

LEXIS MIDDLE EAST LAW ALERT

تشريعات الشرق الاوسط

October/November 2024

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FEATURE ALL CHANGE

Modernising the Judicial System In Abu Dhabi

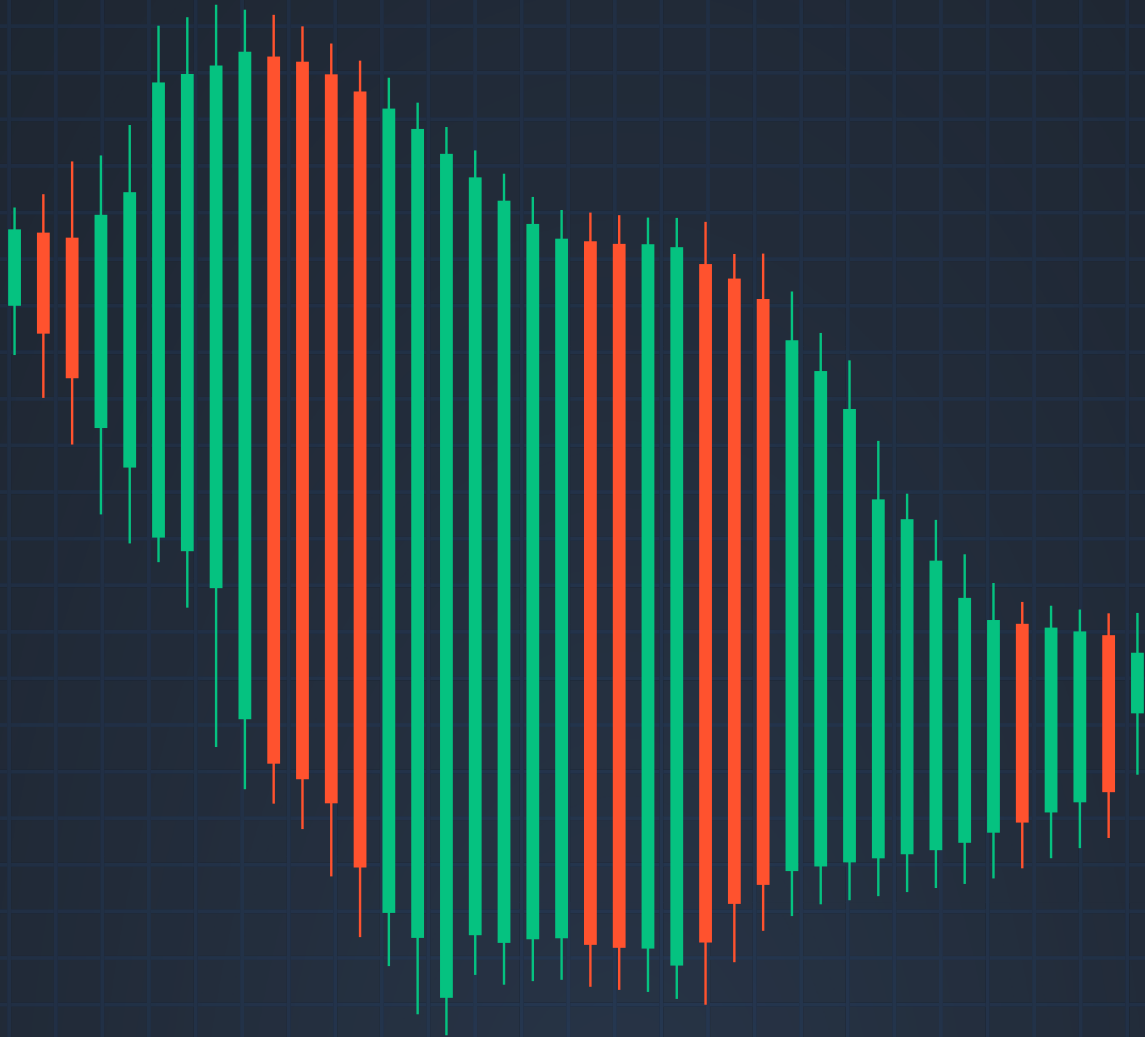
PROFILE TELECOMS

Hilal Al Khulaifi of Ooredoo Group

CONTRACT WATCH

Saudi Arabian Labour Contracts

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



EQUALITY & OPPORTUNITY

Saudi Arabia's new Investment Law



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AN INVESTMENT AGENDA

In the past a common features of company law across the GCC was the complex rules on the nationality of majority shareholders in companies. As oil was discovered and the economies in the GCC countries first began to develop there was an understandable desire to ensure national interests were protected, and locally owned businesses were given an opportunity to flourish - which many have gone on to do.

However, in recent years there has been a change of focus across the region. Ensuring nationals are able to benefit from the country's oil revenues has become less important. Instead the diversification of the economy away from hydrocarbons and ambitious economic strategies are now the order of the day in the GCC. With that ambition has come a desire to ensure foreign investment is able to help provide the capital and any necessary skills and know-how to make these dramatic changes happen. The National Investment Strategy in Saudi Arabia for example aims to increase foreign investment in the Kingdom by 388 billion Riyals by 2030. Changes like that do not just happen. Foreign investors who may be looking at a number of potential jurisdictions to set up in, also need to feel confident they will be treated fairly and have access to opportunities in a new location. Foreign investors also want to ensure their ownership rights of the businesses they are looking to invest in or the Intellectual Property they are either bringing to the country or plan to develop there, will be protected by the Authorities. Perhaps most critically of all they also want assurances that should they at any time wish to exit the jurisdiction, it will be easy for them to do so. These concerns have led the authorities in Saudi Arabia to issue a new Investment Law Saudi Arabia Cabinet Decision No. 40/1446, which we cover here. This along with steps being taken to streamline the processes for investors wishing to establish a business in Saudi Arabia should help those ambitious economic targets become a reality.

Claire Melvin - Editor

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EQUALITY AND OPPORTUNITY

Saudi Arabia has a new Investment Law designed to create a more attractive investment environment there by better protecting local and foreign investors' rights and providing them with more opportunities, as Bedoor Alrabiah of GLA & Co explains.

“On 11 August 2024, a new investment law Saudi Arabia Cabinet Decision No. 40/1446 was issued in Saudi Arabia,” states Bedoor Alrabiah. “This law, which impacts both local and foreign investors replaces the previous Saudi Arabian Foreign Investment Law (Saudi Arabia Cabinet Decision No. 1/2021) which only impacted foreign investors. It is set to come into force 180 days after its publication in the Official Gazette.”

“Article 2 of Saudi Arabia Cabinet Decision No. 40/1446 explains its aims and objectives,” Alrabiah continues. “These include to develop and enhance the competitiveness of the investment environment in Saudi Arabia, contribute to economic development, and create job opportunities by providing an attractive investment climate there. It is hoped this law will help make it easier for investments to be established, to own assets in these investment, and crucially also to



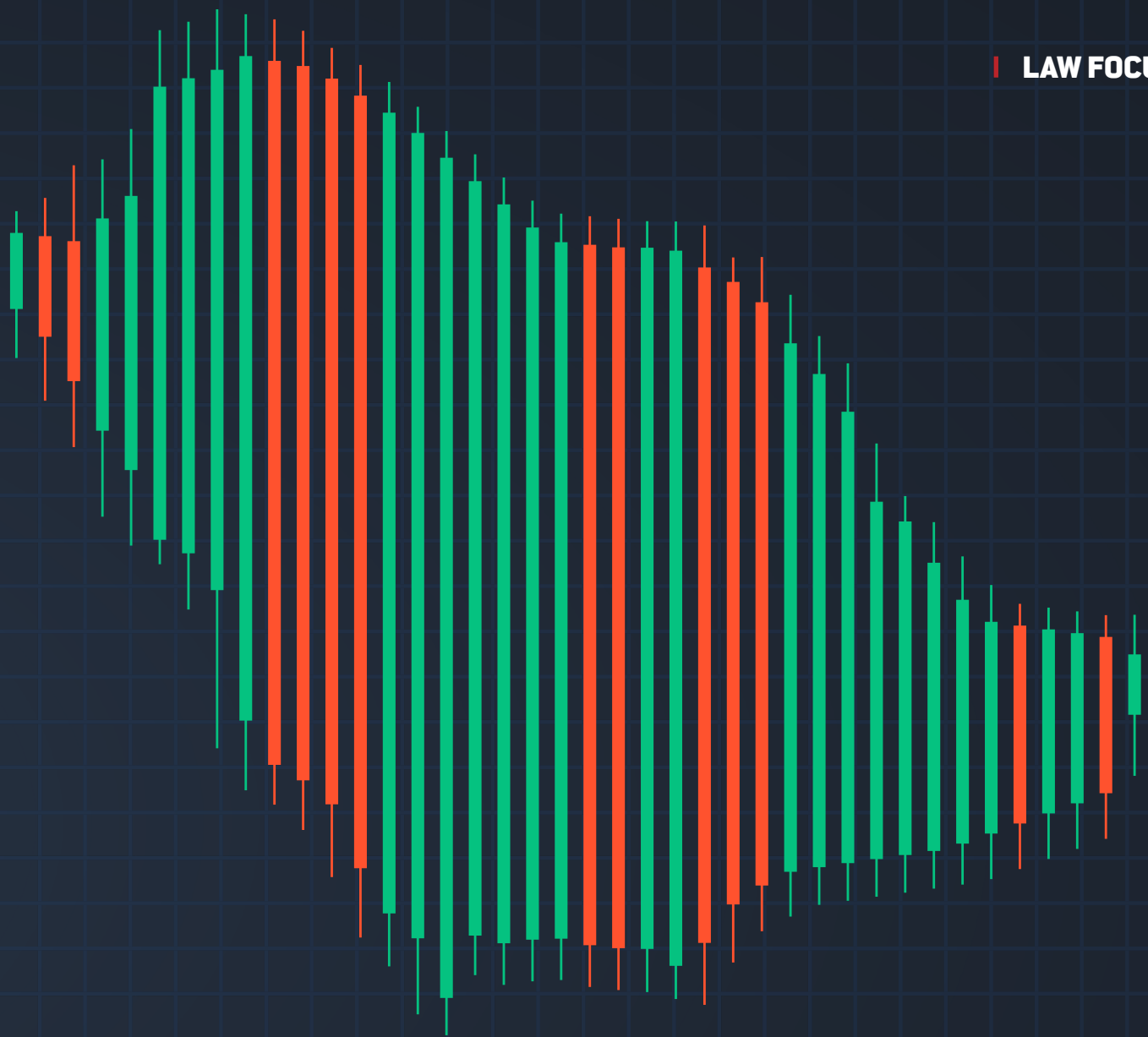
Bedoor Alrabiah
Legal Director,
GLA & Co

enable investors to liquidate or exit investments in Saudi Arabia more easily.”

“Saudi Arabia Cabinet Decision No. 40/1446 will help facilitate smooth and easy transfers of funds, which will make it simpler for investors to move their capital in and out of Saudi Arabia.”

“Investor protection is also seen as a key element in developing a more competitive investment environment in Saudi Arabia,” Alrabiah states. “As a result, Saudi Arabia Cabinet Decision No. 40/1446 also contains provisions which are designed to help guarantee and promote investors’ rights, ensure local and foreign investors have guaranteed equal treatment.”

“This law also promotes the principle of competitive neutrality and fairness, and ensures equal opportunities are available when it comes to investment,” Alrabiah explains. “It will also be interesting to see if this right to freedom of investment found in Article 3 of Saudi Arabia Cabinet Decision No. 40/1446 has an impact in sectors which have been traditionally dominated by local businesses.”



© Getty images/Stockphoto

“In addition, Article 6 of Saudi Arabia Cabinet Decision No. 40/1446 also provides for investment incentives although at present there is no detail on eligibility criteria which are likely to be covered in more detail in the regulations.”

DEFINITION OF INVESTOR

“Another big change in this law is that the definition of who is an investor has been made more comprehensive,” Alrabiah continues. “Local investors are now defined as any natural or legal person who invests and has Saudi nationality. While foreign investors are defined as a natural or legal person who invests but is not considered a local investor under the provisions of the law. This law also provides investors with freedoms and rights and increased investment opportunities.”

SAFEGUARDS

“Article 4 of Saudi Arabia Cabinet Decision No. 40/1446 includes a number of new investor safeguards,” Alrabiah states. “A significant feature here is the enhanced protections for property rights which

RELEVANT LEGISLATION

Article 3 of Saudi Arabia Cabinet Decision No. 40/1446

Without prejudice to the provisions of Articles 8 and 9 of this Law and the provisions of relevant laws, an investor may engage in investment in any sector or activity available for investment.

