VOL 07 | **AUGUST 2017** | HEALTHCARE & INSURANCE | ISSN: 2518-3877

Emirates Law

Business & Practice

> "When it comes to health legislation a key aim of the UAE is to protect the country's assets and prosperity, and to ensure sustainable development."

IN SICKNESS AND IN HEALTH
UAE HEALTH CARE LAW

His Excellency Humaid Al Qatami
Chairman of the Board and Director General of the Dubai Health Authority

The Crime of Fraud
Jouslin Khairallah
Khairallah Advocates & Legal Consultants

Overview Healthcare Funding
Allison Beirne
Clyde & Co

Healthcare Innovation
Salah Mostafa & Dr Dalia Sarhan
Takeda

DHCC's growing community helps people heal better, feel better and live better.

To be a part of the DHCC Community or find a doctor visit
dhcc.ae / call 800 HEALTH

مدينة دبي الطبية
Dubai Healthcare City

Justice Dr Jamal Al Sumaiti
Director General, DJI

The Business of Good Health

As far back as the early 1970s when the Ministry of Health and Prevention was formed, the UAE Government has focused on ensuring there is access to quality health care in the country and that providers of those services are well regulated. Despite this, it might at first seem strange that a business magazine such as Emirates Law Business & Practice would want to dedicate a whole issue to the subject, of health. However, these days in the UAE health is very much a business issue.

What may be surprising to some of our readers is that the UAE has more private health care providers than many other jurisdictions and 'health tourism' is being seen by the Government and authorities as a potential area for business growth. A key part of ensuring that this happens involves also ensuring there is robust regulation of healthcare providers operating in the Emirates. Therefore, in order to support this a host of recent regulations have been issued, including those involving emerging areas such as virtual medicine.

However, this is not the only reason the Government is now focusing on health. As is the case in many other countries the Government is also, having to consider measures to ensure going forward healthcare can be sustainably funded. A growing population, increased incidences of lifestyle conditions like diabetes and greater availability of treatments have all put pressure on the existing health care budget. As a result, as is happening in many other GCC states, some Emirates have decided to issue mandatory health insurance laws covering non-nationals in the country. Not only have these developments obviously helped create new business opportunities for those in the insurance and health care sectors, but they are also having an impact on other businesses, who now face the potential of fines and other penalties for non-compliance, making it vital that they fully understand their impact. In Dubai, for example, employers and sponsors (where a non-national is not employed) are now responsible for ensuring the non-national has the appropriate mandatory health care insurance in place. There is a good monitoring system in place too, to easily highlight where this is not the case.

In Dubai fines have already been levied for those who have failed to comply with these provisions and these increase in the case of persistent offenders. In addition, and potentially more worryingly violations in this area can also have a negative impact on an employer's ability to renew and get new work permits for non-national staff.

These changes all add up to making health a business issue in the UAE not just for those who may benefit from the business opportunities these regulatory changes bring but for employers across all the business sectors. We hope therefore, that the explanations and analysis in this issue of the new regulations in this area and the overall regulatory environment (which has both Federal and Emirate level components) is helpful to all our readers.

Emirates Law
Business & Practice

ADVISING GLOBAL INVESTORS ON UAE LEGAL BEST PRACTICE

Emirates Law Business & Practice is a free quarterly printed publication reporting on recent legal developments in UAE and around the world. Articles are practitioner oriented and non-academic. The magazine covers specialist subject areas offering independent analysis by experts in their field, such as the judiciary, academics, solicitors, barristers, in-house lawyers and government lawyers,. Our aim is to be an international legal magazine, making a significant contribution to legal debate. Emirates Law Business & Practice provides its readers with a wide selection of relevant law disciplines, addressing various aspects of law.

Dubai Judicial Institute
P.O. Box 28552, Dubai, U.A.E.
Tel +97142833300.
Fax +97142827071
editorial@dji.gov.ae
www.dji.gov.ae

Editorial board
Editor in Chief: Justice Jamal Al Sumaiti LL.M., Ph.D.
Editor: Sogol Kaveity LL.M.
skaveity@dji.gov.ae
Board member: Mohamed Al Yafeai LL.B.
malyafeai@dji.gov.ae

Project Manager
Roudha Al Shamsi B.Sc
ralshamsi@dji.gov.ae

Art Director
Shamsa Al Marri M.Sc
salmarri@dji.gov.ae

Advertising
Please find our media pack on our website:
www.emirateslaw.ae

Advisory board
Al Tamimi & Company: Essam Al Tamimi; **Baker McKenzie Habib Al Mulla:** Dr. Habib Al Mulla; **BSA Ahmad Bin Hezeem & Associates LLP:** Dr. Ahmad Bin Hezeem; **Clifford Chance:** Robin Abraham; **Clyde & Co:** Alec Emmerson; **DIFC Courts:** His Excellence, Justice Omar Al Muhairi; **Hadef & Partners:** Sadiq Jafar; **Hogan Lovells:** Rahail Ali; **Jones Day:** Ms. Sheila L. Shadmand; **Latham & Watkins:** Villiers Terblanche; **Norton Rose Fulbright:** Patrick Bourke; **Simmons & Simmons:** Muneer Khan

Publisher
LexisNexis Middle East
Head of Middle East
Publishing: Hussain Hadi,
hussain.hadi@lexisnexis.co.uk
Editorial Consultant: Claire Melvin,
claire.melvin@lexisnexis.co.uk
Photographer: Mostafa Samir

Printed by Atlas Group, PO Box 1533, Dubai

Circulation
Emirates Law Business & Practice has a print run of 4,000 hard copies and can be accessed online free of charge from dji.gov.ae. To be added to our controlled print circulation e-mail: editorial@dji.gov.ae

IN SICKNESS AND IN HEALTH
UAE HEALTH LAW

Finding a sustainable way to finance growing healthcare systems is becoming a priority for the GCC Governments Allison Beirne of Clyde & Co LLP provides an overview of the options being taken on on P6.

"The Dubai Health Authority has adopted a clear policy and methodology in order to strengthen its relationship with its strategic partners and help build new partnerships."

P29: PROFILE

HIS EXCELLENCY HUMAID AL QATAMI
CHAIRMAN OF THE BOARD AND DIRECTOR GENERAL OF THE DUBAI HEALTH AUTHORITY

OVERVIEW
Healthcare Funding

As finding a sustainable way to finance their growing healthcare systems becomes more of a priority for GCC governments, Allison Beirne of Clyde & Co LLP provides an overview of the options these countries are now adopting.

Worldwide governments seeking to ensure equitable access to healthcare for their populations are grappling with the challenges of delivering high quality healthcare despite spiralling healthcare costs. These aspirations are echoed in the GCC countries, with governments seeking to create equitable and sustainable healthcare systems.

The reform of the healthcare financing systems in the region is recognised as vital to the development of an equitable and sustainable healthcare system. However, as the high profile controversy surrounding efforts to repeal Obamacare highlights, the complexity of healthcare financing and the difficulties inherent in finding solutions that satisfy all stakeholders are not easily overcome.

It is a perennial challenge in healthcare to create an ecosystem that meets the various and sometimes diverging needs of each of the stakeholders - payers, providers, patients, professionals, policy makers, politicians, the public, and the press.

A scan of the globe demonstrates the variety and complexity of the models. Healthcare in the US is private insurance-based and decentralised, with services delivered through private health care providers, with the government controlling access to federal programmes (such as Medicare and Medicaid). While in Britain the national health system (NHS) launched in 1948, is state run and funded by the government through taxation. The Canadian system (which is also government run) is by contrast, based on a social insurance model, funded through individual contributions, with healthcare provided by the private sector. Finally, the German system, which is a mandatory health insurance model, provides a middle ground between the US market-led and British state run systems. Implemented by Otto von Bismarck in 1883, the German model is funded by employees and employers through mandatory Krankenkassen (sickness funds). The evolution of each system is unique to each country, and while each country can boast of successes, no system is without its critics.

