

lex arabiae

Legal News of the Gulf

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Meyer-Reumann & Partners

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United Arab Emirates

M&P Welcomes Heinrich Köllisch

We are pleased to announce that RA Heinrich Köllisch joined our Dubai office. Today we use this opportunity to give him a chance to introduce himself to the readers of Lex Arabiae:

“Born and raised in Hamburg, Germany I graduated there from secondary school Christianeum and continued my formation in Legal Studies in Passau and Mainz until my 1st State Exam in 2006.

My very interest to pursue on an international focus led me to take up a second study after my legal graduation. So I started to study Languages, Culture and History of the Middle East at the University of Tübingen. My special interest in this context was to learn and be able to communicate in Arabic and secondly to gain an insight into the legal systems of the Arabic World. Therefore I spent one year in Tunis, where I found a place at the local Zitouna University (with its roots going back over 1200 years) to study Islamic Law.

Shortly after I entered my mandatory Legal Traineeship (Referendariat) in Hamburg. Amongst other stations I spent half a year with the Hamburg Senate Chancellery in the Department of European and International Affairs. Another Experience has been a time with an international Law Firm in Frankfurt/Main, in their Team of Banking and Finance, specially focusing on the German Market for Islamic Finance.

The most shaping station of my

Referendariat for me though was my stay with Meyer-Reumann & Partners in Dubai in 2014. Here I was able to work in all of the fields I have so passionately studied and I found an opportunity to use, what I personally like in the interest of customers. So it was very obvious for me to approach Meyer-Reumann & Partners again after passing my 2nd State Exam in Hamburg and my admission to the Hamburg Bar as a lawyer.”

We welcome RA Heinrich Köllisch in our Dubai team !

*Elena Schildgen
Meyer-Reumann & Partners,
Dubai Office*

United Arab Emirates

Recent Developments in UAE Islamic Banking

Guiding Principle

Islamic Banking and Finance is a topic of constant attention and many banks in the UAE do define themselves as Islamic. As certain structural changes in the Islamic banking sector in the UAE might be about to happen, the Islamic banking system in the UAE shall be presented and possible changes shall be assessed.

A. Introduction

In the style of a 21st Century Pop Star HH Sheikh Mohammad released the following tweet on Twitter on May 8, 2016 2:20 AM:

“We sanctioned the initiation of a Higher shari‘a Council for financial and banking

transactions in the state, to set standards and to overlook the shari‘a boards of Islamic banks and financial institutions.”¹

The statement triggered a widespread response of followers on Twitter and in the local Arabic press during the following days. Ranging from a short and simple “OK” to calling the announced decision one of “strategic” dimensions.

This article would like to take this recent happening as triggering event to assess the Islamic banking system in the UAE and discuss possible consequences of the decision announced by his HH Sheikh Mohammad.

Therefore firstly, a short overview of the banking system in the UAE and its main legal pillars shall be given, followed by a brief introduction into Islamic finance and its main legal and shari‘a features. Based on all this and finally the announced decision of HH Sheikh Mohammad shall be discussed in a number of possible scenarios.

B. The Basic Structures of the Banking System in the UAE

Banks do form a significant sector of the UAE’s economy as impressively underpinned by the 2016 Forbes Ranking of the World’s Biggest Public Companies.² Half of the listed 14 UAE companies in the ranking are banks and with regard to assets the top five of the ranking are comprised of banks.

¹ <https://twitter.com/hhshkmohd/status/729239632550998016>

² <http://www.forbes.com/global2000/list/#country:United%20Arab%20Emirates>

Concerning the legal regimes of banks and financial institutions, the first differentiation has to be made along geographical boundaries: Many of the banks in the UAE operate out of financial free zones, most notably the DIFC in Dubai but also ADGM in Abu Dhabi. Here special legislation applies that differs to a reasonable extent from the mainland legislation this article will focus on.

Mainland banking activities shall be taken into account from three different angles:

- Firstly the corporate aspect which focusses on the entity of the bank itself as a legal person and the legal regime that governs it;
- Secondly the regulatory aspect which revolves around the banking supervision and the government entities regulating banking operations in the UAE; and
- Thirdly the legal regime that governs the relations between the banks and its customers in everyday business.

I. The Corporate Law Aspect

Most legal persons in the UAE are incorporated under the Federal Law 02 of 2015 on Commercial Companies (Commercial Companies Act) which has just recently been newly legislated in 2015. From the multitude of company types set out in this law only one suits for the incorporation of a commercial bank. Art. 79 (1) of the Federal Law 10 of 1980 on The Central Bank, the Monetary System and the Order of the Monetary Profession (UAE Banking Law) requires all commercial banks to be set up as public stock companies under the UAE Commercial Companies

Act. This obligation explains, amongst other factors, why so many banks can be found in the aforementioned Forbes list of Public Companies.