(Source: Lexis Middle East Law)

will help ensure that investors’ assets are protected. This includes the protection of IP rights which will help protect investors’ innovations and creations. In addition, new dispute resolution methods have been put in place which will ensure any conflicts are resolved fairly and efficiently. These protections are much stronger than they were in the past and significantly local and foreign investors will now be treated equally.”

“Article 4 of Saudi Arabia Cabinet Decision No. 40/1446 also provides mechanisms for the investors to enforce their rights,” Alrabiah adds. “Investors now have the right to resolve any disputes through local courts or using alternative dispute resolution methods

RELEVANT NEWS

Financial Guarantees for Foreign Small Investors

Saudi Arabia is set to extend its 'Kafalah' financing guarantee programme to small foreign investors, in order to attract foreign companies and boost investment in the local market. This change aligns with the National Investment Strategy, which has set a target to increase foreign direct investment to 388 billion Riyals by 2030, so that it constitutes 5.7% of the GDP. The Kafalah programme was established under Saudi Arabia Cabinet Decision No. 301/1437.

such as arbitration, mediation, and reconciliation as stated in Article 10 of Saudi Arabia Cabinet Decision No. 40/1446."

"Although, having these alternative dispute resolution mechanisms available will be an advantage for some investors, it is also possible investors who lack the legal knowledge to navigate these new options may initially face additional costs as they learn about these new ADR rules and procedures."

ESTABLISHMENT

"Another big change is the way in which establishing a business in Saudi Arabia has been streamlined and made much simpler," Alrabiah explains. "Rather than having to obtain a licence there is now a simplified registration process which makes it easier and faster for

investors to start their businesses. There will also be dedicated service centres which will provide efficient support to investors and help reduce delays. At present there is no further information on document requirements for establishing a business, and the time lines and fees detailed in Article 7 of Saudi Arabia Cabinet Decision No. 40/1446 but further details are likely to be issued in the regulations."

CONCEPT OF CAPITAL

"The concept of capital has also become more precise and comprehensive, and includes both local and foreign capital," Alrabiah explains. "It now includes stocks and shares in companies, contractual rights, fixed or moveable assets, intellectual property rights, as well as any rights which are granted under a licence or permit system. However, it is important to note that the definition of capital explicitly excludes loans, bonds, financing instruments, and public and private debt instruments which means that these types of investments are outside the scope of the new investment law."

"There is one area which at present is unclear," Alrabiah continues. "Article 8 of Saudi Arabia Cabinet Decision No. 40/1446 mentions a list of excluded activities but the exact list of excluded activities have not been detailed in the law. However, the broad principles have been outlined and it is expected further details on this area will be detailed in the implementing regulations which are yet to be published."

TRANSITION

"This law includes a number of positive elements but at present there are some areas which are still unclear," Alrabiah states. "As a result the transition could create temporary uncertainty for investors, in particular if

the implementing regulations which are expected to follow to fill in these gaps are delayed or are unclear. There will also be new compliance requirements which businesses will have to become familiar with. There is also a possibility that as local and foreign investors are now being treated equally, smaller local businesses could face increased competition. In addition, there is a risk we might see enhanced incentives and protections being offered in particular sectors leading to market saturation in some of those sectors."

NEXT STEPS

"The implementing regulations have not yet been issued so those interested in investing in Saudi Arabia will have to keep up to date on the likely further changes in this area, if they are to fully understand these new specific requirements and the new opportunities," states Alrabiah. "It will be important for them to consult advisers who are familiar with this new regime. There will be new registration processes to learn about and new alternative dispute resolution options to consider."

"It is also possible that this new law could impact investors' investment strategies," Alrabiah adds. "As there are likely to be specific sectors which will benefit from enhanced protections and the expected incentives which have been briefly covered here. Certain sectors, such as technology, renewable energy, and tourism, may now see significant growth as investors take advantage of this law's new opportunities."

"With these new opportunities for investment in Saudi Arabia on the way, foreign investors should also be building relationships with local partners and stakeholders to ensure a smoother and safer entry into the Saudi Arabian market. Those who are existing investors in Saudi Arabia will not need to do anything specific to comply with these amendments," Alrabiah continues. "There are no additional requirements existing investors need to comply with. It is likely the Saudi Authorities will issue detailed regulations and guidelines to clarify the provisions in Saudi Arabia Cabinet Decision No. 40/1446 which new investors will have to keep up to date on."

"The new Investment Law in Saudi Arabia is a significant step towards creating a more attractive and competitive investment environment," Alrabiah adds.

"By providing equal opportunities and safeguards for both local and foreign investors, it aims to facilitate economic growth and job creation. While some details are still awaiting clarification through implementing regulations, the law's emphasis on investor protection, streamlined processes, and incentives holds promise for increased investment and innovation in the Kingdom. As the implementing regulations are unveiled, investors will gain a clearer understanding of the specific requirements and opportunities presented by this new framework, paving the way for enhanced collaboration and mutually beneficial partnerships."



The depth of knowledge exhibited by BSA's attorneys in tackling multi-faceted issues has been truly remarkable. Their ability to analyse intricate legal details, coupled with their proactive approach to identifying potential obstacles, has proven invaluable.



- Chambers & Partner Global Guide



BSA LAW: EXCELLENCE IN PROGRESSIVE LEGAL SERVICES

*Home-grown legal experts with roots in Dubai
and reach that extends across the globe.*

BSA Law is a regional, full-service law firm. Founded in 2001, and launching our Saudi Arabia office 10 years ago, we advise local and international businesses, government entities and financial institutions across an array of sectors.




LEGAL ROUND-UP

COVERING RECENT KEY LEGAL DEVELOPMENTS – REGION-WIDE


UAE

DIGITAL ASSET MARKETING

 The Dubai Virtual Assets Regulatory Authority (VARA) has issued new comprehensive regulations governing the marketing of virtual assets and related activities in or targeting the UAE. The Regulations define 'marketing' broadly to include any advertisement, invitation, promotion or solicitation related to virtual assets or virtual asset service provider (VASP) activities, across all media channels like social media, events, airdrops and educational content. All marketing must be fair, clear and not misleading, with prominent disclaimers on the risks of virtual assets losing value and their volatility. In addition, marketing cannot state or imply urgency, guaranteed returns or that investments are safe and simple. The incentives offered must not divert focus from investment risks. In addition, only VARA-licensed VASPs can market their own licensed activities or have third parties market on their behalf with approval. Marketing anonymity-enhanced cryptocurrencies are also strictly prohibited and unlicensed foreign entities cannot market virtual assets targeting the UAE

DUBAI

VETTING EXPERTS

 A new framework is being developed to regulate the vetting and appointment of technical experts who appear before Dubai's judicial entities. The Dubai Centre for Judicial Technical Expertise will be established and will oversee all matters involving technical experts who appear before Dubai judicial entities. It will also implement a comprehensive governance system which will ensure the quality and compliance of expert reports. The performance of expert witnesses will also be subject to quantitative metrics and timelines to ensure swift, high-quality reporting. In addition, there will be a comprehensive review of existing legislation governing technical experts in Dubai.

SAUDI ARABIA

SOCIAL INSURANCE REGISTRATION

 The Saudi General Organisation for Social Insurance is requiring employers to register their employees' contracts through the Qawa platform. The process for adding employees to the Social Insurance system after contract registration has been clarified. Under the Social Insurance regulations, employers must register employees within a month of the commencement of their employment. The employee's social insurance joining date must align with the contract start date. The mandatory age for subscribing to the Social Insurance system is 15 Hijri years. Registration is compulsory for all employment relationships. This includes Saudi nationals, expatriate workers, nomadic tribes, and GCC nationals, regardless of the contract's length, nature, or form, provided the work is primarily performed within Saudi Arabia in exchange for remuneration.

TRADE NAMES

 New regulations on commercial registration and trade names have been approved by the Saudi government. These new regulations will repeal and replace Saudi Arabia Ministerial Decision No. 2015/1420 and Saudi Arabia Cabinet Decision No. 133/1420 which cover the registration and approval of trade names. Businesses registered in the Commercial Register will be granted a five-year grace period starting from the effective date of the new Commercial Register Regulations to rectify the status of their subsidiary commercial registers. All subsidiary registers will be cancelled when this period expires. The Trade Names Regulations will not prejudice trade names which were registered before it came into force, in line with Ministry of Commerce guidelines.


ARTICLES OF ASSOCIATION

 The Saudi Ministry of Commerce has highlighted seven advantages


for companies amending their Articles of Association under the new Companies Law. A key advantage is that small and micro companies which meet certain criteria will be exempt from having to appoint an auditor. It is also possible to maximise the use of electronic services provided by government agencies. Both public and private sector entities will be able to verify the data in their Articles of Association or Bylaws electronically. There are currently no fees for publication of these amendments. Companies can amend all of their current Articles of Association/Bylaws articles, in manual and electronic contracts.

QATAR

TRADEMARK DATABASE

 The Qatari Ministry of Commerce and Industry has launched Qatar's trademark database on the World Intellectual Property Organisation (WIPO)'s Global Brand Database. Those interested in Qatari trademarks can now search the database through the Global Brand Database (wipo.int) website before applying for trademark registration and learning about trademarks in markets of interest to both the government and private sectors. These changes follow Qatar's accession to the Madrid Protocol for the International Registration of Trademarks.


APPROACHING OFFSHORE PLATFORMS

 The Qatar Ministry of Interior (MoI) has reminded the public to refrain from approaching main or ancillary offshore oil platforms. Article 3 of Qatar Law No. 8/2004 states no unauthorised person can approach maritime facilities within a distance of less than 500 metres. Fishing or leaving fishing gear at a distance of less than 500 metres from maritime facilities is also prohibited. Those who make any approach under 500 metres for any purpose, may be fined 100,000 Riyals


and imprisoned for up to three years, or face one of the two penalties. Those who commit any unintentional acts of sabotage, can be fined 200,000 Riyals and face imprisonment for up to three years.

OMAN


ADVOCACY AND LEGAL CONSULTANCY

 A new Law on Advocacy and Legal Consultancy Oman Sultani Decree No. 41/2024 has been issued. This law will regulate the legal profession and consultancy services in Oman. Existing law firms, civil companies for advocacy, and foreign legal consultancy offices will have to rectify their position within one year from the date of this law's enforcement. Non-Omani lawyers' registrations will remain valid until the end of this period. Civil companies for advocacy currently in partnership with non-Omani partners will have three years to operate, during which the transfer of ownership or shares to non-Omanis is prohibited. Registration of non-Omani partners will also continue until the end of this period.

CLOUD COMPUTING

 A bylaw regulating cloud computing services and data centres in Oman which sets out the legal framework for licensing and operating these services, including requirements for applicants, fees, and classifications of service providers has been issued. Applicants for a cloud computing service licence must be legal entities with commercial registers limited to telecommunications, information technology, or related services. The by-law outlines a licensing process with the Telecommunications Regulatory Authority and specifies fees ranging from 100 to 1000 Omani Riyals. The licences last for three years, and are renewable unless the licensee requests cancellation.

PARENTAL LEAVE

 The Oman Health Ministry has issued a Circular on Maternity and Paternity Leave. The circular has

directed health institutions, particularly those that provide services to pregnant women and on childbirth, to streamline the process workers across all sectors can use to obtain proof of their eligibility for maternity and paternity leave. According to the circular, with effect from 19 July 2024 maternity leave is granted for a period of 98 days, and this period is not limited to a specific number of births. Up to 14 days of this leave can be taken before the expected delivery date. Paternity leave is granted for a period of seven days, provided the child is born alive and the leave is taken within 98 days of the child's birth.


KUWAIT

MARKETING OUTSIDE STORES

 The Ministry of Commerce and Industry (MOCI) has issued Kuwait Ministerial Decision No. 198/2024, prohibiting the marketing and promotion of goods and services outside the boundaries of commercial stores and display outlets (or booths). MOCI has added that any sales or promotional activities which take place outside these boundaries will be considered to be a violation of the law.