Until recently, government funded public healthcare systems have been the dominant healthcare financing models in GCC countries. As a part of the GCC governments' investment into developing more equitable, efficient and sustainable healthcare systems, we have seen the region wake up to healthcare financing reform. This article considers the characteristics and drivers which are unique to the healthcare financing reform which is underway in the GCC region and considers the ongoing developments in healthcare financing reform country by country.

GCC EXPERIENCE

When it comes to healthcare, the GCC countries have a number of unique characteristics which differentiate them from countries in other parts of the world. The GCC states are high-income countries with the sorts of high urbanisation rates, which are typical of developed countries. However, the region also faces issues such as poor health profiles and challenges with the quality and delivery of health care services to their populations which are less typical in developed countries. In addition, most GCC countries have a high proportion of expatriate non-national residents. At present governments across the whole GCC are trying to improve the health of their entire populations and the quality of their healthcare delivery model. As a result, comprehensive health care reform is being implemented throughout the GCC in an effort to support the growth of sustainable healthcare systems. Until recently, healthcare services in the GCC states have typically been funded by GCC governments from their natural resources (including oil or gas). However, current healthcare reform in these countries is moving away from a pure state funding system.

DOMINANT FINANCING MODEL

The new health financing models being adopted in GCC countries, with some local variations are based on mandatory health insurance with a 'pay per service model'. There are employer-funded

mandatory health insurance schemes for private sector employees and state funded schemes for citizens with both schemes based on mandated benefit levels. This approach has been introduced with varying success across the region in Kuwait, Saudi Arabia, Qatar and the Emirates of Abu Dhabi and Dubai in the UAE.

The high proportion of expatriates in the region is a key driver behind the introduction of this approach with compulsory health insurance being seen as a preferred financing model in order to shift the financial burden of expatriate residents' health care for those working in the private sector to their employers rather than the Government. In most of the GCC countries, the approach being taken is a hybrid one as typically alongside the employer funded scheme, there is a parallel social insurance scheme for the local national population which is being funded by the government. As a result, although the government is continuing to fund the national population's health care needs the financing model has been reformed. These insurance models have also enabled the collection of crucial health data on the population, which continues to inform the development of healthcare services focused on population health management.

SAUDI ARABIA

In 2004, Saudi Arabia introduced a mandatory health insurance scheme which requires private sector employers to provide health insurance coverage for their employees, based on a mandated schedule of benefits. The model is private sector friendly and the local insurance market is currently providing insurance products which can be used by private sector providers. However, new regulations which implemented a one policy per employer restriction were introduced in 2016 and have shaken up the health insurance market in the Kingdom. These regulations were aimed at tightening the scheme to ensure all employees in the private sector were being provided with genuine health insurance. At present the majority of the Saudi national population (>31 million) are still being served by the public sector system. However, falling oil prices continue to place significant pressure on the public purse. There is a growing need to provide payer certainty in the market in order to attract inward investment into the healthcare sector. As a result extending the national health insurance system to the local population through further healthcare financing reform is appearing on the government's agenda.

UNITED ARAB EMIRATES

In the UAE, Abu Dhabi rolled out a compulsory health model in 2006 which regulates the cost and level of benefits low-income expatriates receive. Although this allows private insurer participation, the market is dominated by the government owned National Health Insurance Company, Daman. Daman is also the sole administrator of the government funded health insurance scheme, Thiqa, which covers Emirati nationals in Abu Dhabi. However, Government reforms will continue as they are still experimenting with the levels of benefits which are appropriate for the market. Dubai also introduced a mandatory health insurance scheme in 2014 which aimed at implementing universal health insurance cover for all Dubai residents. The scheme is based on a mandated schedule of benefits, which have been phased in over the last few years. The final phase (for small employers and sponsors) was implemented in full on 31 March 2017. In addition, the Dubai Health Authority (DHA) has recently announced that it has fined 25 market participants including health centres, clinics, insurance brokers and insurers for violating the health insurance law and it has referred six clinics for prosecution for alleged fraudulent activities. The DHA has subsequently suspended a number of insurance brokers. This recent action has sent a strong message to the market on the consequences of ignoring the regulations in this area. When it comes to health care reform, developments in the Northern Emirates also remain on the agenda. There is partial insurance cover in these Emirates which is provided by some companies and public sector bodies. For example,

"It is expected Bahrain, Oman and Kuwait will introduce their own healthcare reforms over the next few years."

all employees of the Sharjah government and their dependents are covered under a 2013 scheme. In addition, early this year, following a resolution the DHA mandated health insurers in Dubai to extend their networks to include providers in Sharjah and the Northern Emirates in order to try to tackle the accessibility issue for those who work in Dubai but live in other Emirates.

QATAR

Qatar's social health insurance scheme was introduced in 2013 and mandated a single national insurer to provide basic benefits to all Qatari nationals and expatriates. As was the case in Dubai, this scheme was due to be rolled out in phases, starting with Qatari nationals. However, there were differences between this scheme and some of the other schemes which are being implemented in other GCC countries. For example, the Qatari scheme significantly reduced the role of private health insurers.The health insurance scheme in Qatar was withdrawn in 2015 following mounting pressure from the private insurance sector. A revised health financing scheme which is similar to the schemes found in Dubai and Abu Dhabi lines is now anticipated in Qatar. Qatar Cabinet Decision No. 27/2016 was issued on 11 October 2016 to provide the foundations for the implementation of this new healthcare financing system.

BAHRAIN, OMAN AND KUWAIT

At present, it is expeced that Bahrain, Oman and Kuwait will introduce their own healthcare financing reforms over the next years. In Bahrain, the Supreme Council of Health has indicated reforms will be implemented in 2019. Meanwhile, the Oman Chamber of Commerce and Industry announced in November 2016 that health insurance cover would be made mandatory for all workers in the private sector in 2018. In Kuwait, Kuwait Law No. 1/1999 (the old health insurance law which was not implemented in the end because of the absence of significant public health provider reform) has recently been revoked in preparation for the introduction of a new set of reforms. These are expected to exclude expatriates from the public health care system. As a part of Kuwait's National Healthcare Expansion Plan three 700-bed hospitals will also be built to provide integrated medical services to foreigners in Kuwait. Once again it is currently expected an employer funded health insurance scheme will be mandated to cover expatriate healthcare costs.

TRENDS, SUCCESSES AND CHALLENGES

In comparison with other jurisdictions GCC countries have the advantage of operating from a relatively greenfield site. Mandatory health insurance has brought equitable access to healthcare. The mandatory schemes with continous monitoring are providing low income workers with access to medical treatment. The reforms have also been a successful means of shifting the financing of employee health care to private sector employers and of improving access to medical data. Health regulators around the region are also continuing to take an active role in developing regulatory frameworks intended to drive quality and efficiency. However, there are inherent challenges faced by GCC governments, regulators and other stakeholders in creating financially sustainable healthcare systems. Quite simply, funding, whatever its source, whether it is pumped in or drip fed into the system, needs to be effectively used to ensure people have access to healthcare services (without suffering undue financial hardship) and that costs are controlled. Financial sustainability of this type also requires the development of a health ecosystem which includes innovative financing models, proper incentive structures for suppliers and users, and effective systems and controls to manage risks. While the GCC countries have embarked on this path, it is clear (as is the case in countries in other parts of the world) there are significant future challenges in this area. ■

Allison Beirne
Legal Director
allison.beirne@clydeco.com
Clyde & Co LLP

Allison Beirne is a Legal Director in the corporate insurance and financial services team in Dubai. Her clients are re/insurance companies, brokers, third party administrators, asset managers, financial advisers, fund managers and other participants in the financial services industry.

In Sickness and in Health

UAE Health Care Law

Federal Law No. 1/1972
This law established the Ministry of Health and Prevention (MOHP).

