020	Amending Cabinet Decision No. 4 of 2015 on the fees for services provided by the Ministry of Infrastructure Development.
39 of 2020	On mandatory standards for regular technical inspection of vehicles in the UAE.

MINISTERIAL DECISIONS

- From the Ministry of Health & Prevention

253 of 2020	On the rules and guidelines for prescribing and dispensing certain controlled medications.
254 of 2020	On the pricing of various medications.
255 of 2020	On the pricing of various medications.
256 of 2020	On the pricing of various medications.

ADMINISTRATIVE DECISIONS

- From the Securities and Commodities Authority

  - Certificate of approval of amendment of the Articles of Association of Agthia Group PJSC.
  - Certificate of approval of amendment of the Articles of Association of Al Hilal Takaful PSC.

United Arab Emirates
Ministry of Justice

50th Year
Issue No. 680
23 Shawwal 1441H
15 June 2020

FEDERAL DECREES

83 of 2020	Transferring the UAE Ambassador to Kuwait to the Headquarters of the Ministry of Foreign Affairs and International Cooperation.
84 of 2020	Transferring the UAE Ambassador to Argentina.
85 of 2020	Transferring the UAE consul-general in Mumbai.
87 of 2020	Appointing a UAE non-resident ambassador to the Principality of Monaco.
88 of 2020	Terminating the duties of a member of the diplomatic and consular corps.
89 of 2020	On a secondment to the post of Director General of the National Qualifications Authority.

REGULATORY DECISIONS OF THE CABINET

44 of 2020 Regulating the submission of reports by multinational companies.

46 of 2020 Amending Cabinet Decision No. 52 of 2017 promulgating the executive regulations of Federal Decree-Law No. 8 of 2017 on Value Added Tax.

MINISTERIAL DECISIONS

- From the Ministry of Interior

243 of 2020 Amending Ministerial Decision No. 178 of 2017 on the rules and procedures for traffic control operations.

244 of 2020 Amending Ministerial Decision No. 130 of 1997 promulgating the executive regulations of Federal Law No. 21 of 1995 on traffic, as amended.

- From the Ministry of Justice

227 of 2020 Authorizing certain officials at the Telecommunications Regulatory Authority to enforce the law as judicial officers.

416 of 2020 On the formation of the Shawwal 1441H Moon Sighting Committee.

456 of 2020 Renewing terms of office of members of tax dispute resolution committees.

- From the Ministry of Health & Prevention

257 of 2020 On the implementation of certain provisions of Cabinet Decision No. 21 of 2018 regulating the marketing of nutritional products for infants and children.

- From the Ministry of Community Development

79 of 2020 Giving public notice of the establishment of the Ulcerative Colitis Patient Support Association.

80 of 2020 Changing the name of the Solidarity Fund for Theatrical Association Members.

81 of 2020 Giving public notice of the establishment of Al Noor Association for the Care and Rehabilitation of Persons with Disabilities.

98 of 2020 Transfer of premises of Emirates Seniors' Friends Association.

101 of 2020 Giving public notice of the establishment of the Women's Health & Happiness Association.

ADMINISTRATIVE DECISIONS

- From the Securities and Commodities Authority
  - Certificate of approval of amendment of the Articles of Association of Abu Dhabi Commercial Bank PJSC.
  - Certificate of approval of amendment of the Articles of Association of United Fidelity Insurance Company PSC.
  - Certificate of approval of amendment of the Articles of Association of Commercial Bank of Dubai PSC.
  - Certificate of approval of amendment of the Articles of Association of Julphar (Gulf Pharmaceutical Industries) PSC.
  - Certificate of approval of amendment of the Articles of Association of Dana Gas PJSC.
  - Certificate of approval of amendment of the Articles of Association of Takaful Emarat PSC.

EURO GULF
GROUP

CREATING BUSINESS OPPORTUNITIES FOR EVERYONE

Euro Gulf Group of companies is managed by independent board of directors who are senior lawyers and partners of Al Tamimi & Company.