It also means that largely commercial banks are subject to provisions of the Commercial Companies Act just as any other publicly listed stock company. This includes in particular the 51 percent ownership rule of UAE nationals as set out by Art. 10 (1) Commercial Companies Act as well as the monistic administrative structures characterized by a board of directors responsible to the general assembly of shareholders. An institution such as a supervisory council to control the board as e.g. the Aufsichtsrat in German public stock companies not exist. Again the nationality rules of the Commercial Companies Act come into play providing for the majority of board members and the president to be of Emirati nationality (Art. 151 Commercial Companies Act). A number of executive officers who have delegated competencies from the board regularly assumes the everyday management of the company. In comparison to a German Vorstand they are not an independent corporate body with statutory rights and duties. In many cases, these officers are not of Emirati nationality but do act as the major decision and management center of the corporation as prominently illustrated by the case of Shayne Nelson, CEO of Emirates NBD³. In this context it might be interesting to note, that the new UAE

³ <http://www.emiratesnbd.com/en/about-emirates-nbd/management-team/shaynenelson/>

Commercial Companies Act foresees shari'a boards for Islamically managed companies (e.g. Art. 132 (6), 177 (4) Commercial Companies Act) without defining their position and competences in the corporation.

This general corporate legislation takes a modified shape in the case of UAE banks, as a considerable amount of legal prescriptions alter or abrogate the provisions of the Commercial Companies Act. A very prominent one is Art. 6 Commercial Companies Act. Here banks and financial companies are exempt from the governmental supervision of the Ministry of Economy, which shows that banks even in corporate issues fall under a special supervisory regime. In the UAE, this is predominantly exercised by the Central Bank of the UAE. Furthermore, additional demands are established concerning the criminal record of bank managers and personal incompatibilities (Art. 93 UAE Banking Law). A further field of special legislation concerning commercial banks are stricter provisions on capital and reserves, which have to be provided (Art. 79-82 UAE Banking Law). In addition, any changes made to their memoranda or articles of association are subject to approval of the Central Bank. Moreover, the winding up of commercial banks is subject to special provisions as defined in Art. 108 – 111 UAE Banking Law.

II. The Regulatory Aspect

As already indicated the main - though not sole - regulatory body for commercial banks is the Central Bank, which exercises its respective powers predominantly through the Banking Supervision and Examination

Department (BSED), one of its seven departments. The first and most important condition to operate a commercial bank is a banking license issued by the competent authority within the Central Bank (Art. 83 (1) UAE Banking Law). A similar license is needed, when a branch of a foreign bank strives to take up commercial bank activities in mainland UAE. Furthermore licenses must be obtained for mergers or closing of commercial banks. Following their licensing, commercial banks are enlisted in a special register. In a number of cases, the Central Bank may erase the commercial bank from the register, which resembles the withdrawal of a license. Furthermore, a number of activities most notably industrial and commercial activities as well as the purchase of shares are limited to a large extent by the UAE Banking Law. Violations of these legal stipulations give regulatory authorities an additional power to discipline commercial banks accordingly (Art. 112 UAE Banking Law). Furthermore the Central Bank is widely entitled to regulate generally and specifically on commercial banks (e.g. Art. 95, 96 UAE Banking Law) and to control the banks accordingly through the BSED (Art. 99, 100 UAE Banking Law).

Alongside this general regulatory system, the UAE Banking Law provides for a number of special provisions in the field of accounting and statistics (Art. 101 – 107 UAE Banking Law).

It should be mentioned that as far as the UAE Banking Law itself goes, the aforementioned regime concerning corporate and regulatory aspects is only applicable to commercial banks. By

virtue of Art. 3 Central Bank Board of Directors Resolution No. 21/2/88 the vast majority of rules applicable to commercial banks are applicable to investment banks as well.

Another main area of regulative activities in the UAE banking system stretches onto the field of combating money laundering. Though this area of regulatory activity is highly dynamic in its development at present, it shall be not taken into account in this article, as it has little to no connection to explaining the system of Islamic banking and finance in the UAE.

III. The Legal Regime in Relation to the Customer

Banking transactions between bank and customer are in general private law contracts. Thus in some countries like Germany they can be found directly in the Civil Code. The UAE however have taken a different approach and legislated banking transactions as third book of their Commercial Code. The UAE Commercial code regulates such transactions as deposits and transfers (Art. 371-389 UAE Commercial Code), current accounts (Art. 390-408 UAE Commercial Code), loans (Art. 409-439 UAE Commercial Code) including credits, bank guaranties, credit facilities and letters of credit as well as transactions on commercial (Art 440-449 UAE Commercial Code) and financial instruments (Art. 450-477 UAE Commercial Code). For some of these transactions the law expressly states them to be of commercial nature even when they should appear in a b2c relation.

C. The Islamic Finance in Theory and In The UAE Legal Framework

After looking at the core legal stipulations concerning the UAE's banking system, it should be examined what makes Islamic finance Islamic finance in the UAE. So firstly, an insight shall be given into the main concepts of Islamic law concerning financial transactions, before we consider how the UAE law transfers these concepts into its legal system.

I. Main Sharī'a Concepts Applicable to Financial Transactions

Whereas the literary meaning of sharī'a is "the physical access to drinkable water"⁴, as a legal term it is quite commonly defined as "the rules and regulations governing the lives of Muslims"⁵. So sharī'a is the term used for the sum of all transcendently given rules regulating the life of Muslims in relation to God and between humans. This term though neither explains what rules there are nor how they are derived and from what sources. The knowledge of these rules is described as fiqh in Arabic, whereas sources and methods of deriving are tackled by the discipline of uşūl al-fiqh, which evolved mainly out of the fiqh. Given this complexity, it is not surprising, that a number of different approaches and opinions with regard to the sharī'a developed. The main views today in sunni Islam accumulate in four legal schools, the so called madhāhib (sg. madhhab), yet this does not mean that there can still be a number of

different views when it comes down to a single rule between fiqh scholars.