TURKEY

LABOUR MARKET COMPETITION

 The Turkish Competition Authority has published long awaited draft guidelines on Competition Violations in Labour Markets following investigations in 2021, primarily in the digital sector. Areas covered include no poach agreements where one entity agrees not to offer employment to or recruit employees of the other employer either directly or indirectly. There will also be rules on wage fixing agreements and in relation to the direct or indirect control or suppression of the wages to be paid and/or any other rights to be provided to employees at a certain level or within a certain time period. Information exchanges of information that refers to any direct or indirect data related to labour by competitors are also covered in these draft guidelines.

REGULATORY ROUND-UP

UAE: The UAE Telecommunications and Digital Government Regulatory Authority (TDRA) has taken enforcement action against those who have violated the new telephone marketing violations under Cabinet Decision No. 56/2024...

Bahrain: 118 new essential food items have been added to Bahrain's zero-rated VAT list...

Oman: A new fee of 25 Riyals will be payable for studying requests to assess potential medical errors but will be refunded if the Supreme Medical Committee or a court confirms the error...

Saudi Arabia: Saudi Arabia has launched a tourist tax refund scheme...

Qatar: The Qatar Stock Exchange has announced new amendments and standards for liquidity provider activity came into effect on 1 September 2024...

UAE: The General Civil Aviation Authority (GCAA) has issued new National Cyber Security Guidelines for the civil aviation sector...

Dubai: The Knowledge and Human Development Authority in Dubai has introduced a mandatory School Fees Card for all private schools there...

Saudi Arabia: The Saudi Roads General Authority (RGA) has clarified the standards and specifications which will apply to electronic billboards by roads...

Oman: A Ministerial Decision has set the return due for obtaining a commercial loan or debt at 6% unless a lower percentage is agreed...

Qatar: Those found guilty of electronic fraud in Qatar may be fined up to 200,000 Riyals or face imprisonment for up to three years, or potentially face both penalties...

Saudi Arabia: Comprehensive regulations on bunkering operations in tourist marinas have been issued...

Qatar: The Qatar Ministry of Health is consulting on the classification of food establishments...

Oman: The Supreme Judicial Council of Oman has launched an Open Data portal on its official website, providing public access to statistical data on the country's judicial system including appeal statistics...

UAE: The UAE has introduced a new national economic record platform, Namou, to streamline business licensing and economic activities across all seven emirates...

LAW MONITOR

RECENT LEGAL DEVELOPMENTS IN THE GCC

UAE - COMPANIES



Ministerial Decision No. 137/2024 On the Regulation of the Registrar's Work, Controls of Private Joint Stock Companies and the Rules of Governance has been issued. This law regulates the work of the Registrar at the Department of Commercial Registration and Agencies and their duties on keeping and providing access to company documents. It also includes the document retention requirements which apply to companies. Procedures for registering, renewing, amending, and deleting company entries, incorporating companies, share records, board meetings, general assemblies, increasing capital, and governance aspects are also covered..

QATAR - RENTS



Qatar Ministerial Decision No. 123/2024 which covers the rental value of industrial plots which are affiliated with the Ministry of Municipalities has been issued. The law lists different rental values which are quoted per square metre on an annual basis for industrial plots with an industrial licence, logistics enterprises and commercial enterprises which are located in an industrial and logistic area. The methodology for assessing the rental value where there are mixed activities within a plot is also explained.

GAZETTE WATCH

UAE Official Gazettes No. 779 - 784 – These Gazettes include Federal Decree-Law No. 15/2024 on the collection of Federal entities' debts.

Saudi Arabia Gazettes No. 5040– 5052 – These Gazettes include Saudi Arabia Royal Decree No. M88/1446 amending Article 9 of the Law on the Implementation of the Saudi Building Code.

Qatar Official Gazettes No. 10-14 – These Gazettes include Qatar Law No. 12/2024 on the Qatarisation of jobs in the private sector.

Kuwait Official Gazettes No. 1697-1709 – These Gazettes include Kuwait Decree-Law No. 106/2024 which has amended the Companies Law (Kuwait Law No. 1/2016).

Oman Official Gazettes No. 1555-1567 – These Gazettes include Oman Sultani Decree No. 47/2024 on the protection of bank deposits.

(Source: Lexis Middle East Law)

OMAN - HEALTH



Oman Ministerial Decision No. 58/2024 which covers Health Co-Insurance Activities has been issued. Insurance companies which wish to provide health insurance must have a license. This type of coverage cannot exceed 49% of the company's total insurance coverage,

KUWAIT - LEASING



Kuwait Decree-Law No. 95/2024 has amended Kuwait Decree-Law No. 35/1978 On the Real Estate Lease. As a result a new Article 11 bis has been added to Kuwait Decree-Law No. 35/1978 which specifies the form of the lease and the need for it to be notarised in line with Kuwait Law No. 10/2020. It also requires rent stipulated in a lease contract to have a specified value, and be payable on a specific due date.

FEATURED DEVELOPMENT

Alexey Chertov and Alexander Tombak of Morgan, Lewis & Bockius LLP consider changes to ADGM property law.

In response to the significant expansion of the Abu Dhabi Global Market (ADGM) territory, pursuant to Cabinet Decision No. 41/2023 ADGM published several amendments to its real estate laws and regulations on 9 June 2023. These temporarily suspend the application of ADGM real estate laws to properties located within Al Reem Island until 31 December 2024, due to the complexity of a substantial transition from UAE mainland civil law to ADGM law, which is based on English law principles, across all Al Reem Island. ADGM has recently concluded public consultation on a proposed revamp of its real estate legal framework in light of Cabinet Decision No. 41/2023. On 26 September 2024 it enacted the amendments which comprise revisions of the Real Property Regulations 2015 and the introduction of several new regulations, including the Off-Plan Development Regulations 2024 and Registration of Future Interests Regulations 2024. Several new subordinate regulations have been introduced, including the Off-Plan Development Regulations (Project Account) Rules 2024 and the Off-Plan and Real Property Professionals Regulations 2024. Key amendments include the conversion of existing musataha and

usufruct interests in real property on Al Reem Island into leasehold interests, the recognition of existing freehold interests in real property, and the introduction of protections for residential lessees, including a 5% cap on security deposits and provisions for automatic renewal. The new off-plan regulations require the registration of developers and projects in ADGM registers, stipulate project registration requirements. e.g. sufficiency of funds, impose mortgage restrictions except for obtaining development funding, which must be deposited into the project account, set out termination conditions, and mandate the deposit of all funds (including equity financing from shareholders) into the project escrow account. The Off-Plan Development Regulations (Project Account) Rules 2024 detail requirements for the release of funds, including retaining 5% of the total development costs on the project escrow account for 12 months post-completion, profit withdrawal conditions after 60% completion, and reporting obligations. The Off-Plan and Real Property Professionals Regulations 2024 cover licensing of brokers, surveyors, valuers, property managers, inspectors, and association managers.

BAHRAIN - LABOUR



Article 40 of Bahrain Law No. 19/2006 (On the Regulation of the Labour Market) has been amended by Bahrain Decree-Law No. 12/2024. This article covers reconciliations where a crime committed under Article 23(a) or (b) of Bahrain Law No. 19/2006 - which are work permit offences - has been committed.

SAUDI ARABIA - PRODUCT SAFETY




Saudi Arabia Cabinet Decision No. 93/1446 On the Approval of the Product Safety Law and the Standards and Quality Law has been issued. As a result, a Committee called the 'Product Safety and Monitoring Committee' will be established within the Saudi Standards, Metrology and Quality Organisation (SASO), made up of representatives from relevant government agencies concerned with product safety and private sector representatives. International and Regional Standards and Related Documents are considered the basis for adopting Saudi Standards. SASO will be the sole reference authority on Standardisation and Quality activities in Saudi Arabia, except for products and services which come under the Saudi Food and Drug Authority (SFDA)'s jurisdiction.

TAX AND FINANCE ROUND-UP


COVERING RECENT KEY TAX AND
FINANCE DEVELOPMENTS – REGION-WIDE

UAE

PRIVATE CLARIFICATION FEES


 Federal Administrative Decision No. 5/2024 On Refund of Fees of Private Clarification Requests came into effect on 1 August 2024. It states the Federal Tax Authority (FTA) will refund fees for a private clarification request in a number of specific circumstances. These include if the applicant withdraws the request within two business days of submission, if it has been submitted by someone who is not registered and does not relate to tax registration and if the applicant is subject to a tax audit at the time of the request. Refunds will also be possible if the request involves procedures after an FTA decision, the submission duplicated one by the same applicant on the same subject or if it involves a subject currently under review for a legislative amendment in coordination with the Ministry of Finance (MoF). Clarification requests may also be denied if they have already been addressed in either existing guides or public clarifications; they are based on hypothetical scenarios, relate to issues that have already been clarified or if they involve taxpayers who are currently under audit or inspection.

VIRTUAL ASSETS

 The Securities and Commodities Authority (SCA) has published long-awaited guidelines which supplement the UAE Virtual Asset regime including Cabinet Decision No. 111/2022, Securities and Commodities Authority Decision No. 13/RM/2021 and Securities and Commodities Authority Decision No. 26/2023. The guidelines apply across the UAE, except for in the DIFC and ADGM financial freezones. They confirm there are two different types of virtual asset - those used for investment purposes and those used for payment purposes, and different regulatory frameworks and regulators apply to each of them. It has also been explained that certain types of asset will not come under the SCA's remit. These include digital securities or digital


commodity derivatives contracts; service tokens and non-fungible tokens that do not represent virtual assets for investment purposes; loyalty programmes; those used for payment purposes and developing, deploying or using software to mine, create or extract virtual assets. In addition to the general licensing requirements in the SCA Rulebook, Virtual Asset Service Providers (VASPs) must ensure they undergo routine systems maintenance and development, have robust security procedures and measures, ensure cryptographic keys and wallets are stored safely and all held assets have sufficient password protection and encryption. There must also be adequate personnel management and decision making processes, and publicly available procedures outlining processes if there is an unplanned outage.

SHORT TERM FINANCING

 The UAE Central Bank has obliged companies that provide installment and short-term financing services to their customers to also clarify to them all imposed fees, as a percentage and value, of the total financing amount, especially when it comes to late payment fees. These lenders must also inform borrowers of the consequences of late payment from the agreed dates. The new Central Bank regulation states financing companies with limited licenses and agents must disclose to borrowers the total fees the borrower must pay to obtain short-term credit. The total amount or value of the fees must also be disclosed, as a total amount and value, and as a percentage of the credit value. These companies must provide clear examples of how fees are calculated and applied, especially any late payment fees. The borrower must sign the credit documents and be provided with a copy signed by the financing company with the limited license or the agent and the borrower. Collection policies, procedures, and related controls must also meet the consumer protection regulation requirements and Central standards.

SAUDI ARABIA

VAT AND GROUPS


 Saudi Arabia's Zakat, Tax and Customs Authority (ZATCA) launched a consultation on changes to the VAT regulations which ended on 17 September 2024. The proposals covered areas including the provisions in Article 10-11 of Saudi Arabia Administrative Decision No. 3839/1438 on group registration and applications to form a VAT group. There were also proposals to broaden ZATCA's powers to cancel a VAT group registration or exclude a specific member from a VAT group either from a past or future date. Proposed changes were also been put forward to Article 13 of Saudi Arabia Administrative Decision No. 3839/1438 on deregistration. Amendments were also proposed on a range of areas including on transfer of an economic activity and the provisions in Article 47 of Saudi Arabia Administrative Decision No. 3839/1438 which cover persons who are liable to pay tax in special circumstances.

TRIAL PRODUCTS

 The Saudi Ministry of Industry and Mineral Resources has launched a Customs Exemption Service for Experimental Production through the Sanaee platform in order to support industrial establishments which have obtained an industrial license during the construction phase. The service will exempt raw materials used in experimental production from customs duties, up to specified quantities. The service will support industrial establishments in research and development activities, experimental production, training employees on production operations and lines, and on the quality testing of materials.

QATAR

BANKS AND AI

 The Qatar Central Bank (QCB) has issued new guidelines to QCB

licensed financial firms that use AI systems. Under these guidelines financial institutions that use, develop or deploy AI system must now strengthen their governance structures by putting in place a robust AI strategy, which must be reviewed periodically. They must also have a dedicated function overseeing the AI operation. A human oversight protocol will also be mandatory when they use any AI system. The guidelines make it clear that a firm's board of directors and senior management are accountable for the outcomes and decisions of their AI systems. Firms must also identify high risk systems which come under tighter scrutiny, higher levels of disclosure and risk management requirements.