Euro Gulf Group provides services by acting as the UAE national shareholder and/or the UAE national service agent for its non-GCC clients' limited liability companies and branches registered in the UAE and the GCC. We also act as a national agent for entities set up under the provisions of the Foreign Direct Investment law of the UAE.

We have been pioneers in helping companies enter the UAE and GCC markets for almost two decades, with a mission to offer businesses a wider access to the UAE and Gulf markets.

Integrity

Trust

Innovation

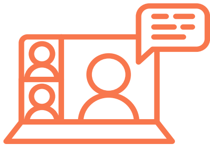
Excellence

Transparency

Customer Centricity

Euro Gulf Group, Level 15, The Maze Tower, Next to Emirates Tower Metro Station, Sheikh Zayed Road, PO Box 9276, Dubai, UAE

: +971-4-318 9980 : Info@euro-gulf.ae : +971-4-331 3089 : www.euro-gulf.ae : @eurogulfgroup : Eurogulfgroup



Our Partners' Meeting went digital!

For the first time, our 70+ partners from across the region joined our mid-year Partners' Meeting via online webinar. The meeting featured business updates, panel discussions and a town hall Q&A.

Since the beginning of the COVID-19 outbreak, we have provided an uninterrupted service to our clients, working remotely or – as restrictions have eased - from the office. Our June Partners' Meeting was another great example of *'Business As Usual'* in unusual times.

(L-R) Essam Al Tamimi, Chairman. Samer Qudah, Managing Partner. Jody Waugh, Deputy Managing Partner. Abdullah Mutawi, Partner, Head of Corporate Commercial. Mohamed Gabr, Partner, Head of Corporate Commercial - Egypt, Khaled Attia, Partner, Head of Dispute Resolution - Egypt and Martin Hayward, Head of Technology, Media & Telecommunications.