Federal Law No. 4 /2016
This law brought in significant changes to the UAE's medical liability regime.

Federal Law No. 10 /2008
This law on medical liability has been superceded by Federal Law No. 4/2016.

Federal Law No. 3 /1983
This law known as the Pharmacy Law covers the import, manufacture and distribution of pharmaceutical products.

Cabinet Resolution No. 10 /2008
This law defined responsibilities of the Ministry of Health and Prevention (MOHP).

Dubai Law No. 13/2007
This law established the Dubai Health Authority (DHA).

Dubai Decree Law No. 11/2013
This law brought in mandatory health insurance for non-Emiratis in Dubai.

"The healthcare sector has been identified by the UAE government as a priority sector and, this industry has displayed extraordinary growth in the last few years," states Nomaan Raja of Latham & Watkins LLP. "However, in order to keep up with these changes and encourage more growth, healthcare regulators in the Emirates have recently put in place a number of significant new laws and policies."

"Healthcare is regulated at both the Federal and Emirate level, and the Federal legislation dates back to the 1970s and 1980s," adds Muhammad R. Al Najjab of Latham & Watkins LLP. "However, there has also been ongoing legislative reform aimed at developing this sector ever since. Public healthcare services in the UAE are administered by different regulatory authorities, the most significant of which are the Federal Ministry of Health and Prevention (MOHP), Health Authority-Abu Dhabi (HAAD) and the Dubai Health Authority (DHA). There are also two healthcare free zones in Dubai, Dubai Healthcare City and Dubai Biotechnology and Research Park, with their own regulatory bodies."

MOHP

"MOHP was established under Federal Law No. 1/1972 to, among other things, license companies and individuals providing healthcare services, build and manage health facilities and regulate various areas of healthcare, including the practice of medicine, dentistry, nursing, pharmaceuticals and laboratories," explains Eyad Latif of Latham & Watkins LLP. "According to Cabinet Resolution No. 10 /2008, MOHP is responsible for providing UAE citizens with healthcare, preparing health, preventive and training programmes, organising healthcare professionals' practice and establishing, managing and supervising healthcare facilities."

HAAD AND THE ABU DHABI HEALTH SERVICES COMPANY

"In 2001, the Abu Dhabi government established the General Authority of Health Services (GAHS) which had a mandate to oversee all public healthcare institutions in the Emirate. However, in 2007, it split into two organisations, HAAD which is the regulatory body for healthcare in Abu Dhabi, and the Abu Dhabi Health Services Company SEHA which operates public healthcare assets," Raja states.

"Private clinics and hospitals operating in the UAE need a professional license issued by the relevant licensing authority and upon successful receipt of such a license, are listed in the commercial register of the relevant trade authority," explains Lara Barbary of BSA Ahmad Bin Hezeem & Associates LLP.

"MOHAP, HAAD, and DHA also maintain registers of the medical service providers and health practitioners they license. Registers maintained by the relevant trade or medical authority are available to the public on the authorities' official websites."

DHA

"DHA was created in June 2007 under Dubai Law No. 13/2007," Al Najjab explains. "As the main health authority for Dubai, its primary objectives include healthcare planning and promotion of healthcare investment in Dubai, improving healthcare quality through information systems and standards, regulating healthcare services in Dubai, developing a comprehensive healthcare insurance and funding policy, public health promotion, developing medical education and research, and owning and operating Dubai government healthcare facilities."

ISLAM AND HEALTH

"The UAE follows a civil law system based on the principles of Sharia," explains Barbary. "As such the principles of Islam also impact the means of health care provision and types of procedures which are legal in the Emirates as UAE legislation has to be drafted in line with the principles of Islam."

FEDERAL MEDICAL LIABILITY LAW

"A recent development in this area is Federal Law No. 4/2016 On Medical Liability (which is known as the Medical Liability Law)," Latif adds. "This has brought in a number of important changes to the medical liability regime which was established under the old Federal Law No. 10 /2008."

"These changes include the establishment of a Committee for Medical Liability (CML) and a Supreme Committee for Medical Liability (SCML)," Raja adds. "The CML is responsible for reviewing medical liability claims referred to it by MOHP and the justice system. Any civil claims for medical liability against medical practitioners must be certified by the CML before the initiation of formal court proceedings. In criminal proceedings, law enforcement authorities must also obtain a decision from CML before arresting or questioning a physician on medical errors. SCML is responsible for adjudicating appeals from decisions and CML determinations."

"Federal Law No. 4 /2016 also sets out conditions under which it is permissible for a doctor to perform gender reassignment surgery," Al Najjab continues. **"**This can only happen if the person's sexual identity is ambiguous and they are neither clearly male nor female; the person's sexual traits do not align with their physiological, biological, and genetic characteristics; and these conditions are confirmed and approved by a newly established specialist medical committee, which issues decisions after referring the case to a psychiatrist for psychological preparation."

"In addition, Federal Law No. 4 /2016 has set limits under which healthcare professionals can allow natural death by refraining from performing resuscitation procedures," Latif states. "This includes cases where the patient suffers from an incurable illness, all methods of treatment have been exhausted, where it is proven treatment would be futile in light of the patient's situation, or at least three consultant physicians believe allowing natural death would be in the patient's best interest. However, doctors cannot refuse to resuscitate a patient who has expressly requested resuscitation, irrespective of the whether this would be futile."

EMIRATE HEALTH INSURANCE

"When it comes to health," explains Emily Sharratt of Hadef & Partners, "individual Emirates have their own laws on some matters

(like health insurance) which are Emirate specific and only apply within that specific Emirate. For example, Dubai Decree Law No. 11/2013 (Dubai Health Insurance Law) requires all Dubai employers to provide health insurance for their employees. The equivalent legislation in Abu Dhabi is Abu Dhabi Law No. 23/2005 or the Abu Dhabi Health Insurance Law together with its supplemental executive regulations."

"Both these laws make it compulsory for employers and sponsors to provide health insurance but there are differences between the Emirates on the level of cover required. For example, in Abu Dhabi employers must cover the employee, their spouse and up to three dependents but in Dubai they need only cover the employee."

"If an individual needs to apply for a visit visa (e.g, a 90 day long term visa or 30 day short -term visa) in advance of entering the UAE they must have evidence that they have obtained travel insurance as part of their application," explains Andrew Mackenzie of Hogan Lovells.

DUBAI MANDATORY HEALTH INSURANCE

"Under Dubai Decree Law No. 11/2013 all sponsors must also provide their dependents with health insurance," Raja adds. "The initial deadline for complying with the mandatory health insurance provisions in this law was 30 June 2016, but it was extended to 31 December 2017. The Dubai Executive Council Decision No. 6/ 2017 Regarding the Phases of the Application of Health Insurance in the Emirate of Dubai, then provided a grace period on fines for sponsors who did not need to obtain health insurance for their dependents until 31 March 2017. However, this regime is now fully in force and fines have already been levied."

"Penalties for failing to comply with the healthcare law range from fines of 500 to 150,000 AED and these may be doubled in the case of repeat offenders," Al Najjab adds. "Repeated breaches can also lead to substantial penalties including fines up to 500,000 AED or cancellation of the employer's trade license," Mackenzie notes.

BASIC PLAN

"Meanwhile in Abu Dhabi, HAAD announced a number of amendments to Abu Dhabi's public health insurance programmes, which took effect from 1 July 2016," Latif explains. "These included decreasing the coverage provided to Emiratis and expatriates under the Thiqa and Abu Dhabi Basic insurance plans from 100% to 80% for treatment fees at private healthcare facilities in the Emirate."

"When it comes to medical services which are obtained outside Abu Dhabi, the Thiqa plan only covers 50% of the cost except in cases of specialist services which are unavailable in the Emirate," states Raja.