On the other hand, it can be noticed, that the sharī'a as described here is a system, which is predominantly connected to the single Muslim and can be utilized by him in order to determine his individual ethical standpoints and values. So legislature of states can include sharī'a rules in varying degree and context. In most states of the Arab world today, the sharī'a is applied in the framework the law has ordered for its application. An exception to this is mainly Saudi-Arabia, where the sharī'a still directly applies and legislative acts of the government are subject to it. Also many states use sharī'a generated rules and concepts as source of inspiration for their laws and let the sharī'a be one of the major guidelines for interpretation of codified law (cf. Art. 1 Federal Law Nr. 5 of 1985 (UAE Civil Code) or Art. 7 UAE Constitution).

So, in order to find out more about the core concepts of the sharī'a applicable in the field of banking and finance, reference should be made to the according works of fiqh. The theoretical basis for most sharī'a transactions can be found in the elaborations on sales (bay') contracts. From this basis most of the sharī'a rules on Islamic banking and finance are derived.

Elements of a sales contract in sharī'a are the parties (buyer and seller), the object (good and price) as well as the way of conclusion (offer and acceptance).⁶ Restrictions applicable in Islamic banking focus around the second

⁴ Cf. Lisān al-'arab, Vol 8, 175

⁵ EP² Vol. 9, 321

⁶ Ibn al-Juzay, 391

element. This means price and good must fulfill certain conditions to be in line with sharī'a. The main terms that appear in this context are ribā and gharar.

1. The Concept of Ribā

The meaning of the Arabic word ribā can range from "gain" or "increase" to "exaggeration" or "usury". As a sharī'a term definitions for ribā can vary. The hanafī legal school defines it "void advantage in exchange treaties according to sharī'a standards in favour of one party"⁷ whereas the mālikī legal school does not have a definition at all, but rather defines its subtypes only.⁸ According to fiqh sources it is mainly applied to two kinds of objects and two kinds of transactions.

The objects can be precious metals (gold and silver) (naqdān) and food (ṭa'ām). In Islamic banking and finance special attention is given to the first one. Even though modern currencies largely are not backed up by reserves of these metals, modern currencies are treated by sharī'a scholars as if they were coined gold or silver. Therefore, money as core good of banking is subject to the concept of ribā object wise. Though not at the heart of modern banking, investments in foodstuffs could be subject to the concept of ribā as well.

The two ways that ribā can take in transactions are nasī'a and tafāḍul. The Arabic word nasī'a means "delay" or

"postpone". It refers to the idea that in the contractual exchange of good and price one of the two can be delayed. For the aforementioned objects this is not permitted in sharī'a contexts: So gold, silver (and money) cannot be exchanged for one another other than on the spot. Whereas the nasī'a stresses the time element in the transactions, the tafāḍul focusses on an unevenness in value of the exchanged good and price, as tafāḍul is usually translated as "quantitative disparity". This kind of ribā basically applies when the same type of metal (e.g. gold) or food is traded for its own kind with a difference in price for equal quantities.

All of the aforementioned explains why e.g. interest on borrowed money does impose a significant amount of problems in a sharī'a conform finance system.

2. The Concept of Gharar

Though not as prominent as the concept of ribā, the concept of gharar also influences Islamic banking and finance to some extent. A literary translation of the word would be "hazard" or "jeopardy". This concept is connected to the idea that the good and price of a sharī'a sales contract have to be defined and known (ma'rūf) as well as capable to be delivered (maqḍūr 'alā taslīmi-hī).⁹ So if these two requirements are not met, a valid sales contract cannot be enacted. Most prominent examples for the latter one in fiqh literature are the sale of fish in the sea or birds in the air. In general, the sharī'a sales concept is based on the idea that goods can be inspected before the conclusion of the contract. Thus

⁷ Al-Khaṭīb al-Tamartāshī as presented in Appendix 1

⁸ al-Mawsū'a al-fiqhīya al-kuwaytīya, Vol. 22, 50

⁹ Ibn al-Juzay, 392

sales of goods that are not present at the place of contract are possible but under conditions only. The same applies if the buyer does not know the price.

3. Further Concepts Relevant to Shari'a Investments

Other conditions for the sale of good in fiqh terms would be that they are ritually clean (tāhir) and of practical use (muntafi' bi-hī).¹⁰ So investments e.g. in pork or completely superfluous things would hardly conform with shari'a stipulations.

4. Legal Creativity in Shari'a

As already implied in the aforementioned, specific shari'a concepts can be a point of discussion amongst scholars up to the level of dispute. This is especially the case, when it comes to single details of regulations. The preceding presentation was mostly oriented along the viewpoints of the mālikī legal school, as it is presumably the prevailing one amongst citizens of the UAE.

However, the academic dispute will come into play on another level as well. By time, Islamic jurists developed ways to stick formally to the conditions of shari'a concepts but tried to reach results that were forbidden by some or all of the transactions. These ways are called hiyal (sg. ḥīla) in Arabic. Again, different legal schools and scholars developed different views if and to what degree these ways are still compatible with shari'a rules and values. Generally speaking, the followers of the ḥanafī school of law (mostly found in Syria and

non-Arabic Muslim countries) are most permissive whereas ḥanbalī followers (the prevailing school in Saudi-Arabia but also strong in other GCC countries including the UAE) would be most restrictive and followers of the mālikī and shāfi'ī schools would be found in the middle between these two.