5th May 2020

DIFC Fiscal Relief Package and other New Developments

Speakers: Izabella Szadkowska and Noff Al Khafaji

7th May 2020

Joint Webinar with Allied Investment Partners

Allied Investment Partners Webinar: Navigating Through Turbulent Times

Speakers: Andrew Tarbuck, Rafiq Jaffer and Sherif Rahman

7th May 2020

Joint Webinar with Lexis Nexis

Middle East COVID-19 Updates – Qatar

Speaker: Matthew Heaton

13th May 2020

Joint Webinar

Employment Law in Crisis Webinar

Speaker: Ivor McGettigan

18th May 2020

Joint Webinar with Dubai Chamber

COVID-19 and Force Majeure in UAE

Speakers: Essam Al Tamimi, Naief Yahia, Omar Omar and Mohammed Kawasmi

18th May 2020

Joint Webinar with DIFC

DIFC Presidential Directive Update

Speaker: Gordon Barr

19th May 2020

Joint Webinar with Business Finland

Emiratization/Saudization requirements and in country values

Speakers: Ivor McGettigan and Zahir Qayum

19th May 2020

Joint Webinar with Ankura

Bahrain Cybersecurity & Data Protection Workshop

Speaker: Andrew Fawcett

20th May 2020

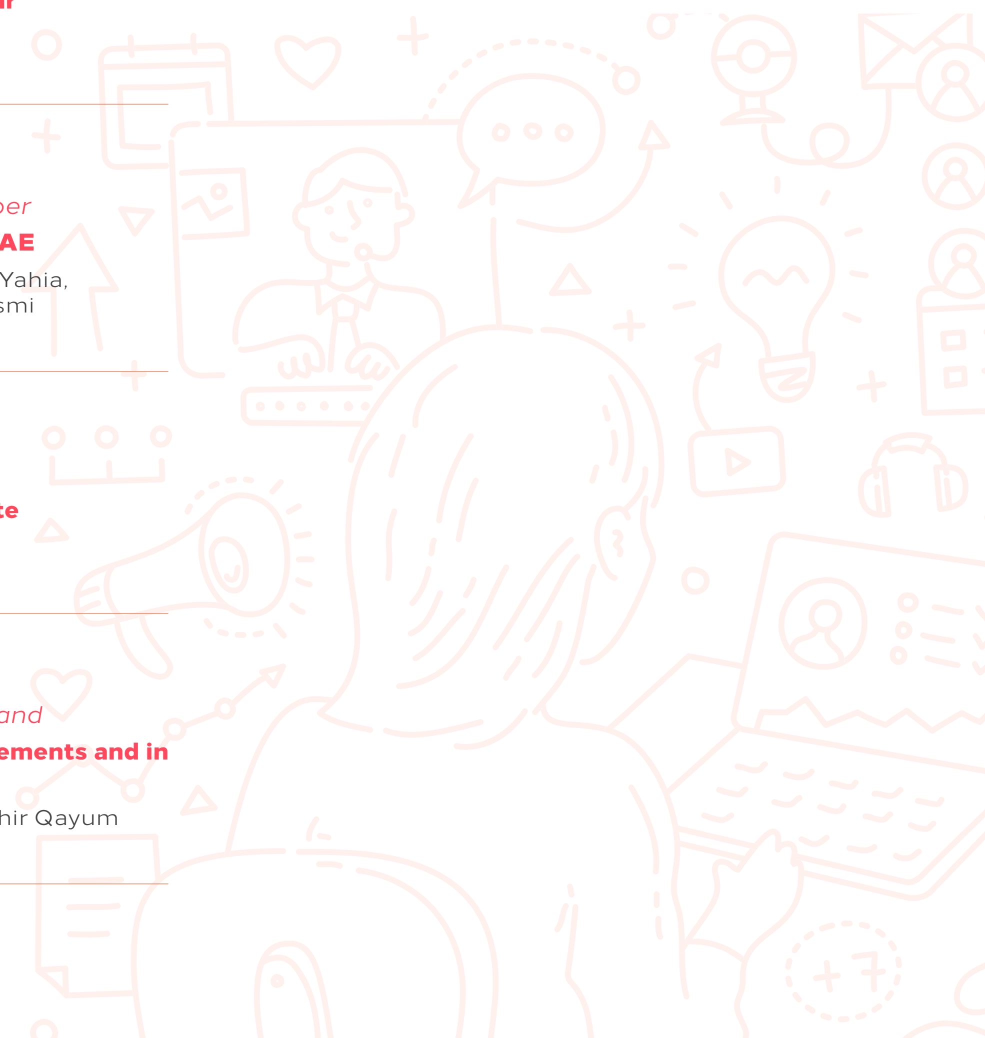
IEG Roundtable Webinar

Speakers: Allison Hosking and Martin Hayward

31st May 2020

UAE Economic Substance Regulations

Speakers: Izabella Szadkowska, Noff Al Khafaji, Shiraz Khan and Janet Gooi



About Us

Al Tamimi & Company has unrivalled experience, having operated in the region for over 30 years. Our lawyers combine international experience and qualifications with expert regional knowledge and understanding.

We are a full-service firm, specialising in advising and supporting major international corporations, banks and financial institutions, government organisations and local, regional and international companies. Our main areas of expertise include arbitration & litigation, banking & finance, corporate & commercial, intellectual property, real estate, construction & infrastructure, and technology, media & telecommunications. Our lawyers provide quality legal advice and support to clients across all of our practice areas.

Our business and regional footprint continues to grow, and we seek to expand further in line with our commitment to meet the needs of clients doing business across the MENA region.