"Other changes to the Abu Dhabi Basic plan include a requirement that employees covered under the plan pay 50% of the insurance policy's premiums for certain of their dependents (spouse and up to three children) and 100% of premiums for other dependents (parents and any additional children)," Al Najjab explains.

"Under these schemes employers do not have to provide cover outside the UAE although many international employers do. One point which is important to note is that both the Abu Dhabi and Dubai health insurance laws require employers to provide their employees with a minimum level of health insurance and also prohibit employers from passing these costs back to employees," adds Mackenzie.

TREATMENT OVERSEAS

"Those who qualify for public health insurance in the UAE for the funding of overseas treatment can submit requests for such treatment to be funded," Barbary continues. "These requests are sent to MOHP if the individual is a resident of Sharjah, Ras Al Khaimah, Ajmam, Umm Al Quwain or Fujairah, HAAD if the individual resides in Abu Dhabi or DHA if they are a Dubai resident. In order to be eligible for treatment abroad, the individual must be a UAE national, the necessary treatment must not be available in the UAE and they must have gained approval from the Higher committee within the relevant health authority."

"Applications can be made through the official websites of MOHP, HAAD or DHA and need to be supported by relevant documentation," Barbary continues. "This can include but is not limited to recent medical reports issued by a publicly owned government hospital (which must not be more than three months old), and a copy of the patient's passport, family book and ID."

GCC NATIONALS' POSITION

"The position is different for GCC nationals when it comes to access to public health care," Barbary adds. "They are entitled to both cost reductions when accessing public healthcare provision in the UAE and free treatment at public health care facilities if they are accessing these services in emergency circumstances."

FREE ZONE POSITION

"While free zones are separate economic zones and have some of their own rules and regulations, they are still governed by any Emirate specific laws and Federal laws in other areas," Sharratt explains. "Therefore, provisions such as mandatory health insurance which apply in a particular Emirate will also apply to a company based in a free zone in that Emirate."

"The free zones also have flexibility to issue their own supplementary rules and regulations," Sharratt continues.

"Following the introduction of the Dubai Health Insurance Law, Dubai Decree Law No. 11/2013, in January 2014, some free zone authorities acted early and made it a prerequisite for sponsors within their authority area to ensure health insurance was in place for every employee at the point of in the Dubai Health Insurance Law."

"Dubai Healthcare City (DHCC) is a free zone in Dubai which was specifically established to focus on healthcare and medical tourism," Sharratt adds. "Across two geographic locations, it focuses on healthcare and medical education (in Phase 1) and wellness (in Phase 2). Businesses operating out of DHCC must comply with regulations which the Dubai Healthcare City Authority (DHCA) issues on the free zone's independent governance."

"DHCC has its own regulatory arm and Company Registry to assist with and oversee the registration and licensing of DHCC companies," Sharratt continues. "There are a number of bespoke regulations and processes which corporate entities and health professionals working and operating in the free zone have to comply with. The DHCA also has an outsourced visa service employers there can use."

SUPPORT FOR THE SICK AND DISABLED

"Unlike many jurisdictions, there are no national insurance or income tax contributions payable in the UAE which are intended to fund payments to either the unemployed or those suffering from sickness or disability," states Sarah Anderson of Hadef & Partners. "However, some financial support is available from the Community Development Authority for low income earners, and in practice, our understanding is that support is limited to UAE nationals or those with disabilities. In addition, although most residents in the UAE have health insurance which either their employers or sponsors must provide in place, the Dubai Health Authority also permits low-paid residents to obtain a health card which entitles them to low cost medical treatment at public hospitals and clinics."

PENSIONS COVER BY EMPLOYERS

"There is also a national pension fund but this is only available to UAE nationals or GCC nationals who work in the UAE," explains Anderson. "However, there is no blanket requirement that employers in the UAE must provide pension cover for all their employees, although there are pension requirements which relate to employees of some nationalities. There is also no state pension fund in the UAE into which employees have to pay contributions."

"However, any UAE employer who employs 'eligible' UAE and GCC nationals working in the UAE must register themselves with the relevant pension authority," Anderson continues. "These are the General Pension and Social Security Authority (GPSSA) in Dubai and Abu Dhabi Retirement and Pension Benefit Fund (ADRPF) in Abu Dhabi. They must then ensure they have registered any 'eligible' UAE or GCC nationals on these schemes."

"Eligible UAE nationals are those who hold a family book or those with a long-standing connection to the UAE", Anderson explains. "While eligible GCC nationals are those working in the UAE, there is no requirement for them to provide a family book."

"Registration of eligible employees must take place within a set period of them starting their employment and there are fines and penalties for late registration or failures to register them," Anderson states. "Employers must make pension contributions (of varying percentages depending on nationality) on an eligible employee's behalf. The employees are also generally required to make contributions and the state does this too."

DHA SPECIALIST SERVICES REGULATIONS

"DHA has also recently put in place some new and updated regulations and guidelines on the licensing, delivery and service standards which are applicable to a number of specialist healthcare services in Dubai," Raja continues. "These regulations include nursery clinic requirements, sleep laboratory guidelines, laser and intense pulsed light , hair reduction standards, hyperbaric oxygen therapy service standards, hair transplant service standards, colon hydrotherapy guidelines, and point of care testing guidelines."

PRESCRIPTION REGULATION

"Basic legal requirements governing the import, manufacture and distribution of pharmaceutical products in the UAE are covered by Federal Law No. 3/1983 On the Pharmacy Profession and Pharmaceutical Institutions or Pharmacy Law," Barbary says. "Under this law it is forbidden to practice the pharmaceutical profession which is defined as including the preparation, composition, separation, manufacturing , bottling or packaging or selling any medicine to protect or treat humans or animals without a license issued by MOHP."

"The Registration and Drug Control Department within the UAE Ministry of Health controls drugs and treatments which can be provided," adds Mackenzie. "The Narcotics law, Federal Law No, 14/1985 is also relevant in this context."

"Opening or operating a pharmacy, pharmaceutical factory or medical store (defined as any establishment within the UAE whose business purpose is the import, storage or wholesale distribution of medicine) without having obtained a MOHP license is also prohibited under Federal Law No. 3/1983," Barbary adds.

"This law also prohbits the sale of any medicine or medical preparation, without a medical prescription written in clear hand writing, carrying the name of the licensed doctor who issued it and their stamp and the prescriptions issue date."

"In practice , this is strictly applied by licensed pharmacists on certain medicines such as male sex hormones, narcotics, hypnotics, tranquilizers, and other agents which can cause dependence," Barbary adds. "A wide range of medicines including antibiotics, asthma inhalers, insulin and anti-diabetic, cholestral medicine and anti-hypertensive medicine are generally sold over the counter in the UAE."

"An individual's health insurance will govern whether nationals or residents have to pay prescription charges at cost or these are free," Barby explains. "If the insurance policy covers outpatient prescription drugs, these drugs will be subject to a Drugs Formulary which details the drugs which are covered under the individual's policy under the relevant Federal or Emirate authority. If the required

drugs are not included in the Drugs' Formulary relevant costs have to be paid by the individual directly to the drugs' provider."

"However, prices of pharmaceutical products are regulated and vary depending on whether the product is being supplied to the public or private healthcare sector. The UAE currently imports about 85-90% of these products from abroad. If a particular product is being supplied directly to governmental authorities or government-owned hospitals, its price is determined through the commercial arrangement in place between the relevant pharmaceutical company and government body or hospital," Barbary adds.

"However, if it is being supplied directly to private sector pharmacies and hospitals, as a result of pricing legislation there are fixed price margins for registered pharmaceutical products which distributors and pharmacies must abide by. "

"Under Article 65 of Federal Law No. 4 /1983 all pharmaceutical products (whether they are over the counter or prescription medicines) must also be registered with MOHP before being put into circulation in the UAE," Barbary adds.