All of these factors have an impact when assessing to what degree financial products can be seen as shari'a conform or not. It also results in Islamic banks taking other ways if investing their clients' money e.g. in shared projects set up as companies where the client increases his shares by time to become the whole owner. To sum it all up, it should be pointed out, that there is a multitude of views to what can be seen as shari'a compliant and what exceeds its limits. In the end, it is left to the conscience of every single Muslim what views he follows and accepts.

II. The Islamic Factor in the UAE Banking System

After explaining both the banking system in the UAE and the main concepts that curb an Islamic finance system, it is time to take a look at how both are connected i.e. how the Islamic banking and finance system in the UAE works.

This is regulated by Federal law 6 of 1985 on Islamic Banks, Financial Institutions and Investment Companies (UAE Islamic Banking Law).

According to this law, an Islamic bank is one that declares itself as an Islamic bank by virtue of its memorandum and articles of association (Art. 1 UAE Islamic Banking Law). This means, the UAE Islamic Banking Law does not

¹⁰ Ibn al-Juzay, 392

request any special application or approval for Islamic banks other than normal banks.

Islamic Banks are generally set up in the same legal forms and under the same procedures as normal banks (Art. 2 UAE Islamic Banking Law). With regard to the operation of an Islamic bank, Art. 3 UAE Islamic Banking Law allows Islamic banks to undertake all financial transactions permitted to ordinary banks. Furthermore, certain transactions forbidden to ordinary banks are legalized for Islamic banks on the condition that the sharī'a is obeyed (Art. 3, 4 UAE Islamic Banking Law). This happens in order to enable Islamic banks to be able to invest in a larger number of projects together with their clients.

On the other hand, certain additional provisions with regard to their corporate structure bind Islamic banks. Art. 6 UAE Islamic Banking Law provides for a sharī'a control body in every bank. The law sets the number of members to a minimum of three and assigns them the task to check on conformity of transactions and interactions enacted by the bank with the Islamic sharī'a and its rules. Details on the formation of this body, its precise tasks and procedures are left to be established by the articles of association of every Islamic bank itself.

Finally, Art. 5 UAE Islamic Banking Law foresees the establishment of a Higher sharī'a Council. This council does not seem to have been established yet.

D. Evaluation the Announced Decision of HH Sheikh Mohammed

So what kind of council does HH Sheikh Mohammed aim to establish? What could be its structure and competences and how could it affect the existing system of Islamic banking and finance in the UAE?

It seems reasonable to assume, that the council HH Sheikh Mohammad mentions in his tweet is the council set out by Art. 5 UAE Islamic Banking law. This is due to the tweet and Art. 5 UAE Banking law using exactly the same terminology in Arabic to name the council (“hay'a sharī'ya ulyā”). Furthermore, HH Sheikh Mohammed would be the legal competent authority to announce such a decision since his position as Prime Minister of the UAE. Art. 5 UAE Islamic Banking Law orders the Higher sharī'a Council to be set up by a decision (qarār) of the Council of Ministers. In accordance with Art. 55 UAE Constitution the Council of Ministers is composed of a President, Vice President and the remaining Ministers, thus HH Sheikh Mohammed as Prime Minister (President of the Council of Ministers) is the leading figure to speak on behalf of the competent constitutional authority. Moreover it is assumed, that the council set out by Art. 5 UAE Islamic Banking Law does not exist yet. Thus, it seems highly probable that HH Sheikh Mohammed intended to announce the establishment of this council now.

Therefore, what structures does Art. 5 UAE Islamic Banking Law foresee for the Higher sharī'a Council? It should be composed out of Islamic scholars, jurists

and bankers. This lets it appear as more than just a council composed purely of religious scholars. On the other hand, there is no indication in the law, that all of the three professions have to be represented in the same share. Nor does the law state what qualification the members have to fulfil. Furthermore, the council will be established under the authority of the Ministry of Islamic Affairs and Endowments (Art. 5 Islamic Banking Law). This in theory adds another ministerial authority to the authorities taking responsibility for Islamic Banking and finance. On the other hand, this ministry does not appear in the portfolio of ministries of the UAE. As per today the General Authority of Islamic Affairs and Endowments administers Islamic affairs and endowments. An authority with a more independent position (e.g. an own legal personality) vis-à-vis the Council of Ministers than the former ministry.

With regard to competences Art. 5 UAE Islamic Banking Law outlines some of the competences expected to be vested in the Higher shari'a Council. These competences are twofold: Firstly, the council shall be the highest control body to safeguard the legitimacy of banking transactions from a shari'a point of view. It shall secondly be competent upon request of Islamic banks to decide questions that pose itself to the banks during their activity and conduct. All of this seems to go into a direction to establish a second regulatory system for Islamic banks from a shari'a perspective. This would indeed be a fundamental structural change in the Islamic banking system compared to how we know it in the UAE today.

All of the above being said, if the legal framework set out by the UAE Islamic Banking Law was not adjusted or altered, which with regard to the many changes the legal system of the UAE has experienced since 1985 could very well be an option.