17	9	73	350+
Offices	Countries	Partners	Lawyers
450+	**850+**	**50+**	**1**
Legal Professionals	Employees	Nationalities	Fully Integrated Law Firm

Client Services

Practices

Arbitration • Banking & Finance • Capital Markets • Commercial • Competition • Construction & Infrastructure • Corporate/M&A • Corporate Services • Corporate Structuring • Employment & Incentives • Family Business • Financial Crime • Insurance • Intellectual Property • International Litigation Group • Legislative Drafting • Litigation • Mediation • Private Client Services • Private Equity • Private Notary • Projects • Real Estate • Regulatory • Tax • Technology, Media & Telecommunications •

Sectors

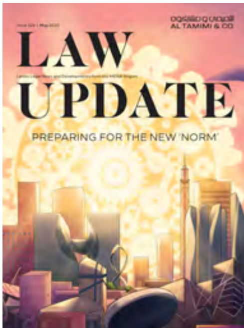
Automotive • Aviation • Education • Expo 2020 • FMCG • Healthcare • Hotels & Leisure • Rail • Shipping • Sports & Events Management • Transport & Logistics •

Country Groups

China • India • Korea • Russia & CIS • Turkey •

Publications

Al Tamimi & Company is at the forefront of sharing knowledge and insights with publications such as Law Update, our monthly magazine that provides the latest legal news and developments, and our "*Doing Business*" and "*Setting Up*" books, which have proven to be valuable resources for companies looking to do business in the region. You can find these resources at www.tamimi.com.