QFC

DIGITAL ASSETS

 The Qatar Central Bank, the Qatar Financial Centre Authority (QFCA) and Qatar Financial Centre Regulatory Authority (QFCRA) have announced the launch of a new QFC Digital Assets Framework. The QFC Digital Assets Framework 2024 will establish the legal and regulatory foundation for digital assets, including the process of tokenisation, legal recognition of property rights in tokens and their underlying assets, custody arrangements, transfer, and exchange. It will also provide for the legal recognition of smart contracts.

BAHRAIN

DOMESTIC MINIMUM TOP UP TAX

 Bahrain has announced the introduction of a Domestic Minimum Top-Up Tax which will be targeted at multinational group companies which are operating there. The new tax is set to come into effect on 1 January 2025. As a result Bahrain Decree-Law No. 11/2024 Regarding the Implementation of Tax on Multinationa Enterprises has been issued. It will apply to multinational group entities with a consolidated group turnover of more than EUR 750 million for at least two of the four immediately preceding tax years. The rules on calculating the Effective Tax Rate (ETR) and Top-Up Tax closely align with

TAX TREATY UPDATE


UAE: Negotiations have begun between Eswatini (formerly known as Swaziland) and the UAE on a possible income and capital tax treaty.

Saudi Arabia: Iran and Saudi Arabia have reached an agreement on the draft text of a double taxation treaty between the two countries.

Oman: Egypt's Council of Ministers have approved a Double Tax Treaty with Oman.


the Pillar Two/GloBE Model Rules. The legislation incorporates all optional safe harbours from the GloBE Rules, including the Transitional Country by Country(CbCr) Safe Harbour and the Simplified Calculation Safe Harbour. As Bahrain has not previously had corporate Income Tax a definition of tax residency based on the place of incorporation or effective management has also been included.

NEW EXCHANGE

 The ATME, a regulated digital assets exchange, has been launched in Bahrain by the Bahrain Economic Development Board (EDB) and is licensed by the Bahrain Central Bank. The exchange which is built on a private blockchain network, will facilitate the conversion of real-world assets into digitally tradable tokens. Access to the exchange will be restricted to authorised participants who have undergone rigorous Know Your Client (KYC) and anti-money laundering compliance checks.

KUWAIT


INSURANCE FEES

 The Kuwaiti Insurance Regulatory Unit has issued a circular on the payment of fees by insurance companies which are operating there. This circular is in line with Kuwait Law No. 125/2019. All insurance companies subject to the Insurance Regulatory Unit must fill out the specified table and submit payment receipts for any fees owed to the Unit, including cash deposits, bank transfers, cheques, or electronic payments, within five working days of the payment date. Companies must clearly indicate the type of fees being paid and provide separate receipts for each fee category. Discrepancies in payment amounts must be explained and supported with

evidence. Those who fail to comply with this circular may face legal action under Kuwait Law No. 125/2019.

TURKEY

SETTLEMENT CHANGES

 Turkey Law No. 7524/2024 on Amendments to Tax Laws, Certain Laws and Turkey Decree No. 375 has been published in the Official Gazette and include a number to the Tax Procedural Law. As a result original tax amounts can no longer be subject to settlement, and settlement applications will only be possible if they relate to tax loss penalties, irregularity fines and special irregularity fines of over 23,000 Turkish Lira. The original tax amount can still be subject to a lawsuit in cases of settlement for the penalties and fines. However, the provisions prior to these amendments will apply to taxes and penalties for which the taxpayer is expecting a settlement date for a settlement application made before Turkey Law No. 7524/2024's publication; if the settlement date had been appointed but the meeting had not yet been held; if the settlement date was postponed or the settlement application period had not lapsed.

EGYPT

CAPITAL GAINS

 The Egyptian Investment Ministry is understood to be currently studying several proposals on capital gains tax on stock exchange transactions. In May 2024, it was announced that Capital Gains Tax which had been suspended for a number of years would finally take effect starting from the March/April 2025 tax season. There have now been reports that Egypt could be considering abolishing capital gains tax on stock exchange transactions shortly.



ALL CHANGE

Dhana Pillai of DPTC explains how Abu Dhabi Law No. 6/2024 is set to modernise the judicial system there.

“**A**bu Dhabi Law No. 6/2024 On the Judicial Department was issued on 30 June 2024,” states Dhana Pillai. “It repeals and replaces Abu Dhabi Law No. 23/2006 which was the previous law on this subject.”

“This new law reflects the Emirate of Abu Dhabi’s aim to become a global hub for business and innovation,” Pillai continues. “It is hoped that by focusing on judicial efficiency it will be possible to address the increasing complexity of legal disputes in the rapidly evolving global economy.”

COURTS

“A key element of this new law is the ability following a decision by the Chairman of the Abu Dhabi Judicial Department to establish specialised courts (see Article 6 of Abu Dhabi Law No. 6/2024) which will handle particular types of disputes,” Pillai explains.

“Subject to where these specialised courts are established the court of appeal and court of first

instance will be made up of penal, personal status and administrative circuits.”

“Under Article 3 of Abu Dhabi Law No. 6/2024 the Courts will not be able to hold their hearings outside their seats unless there has been a decision of the Judicial Council allowing them to do so,” Pillai states. “However it has been stated the courts will be able to hold their hearings remotely using modern communications technology, whenever the Judicial Council decides, under legally established controls, conditions and procedures.”

“The Council will also have the power following recommendations of the Judicial Inspection Division, to form other circuits,” Pillai adds. “This includes the ability to form one or more judicial circuits presided over by a judge assisted by two national or international experts, to hear disputes of a specific nature.”

“Meanwhile, Article 7 of Abu Dhabi Law No. 6/2024 explains the remit of the Abu Dhabi Court of Cassation,” Pillai states. “The seat of this court will be in the city of Abu Dhabi and its judgements will be

Opportunities in the Middle East with Jameson Legal

Jameson Legal is an international legal recruitment company founded in 2010, with specialist divisions for private practice, in-house, interim, and legal tech. We act for client law firms and companies and advise qualified lawyers from NQ to equity partner level, as well as paralegals, compliance professionals, and legal tech professionals.

Qatar

Senior Counsel, Shipping

Our client, a leading O&G company, is offering an excellent opportunity for a Senior Counsel to join their renowned energy team. The role involves supporting the company's acquisition and marine transportation of LNG, crude oil, and other liquid petroleum products. Applicants must be legally qualified in a leading jurisdiction and possess a minimum of 10 years' PQE in shipping law.

Ref: *IJR-IM-16268*

Saudi Arabia

Tax Counsel, Energy

Our client, a global leader in the energy sector, is looking to recruit a Saudi-qualified Tax Counsel with a minimum of three years' experience to join their busy in-house tax team. The successful candidate will be responsible for providing extensive support and strategic legal counsel to internal stakeholders. A strong understanding of Saudi Arabia's tax regulations is essential.

Ref: *TME-PM-15586*

Abu Dhabi

Senior Legal Counsel, Corporate/Commercial

We are working with a local government entity that is seeking to hire a Senior Legal Counsel, who will report directly to the Chief Legal Counsel and work on international and regional corporate transactions. Successful applicants should have a common law qualification, ideally with a minimum of 8 years' PQE. Experience working in the UAE or the wider Gulf would be an advantage.

Ref: *RPG-IM-16238*

Abu Dhabi

Compliance Officer

A global investment and asset management client of ours is looking to hire an experienced Compliance Officer to lead the compliance program for their Abu Dhabi businesses, reporting to the Group Chief Compliance Officer. The successful applicant should have over seven years' experience working in a compliance role within a financial services firm, preferably in the investment or asset management sector.

Ref: *MBP-IM-16304*

Qatar

Senior Counsel, Energy Trading

We are working with an established energy company that is looking to enhance its trading facility by adding a Senior Counsel specialising in energy trading, with a specific focus on LNG trading. This is a fantastic opportunity to join a growing team with exciting career prospects. Applicants must have at least 8 years' PQE and be civil or common law qualified, with experience at a leading international law firm.

Ref: *RPG-IM-16237*

Middle East Locations

Transformation Consultant

Our client, a global legal tech consultancy, is offering an exciting opportunity for a Transformation Consultant to join their team in one of their Middle East locations. The key responsibility of this role is to lead large-scale, enterprise-wide CLM implementations. The ideal candidate will have similar engagement experience and be able to demonstrate expertise in working with commonly used legal technologies.

Ref: *BHS-PM-16284*

Saudi Arabia

Legal Director, Projects

A prestigious conglomerate in the Middle East is seeking to hire a skilled attorney with experience advising on legal matters related to power and water projects, including project, corporate, and other financing matters. Candidates should have at least 8 years' legal experience, gained at international law firms or in-house teams.

Ref: *SSK-IM-16225*

Saudi Arabia

Senior Legal Counsel, Corporate/M&A/Commercial

An incredibly exciting opportunity has arisen to work with a significant player in the food and beverage industry, renowned in Saudi Arabia and the GCC region. The role involves providing expert legal counsel on corporate and commercial matters. Ideally, applicants should have 8-10 years' PQE and be qualified in KSA, the UK, or other common law jurisdictions. Proficiency in Arabic and experience in the GCC region are essential.

Ref: *SSK-IM-16270*

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



issued by three judges. This court will have jurisdiction in appeals against judgments issued by the Courts of Appeal and other instances where the law provides for the possibility of lodging an appeal.”

“It will also consider conflicts of jurisdiction between the courts of the Emirate of Abu Dhabi.”

“Jurisdictional conflicts between courts are an inevitable part of any judicial system, especially where a legal regime is developing rapidly,” Pillai states. “Therefore, it is perhaps not surprising that, under Abu Dhabi Law No. 6/2024, the Abu Dhabi Court of Cassation has been given the power to resolve jurisdictional conflicts between different courts within the Emirate. This will ensure disputes over which court has the authority to hear a case will not result in undue delays.”

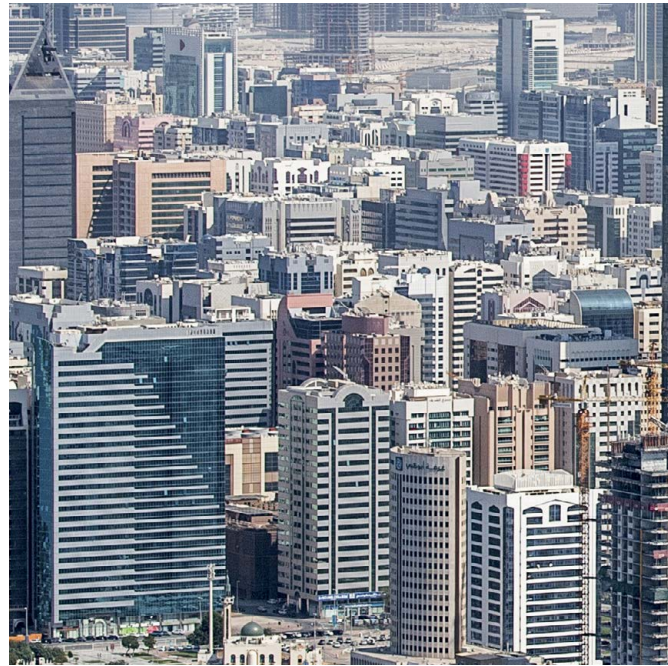
“This differs from the position in Dubai where Dubai Decree No. 29/2024 On Judicial Authority for Resolving Jurisdictional Conflicts Between DIFC Courts and Judicial Authorities in Dubai, provides for a specific tribunal which can resolve jurisdictional conflicts there between the DIFC Courts and onshore courts.”

“In addition, it has also been stated that if, in the process of hearing a case or an appeal, a Court of Cassation Cassation Circuit decides to reverse a legal principle which has been established by previous rulings, or if conflicting principles have been previously issued by the court, it will refer the matter to the President of the Court to raise the appeal to the competent panel for adjudication,” Pillai explains.

“The panel will then issue its ruling in the case of reversal by a majority of at least six members. It should also be noted that the President of the Court may, whenever they deem it appropriate, raise the appeal to the two panels jointly. The reversal ruling will only be issued by a majority of 13 members.”

EXPERTISE

“The decision to create these specialised court circuits is to ensure that cases are presided over by judges who have expertise in the relevant field,” Pillai states. “This is particularly important as the world of business becomes more technical. It is also hoped



this will speed up the judicial process and improve the quality of rulings.”

“However, that is not all, as Article 18 of Abu Dhabi Law No. 6/2024 also allows for the appointment of non-national judges if need be. This could be particularly relevant in international commercial disputes, where expertise of foreign judges may be beneficial,” Pillai adds.