Apart from formal aspects, the last question remaining is what would these reforms mean for the single customer investing his money in Islamic banks. Assuming the council would become a new regulatory authority in the UAE Islamic banking system it would structurally lead to a higher degree of centralization and unification in respect of Islamic financial products in the UAE. This seems to be what is intended by the decision of HH Sheikh Mohammed. It would thus have the positive impact for the customer to find a more transparent and reliable set of shari'a conforming financial products. On the other hand, the multitude of Islamic finance products possible to be offered on the UAE market could be reduced and hence exclude a number of products that would still be acceptable from an ethical point of view to some investors.

The solution between the extremes of laissez fair and choking the market would most probably lie in a carefully selected composition of the council members. In turn, they would be able to define reliable outer boundaries for shari'a conforming financial products and structures to let enough space for the single customer to decide according to his religious and ethical conscience to what extent he would be willing to go.

With one of the longest Islamic historic experiences and an open eye for the

future, the UAE should be the place to successfully establish a council meeting all these demands.

Heinrich Köllisch
Meyer-Reumann & Partners,
Dubai Office

United Arab Emirates

DIFC Wills & Probate Registry - The Smart Way to Protect your Assets in Dubai

Guiding Principle

The DIFC Wills & Probate Registry is the first jurisdiction in the MENA region allowing the registration of an English language will under internationally recognized common law to give residents and non-residents a legal solution and the freedom to dispose of assets according to their wishes in case of inheritance.

1. General Overview:

The DIFC Wills & Probate Registry is a joint initiative of the Government of Dubai and the DIFC Courts offering first-of-its kind services allowing eligible individuals to register wills and dispose of their assets and property upon death as they see fit.

Since its establishment in May 2015, the number of wills registered to date stands at 1583 in September 2016. This number highlights the increasing importance residents and investors place on having a will to plan their succession for assets and property in Dubai thus avoiding either

- having to move assets overseas due to

perceived uncertainty or

- a process which, in absence of a registered will, is time consuming and fraught with legal complexity.

Thus, the major benefit of the will registration system is to end ambiguity whether Sharia law principles should apply to the inheritance of foreigners' property because judgments of the DIFC courts i.e. probate decisions, are now directly enforceable in the courts of Dubai.

2. Registration Process:

Information required to register a will with the DIFC Wills & Probate Registry are available online www.difcprobate.ae and as stated by the Registry "anyone of age of majority and sound mind may write their own will and change it anytime during their life without consulting an attorney or a professional legal representative". However, experience shows that ever so often wills drafted without legal assistance are either invalid or ineffective. The Registry clearly states that they do not provide legal advice, but on the other hand, they do strongly recommend making use of the services of a licensed practitioner. This should avoid that a will does not comply with the Registry's requirements and the registration is delayed. Kindly note that only lawyers registered to draft and register a "DIFC-Will" at the DIFC Wills & Probate Registry will be able to act on behalf of testators. The list of registered lawyers is available on their website under "Register of Will Draftsmen" www.difcprobate.ae/using-professional-legal-services/. Please follow the link to check the registration of Elena Schildgen of Meyer-Reumann & Partners as

licensed legal practitioner.

3. Registration Options:

Both residents and non-residents in the UAE can register their DIFC-Will, as long as they have assets in Dubai and are eligible to opt-in the DIFC jurisdiction. This requires a formal registration of the DIFC-Will. The following options are available:

a) DIFC Property Will:

As of September 6, 2016 testators are able to complete and submit for registration at the Registry a will that specifically covers up to five (5) real estate properties (or a share in any such five properties). The requirements are that the testator

- is not a Muslim and has never been a Muslim,;
- is over 21 years of age; and
- owns real estate in Dubai.

It is not possible to include any other assets or the guardianship of children. The registration fees are AED 7.500 for a single property will or AED 10.000 for two mirror wills i.e. spouses sign wills at the same time.

b) DIFC Will:

A last will and testament covering real estate properties and all other assets of any kind can be registered applying the same conditions i.e. the testator is Non-Muslim, above 21 years of age and the assets are located in Dubai.

The last will and testament may even include provisions for the guardianship of minor children of the testator provided the children live with the testator and are resident in Dubai.

The registration fees of a single will are

AED 10.000 or AED 15.000 for two mirror wills i.e. spouses sign wills at the same time.

c) Guardianship Will:

In the event that a testator, Non-Muslim and above 21 years of age, does not own any assets in Dubai, it is also possible to register a last will and testament solely pertaining to the appointment of guardians of the minor children resident with the testator in Dubai.

The registration fees of a single will are AED 5.000 or AED 7.500 for two mirror wills i.e. spouses sign wills at the same time.

4. Registration Appointment:

The last wills and testaments should be drafted in accordance with certain minimum stipulations as per standard DIFC forms and if drafted by a lawyer such lawyer needs to be registered in the register of will draftsmen.

a) Booking of Appointment

Appointments for the signing and registration of the last will and testament can be made online at www.difcprobate.ae/appointments upon payment of a booking fee of AED 1.000 per will. In case of cancellation, this fee is non-refundable. The appointment may be re-scheduled twice.

The remaining balance can be paid in cash, by cheque or by credit card at the time of signing. Please note that installment plans for payment of the registration fees are also available from EmiratesNBD <https://www.emiratesnbd.com/en/>.

b) Required Documents

For the appointment you need to bring

your unsigned will (with any annexes), title deeds, your Passport and/or Emirates ID and that of the witness, and details of beneficiaries and other documentation the last will may refer to. Two witnesses are also required: the attendant at the DIFC Registry acts as one of these witnesses and the other witness may be anyone other than a beneficiary of the will (the lawyer who drafted the will or a friend or relative can attend provided they are not named in the will).

c) Completion

Once completed, it is registered at the DIFC Registry and then stored in electronic form (which provides additional security) for 120 years calculated from the birthdate of the testator. The testator receives as many certified copies as requested without additional charge. It is advisable to keep certified copies also with the executors/trustees and or beneficiaries.