" After registration, MOHP reviews the product and determines its cost, insurance, and freight price. What is known as the 'CIF' price is then calculated based on all costs incurred in order to get the product from its place of origin to the UAE. Once the CIF price is determined for a product under Ministerial Resolution No. 140/2013 Unifying the Importation Price of Medicines from the Manufacturer at the Country of Origin to the Port of Destination (CIF) in USD applies and the agent or distributor of a pharmaceutical product must be paid the CIF Price plus 15% of the CIF Price by UAE pharmacies and private hospitals. Pharmacies or private hospitals which sell these products to the end consumer must then be paid a fixed margin of the CIF Price . If the CIF price is under 500 AED this is currently 28% and 20% if it is above 500 AED. Consumers pay a price calculated by adding the CIF Price, the agent's or distributor's 15% margin, and the relevant margin payable to pharmacies or private hospitals. These prices are then listed in a List published by MOHP for use by the private healthcare sector. The most recent edition of this list was issued in September 2016. However, prices of generic products like aspirin and paracetamol are not covered in this list."

MEDICAL TOURISM

"In the run up to Expo 2020 Dubai is set to build a significant number of new hospitals and hire thousands of new staff to help generate more foreign investment in the health care industry. Steps are also being taken to help facilitate more medical tourism by providing 'medical tourist' visas for non-residents," explains Sharratt. "These last for three months but it is possible to extend them. Different categories of visa are available depending on the type and treatment specialism and a hospital ranking system which is being developed so potential patients can filter their treatment options based on price, star-rating and quality of services at facilities."

"Hospitals authorised by the Dubai Health Authority sponsor a patient and their families under these visas and they have a choice of travel and accommodation packages, including hotel stays and activities," Sharratt adds.

REGULATION OF THE PROFESSION

"MOHP, HAAD and DHA are responsible for regulating and licensing the medical profession in the UAE," Barbary explains. "They all place an emphasis on educational standards, experience and licensing requirements. Their aim is to ensure health professionals practice safely in the UAE and in accordance with UAE Federal laws and international best practices. All medical professionals in the UAE need a license issued by any of these authorities to practice. In order to be eligible to work in the medical field in the UAE, those who have trained overseas must have successfully completed relevant qualifications from medical schools or colleges which are listed in the Directory of Medical Schools published by the World Health Organisation or in FAIMER's International Medical Education Directory. They are also subject to examination by the relevant UAE authority (e.g. MOHP, HAAD or DHA) before obtaining a license to practice within the UAE."

"In the past there were several potential medical licenses; granted by the DHA for those who wished to practice in the Emirate of Dubai, by HAAD allowing applicants to only practice in the Emirate of Abu Dhabi, and by MOHP which entitled the holder to practice in the remaining Emirates . However, in 2014, unified medical licenses were recognised across the UAE, which allow medical professionals to work across the country on receipt of a license from either MOHP, HAAD or DHA."

The licensing procedure generally involves the payment of fees, completion of training courses, passing exams and obtaining ministry approvals. Qualifications and level of experience required for a license to practice n the UAE depend on the applicant's medical

SOME KEY REGULATORS

Ministry of Health and Prevention (MOHP)
This Federal department has a range of responsibilities including licensing providers, providing facilities and supervision of medical professionals.

Health Authority Abu Dhabi (HAAD)
Regulates and licenses health care services including telehealth provision in the Emirate of Abu Dhabi.

Dubai Health Authority (DHA)
The DHA is the main health authority for Dubai.

Dubai Economic Department (DED)
Healthcare providers in Dubai undertaking commercial activities need to have Dubai Economic Department licenses. The DED has provided licenses for tele-counseling centres.

General Authority of Health Services (GAHS)
This body was the predecessor of HAAD and SEHA which now operates healthcare assets in Abu Dhabi.

Dubai Health Care City
Healthcare providers undertaking commercial activities in Dubai Health Care City will need a license from the freezone authority.

Dubai Biotechnology and Research Park
Healthcare providers undertaking commercial activities in Dubai Biotechnology and Research Park will need a license from the freezone authority.

profession and the authority they are applying to. They vary depending on whether the medical professionals are interns, general practitioners, specialists, consultants or resident doctors or dentists. Nurses must also obtain a license depending on whether they wish to be registered nurses, registered midwives, nurse practitioners, mental health nurses, pediatric nurses, community nurses or assistant nurses. Licenses are also needed for traditional, complementary and alternative medicine practitioners . A separate license issued by Harvard International is required for medical practitioners who wish to work in the Dubai Health Care City (DHCC). All healthcare professionals including those outside the UAE, can apply for a medical license to work in the Emirates through the online Examination and Evaluation System (EES) on the MOHP website. After uploading documentation and making associated payments, applicants sit an exam which is conducted once a week and can take up to four attempts at passing this."

VIRTUAL HEALTHCARE

"Technology is advancing what is possible in terms of the delivery of healthcare information and services using methods which are often known as as 'telehealth', explains Dan Partovi of Jones Day. "Virtual second opinions and speciality consultations are now a viable resource for health providers and consumers regardless of their geographical location and healthcare providers and facilities in UAE have been able to advance the standard of care and service offerings using these and other tele-health models."

"However, they do raise some novel legal considerations, especially when the virtual service involves activities which cross jurisdictions and what it means to practice medicine. For example, do certain remote speciality consultations require a license, and what would be the applicable data privacy rules," Partovi continues. "The legal considerations are nuanced and often tie into the end user's or patient's location. This can leave health care providers with a patchwork of dissimilar differing requirements to consider as some jurisdictions have specifically implemented or are in the process of considering laws and regulations on telehealth, while others are not."

"The UAE and its healthcare regulators have recognised and support telehealth at a policy level," Partovi explains. "As a result its legal regulation is evolving fast but also varies from Emirate to Emirate. The most significant regulations are currently found in Abu Dhabi and Dubai."

"In the UAE there is a strong consumer demand for telemedicine and Government backing," adds Els Janssens of Baker McKenzie Habib Al Mulla. "Population increases and a rise in diseases like diabetes and obesity plus the aims in the UAE's Vision 2021 which includes promoting both a healthier lifestyle and the provision of world class health care are driving the growth of telemedicine. It can include a range of services and applications including two way video, email, smartphone communication and wearable devices and other forms of telecommunications technology. These applications also include different forms of communication including remote monitoring, store and forward and real time interaction between doctor and patient, which enable an enhanced level of care compared to traditional medicine."

"One of the recent initiatives in this area has been the launch of Abu Dhabi's 24 hour telemedicine centre, "Janssens explains. "This is a joint venture between Mubadala Healthcare and the Swiss provider Medgate. Other initiatives have included the Dubai Healthcare Authority's RoboDoc which will soon be available across DHA hospitals and healthcare centres, and is expected to be extended to homecare patients later, There is also Du's partnership with Mobile Doctors 24/7 which is providing a physician helpline to customers."

"In the Emirate of Abu Dhabi the telehealth regulatory regime is overseen by the Health Authority - Abu Dhabi (HAAD) and specifically considers and regulates provision of both tele-counselling (i.e. telemedicine providers to local provider services) and teleconsultation (i.e. telemedicine providers to patients). Regulation is provided by the HAAD Service Standards For Telecounselling in the Emirate of Abu Dhabi (the Telecounselling Standard) and the HAAD Service Standards For Teleconsulting in the Emirate of Abu Dhabi (the Teleconsulting Standard)," states Partovi.

"The Telecounselling Standard states telecounselling may include a range of telehealth services involving physician to physician counselling, including telephone, video, internet, remote monitoring or remote imaging consultations," Partovi explains. "In order to participate in telecounselling in Abu Dhabi, the originating HAAD licensed healthcare provider must ensure the service is only sought from providers who are either licensed by HAAD (where those providers are located in Abu Dhabi) or are licensed by their respective country specific regulator (where those providers are located outside Abu Dhabi). The Telecounselling Standard also sets out primary responsibilities for healthcare decisions and privacy obligations, amongst other things."