“It will also be important that these overseas judges receive appropriate training on the Abu Dhabi legal system.”



Dhana Pillai
Founder, DPTC

“Although it should be noted under Article 22(2) of Abu Dhabi Law No. 6/2024 that all judges and members of the public

prosecutors including any foreign ones will be required to take an oath which states: ‘I swear by almighty God to judge with justice, without concern or favouritism, and to be loyal to the Constitution and the laws’ in order to ensure they uphold the UAE’s constitutional values when undertaking their work.”

USE OF ENGLISH

“The language of the Abu Dhabi courts will be Arabic and translators will be used where necessary under Article 11 of Abu Dhabi Law No. 6/2024,” Pillai states.

“However, with some specialised courts or circuits, or in a specific lawsuit, or some types of lawsuits, the Council may decide that the language of the trial and procedures, judgments and decisions will be English.”

“In such cases, the litigants, witnesses and lawyers as well as the submission of briefs, memorandums, requests and documents in these circuits will be in English.”

“In addition, the statements of any litigants, witnesses or others who do not speak English will be translated.”

RELEVANT LEGISLATION

Article 5 of Abu Dhabi Law No. 6/2024

1 Courts of First Instance, Courts of Appeal and a Court of Cassation shall be formed in the Emirate.

2 It shall be permissible by a decision of the Chairman based on the recommendation of the Council, to establish Specialised Courts and determine their jurisdictions. A single court may include first instance circuits, appellate circuits and circuits of enforcement of the judgments rendered thereby.

(Source: Lexis Middle East Law)



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GOVERNMENT CASE DIVISION

“Under this law, there will be a Government Cases Division at the Judicial Department which will represent government departments and public bodies and institutions affiliated with the Emirate Abu Dhabi, when it comes to filing requests, statements of claims, appeals, defences and, in general, whenever these bodies need to initiate lawsuits and appeals before all the courts inside and outside the State, whether they are plaintiffs or defendants,” Pillai states. “This special division will also take on this role before the arbitral tribunals in the State or abroad.”

“In addition, the Government Cases Division will represent companies and companies where the government is a shareholder, as a result of a request from the company’s legal representative or as mandated by the Executive Council. These entities will not be able to agree to conciliation unless they have first consulted the Government Cases Division. However, the Government Cases Division may also propose to an entity with capacity conciliation in a lawsuit it has initiated on its behalf.”

“Relevant entities will not be able to disagree with the Government Case Division if it has decided not to file a law suit or to appeal or not to appeal against a decision, unless there has been a grounded decision by its chairman or whomever it has delegated,” Pillai continues.

EFFICIENCY

“The authorities in Abu Dhabi are very keen to ensure, the judicial system there follows best practice,” Pillai adds.

“As a result, Chapter 8 of Abu Dhabi Law No. 6/2024 covers the adoption of Global Judicial Indicators for measuring the system’s efficiency.”

“A whole host of metrics will be used to measure

efficiency including the rate of case adjudication, backlog, rates of cases completed within a specific time and even rates of hearing punctuality. The levels of satisfaction of those using the Abu Dhabi judicial system will also be measured, along with utilisation rates of information technology systems and digital systems in the courts.”

ARTIFICIAL INTELLIGENCE

“In addition, as part of this drive towards modernisation and innovation Article 52-54 of Abu Dhabi Law No. 6/2024 covers the use of Artificial Intelligence in the justice and the judicial services,” Pillai adds.

“It will be possible to use artificial intelligence systems in all justice services and judicial processes carried out by the Abu Dhabi Judicial Department.”

“However, there are also guiding principles which cover the use of artificial intelligence systems in this context under Article 53-54 of Abu Dhabi Law No. 6/2024 and plans to issue further implementing regulations on this area.”

WHAT’S NEXT

“The introduction through this law of AI, specialised courts, and English-language proceedings are all steps toward achieving Abu Dhabi’s vision of a judicial system that supports its aim of becoming a global business hub.”

RELEVANT NEWS

Power of Attorney for Litigation in cases brought before the Judicial Department Courts

Abu Dhabi Circular No. 11/2024 Regarding the Power of Attorney for Litigation in Cases Brought Before the Judicial Department Courts has been issued. As part of the Abu Dhabi Judicial Department’s efforts to develop Notary Public services by linking the power of attorney for litigation to the case management system, the courts will be able to view a power of attorney electronically and follow up on any update leading to a revocation or renewal. As a result, from 1 September 2024 a power of attorney for litigation in cases brought before the Judicial Department courts will not be accepted, unless it has been issued by the Notary Public at the Department.

CASE FOCUS

Case No Narciso v Nash, DIFC Case No. ARB 009/2024 issued on 14 June 2024

Jurisdiction DIFC

Court DIFC Court of First Instance

Recommended by Stephenson Harwood LLP, Legal Advisor to the Claimant

WHAT IS IT ABOUT?

This case was the first time the DIFC Courts had considered the impact of Dubai Decree No. 34/2021 Concerning the Dubai International Arbitration Centre, which abolished the DIFC Arbitration Institute (DAI) (the administering body of the DIFC-LCIA Arbitration Centre) and transferred its rights and obligations to the Dubai International Arbitration Centre (DIAC). Both parties in this case were incorporated in the UAE and operated in the construction sector.

In 2020, they entered into a subcontract agreement on the construction of residential housing units. This contract contained an arbitration agreement that provided for arbitration under the DIFC-LCIA Arbitration Centre Rules; a seat of arbitration in the DIFC; and that UAE law would be the governing law.

On 14 July 2021, the sub-contract was terminated by the Claimant (Narciso, the contractor) following disputes about the Defendant's (Nash, the subcontractor's) performance.

On 17 September 2021, Dubai Decree No. 34/2021 was issued providing that all agreements to resort to DIFC-LCIA arbitration which had been concluded before the effective date of that Decree were deemed valid, and DIAC would replace the DIFC-LCIA in considering and determining all disputes which arose out of these agreements, unless it was otherwise agreed by the parties.

Dubai Decree No. 34/2021 also attached a Statute of DIAC, which stated that where the parties had chosen the DIFC as the seat of arbitration, the arbitration agreement and arbitration proceedings would be governed by the DIFC Arbitration Law (DIFC Law No. 1/2008) and the DIFC Courts would have jurisdiction to consider any claim, application or appeal relating to any award or arbitration measure.

In September 2023, the Defendant attempted to initiate arbitration proceedings before DIAC alleging the termination of the sub-contract was unlawful.

It sent a letter to DIAC requesting that they appoint an arbitrator. DIAC then took this request as one to act as an appointing authority rather than a request for arbitration under the DIAC Rules and wrote to the Claimant requesting agreement for DIAC to act as an appointing authority.

The Claimant did not agree to this stating the request was out of order and /or was premature.

In April 2024, the Defendant commenced proceedings against the Claimant in the Sharjah Court, seeking similar relief.

The Claimant then applied to the DIFC Court on 17 May 2024 for an interim anti-suit injunction to restrain the Defendant from pursuing the Sharjah proceedings which they said had been commenced in breach of the arbitration agreement.

The DIFC Court granted the interim anti-suit injunction, which was continued at the return date and the Defendant was allowed to file a challenge to the jurisdiction of the DIFC Court and seek to discharge the interim anti-suit injunction.

WHAT WAS DECIDED?

The DIFC Courts dismissed the Defendant's application and continued the interim anti-suit injunction. The DIFC Courts stated they had jurisdiction over the Claimant's claim, as the parties had chosen the DIFC as their seat of arbitration, which carried with it the implicit choice of the DIFC Courts as the supervisory courts.

The law which was applicable to the arbitration agreement did not make any difference to the DIFC Court's jurisdiction to protect their own exclusive jurisdiction and the parties' agreement to refer their disputes to arbitrators.

The arbitration agreement was valid and enforceable. It was governed by DIFC law, as the law of the seat of arbitration, and Dubai Decree No. 34/2021 had not rendered the arbitration agreement null and void, inoperative or incapable of being performed, but had preserved the parties' bargain and allowed

them to resort to DIAC or any other arbitration centre they wished. The arbitration agreement had not been abandoned or terminated and the Claimant had not been estopped by conduct from relying on it. These were serious issues to be tried on the American Cyanamid basis. It was not clear that the Claimant had fundamentally failed to perform the arbitration agreement or shown any clear intention to renounce it, and the Defendant had merely made a mistake in the way they had tried to start the arbitration proceedings.

The anti-suit injunction was also justified, as there was no good reason not to enforce the arbitration agreement and the Defendant should therefore be restrained from pursuing the Sharjah proceedings, which breached the arbitration agreement and interfered with the DIFC Courts' jurisdiction.

WHAT IS IT ABOUT?

This case is important as it shows the DIFC Courts will uphold Dubai Decree No. 34/2021 and enforce resorting to DIAC arbitration for arbitration clauses that provide for DIFC-LCIA arbitration. This is because Dubai Decree No. 34/2021 is a Dubai law, and the DIFC Courts consider themselves bound by that law. Alternatively, the DIFC Court would have still considered the Decree effective as UAE Law would have governed the validity of the arbitration agreement. The Abu Dhabi Court of Appeal in ADCA Case No. 1046/2023 had also previously held Dubai Decree No. 34/2021 was effective and reinforced party autonomy. The Court gave effect to the parties' arbitration agreement.

There has been considerable concern about the effectiveness of Dubai Decree No. 34/2021 following negative judgments in the USA and Singapore. This case will bring a degree of comfort to parties that still have contracts with DIFC-LCIA arbitration clauses in them that they will be able to resort to arbitration.

Mark Lakin (Partner), Magda Kofluk (Managing Associate), Samantha Martin (Associate), and Mayss Akasheh (Associate) of Stephenson Harwood LLP acted for the Claimant in this matter and contributed to this article.

Case No DCA Case No. 11/2024 issued on 29 April 2024

Jurisdiction Dubai

Court Dubai Court of Appeal

Recommended by Wasel and Wasel

WHAT IS IT ABOUT?

This appeal centred on a claim that an arbitration award was invalid because it had been signed by only two of the three arbitrators. The third arbitrator's dissenting opinion was not included or explained in the final document.

The appellant argued that the absence of the dissenting opinion and the refusal to include it had invalidated the arbitration award. In this case the

arbitration panel had been made up of three arbitrators. However, the award was signed by only two arbitrators, Arbitrator A and B. The third arbitrator, Arbitrator C, refused to sign the award because he held a dissenting opinion.

WHAT WAS DECIDED?

In the detailed judgment the Dubai Court of Appeal reiterated a number of principles which are enshrined in the UAE Arbitration law (Federal Law No. 6/2018).

Firstly, the judgment emphasised that as long as an arbitration award was issued by the majority of the arbitrators, it would remain valid.

Federal Law No. 6/2018 specifically states the arbitration award is issued by a majority of the opinions if the arbitration panel is composed of more than one arbitrator. If the arbitrators' opinions diverge so a majority is not achieved, the president of the arbitration panel issues the award unless the parties agree otherwise.

The judgment also clarified the importance of the arbitrators' signatures and clarified the requirements for the arbitrators' signatures.

Article 41(2) of Federal Law No. 6/2018 states that the arbitrators sign the award, and if any arbitrator refuses to sign the award, the reason for not signing must be mentioned. The award is valid if signed by the majority of the arbitrators.

The court ruled that a failure to record the dissenting opinion of one arbitrator had not undermined the validity of the award which had been signed by the majority. The arbitration award was valid as long as it adhered to the legal requirements and had been signed by the majority of the arbitrators.

WHY IS IT IMPORTANT?

This ruling provided crucial insights and clarifications on the arbitration process and the legal framework that supports it. Article 54(6) of Federal Law No. 6/2018 was important in this context as it allowed for the correction of a procedural error based on the parties' request, which reduces the grounds for nullifying an arbitration award. It shows the Dubai Courts will prioritise the validity of procedural actions over potential grounds for nullification, as long as the fundamental objectives of the procedure are met.

It also highlights that the validity of arbitration awards hinge on their adherence to procedural rules and the majority rule principle.

Although, dissenting opinions in arbitration are important, an award will not be invalidated just because they have not been included provided the majority of the arbitrators have signed the award.

Federal Law No. 6/2018 has been designed to ensure there is procedural robustness and to minimise the potential for nullification of awards based on technicalities.

This judgment provides a clear message that arbitration awards should be respected and upheld if they comply with the procedural requirements, even if there is a dissenting opinion. This approach helps to promote the efficiency and reliability of arbitration as a dispute resolution mechanism in the UAE.