Accolades

Regional Footprint

UAE
Abu Dhabi
Dubai, DIC
Dubai, DIFC
Dubai, Maze Tower
Ras Al Khaimah
Sharjah

Bahrain
Manama

Egypt
Cairo

Iraq
Baghdad
Erbil

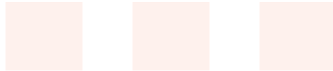
Jordan
Amman

Kuwait
Kuwait City

Oman
Muscat

Qatar
Doha

Saudi Arabia
Al Khobar
Jeddah
Riyadh



Key Contacts

CHAIRMAN
Essam Al Tamimi
e.tamimi@tamimi.com

MANAGING PARTNER
Samer Qudah
s.qudah@tamimi.com

SENIOR PARTNER
Husam Hourani
h.hourani@tamimi.com

Offices

UAE
ABU DHABI
Alex Ghazi
alex.ghazi@tamimi.com

DUBAI, DIC
Ehab Morcos
e.morcos@tamimi.com

DUBAI, DIFC
Husam Hourani
h.hourani@tamimi.com

DUBAI, THE MAZE TOWER
Bassem El Dine
b.dine@tamimi.com

RAS AL KHAIMAH
Ammar Haykal
a.haykal@tamimi.com

SHARJAH
Zafer Oghli
z.oghli@tamimi.com

BAHRAIN
MANAMA
Foutoun Hajjar
f.hajjar@tamimi.com

EGYPT
CAIRO
Ayman Nour
a.nour@tamimi.com

IRAQ
BAGHDAD
Mohammed Norri
m.norri@tamimi.com

ERBIL
Khaled Saqqaf
k.saqqaf@tamimi.com

JORDAN
AMMAN
Khaled Saqqaf
k.saqqaf@tamimi.com

KUWAIT
KUWAIT CITY
Alex Saleh
alex.saleh@tamimi.com

Philip Kotsis
p.kotsis@tamimi.com

OMAN
MUSCAT
Ahmed Al Barwani
a.albarwani@tamimi.com

QATAR
DOHA
Matthew Heaton
m.heaton@tamimi.com

SAUDI ARABIA
AL KHOBAR
Grahame Nelson
g.nelson@tamimi.com

JEDDAH
Ahmed Basrawi
a.basrawi@tamimi.com

RIYADH
Abdullah Mutawi
a.mutawi@tamimi.com

Practices

ARBITRATION
Thomas Snider
t.snider@tamimi.com

BANKING & FINANCE
Jody Waugh
j.waugh@tamimi.com

CAPITAL MARKETS
Andrew Tarbuck
a.tarbuck@tamimi.com

COMMERCIAL
Willem Steenkamp
w.steenkamp@tamimi.com

COMPETITION
Omar Obeidat
o.obeidat@tamimi.com

CONSTRUCTION & INFRASTRUCTURE
Euan Lloyd
e.lloyd@tamimi.com

CORPORATE/M&A
Abdullah Mutawi
a.mutawi@tamimi.com

CORPORATE SERVICES
Izabella Szadkowska
i.szadkowska@tamimi.com

CORPORATE STRUCTURING
Samer Qudah
s.qudah@tamimi.com

EMPLOYMENT & INCENTIVES
Samir Kantaria
s.kantaria@tamimi.com

FAMILY BUSINESS
Richard Catling
r.catling@tamimi.com

Nawal Abdel Hadi
n.abdelhadi@tamimi.com

FINANCIAL CRIME
Khalid Al Hamrani
k.hamrani@tamimi.com

INSURANCE
Yazan Al Saoudi
y.saoudi@tamimi.com

INTELLECTUAL PROPERTY
Omar Obeidat
o.obeidat@tamimi.com

INTERNATIONAL LITIGATION GROUP
Rita Jaballah
r.jaballah@tamimi.com

LEGISLATIVE DRAFTING
Mohamed Al Marzouqi
m.almarzouqi@tamimi.com

LITIGATION
Hussain Eisa Al Shiri
h.shiri@tamimi.com

PRIVATE CLIENT SERVICES
Essam Al Tamimi
e.tamimi@tamimi.com

PRIVATE EQUITY
Alex Saleh
alex.saleh@tamimi.com

PRIVATE NOTARY
Taiba Al Safar
t.alsafar@tamimi.com

PROJECTS
Mark Brown
m.brown@tamimi.com

REAL ESTATE
Tara Marlow
t.marlow@tamimi.com

REGULATORY
Andrea Tithecott
a.tithecott@tamimi.com

TAX
Shiraz Khan
s.khan@tamimi.com

TECHNOLOGY, MEDIA & TELECOMMUNICATIONS
Martin Hayward
m.hayward@tamimi.com

Sectors

AUTOMOTIVE
Samir Kantaria
s.kantaria@tamimi.com

AVIATION
Yazan Al Saoudi
y.saoudi@tamimi.com

EDUCATION
Ivor McGettigan
i.mcGettigan@tamimi.com

EXPO 2020
Steve Bainbridge
s.bainbridge@tamimi.com

FMCG
Samer Qudah
s.qudah@tamimi.com

HEALTHCARE
Andrea Tithecott
a.tithecott@tamimi.com

HOTELS & LEISURE
Tara Marlow
t.marlow@tamimi.com

RAIL
Foutoun Hajjar
f.hajjar@tamimi.com

SHIPPING
Omar Omar
o.omar@tamimi.com

SPORTS & EVENTS MANAGEMENT
Steve Bainbridge
s.bainbridge@tamimi.com

TRANSPORT & LOGISTICS
Yazan Al Saoudi
y.saoudi@tamimi.com

Country Groups

CHINA
Jody Waugh
j.waugh@tamimi.com

INDIA
Samir Kantaria
s.kantaria@tamimi.com

KOREA
Omar Omar
o.omar@tamimi.com

RUSSIA & CIS
Matthew Heaton
m.heaton@tamimi.com

TURKEY
Omar Obeidat
o.obeidat@tamimi.com

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

Chambers Global

Contact Us

UNITED ARAB EMIRATES

Abu Dhabi Al Sila Tower, 26th Floor, Abu Dhabi Global Market Square, Al Maryah Island, PO Box 44046, Abu Dhabi, UAE

T: +971 2 813 0444 / F: +971 2 813 0445

Dubai Internet City DIC Building No. 5, G 08, PO Box 500188, Dubai, UAE

T: +971 4 391 2444 / F: +971 4 391 6864

Dubai International Financial Centre 6th Floor, Building 4 East, Dubai International Financial Centre, Sheikh Zayed Road, PO Box 9275, Dubai, UAE