"The Teleconsultation Standard contemplates teleconsultation may include a range of telehealth services involving a physician-to-patient relationship, including consultations and health monitoring services in Abu Dhabi," Partovi adds. "As the Telecounselling Standard does for telecounselling, the Teleconsulting Standard sets out requirements and standards for provision of teleconsulation services in Abu Dhabi. The Teleconsulting Standard also states specifically a number of services which cannot be performed remotely, and require referral to an in-person consultation in Abu Dhabi. These include prescribing certain controlled medications."

"Oher services which cannot be included under the Teleconsultation Standard include for example, services involving invasive clinical interventions, issuing sick leave certificates or certificates on fitness to work, which are excluded, as is any telephone based minimal follow up following a face to face consultation.

Teleconsultation needs to be provided in Arabic and English as a minimum and access for patients should be universal," Janssens adds.

"An existing health facility in Abu Dhabi which wishes to add teleconsultation to its offering only needs to obtain authorisation from HAAD," Janssens notes. "Whereas a new health provider who has not previously been licensed will need to apply for a license specifically for teleconsultation. The standard also puts great emphasis on ensuring the confidentiality of patient data and telemedicine providers need to have policies and procedures in place to ensure safe transmission and storage of confidential personal and health information in accordance with HAAD regulations."

"Health teleconsultation services need to be provided by appropriately qualified and HAAD licensed health care professionals," adds Janssens. "However, rather than having a specific professional license for teleconsultation HAAD requires the telemedicine provider to ensure initial and refresher training is provided on telehealth care provision and competence assessments are carried out in this area."

"Dubai's telehealth regulatory regime is overseen by the DHA," Partovi continues.

"In February 2017, Dubai Health Authority issued a telemedicine regulation," adds Janssens. "Compared to the Abu Dhabi Teleconsultation Standard, the scope of Dubai's Resolution No. 30/2017, approving the Regulation of Tele Health Care services, is wider. It also includes tele-surgery and online pharmacy for both over the counter and prescription drugs amongst other products. Unlike Abu Dhabi, the possibility of prescribing drugs via tele-healthcare services technology is foreseen. "

"The DHA also distinguishes between the licensing of new telehealthcare service centres, and adding tele healthcare services as an activity to an existing healthcare facility license. In addition, it makes it possible for cooperation between healthcare facilities across the UAE in order to provide tele healthcare services. The principles around data protection, patient consent, and education of healthcare professionals are the same as Abu Dhabi. However, in Dubai there is a difference in the detail of the requirements (e.g. data protection rules). The Dubai Telemedicine Regulations do not apply to telemedicine providers in Dubai Healthcare City, where any facility wishing to offer these services will need to seek a license from the DHCC freezone authority."

"However, health apps remain largely unregulated in the UAE," Janssens adds.

"The Ministry of Health has not published any guidance on its position regarding health and wellness apps. In practice this follows a similar hands-off approach on low risk general wellness apps by the FDA. In fact, as part of its innovation effort, it has itself launched a number of health apps such as the E-Etmenan App to promote early intervention in non-communicable diseases, and the Health Heroes App to combat childhood obesity. However, appliances or software which are intended by the manufacturer for the diagnosis, prevention, monitoring or treatment of disease can be classified as a medical device by the Ministry of Health, and made subject to listing or registration requirements. If there is any doubt about the classification of a product (as a medical device or not), an application for classification can be made to the Ministry of Health. With both supporting software solutions for tele-consultatoin and health apps, compliance with data protection rules is crucial. UAE data protection rules at Federal level are limited but Dubai Healthcare City and Abu Dhabi Global Market Square have their own data protection legislation, and health authorities such as HAAD have issued a number of regulations aimed at protecting patient health data. These have different implications, for example, on transfers of data outside the jurisdiction, or reporting of data breaches, and care is needed when implementing a business model in the UAE."

DISCIPLINARY REGIME

"The disciplinary bodies for medical professionals in the UAE vary depending on the authority the practitioner is registered with," explains Barbary, "The medical authorities have full discretion to prevent individuals from practising not only within the UAE, but the entire GCC region in cases of medical misconduct."

"MOHP's Medical Licensing Committee which handles medical complaints against professionals licensed with them convenes every two weeks and can revoke licenses of medical professionals in the Medical Licensing Registry in the UAE for gross medical malpractice and infringement of medical ethics within the country," Barbary continues.

"HAAD's Disciplinary Committee is responsible reviewing misconduct, malpractice, negligence, incompetence cases and breaches of their regulations for healthcare providers in Abu Dhabi and Al Ain and the DHA's Health Regulation Department is the disciplinary body for healthcare providers in Dubai."

"DHA requires complaints to be registered in writing and presented within six months of any incident or breach. Once a complaint is filed, it is treated based on the severity of the issue, These range from a minor classification (no injury) to moderate (increased length of stay or surgical intervention as a result of the incident) and the major classification (for procedures with the wrong patient or body part or medical error leading to death). The Health Regulation Department then takes the necessary disciplinary action after receiving advice from a committee of three doctors. Punitive action can range from a fine or notice or warning letter, to a suspension or revocation of the professional's medical license. "

"Victims of malpractice or medical negligence can take action against their medical practitioner by filing a complaint with the local healthcare authority, bring a civil prosecution

case before the competent courts, and pursue a criminal case against the doctor or healthcare provider with the public prosecutor if results of the malpractice were serious enough,

"Barbary continues. "Federal Law No. 4 /2016 advises healthcare service providers to obtain malpractice insurance, it also outlines doctor's responsibilities and details the process for investigation and disciplinary proceedings in cases of alleged medical malpractice."

"This Law has also called for the formation of a Medical Liability Committee of doctors specialised in all fields of medicine based on a resolution to be issued by the MOHP."

"This Committee will be responsible for reviewing medical complaints referred by the MOHP, HAAD and DHA discipinary bodies, the Public Prosecution, or the courts, and will help determining if a medical error has been committed and the seriousness of such errors."■

Dan Partovi
Partner
dpartovi@jonesday.com
Jones Day

Dan Partovi is an experienced corporate lawyer who focuses on complex international transactions across a range of industries.

Nomaan Raja
Partner
nomaan.raja@lw.com
Latham & Watkins LLP

Nomaan Raja is a partner based in the Dubai office and is also the local Chair of the Corporate Department. Raja's practice focuses on debt capital markets transactions (conventional as well as Sukuk issuances), high-yield bond offerings, equity offerings, bond/sukuk restructurings, mergers and acquisitions, and investments and other corporate transactions.

Muhannad R. Al Najjab
Associate
muhannad.alnajjab@lw.com
Latham & Watkins LLP

Muhannad R. Al Najjab has experience advising issuers and underwriters in both public and private capital markets transactions in debt and equity securities. He also advises purchasers and vendors in connection with private equity mergers and acquisitions, and provides clients with advice on general corporate matters.

Eyad Latif
Associate
eyad.latif@lw.com
Latham & Watkins LLP

Eyad Latif is an associate in the Dubai office of Latham & Watkins, where he is a member of the Corporate Department and Mergers & Acquisitions practice. His practice focuses primarily on the representation of US and international clients in a wide variety of corporate transactions in the areas of mergers and acquisitions, private equity and general corporate matters.

Emily Sharratt
Trainee Solicitor
e.sharratt@hadefpartners.com
Hadef & Partners

Emily Sharratt works as a trainee lawyer in the Hadef & Partners' Dubai office. She has experience in Commercial Litigation, Civil Fraud, Asset Recovery, and an indepth knowledge of the UAE legal framework in Corporate, Employment and Dispute Resolution.

Sarah Anderson
Senior Associate
s.anderson@hadefpartners.com
Hadef & Partners

Sarah Anderson works in the Employment Department in the Dubai Office of Hadef & Partners. She has considerable experience of advising clients on both contentious and non-contentious HR and employment issues.