Is Your Company in Compliance With the Saudi Arabia Data Protection Law?

Know Your PDPL Responsibilities

1 Select a legal basis for processing

2 Implement processing principles

3 Appoint a data protection officer

4 Establish a privacy policy

5 Draft privacy notices

6 Record processing activities

Conduct impact assessment

Secure agreements with processors

Abide by data retention rules

Abide by data destruction conditions

Adhere to data subjects' rights

Ensure notification of data breach

7

8

9

10

11

12

Learn everything you need to know in crystal-clear format with our **KSA Data Protection Toolkit**.



SCAN ME

IN-HOUSE PROFILE

CHIEF LEGAL, REGULATORY & GOVERNANCE OFFICER – TELECOMS



Technology's Regulatory Impact

Hilal Al Khulaifi Group Chief Legal, Regulatory & Governance Officer, Ooredoo Group explains how dramatic technological change in the telecoms sector could lead to a regulatory rethink.

YOUR BACKGROUND

I was educated in Qatar and studied Islamic sharia and law at the College of Sharia and Law at Qatar University. In the past I have had a number of different roles with the Qatari government. I was Director of the Legal Affairs Department at the Qatar Ministry of Commerce and Industry (MOCI) for six years. I also served on a number of committees including the MOCI Anti-Commercial Concealment Committee, the Financial Penalties Committee at the Communications Regulatory Authority, the Permanent Residency Card Committee, the Tenders and Auctions Committee at the Supreme Council for Economic Affairs and Investment, and the Qatar Chamber of Commerce and Industry Election Committee. In addition, I was a member of the National Committee which was responsible for preparing legislation related to Qatar's hosting of the FIFA World Cup and of the committee responsible for the Supervision of the FIFA World Cup in Qatar. In addition, in my role as Director of the Legal Affairs Department at MOCI I was involved in drafting a number of laws and regulations related to the 2022 FIFA World Cup, which in terms of sport has been the most significant event to date in Qatar so I am very proud of my contribution to it. In addition, I have also been Qatar's representative to the United Nations Commission on International Trade Law (UNCITRAL) and the state delegate to the Working Group II on Dispute Settlement and Working Group III on Investor-State Dispute Settlement Reform. I also served as the Secretary of the Supreme Council for Economic Affairs and Investment and was a member of the team which established the Commercial and Investment Court in Qatar.

YOUR CURRENT ROLE

At present I work as the Group Chief Legal, Regulatory and Governance Officer at Ooredoo Group. Ooredoo is a Qatari public shareholding telecommunications company. Ooredoo Group oversees the management of Ooredoo and its group companies which I also provide support to. The Group operates through management service agreements with Ooredoo and its subsidiaries. We are headquartered in Qatar, but have operations in a whole range of Middle Eastern



and North African countries, including Oman, Kuwait, Iraq, Palestine, Tunisia, Algeria, the Maldives, and Indonesia. In addition, the company invests in other ventures in the telecommunications and technology sectors. Moving over to the private sector from the public sector was a significant change for me, as the nature of the work in the private sector is very different from that in the public sector. The telecommunications sector is also dynamic and constantly evolving, which means continuous monitoring is required. There is a lot going on in the Telecoms and digital sector at the moment. The roll-out and potential use cases for 5G are expanding, including greater enterprise use of 5G when combined with the internet of things (IOT) which is helping companies transform their business, become more 'digital' and even changing their business models. Telecoms networks are also opening up through APIs, and a new digital ecosystem is being developed, where new uses and applications are being created, opening up better customer experiences, new revenue generation opportunities for network operators and new business models for start-ups and other entities. We are also seeing new partnerships between telecoms businesses and satellite operators to expand mobile coverage to rural areas and there are new partnerships with AI enablers such as Nvidia, Google, and Microsoft. In addition, AI integration is improving our networks and helping to make energy consumption more efficient. The telecoms value chain is also being unbundled and as a result some sub-stacks, including towers, data centres, fibre and

PRACTITIONER PERSPECTIVE



Rémi Bresson Auba
Solicitor,
Pinsent Masons

Rémi Bresson Auba and Diane Mullenex of Pinsent Masons explain the Qatar Communications regulator’s decision to require mobile service providers to switch to the Time Division Duplex technique.

The recent Qatar Communications Regulatory Authority (CRA) decision to require Mobile Service Providers to switch to the Time Division Duplex (TDD) technique in the highly valuable 2.6 GHz frequency band by 31 March 2025 is a significant milestone in the country’s telecommunications landscape. This strategic move aims to enhance the quality and efficiency of mobile services, and benefit both consumers and businesses. To fully appreciate the implications of this CRA decision it is essential to understand the difference between the Time Division Duplex (TDD) and Frequency Division Duplex (FDD) techniques. FDD uses two separate frequency bands for sending (uplink) and receiving (downlink) data. This is similar to having two lanes on a highway for traffic moving in opposite directions. TDD, however, uses the same frequency band for both sending and receiving data but at different times which is similar to having a single-lane road where traffic flows in one direction for a certain period, then switches to the other direction although this switching happens so quickly it appears seamless to users. The switch to TDD is expected to provide several benefits to users. Firstly, by reducing latency and allowing the dynamic allocation of time slots based on real-time traffic demands, it leads to improved network performance, faster data speeds and a better overall user experience. This enhanced quality of service results in fewer interruptions and more reliable mobile services. The switch to TDD will also allow a more efficient use of available spectrum, especially in environments where more data is being downloaded than uploaded, and will support the latest 4G and 5G technologies, enabling consumers to take advantage of new and innovative services. TDD provides the necessary flexibility to handle varying traffic demands, which is crucial for supporting the high data rates and low latency requirements of this advanced technology.

Businesses in Qatar, particularly those which rely heavily

on mobile telecommunications, will also benefit from the CRA’s decision. The improved network performance and higher quality services will enhance operational efficiency and help support the adoption of advanced technologies. This should lead to increased productivity and better customer interactions. The switch to TDD will enable businesses to leverage the latest 4G and 5G technologies, foster innovation and enable the development of new services and applications. This decision also aligns with international standards and recommendations, ensuring that Qatar’s mobile networks are future-proof and capable of supporting the growing demand for high-speed mobile services.

However, despite these numerous benefits, the switch to TDD also presents several challenges that need to be considered. One of the main ones is the need for mobile service providers to upgrade their existing infrastructure to support this new TDD technique. This will require significant investment in new equipment and technology. There may also be technical challenges in ensuring a smooth transition from the current FDD technique to TDD without causing disruptions to existing services. As mobile service providers switch from FDD to TDD, there may be reduced service quality or availability periods which could impact users. The CRA is fully aware of this issue and has already made it clear that consumers will need to be able to contact their service provider if they encounter any issues with mobile telecommunications services. Finally, the switch to TDD will require careful planning and coordination to avoid interference with other wireless services operating in the same frequency band. This may involve regulatory oversight and collaboration between different stakeholders to ensure a successful implementation. The CRA’s decision to switch to the TDD technique in the 2.6 GHz frequency band poses several challenges, but it will also presents numerous opportunities for improved connectivity, innovation, and competitiveness, which fully align with Qatar National Vision 2030.

Diane Mullenex also contributed to this article.

ducts are being carved out as standalone businesses. All these technical changes have legal implications.

They mean the investments made and the value created and accrued to different players on the digital value chain will need to be rebalanced. As massive digital players and traffic generators, accrue more value, the question is being asked, should they also be contributing towards some of the required infrastructure investments? Policy makers and regulators are also having to re-examine old assumptions on who should be regulated and who should not. Many are also developing a more holistic approach towards consumer and competition protection along the entire digital value chain.

LEGAL AND REGULATORY CHANGE

As far as policy and regulations are concerned the telecoms sector is stable. However, there are new possible legislative and regulatory developments along the digital chain that will impact us as network operators. For example, new AI policies are being introduced in various countries, as are new data protection and data sovereignty rules which are being introduced across the MENA region. If the GCC region follows the recent regulatory developments seen in the European Union, there could be new policies and regulations introduced on areas such as large digital platforms, autonomous vehicles, drones, and cybersecurity.

MOVERS AND SHAKERS

A ROUND-UP OF THE TOP APPOINTMENTS AND PROMOTIONS

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BUILDING UP

The construction and engineering law expert Ron Nobbs who previously worked in Stephenson Harwood LLP's London office has moved to the firm's Dubai office. Nobbs has over three decades of experience of working on construction, infrastructure, and engineering projects worldwide and has already spent more than a decade working in the Middle East. In the past he has worked on some of the world's largest projects

of all types including roads, railways, tunnels, bridges, airports, ports and stadiums, as well as on factories, hotels, offices, retail, housing, power stations, process plants, waste facilities, oil rigs and Floating Production Storage and Off-loading projects (FPSOs). He has also used all of the principal forms of contract including JCT, NEC, FIDIC, ICE, IChemE, and GCworks, as well as numerous other bespoke forms. The move is part of Stephenson Harwood's ambitious plan to expand its construction practice in the Middle East over the next five years.

WIRED FOR SUCCESS

Technology specialist Dino Wilkinson has joined Baker McKenzie where he will be a partner and the head of the firm's Middle East Data, Cyber and Technology practice. He will work out of the Baker McKenzie Abu Dhabi office. Previously, Wilkinson worked in Abu Dhabi with Clyde & Co. He has over 12 years experience of advising corporate and government clients on technology contracts, regulatory issues, data protection, and cybersecurity. Other areas of expertise include IT and outsourcing transactions, digital transformation, emerging technology regulation and data privacy laws. In addition, he has been instrumental in drafting key legislation, including on data sharing and privacy laws. However, Dino Wilkinson is not the only new joiner at Baker McKenzie after Sally Kotb also returned to the firm as a dispute resolution partner in the Dubai office. Sally has over 17 years of experience, and specialises in local and international commercial arbitration across various sectors, including construction, real estate, energy, and mergers and acquisitions. In the past she has been an arbitrator in a number of high profile arbitration centres and has also been actively involved in promoting diversity in arbitration.



Saudi law. In the past he has served in prominent government positions, including as the Deputy Minister for Laws and International Cooperation at the Saudi Arabian Ministry of Justice, Advisor to the Minister of Justice and Assistant Deputy Minister for Property Registration. In addition, he has served as a judge in the commercial courts and as a Committee for Resolution of Securities Disputes member. He also played a pivotal role in shaping key legislative reforms in Saudi Arabia, including the Civil Transactions, the Commercial Courts Law, the Judicial Costs Law, the Regulation of Foreign Law Firms and Evidence Laws. He has experience of successfully resolving complex disputes in the commercial and real estate sectors and has been the arbitrator in several major arbitration cases, with disputes exceeding SAR 2 billion.

A MOVE INTO REAL ESTATE

Kiran Chatha who previously worked at CMS in London is set to join the specialist real estate and hotel law firm Wisefields in the Middle East. She will work in the firm's UAE office on their GCC practice. Wisefields was founded in 2022 by two award winning founders and has a presence in Saudi and the UAE. The firm focuses on providing legal solutions to real estate, hotel and tourism issues and problems, as well as support to associated sectors.



THE BEST OF IT

The legal tech and data expert Nick O'Connell has joined the Bird & Bird Tech & Comms group. O'Connell has over 15 years' experience of working in the region and joins the firm as a Partner. He has worked on a range of areas including transactional contracting work and regulatory advisory in the broader technology, media and telecommunications space. He also supports clients on significant ongoing advisory projects, including major tech investments in the region. In addition, Saarah Badr who previously worked inhouse leading the regulatory team and as companies registrar at the Creative Media Authority in Abu Dhabi has rejoined Bird & Bird as a Senior Counsel. She has over 16 years of media, entertainment, regulatory, gaming, intellectual property and commercial experience. In the past she has also spent time working at the regional pay-tv platform OSN, overseeing the commercial legal and content compliance work.



A REAL ASSET

The regional asset manager, broker, and investment bank SICO BSC (c) has appointed Noora Janahi as their Group Chief Legal Officer. SICO BSC (c) have a

DENTONS EXPANDS

Over at Dentons Dr Abdullah Alsulaimi has joined the Riyadh office, as a partner in the litigation and dispute resolution practice there. Alsulaimi is a highly experienced lawyer with more than 13 years of experience in

OTHER CHANGES

HFV: Kashif Syed has joined HFV in Kuwait City as a Partner. He has a broad corporate and commercial practice and previously worked at International Legal Group.