Elena Schildgen
Meyer-Reumann & Partners,
Dubai Office

United Arab Emirates

**RAK ICC - the New Merger
of Offshore Companies**

Guiding Principle

Announced in May 2016, RAK International Corporate Centre (RAK ICC) is a newly merged entity of RAK IC (companies registered by RAK Free Trade Zone Authority) and RAK Offshore (registered by RAKIA)

Previously the two different types of companies were comparatively similar in terms of the main features, but presented differences in the company names, in some of the incorporation documents, as well as some variations on the applicable regulations. Thanks to the merger, the whole structure and procedure is now simplified and more comprehensive and RAK ICC is now the sole entity in Ras Al Khaimah for the incorporation and formation of International Business Companies (Offshore companies).

By the end of 2017, the existing companies, which were registered with RAK IBC and RAK Offshore companies, will need to re-register under the Regulations of RAK ICC and amend their Memorandum and Articles of Association according to the same. The re-registration is free of charge.

The revised regulations are rather similar to the previous ones and the main changes are related to a clearer definition of the terms as well as bringing the regulations up to the current international standards.

Existing RAK IBC and RAK Offshore companies will not face vital changes.

They will be able to maintain in fact their goodwill, their operational history as well as their existing legal status, therefore the same company name, registration details and the same Registered Agent.

RAK ICC regulation will not bring any changes to the main characteristics of the offshore companies, which will keep the typical features of the offshore:

- 0% corporate and personal tax;
- 100% foreign ownership;
- 100% repatriation of capital and profits;
- Regulations free from ambiguity which meet international best practices and standards;
- Simple and fast procedures.

Furthermore,

- UAE is a “white listed” jurisdiction with OECD/FATF;
- UAE offers a “one-stop-shop” for business facilitation through its professional infrastructure;
- UAE offers a valuable alternative to traditionally labelled “offshore centers”;
- RAK ICC Regulations allow for flexibility in the company structure.

RAK ICC will also bring an innovation by granting the possibility to have two kind of companies:

- (i) Companies Limited by Guarantee out of which two types will be allowed, the ones authorized to issue shares and the ones not authorized and
- (ii) Unlimited Companies (authorized to issue cheques) usually used for the real estate planning.

Meyer-Reumann and Partners is a registered offshore agent for RAK ICC agent. We take care of all business requirements of our Clients and assist them with company incorporation and legal assistance.

For offshore company setup kindly contact us, our team will be glad to assist you.

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Iran

Tax on Branches and Representative Offices Based on Iranian Law

Guiding Principle

According to the “Tax Act of Iran”, foreign companies’ branches and representative offices, which are only dealing with marketing affairs and collecting commercial information for their parent companies, are exempted from paying any taxes, however, there are some exceptions in this respect.

I. Introduction

The Tax system of Iran is based on the Direct Taxation Act dated May 11, 1988 (as amended) (abbrev. IR-DTA) and the Value Added Tax Law, enacted on June 08, 2008.

All foreign investors, doing business in Iran or deriving income from sources in Iran are subject to tax. Depending on the type of activity, in which the foreign investor is engaged, different taxes and

exemptions are applicable, including profit tax, income tax, corporate tax, property tax, and VAT.

II. Tax on Foreign Companies' Branches and Representative Offices

Based on IR-DTA, the foreign companies' branches and representative offices, which are only dealing with marketing affairs and collecting commercial information for their parent companies, are exempted from paying any taxes. Note (3) of Art. 107 IR-DTA states that:

“Branches and agents of foreign companies and banks in Iran that are engaged in gathering information or finding markets in Iran for their parent entities, without having the right to make transactions, and receive remuneration from their parent entities against their expenditures, shall not be subject to taxation in respect of such remuneration.”

The above Note is the general rule for branch and representative offices; however, there are some exceptions on it based on Directive No. 18921/1623/232 dated 20.08.2006 of Tax Affairs Organization of Iran:

- a) If the Branch's and Rep. Office's marketing activities, apart from its parent company, are conducted for other foreign companies, in such a case, the income derived from such activities are subject to tax.
- b) In case the Branch or Rep. office offers after-sale services and any income is derived from such

services and/or any commission fee is received, Iranian tax prevails.

- c) It is probable that branch and Rep. offices are considered active in Iran through concluding agreements or issuance of proforma invoices on behalf of their parent companies even if the Branch or Rep. office is not engaged in any commercial activity; based on the notice of its establishment in the Iranian official gazette. In such event, the activity of Branch office or Rep. office is subject to corporate tax.
- d) Also if the parent company sells directly its products and services in Iran, in such a case the activities of Branch or Rep. office may be regarded as commercial by the Tax Department, unless the Branch or Rep. office introduces to Tax Department the name of individual or legal entity, which conducts the direct sale on behalf of parent company.