Lara Barbary
Partner
lara.barbary@bsabh.com
BSA Ahmad Bin Hezeem& Associated LLP

Lara Barbary is a Partner in the Corporate and M&A practice who works in the DIFC office. She specialises in corporate transactional work across a range of industries.

Andrew Mackenzie
Counsel
andrew.mackenzie@hoganlovells.com
Hogan Lovells LLP

Andrew Mackenzie is a litigation and arbitration specialist who works extensively across the Middle East and Africa.. He advises clients on a range of areas including professional negligence and insurance litigation.

Els Janssens
Associate
els.janssens@bakermckenzie.com
Baker & McKenzie

Based in Abu Dhabi, Els acts as a global lawyer to Baker McKenzie's Global Healthcare Practice and advises multinational pharmaceutical clients and investors on healthcare regulations in the UAE. Previously worked for six years as a legal adviser in the European Medicines Agency (EMA) .

Effects of Deductibles in Insurance Policies

Justin Carroll of Al Tamimi & Company considers some legal consequences which can follow from the deductible payable under insurance policies when making a claim.

To a layperson, understanding the language in insurance policies can be daunting, particularly in policies taken out for business purposes. While the use of plain language in common insurance policies like motor vehicle and home and contents insurance has grown the use of plain language in commercial policies like professional indemnity insurance and public and products liability insurance is still the exception rather than the rule. In addition, it is not always clear even to experienced business people what the legal consequences are of features of common commercial policies.

DEDUCTIBLE

Take the deductible, for example, which is a feature of most insurance policies. It is the amount a policyholder must bear of the value of any claim. In effect, it is the cost the policyholder must pay for making a claim under the policy.

For example, if you have home and contents insurance and your home suffers, say, 50,000 AED worth of damage and the policy includes a deductible of 1,000 AED, the insurer will be liable to repair your home up to 49,000 AED or pay out that sum in lieu of repair. The 1,000 AED difference is the cost of the deductible the policy requires you to bear.

The amount of the deductible policyholders face when making a claim usually depends on the riskiness of the policyholder or of the thing insured. Sometimes the amount of the deductible can be very large in relation to the total amount insured under a policy. This can make a policyholder think twice about making a claim under the policy.

HIGH DEDUCTIBLES

In some cases, the value of the claim may be less than the deductible amount. This was the case in Dubai Cassation Court judgment No. 238 and 240/2009. In this case, the claimant underwent surgery to remove a polyp in his nose.

The surgery was performed in a Dubai hospital and resulted in damage to the claimant's olfactory nerve. The claimant sued the surgeon and the hospital and sought 4 million AED in damages. The surgeon and the hospital then sought to join their professional indemnity insurer to the proceedings. However, on appeal, the court rejected the joinder application by the surgeon and the hospital on the grounds their professional indemnity policy contained a USD 50,000 deductible. As damages awarded to the claimant at first instance were only 100,000 AED or around USD 27,250, the damages fell within the deductible which the doctor and the hospital had to bear themselves. On further appeal, the court increased the claimant's damages to 150,000 AED or USD 40,850 which still fell within the policy's deductible. So the net result was that the doctor and the hospital had to pay the damages awarded to the claimant out of their own pockets and both their and the other party's court fees.

KEY LESSON

The key point is the amount of a policy's deductible will give an insurer a defence to any claim by a policyholder which is up to the amount of the deductible. In most cases, it will be clear if the value of the claim is likely to exceed the deductible. But in others it will not be as was the case here which resulted in the doctor and the hospital having to pay not only the damages awarded for the claim but also the claimant's and the insurer's court costs as a result of their failed attempt to defend the claimant's claim and join the insurer to the proceedings.

The doctor and hospital here could have avoided this situation had they obtained legal advice on the likely value of the claimant's claim against them.

This may have made it possible to try to negotiate an amount under the policy with the insurer before the judgment was handed down. Even if the amount the insurer was prepared to pay was low or unlikely to cover the amount of damages awarded to the claimant, it would still have been a better outcome than the doctor and hospital obtained. ■

Justin Carroll
Senior Associate
jcarroll@tamimi.com
Al Tamimi & Company
Justin Carroll is a Senior Associate in the firm's Transport and Insurance team. He is also a member of the firm's healthcare sector group. He has practised Insurance law for over 10 years and has advised GCC and multinational companies based in the UAE on insurance coverage, regulatory compliance and policy interpretation.

Jurisdiction *by* Jurisdiction
Health Care

Health Care

Adjou Ait Ben Idir and Aarti Thadani of Norton Rose Fulbright look at public healthcare and the main requirements and take-up of health insurance in eight jurisdictions.

GLOBAL

The face of global healthcare is changing, as Governments have to deal with ageing populations, cuts to public spending and an increase in healthcare consumption, particularly for chronic conditions. In these circumstances it is not surprising healthcare insurance is growing in importance. The growth of insurance within the healthcare sector is now higher than in other insurance lines. There are also 'disruptors' in the healthcare insurance sector, including InsurTech who are offering significant opportunities. Healthcare insurers are increasingly using connected devices and wearables, telematics, automated underwriting and artificial intelligence to help meet increasing consumer demand, cut costs and refine premium pricing. Profitability remains under pressure and the continuation of low interest and increases in competition pricing sophistication are especially important.

UK

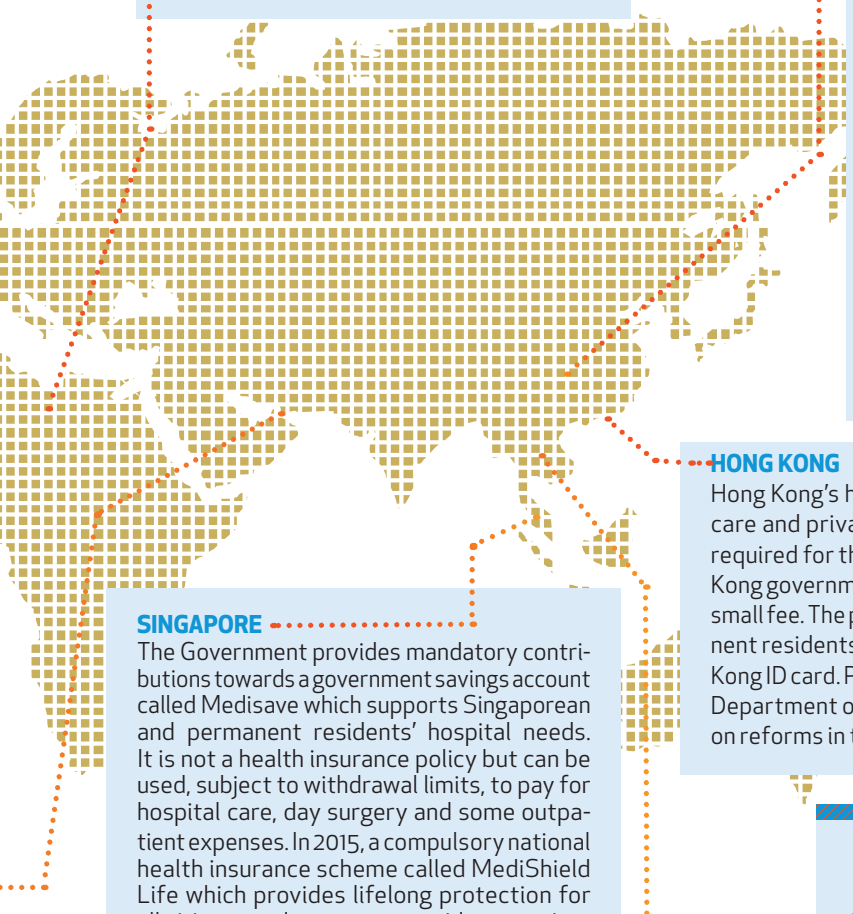
Set up in 1948, the UK's National Health Service (NHS) provides largely free healthcare to the general UK population. However, there is an increasing demand for private health insurance, sales of which rose by 2.1% in 2015 (with over 4 million people being insured), according to figures released by healthcare consultancy LaingBuisson. This is continuing despite the fact the cost of such policies rose from 1 November 2015, largely due to the hike in insurance premium tax (IPT) from 6% to 9.5%. Although some economists attribute increasing sales of private health insurance to a dissatisfaction with NHS waiting lists and treatment restrictions, the main reason is probably due to a rise in company schemes, as numbers of employees with medical insurance have risen by 3.4%. Numbers of individuals taking out private medical insurance have declined, possibly because buying cover independently is now expensive, e.g. in 2015 a healthy 35 year-old in the UK typically paid £650 a year for private medical insurance, while individuals over 70 paid £2,300.