Gordon Brothers: The global asset experts Gordon Brothers have set up a regional office in Dubai. .

I MOVERS AND SHAKERS I

presence in Saudi, Bahrain and the UAE. Noora has over 15 years of legal experience in investment banking services, corporate law, and of offering legal services in the banking and finance sector. In the past she has worked on a number of major transactions in Bahrain, including mergers and acquisitions and public and private capital markets transactions. She is also licensed before the Bahrain Court of Cassation and Constitutional Court and is a practicing arbitrator.

BANKING ON SANYAL

Aditi Sanyal has joined the Norton Rose Fulbright Middle East banking and finance team where she will be a partner. Sanyal previously worked at Simmons and Simmons. However, Sanyal, trained at Norton Rose Fulbright 15 years ago, and is returning there to leverage their global platform and expand her practice. Her past work has focussed on financial institutions in the UAE, Qatar, and Saudi Arabia. In her new role she will be based in Dubai but will collaborate with partners in Dubai and Riyadh. Her work includes both syndicated and bilateral corporate banking transactions and event driven financings, as well as a range of specialisms, including Islamic finance, real estate finance, project finance, acquisition finance and restructuring.

RETURN TO CLYDE & CO

Tom Bicknell will be working as a partner in Clyde & Co's Dubai office. He has rejoined the firm's global Financial Services Regulatory practice after a seven-year absence. With over 19 years of experience, Bicknell is a respected financial services regulatory lawyer who is known for advising multinational and regional companies in the Middle East and Asia-Pacific. His work focus is on non-contentious financial services work, particularly managing large-scale and cross-border regulatory mandates for banks, insurers, and fund managers. He also has expertise in the fintech sector, where he has assisted clients with market entry, digital transformation, and regulatory frameworks. Before rejoining Clyde & Co, Bicknell led the financial services practice at Pinsent Masons in the Middle East.

A COMEBACK CASE

White & Case LLP has welcomed back Majed Alkuraydis as a partner in their Riyadh

office. His practice focuses primarily on capital markets and M&A transactions. In the past he has advised on some of the largest and market-first transactions in Saudi Arabia. He regularly advises clients on Saudi law matters, corporate governance, securities regulations, and investment funds. Alkuraydis was previously working at Al Faisaliah Group as general counsel. However, he began his legal career at White & Case where he worked until 2019. After obtaining a Master of Laws from Harvard Law School he worked as counsel at a Saudi law firm. Alkuraydis is now the third Saudi-qualified partner in the White & Case Riyadh office.

RELOCATION, RELOCATION, RELOCATION

Baker Botts partner Stuart Jordan has relocated from the firm's London to their Dubai office. Jordan was recently appointed as the firm's global head of construction. His work includes both front end work and disputes. He advises developers and contractors across region in the construction, energy and infrastructure sectors. His front end practice focuses on green hydrogen, power, water, transport infrastructure, oil, gas, petrochemical, nuclear and other industrial process plant. However, he also writes and negotiates EPC, EPCM and other main contracts, technology licences, professional appointments, long-term agreements (LTSA), operations & maintenance (O&M), DBFO and other concession agreements. He has been instrumental in the NEOM Green Hydrogen Project in Saudi Arabia, the world's largest green hydrogen project to achieve financial close. He plans to focus on expanding the Dubai team and facilitating global and regional collaboration, as well as continuing Baker Botts's investment in the Middle East's energy and projects sector.

BEETON JOINS HADEF

Julie Beeton has joined HadeF & Partners as a senior consultant in their commercial team. Beeton has over 20 years of legal experience including in corporate

and commercial law, data protection, education, hospitality, cross-border transactions, corporate governance, and compliance. As well as having worked in Canada, and the UK, and she has spent over 14 years in the UAE in a range of roles, in private practice and as a senior legal counsel. Prior to joining HadeF & Partners, she was the head of the legal team for the Abu Dhabi Global Market (ADGM).

ANTI-TRUST TRAILBLAZER

Clifford Chance has appointed Sabra Ferhat as their first dedicated anti-trust counsel based in the UAE. Sabra has relocated from the firm's London office. She has extensive experience in international anti-trust issues across a range of sectors including technology, telecoms, energy, and banking. In the past she has also worked on significant transactions, including advising the Nationwide Building Society on its £2.9 billion acquisition of Virgin Money UK plc and Coca-Cola on its acquisition of Costa Coffee. She has also advised UAE clients including DP World.

A TAXING AFFAIR

Raneem Alrahaimi has joined the DLA Piper tax team in the Middle East. Raneem has five years of experience of working in Saudi Arabia where she specialised in corporate income tax, international tax, transfer pricing, and tax disputes. She is also currently studying for an MSc in Taxation at the University of Oxford. Previously, she worked at EY, where she advised GCC and foreign multinationals on investment structuring and management. She has particular expertise on transfer pricing where she has supported clients in a range of sectors, including consumer goods, retail, construction, transport, and pharmaceuticals in meeting their three-tier TP documentation requirements and in managing disputes. She combines a deep knowledge and understanding of international tax rules, practices, and developments with practical experience in Saudi Arabia and the GCC region.



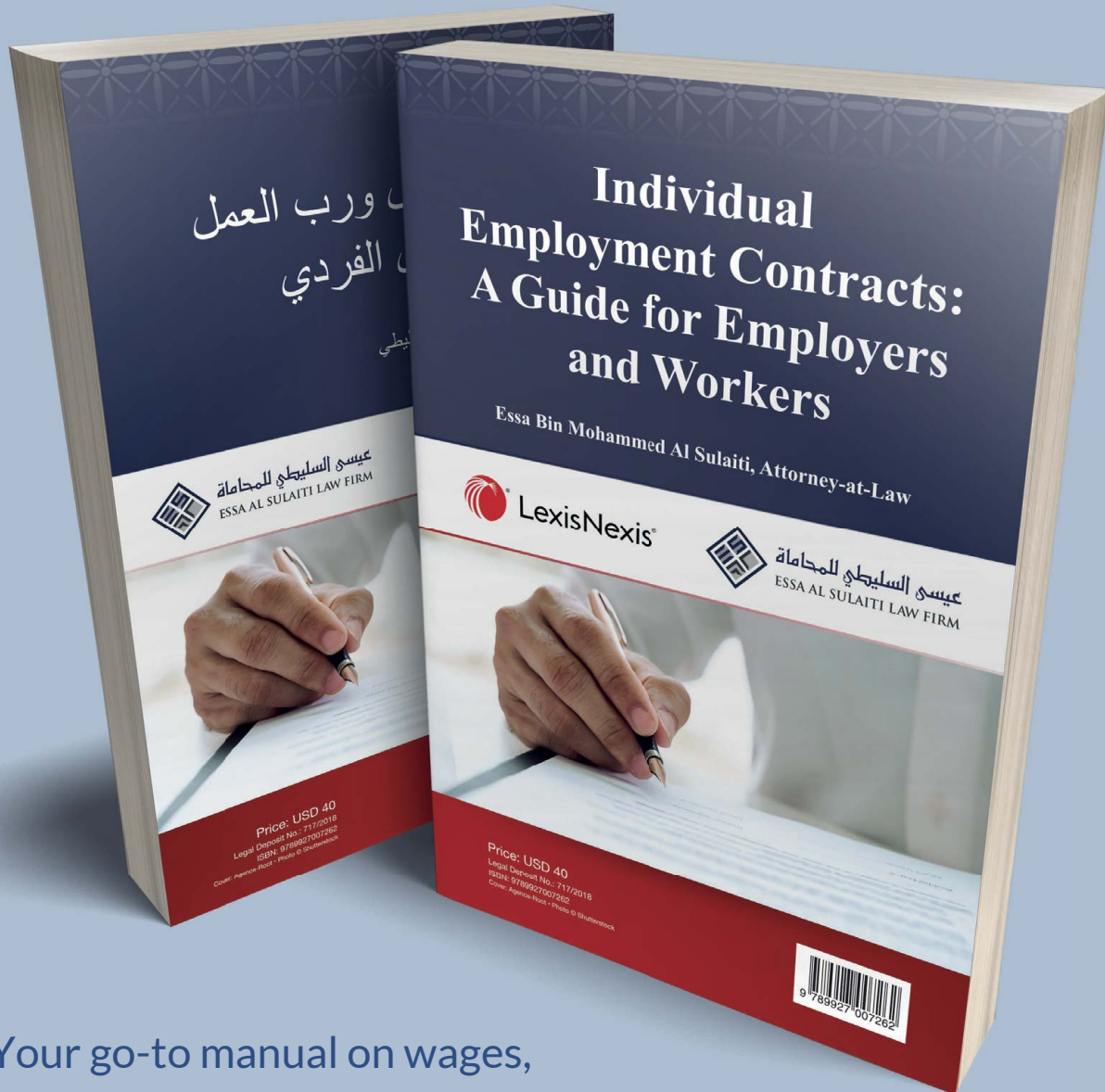
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Enforceability of Foreign Summary Judgments

Waleed Hamad and Myriam Simon of Al Aidarous explain how a significant Dubai Court of Cassation ruling has clarified the legal framework surrounding the enforceability of foreign summary judgments in the UAE.

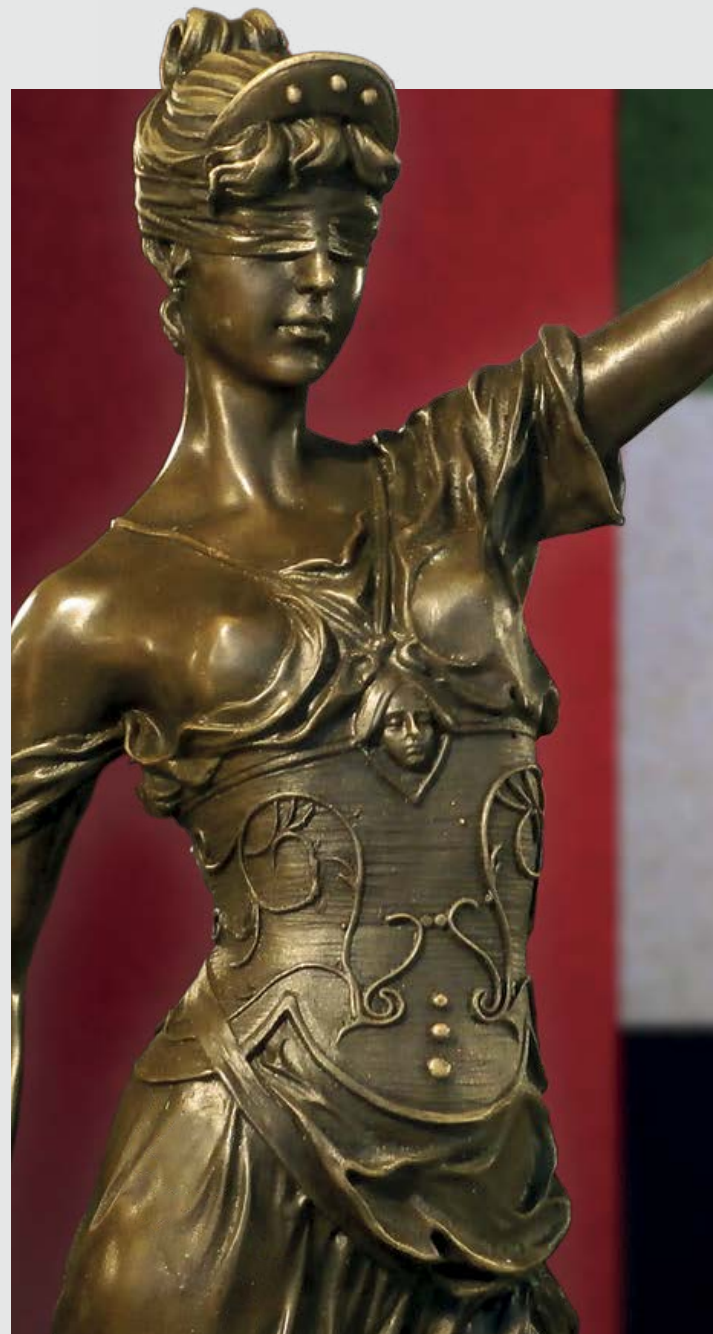
The Dubai Court of Cassation has clarified the legal framework surrounding the enforceability of foreign summary judgments within the UAE in a significant ruling which underscores the courts' commitment to recognising and enforcing judgments issued by foreign courts. This ruling also provides critical insights on how such judgments are categorised under UAE law.