It is required by IR-DTA that the Branch or Rep. offices submit tax declaration each year, even if they do not engage in commercial activities. The Tax Department will study the tax declaration to see if the Branch or Rep. office generates any income. In case of deriving any income, the Branch or Rep. offices should pay tax like other Iranian companies. The aggregate income of companies derived from different sources in Iran or abroad, less the losses resulting from non-exempt sources and minus the prescribed exemptions, shall be taxed at the flat rate of 25%, except the cases for which separate rates are provided under the Direct Taxation Act. The taxation is based on the declared

accounting profit in annual tax declaration.

Furthermore, a VAT tax system exists in Iran. All companies engaged in the supply of goods and services, or in imports or exports, are regarded as taxpayers and subject to the provisions of the VAT Law. The supply of commodities and services in Iran, as well as imports and exports, is subject to the provisions of the VAT Law. Based on the Law all taxable companies must register themselves for VAT and account for VAT on a quarterly basis by filing a quarterly VAT return. The overall VAT rate for the current Iranian Year 1395 (March 20, 2016 – March 19, 2016) shall be 9%.

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Kuwait

New Commercial Agency Law in Kuwait

Guiding Principle

The State of Kuwait recently enacted Law No. 13 of 2016 on the regulation of commercial agencies in Kuwait, explicitly overturning the former agency law. The new Agency Law introduces material changes to the principal/agent relationship while many of its articles remained unchanged.

After years of deliberation and research, the Kuwait National Assembly has ratified a new Commercial Agency Law to address the evolving issues and questions that relate to the country's

commercial agencies.

According to the new Commercial Agency Law No. 13 of 2016, the definition of “commercial agency” now specifically includes the terms “franchisee” and “licensee.” Due to the inclusion in the commercial agency definition, franchisees and licensees will now be treated as commercial agents and are expressly subject to any restrictions or requirements as well as the protections of the new law.

The main change of the new law however is the removal of “exclusivity”. Article 2 of Law No. 13 of 2016 dismantles the monopolies of agents, inadvertently created by the “exclusivity” principles of the prior law, by explicitly permitting principals to have more than one agent and/or distributor in the same territory. Moreover, Article 4 of the Agency Law mandates that a local agent can no longer be an exclusive distributor or provider of commodities or goods in Kuwait. Article 4 also allows for the import of goods and services to a territory from any third party, regardless of whether there may have been a registered and exclusive agent for such goods and services. If enforced, this change in the law could have a material impact in the arrangements between franchisees and franchisors operating in the country.

It is worth mentioning that the new law does not differentiate between an agent, a franchisee or a distributor, but all are considered as the same, especially when it comes to the registration with the Ministry of Commerce and Industry. Furthermore, agents will no longer be permitted to bring any kind of

compensation cases to the Kuwaiti courts if their agency arrangements are not registered. If they do so, their claims will be dismissed by the Kuwaiti courts.

In order for an agency relationship to exist as a matter of law, Article 6 requires this agency relationship to be registered in the commercial register at the Ministry of Commerce and Industry. Under the previous regime, although registration was required, local courts would still grant the local agent compensation rights even if the arrangement was not registered. This registration obligation is crucial as in theory; courts will now dismiss any claim related to an agency relationship if such relationship is not registered.

In the old law, local agents were entitled to compensation when their principal terminated the agency agreement without proving breach of contract by the agent or refused to renew the agency agreement when it expired without any evidence of material breach. While Law No. 13 of 2016 does not deny a local agent's right to be compensated under those conditions, it does clarify in Article 6 that only those commercial agencies registered with the Ministry of Commerce and Industry will be considered and heard by the courts of Kuwait.

Finally, the Agency Law imposes affirmative obligations on the agent, which may continue for a period of six (6) months post termination or expiration of the agency relationship if another agent is not properly appointed in that period. Importantly, failing to perform the obligations set out in the Agency Law imposes financial penalties on the party in breach. Care should be

taken in drafting all new agency/distributorship agreements and the like to limit the potential liability.

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Saudi Arabia

Saudi Arabia Starts the New Hijri Year with a Package of Austerity Decisions Including Switching to the Gregorian Calendar

Guiding Principle

With falling oil prices since mid-2014, the Saudi budget experienced a deficit in the same year for the first time in six years. Again in 2016, the deficit exists for the third year running. Consequently, the Saudi Government reduced, earlier this year, the subsidies for gasoline, electricity and water in the country. Further, the Government announced a new vision to diversify the Saudi economy under the title "Saudi Vision 2030". The vision was followed by an austerity plan to reduce the deficit including cutting government spending and reform its finances. The plan also included switching to the Gregorian calendar instead of Hijri calendar and raising the visas and services fees for visitors and residents of the Kingdom.

A. Fall in Oil Prices and its Impact on the Saudi Economy

During the past two years, the global

crude oil prices lost a third of its value. In February 2014, the price of a crude oil barrel was around US\$ 110. Now, the same barrel costs up to US\$ 30. Locally, the petroleum sector in Saudi Arabia accounts for about 45% of budget revenues, 45% of GDP, and 90% of export earnings.

In line with these figures, the decreasing oil prices since mid-2014 severely affected the government earnings. This resulted in a budget deficit on the same year, i.e. 2014, for the first time in six years. The deficit reached its highest on 2015 amounting to US\$ 98 billion and fallen to US\$ 87 billion on 2016.

B. Saudi Government Efforts to Diversify the Economy and Reduce the Deficit

The Saudi Government started facing these challenges by reducing the subsidies for gasoline, electricity and water in the country.