T: +971 4 364 1641 / F: +971 4 3641 777

Dubai Maze Tower Level 15, Sheikh Zayed Road, PO Box 9275, Dubai, UAE

T: +971 4 331 7161 / F: +971 4 331 3089

Ras Al Khaimah Julphar Office Tower, 39th Floor, Al Jissar Street, PO Box 34053, Ras Al Khaimah, UAE

T: +971 7 233 3841 / F: +971 7 233 3845

Sharjah Al Khan Corniche Street Near Al Qasba Canal 30th Floor, Al Hind Tower PO Box 5099, Sharjah, UAE

T: +971 6 572 7255 / F: +971 6 572 7258

BAHRAIN

Manama Bahrain Financial Harbour, West Tower, 13th floor, Suite 1304, Office 13B, Building 1459, Block 346, Manama, Bahrain

T: +973 17 108 919 / F: +973 17 104 776

EGYPT

Cairo Building No. 5&7 (Star Capital Building), 10th Floor, Geziret El Arab Street, Mohandseen, Giza, Cairo, Egypt

T: +20 2 3368 1000 / F: +20 2 3368 1002

Al Tamimi & Company is associated with Nour & Partners providing legal services in Egypt.

IRAQ

Baghdad Al Harithiya, Kindi St., Dist. 213 Building 106, 1st Floor, Baghdad, Iraq

T: +964 780 029 2929 / F: +964 1 542 0598

Erbil English Village, Gulan Street, Villa No. 130, Erbil, Iraq

T: +964 780 588 7848 / F: +964 750 445 2154

Basra info@tamimi.com.

JORDAN

Amman 6th Circle, Emmar Towers, 11th Floor, Tower B, PO Box 18055, Zip 11195, Amman, Jordan

T: +962 6 577 7415 / F: +962 6 577 7425

KUWAIT

Kuwait City Khaled Bin Al Waleed Street, Sharq, Al Dhow Tower, 16th Floor, PO Box 29551, Safat 13156, Kuwait City, Kuwait

T: +965 2 246 2253 / F: +965 2 296 6424

Al Tamimi & Company International Ltd. provides services in Kuwait through a joint venture with Yaqoub Al-Munayae. Yaqoub Al-Munayae is a registered and licensed lawyer under the laws and regulations of Kuwait.

OMAN

Muscat Al Assalah Towers, Building 223, Block 237, Office 409, Street 3701, Ghubrah South, Muscat, Oman

T: +968 2421 8554 / F: +968 2421 8553

Al Tamimi, Al Barwani & Co. is trading under the registered trade mark of "Al Tamimi & Company".

QATAR

Doha Tornado Tower, 19th Floor Majlis Al Taawon Street, PO Box 23443, West Bay, Doha, Qatar

T: +974 4457 2777 / F: +974 4360 921

Adv. Mohammed Al-Marri in association with Al Tamimi & Company.

SAUDI ARABIA

Al Khobar 9th Floor, Zamil House Prince Turkey Street, Corniche District, PO Box 32348, Al Khobar, Saudi Arabia 31952

T: +966 13 821 9960 / F: +966 13 821 9966

Jeddah King's Road Tower, 11th Floor, King Abdulaziz Road, Al Shate'a District, PO Box 9337, Jeddah, Saudi Arabia 21333

T: +966 12 263 8900 / F: +966 12 263 8901

Riyadh Sky Tower (North Tower), 9th Floor, King Fahad Road, Al Olaya District, PO Box 300400, Riyadh, Saudi Arabia 11372

T: +966 11 416 9666 / F: +966 11 416 9555

For any queries, please email info@tamimi.com.

@AlTamimiCompany

Al Tamimi & Company

Cover Art: Simona Jachimecova @simonaj.art
Sunny Fields, Acrylic on canvas, 100 x 70cm
Curated by Rebia Naim @EmergingScene

www.tamimi.com