BACKGROUND

On 12 August 2022, a claimant submitted petition No. 163/2022 to an execution judge at the Dubai Court of First Instance, seeking enforcement of a final judgment issued by a Canadian court against the respondent. The execution judge granted the petition, authorising the enforcement of the Canadian judgment.

However, the respondent then contested this decision by filing Appeal No. 10/2023, asserting that the Canadian judgment was an urgent judgment, which rendered it unenforceable within the UAE.

The Dubai Court of Appeal upheld the enforcement, and the respondent subsequently sought an appeal before the Dubai Court of Cassation under DCC Case No. 1556/2023. On 16 January 2024, the Dubai Cassation Court referred the case back to the Dubai Court of Appeal, noting that the Court of Appeal had not addressed the respondent's claims on the characterisation of the Canadian judgment.



On 21 February 2024, the Appeal Court dismissed the Court of First Instance's ruling, concluding that the Canadian judgment was an urgent judgment which was not enforceable in the UAE. This ruling set the stage for the claimant's subsequent Dubai Court of Cassation, case DCC Case No. 392/2024.

ARTICLE 222

The Court of Cassation ultimately annulled the Court Appeal judgment and affirmed the initial Court of First Instance ruling for two key reasons.



being satisfied.

This broad interpretation reinforces the principle that, in the UAE, the enforcement of foreign judgments depends primarily on compliance with the specified provisions rather than the specific classifications of the judgments themselves.

JUDGMENT CHARACTERISATION

In addition, the court also looked at the characterisation of the Canadian Judgment. The judgment that was requested to be enforced, which was issued by a Canadian court, met all the conditions stipulated by Article 222 of Federal Decree-Law No. 42/2022. The Dubai Court of Cassation clarified that the characterisation of this judgment did not qualify it as an ‘urgent judgment’ in the prevailing sense of UAE laws.

It classified it instead as a ‘Summary Judgment’. This meant that the judgment had been rendered through simplified procedures, without undergoing the standard full trial process, where the respondent would actively participate in the investigation by submitting written memoranda, providing oral responses, and presenting witness testimony but would have also addressed the substantive issue.

As a result, the Dubai Court of Cassation decided to annul the Dubai Court of Appeal judgment, which had dismissed the Dubai Court of First Instance’s ruling based on the misconception that the Canadian judgment was an urgent one and, therefore, could only be enforced in the jurisdiction in which it had been issued, and not in the UAE.

LESSONS LEARNT

From the reading of this judgment, there are a number of important lessons to be learnt.

- The Dubai Court of Cassation has established that summary judgments, as characterised in common law jurisdictions, such as Canada which are merely expedited proceedings but which still address the substantive issue, are enforceable in the UAE under Article 222 of Federal Decree-Law No. 42/2022.
- In addition, as the Dubai Court of Cassation emphasised that requests for the enforcement of foreign judgments should not be restricted by their characterisation, as long as all other stipulated conditions have been met, we believe that this implies that an urgent judgment, order, or any interim order could also be enforceable before the Dubai Courts under Article 222 of Federal Decree-Law No. 42/2022.

Article 222 of Federal Decree-Law No. 42/2022 (the UAE Civil Procedure Law) outlines the conditions necessary for enforcing judgments and orders from foreign courts.

The Court asserted that Article 222 is both general and absolute, encompassing all judgments and orders issued by foreign courts without differentiation based on the type or nature of the judgment or order.

It emphasised that requests for enforcement should not be restricted by the characterisation of those judgments, subject to the provisions mentioned in Article 222 of Federal Decree-Law No. 42/2022

LITIGATION IN THE DIFC



Sadique Mohd, Head of International Litigation, Al Aidarous provides three essential pieces of advice to DIFC Court Litigants.

The DIFC Courts have become a prominent venue for resolving commercial disputes, as they offer litigants a common law legal framework within the UAE. However, navigating the procedural nuances of the DIFC Courts requires a strategic approach and there are three specific approaches litigants there can take based on the DIFC Courts Rules which can significantly enhance the management of litigation and help optimise litigation outcomes.

MANAGING APPLICATIONS WITHOUT FORMAL NOTICES

One of the most efficient ways to manage proceedings in the DIFC Courts is by using a provision that allows certain applications to be made through correspondence, without the need to issue a formal application notice. This procedure is particularly useful for handling routine case management applications, as it allows for faster resolution of minor procedural matters without the need for a formal hearing.

The relevant provision in the DIFC Court Rules, RDC 23.77 states, ‘Certain applications relating to the management of proceedings may conveniently be made in correspondence without issuing an application notice. It must be clearly understood that such applications are not applications without notice and the applicant must therefore ensure that a copy of the letter making the application is sent to all other parties to the proceedings’.

Under this rule, litigants can make applications by letter, provided they notify the other parties involved in the proceedings. If the application is opposed, the applicant still has the option to apply to the court by letter, clearly stating the nature of the order sought and the grounds for the application. The other party is then given two clear days to respond, and the court will deliver its decision via a letter, which the applicant must promptly share with all the parties.

This is a very helpful process as it saves time and costs. In complex commercial litigation, time is often of the essence, and delays associated with issuing formal application notices and waiting for court hearings can slow down the case progress. By allowing these applications to be made through correspondence, litigants can address routine procedural matters swiftly, without the need for lengthy filings or hearings.

For example, applications on time extensions or minor procedural adjustments (e.g. matters that do not typically require a full hearing) can be dealt with efficiently via correspondence. This not only helps to keep the case on track but also minimises the financial and time burdens which tend to be associated with more formal court processes.

The cooperative nature of this approach can also encourage parties to resolve disputes informally, further expediting the litigation process.

FLESHING OUT GROUNDS OF APPEAL

The appeal process in the DIFC Courts is another area where litigants can benefit from strategic planning. Under Rules 44.28 to 44.30 of the DIFC Court Rules, an appellant is required to file an appellant’s notice, setting out the grounds of appeal along with a skeleton argument. However, the rules also provide flexibility in cases where it is impracticable to submit the detailed grounds and skeleton argument at the time of filing. The rules state that where it is impracticable to comply fully with the requirement to file a skeleton argument and grounds, the skeleton and grounds can be filed 21 days after the filing of the appeal notice. This means there is more time to prepare a thorough and robust appeal case. This flexibility is critical in complex commercial cases, where the grounds for appeal may require extensive legal analysis and consultation with counsel. Appeals are often filed under tight deadlines, and without this rule, litigants could find themselves rushing to submit an incomplete or underdeveloped appeal.

For example, if a party has just received an unfavourable judgment in a high-stakes commercial

dispute, the time limits for filing an appeal may be tight. However, the legal grounds for challenging the judgment could also be intricate and may require a detailed examination of the trial record.

This provision will ensure that litigants are not forced to submit hastily prepared appeals and instead have the opportunity to present fully developed and persuasive grounds for overturning a judgment, thereby increasing the chances of a successful outcome.

INTERIM PAYMENT OF COSTS

Another significant advantage for litigants in the DIFC Courts lies in the courts’ costs regime, particularly in the ability to secure an interim payment on account of costs.

Practice Direction No. 5/2014 outlines the procedure for obtaining such a payment when a party has been awarded costs, but a detailed assessment has yet to be conducted.

Practice Direction No. 5/2014 states, ‘Where the Court has ordered a party to pay costs subject to detailed assessment unless agreed, it will order 50% of the amount claimed in the statement of costs to be paid on account before the costs are assessed, unless the Court sees fit to order otherwise’.

This provision allows litigants who have successfully obtained a costs order to receive 50% of the claimed costs on account, even before the full costs assessment process is completed. It can provide much-needed financial relief, particularly in the case of lengthy and expensive litigation.

The ability to secure an interim payment of costs offers significant financial benefits to successful litigants. In many cases, litigation costs can be substantial, and waiting for the conclusion of a detailed costs assessment can place a heavy financial burden on the winning party.

By ordering a payment on account, the DIFC Courts ensure that successful litigants are compensated more promptly, alleviating the immediate financial strain which can be associated with legal fees. In addition, this mechanism can encourage quicker resolution of costs disputes. Once a party has received a substantial portion of its costs, there may be less incentive for there to be a protracted dispute over the remaining amount. This allows both parties to move on from the litigation more quickly, minimising further costs and time delays. Litigating in the DIFC Courts can offer a wealth of opportunities to commercial parties. However, success often lies in understanding the procedural tools which are at your disposal. By using the ability to make applications through correspondence, taking advantage of the flexibility in filing appeal notices, and securing interim payments on account for costs, litigants can streamline their case management, reduce costs, and also improve their chances of a favourable outcome.

Sadique Mohd is a DIFC Part 2 registered practitioner



Sadique Mohd
Head of
International
Arbitration, Al
Aidarous

CONTRACT WATCH

Labour Contracts



In August 2024, there were significant amendments to the Saudi Labour Law, Saudi Arabia Cabinet Decision No. 219/1426. The changes which aim to modernise the Saudi labour market, enhance workers' rights, and streamline employer responsibilities, will take effect on 20 February 2025, 180 days after publication. It is crucial that Saudi employers understand the potential impact these changes will have on their relationships with employees and labour contracts.

SCOPE OF THE CHANGES

Subject to very few exceptions, these amendments apply to all employment relationships in Saudi Arabia, including private and public sector employers, manpower agencies, and any organisation operating under the jurisdiction of Saudi's labour regulations, which includes employees on ships with a load of less than 500 tons which were previously exempt from Saudi Arabia Cabinet Decision No. 219/1426.

RESIGNATION

One of the primary areas where these amendments will have an impact on employment contracts is on termination. There is a new definition of resignation as 'The worker's written expression of their desire to terminate a fixed-term employment contract without coercion, without any conditions or stipulations, and acceptance of the same by the employer. Where

an employee is on a fixed term employment contract the employer must acknowledge or reject a resignation within 30 days, or it will be automatically accepted. In addition, employers can delay the acceptance of a resignation for up to 60 days with justifiable reasons. Employees also now have the right to withdraw their resignation within seven days of submitting it. As a result of these changes, employers should consider explicitly outlining the resignation process, including timelines for the employer's response and the potential for delay.

PROBATION CHANGES

Another significant change is to probation periods. The maximum probation period will now be 180 days, and this must be explicitly stated in the employment contract. The regulations are expected to further clarify which holidays are included or excluded during this period. Employment contracts that currently list a probation period of less than 180 days, with an option to extend by mutual agreement of the parties, may need to be revised.

NOTICE PERIODS

In addition, the period required to be given to terminate an unlimited employment contract is also to be reduced to 30 days for an employee. However, it remains at 60 days where the employer is giving termination notice.

LEAVE ENTITLEMENTS

There have also be a number of changes to leave entitlements. For example, maternity leave will be 12 weeks on full pay, with specific periods permitted to be taken before and after delivery. Male employees will also be entitled to three days of paid parental leave which must be taken within seven days of the birth of their child.

In addition, all employees will be entitled to three days' bereavement leave on the death of a sibling. Employment contracts and/or employee handbooks will need to be updated to reflect these new leave entitlements.

EMPLOYERS' DUTIES

It is important to note that there are also now new stricter penalties for non-compliance with Saudi Arabia Cabinet Decision No. 219/1426 including fines ranging from SAR 200,000 to SAR 500,000 for violations related to recruitment and manpower services without proper certification from the MHRSD. As a result, employers should be taking proactive steps to ensure their compliance with these upcoming amendments. First, they should thoroughly review and revise their existing employment contracts to align with the new provisions, such as the new resignation procedures, extended probation periods, and updated notice periods. They will also need to update their HR policies and employee handbooks to reflect the various leave entitlement changes. In addition, they will have to stay up to date with additional changes in implementing regulations or guidelines issued by Ministry of Human Resources and Social Development (MHRSD) or other relevant authorities, which may further clarify the application and interpretation of these amendments. Effective employee communication and training will also be needed to ensure employers and employees are aware of their new rights and obligations. It may also be advisable for them to seek legal advice from qualified legal practitioners on the implementation of these changes.

This article was also co-written by Sara Khoja (Partner) and Sarit Thomas (Knowledge Lawyer).



Contributor
Jassar Aljohani
Senior Associate Clyde & Co

The logo for K&L Gates, featuring the company name in white, uppercase letters on a solid orange rectangular background. The background of the entire page is a dark blue field with glowing, wavy lines and scattered light points in shades of blue and yellow, suggesting a digital or technological theme.

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