The following step was developing several social and economic plans aiming to prepare the country for the post-oil era. These plans were all under the umbrella of a new vision to diversify the economy in Saudi Arabia under the title "Saudi Vision 2030"¹¹.

The vision was followed by the announcement of an austerity plan to be applied with the first day of the new Hijri year¹², 1st Muharram, 1438 A.H.

¹¹ Full vision can be reviewed by visiting: <http://vision2030.gov.sa/en>

¹² The Islamic calendar, Muslim calendar or Hijri calendar (Anno Hegirae or AH, Arabic: التقويم الهجري at-taqwīm al-hijrī) is a lunar calendar consisting of 12 months

corresponding to October 2, 2016.

The Government decided to switch to the Gregorian calendar¹³ as its official calendar instead of the Hijri calendar, which the country used since it was founded in 1932. The purpose of the switch is to cut 11 days of payment as wage days to the state employees as the Hijri calendar is shorter.

in a year of 354 or 355 days. It is used to date events in many Muslim countries (concurrently with the Gregorian calendar), and used by Muslims everywhere to determine the proper days on which to observe the annual fasting, to attend Hajj, and to celebrate other Islamic holidays and festivals. For more information, kindly visit: https://en.wikipedia.org/wiki/Islamic_calendar

¹³ The Gregorian calendar is internationally the most widely used civil calendar. It is named after Pope Gregory XIII, who introduced it in October 1582. The calendar was a refinement to the Julian calendar amounting to a 0.002% correction in the length of the year. The motivation for the reform was to stop the drift of the calendar with respect to the equinoxes and solstices—particularly the vernal equinox, which set the date for Easter celebrations. Transition to the Gregorian calendar would restore the holiday to the time of the year in which it was celebrated when introduced by the early Church. The reform was adopted initially by the Catholic countries of Europe. Protestants and Eastern Orthodox countries continued to use the traditional Julian calendar and adopted the Gregorian reform after a time, for the sake of convenience in international trade. The last European country to adopt the reform was Greece, in 1923. For more information, kindly visit: https://en.wikipedia.org/wiki/Gregorian_calendar

In the same context, the Saudi Government cancelled bonus payments for state employees and cut ministers' wages by 20 percent. The Government has earlier suspend wage increases for the new Hijri year and curbed allowances for public-sector employees. The wages of members of a legislative body "Shura Council" (the Saudi Parliament) were cut by 15 percent.

The plan further included increasing the fees for all the visas (work, visit, residency, Umrah¹⁴ and pilgrimage¹⁵)

¹⁴ The Umrah (Arabic: *عمرة*) is a pilgrimage to Mecca, Saudi Arabia, performed by Muslims that can be undertaken at any time of the year, in contrast to the Hajj. In Arabic, Umrah means "to visit a populated place." In the Sharia, Umrah means to perform Tawaf round the Kaaba and Sa'i between Al-Safa and Al-Marwah, after assuming Ihram (a sacred state), either from a Miqat like Zu 'l-Hulafa, Juhfa, Qarnu 'l-Manāzil, Yalamlam, Zāt-i-'Irq, Ibrahīm Mursīa, or a place in Hill. It is sometimes called the 'minor pilgrimage' or 'lesser pilgrimage', the Hajj being the 'major' pilgrimage and which is compulsory for every able-bodied Muslim who can afford it. The Umrah is not compulsory but highly recommended. For more information, kindly visit: <https://en.wikipedia.org/wiki/Umrah>

¹⁵ The Hajj (/hædʒ/; Arabic: *حج* Ḥaġġ "pilgrimage") is an annual Islamic pilgrimage to Mecca, and a mandatory religious duty for Muslims that must be carried out at least once in their lifetime by all adult Muslims who are physically and financially capable of undertaking the journey, and can support their family during their absence. It is one of the five pillars of Islam, alongside Shahadah, Salat, Zakat, and Sawm. The Hajj is the largest annual gathering of people in the world. The state of being physically and

issued by Saudi Arabia starting from October 2, 2016.

Visitors to the Kingdom on religious purposes and business travel will have to pay SAR 2,000 (US\$ 544) for a single-entry visa. A multiple-entry visa now costs SAR 3,000 (US\$ 799) for six months, SAR 5,000 (US\$ 1,332) for a year and SAR 8,000 (US\$ 2,132) for two years.

GCC nationals and pilgrims for Haj or Umrah travelling to the country for the first time will not be affected by the changes. The exceptions covered in bilateral agreements between Saudi Arabia and other countries.

In parallel, Saudi Arabia is planning to boost its tourism numbers up to 140 million by 2020, according to Saudi Arabia's Commission for Tourism and National Heritage, who called the predictions a 'golden opportunity' for the private sector.

The organisation called for 48,000 new hotel rooms to be built in the country to accommodate the numbers.

The kingdom's Vision 2030 reform plan has listed the developed of 1,300 islands – 1,150 in the Red Sea and 150 in the Arabian Gulf – as a development goal for the tourism sector. Around 8,000

financially capable of performing the Hajj is called istita'ah, and a Muslim who fulfills this condition is called a mustati. The Hajj is a demonstration of the solidarity of the Muslim people, and their submission to God (Allah). The word Hajj means "to intend a journey", which connotes both the outward act of a journey and the inward act of intentions. For more information, kindly visit: <https://en.wikipedia.org/wiki/Hajj>

new tourist guides are also said to be needed by 2030.

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