USA

The US has no uniform healthcare system and is often described as a hybrid system. In 2010 President Obama signed the Affordable Care Act (ACA) which made hundreds of significant changes to the US healthcare system between 2011 and 2014. These changes included making it mandatory for almost all Americans to have some form of health insurance, either provided by their employer, an individual plan or through a public programme like Medicaid or Medicare. However, the ACA's future is unclear as there have been calls for this law to be repealed.

UAE

In the UAE there are two separate insurance jurisdictions: onshore and offshore (which includes a number of freezones, e.g. the DIFC). The Insurance Authority covers the 'onshore' insurance regime, and oversees all insurance business other than that conducted in the DIFC. There are also separate health care insurance regulators in some of the Emirates, such as the Dubai Health Authority (DHA) in Dubai and the Health Authority Abu Dhabi (HAAD) in Abu Dhabi. Dubai Law No. 11/2013 introduced mandatory health insurance cover in stages after coming into effect on 1 January 2014. In Dubai compulsory health insurance requirements were introduced for foreign workers (including domestic staff) their spouses and dependants. All citizens and residents in Dubai must now have access to a mandated level of healthcare. In Abu Dhabi, HAAD has also recently declared cuts on the coverage provided under the Thiqa (coverage for nationals) and what is known as the Abu Dhabi Basic Plan.



SAUDI ARABIA

The Council of Cooperative Health Insurance (CCHI) issued a 'Unified Policy' (published on 10 July 2016 and approved by Saudi Arabia Cabinet Decision No. 103/2016) which sets out mandatory rules on health insurance. The Unified Policy's aim is to ensure all private sector employees are covered by private insurance. The CCHI has also introduced compulsory health insurance for visitors to Saudi Arabia.

CHINA

Healthcare has been a focus of the Chinese government since the early 1980s. At least 95% of Chinese population are insured via three public insurance programmes known as the New Rural Cooperative Medical Scheme (NRCMS), which was launched in 2003 in rural areas; the Urban Resident Basic Medical Insurance (URBMI), launched in 2007 to target the unemployed, children, students, and the disabled in urban areas and Urban Employee Basic Medical Insurance (UEBMI), launched in 1998 as an employment-based insurance programme. China outlined five major programmes to achieve healthcare reform in its 2009-11 implementation plan. These included broadening basic healthcare coverage; establishing a national essential drug system; expansion of infrastructure for grassroots medical networks; providing equal access to basic public healthcare services; and implementing pilot reform of public hospitals. The World Bank recommended deeper Healthcare reform in China in 2016.

HONG KONG

Hong Kong's healthcare system is generally divided into public healthcare and private medical care options. Private health insurance is not required for those covered under public healthcare options as the Hong Kong government provides all healthcare services free of charge or for a small fee. The public healthcare system covers Hong Kong citizens, permanent residents, and non-permanent residents with a valid visa and Hong Kong ID card. Public medical care is administered jointly by the Hong Kong Department of Health and the Hospital Authority. The last consultation on reforms in this area was in 2011.

SINGAPORE

The Government provides mandatory contributions towards a government savings account called Medisave which supports Singaporean and permanent residents' hospital needs. It is not a health insurance policy but can be used, subject to withdrawal limits, to pay for hospital care, day surgery and some outpatient expenses. In 2015, a compulsory national health insurance scheme called MediShield Life which provides lifelong protection for all citizens and permanent residents against large hospital bills was introduced. The health insurance market is also growing steadily as private healthcare insurers offer Integrated Shield Plans which complement the Government schemes.

THAILAND

99% of the population receive free healthcare and Thailand is positioning itself as a leader in healthcare tourism. The universal healthcare system is under strain and alternatives are being considered, with a co-payment system the most likely. Three separate state-run schemes provide different groups with slightly different benefits so there is pressure to align them. The universal healthcare provided is basic and overworked so there are opportunities for private provision.

Adjou Ait Ben Idir
Partner
adjou.aitbenidir@nortonrosefulbright.com
Norton Rose Fulbright (Middle East) LLP

Adjou Ait Ben Idir is a corporate lawyer based in Dubai. She specialises in mergers and acquisitions, privatisations, private equity, equity capital markers and international joint ventures.

Aarti Thadani
Associate
aarti.thadani@nortonrosefulbright.com
Norton Rose Fulbright

Aarti Thadani is a dispute resolution lawyer working in Dubai. She specialises in international arbitration, and litigation in the commodities, energy and infrastructure sectors.

The Battle Against Illness: The UAE Role

With technology winning the war against diseases and illness and providing a whole host of new treatment options. Salah Mostafa and Dr Dalia Sarhan of Takeda explain the UAE's role in this battle and how legislation can support innovation in the health sector.

As we begin the third millennium, humanity can only look back with humility, gratitude and admiration at what it has already achieved in terms of reining in plagues, diseases and illness.

For example, for centuries poliomyelitis or (polio) paralyzed hundreds of thousands of children every year. However, in 1994, North America was declared polio-free and since then polio has been almost eradicated worldwide.

However, although the war on diseases is far from over, recent breakthroughs in computing power, robotics, nanotechnology, biotechnology and gene therapy are giving hope to patients around the world.

The following are a couple of examples of key developments:

- Diagnostics: According to a 2015 National Academy of Medicine report 'the delivery of healthcare has proceeded for decades with a blind spot. This means that there are still diagnostic errors in the form of both inaccurate diagnosis or delayed diagnoses. These issues persist throughout all the care settings and continue to harm an unacceptable number of patients. However, the future in the area of diagnostics looks bright as a number of companies are currently working on the new-gen diagnostic 'smart' tools. One example of this is the work by researchers in Gambhir's Lab, who are designing smart clothes to continuously look for breast tumours. There is even a smart toilet which has been developed in order to evaluate 10 measures of health every day.

> "Another question which needs to be considered is who is liable if something goes wrong? For example, if you think about 3D printers who would be liable for defective drugs manufactured using them?"

- 3D printing: Organ transplantation is now an accepted and much sought after form of treatment. However, there can be complications because of donor shortages and there are also ethical issues surrounding organ transplantation which have held back its potential. However, the technology to print human body parts already exists and may become standard in the years to come. For example, at the Wake Forest Institute for Regenerative Medicine in Winston, Dr Anthony Atala is printing cells, bones and even organs on an 800 pound steel machine called 'ITOP', or Integrated Tissue and Organ Printing System. In addition, scientists at the University of California are working out a way to print not just organs, but also the blood vessels which are needed to transport nutrients, oxygen and metabolic waste.

CHALLENGES

As the new technology becomes more main-stream, it will give us more means to battle illness and diseases. However, there are also challenges which need to be considered by policy makers, regulators and the legal professions.

- Privacy - one of the obvious legal concerns new technologies can pose involves individual privacy and data protection. In order to leverage technology in areas such as gene therapy there will be a growing need to establish bio-banks and to expand DNA databases. This raises issues including: how biological materials are entered into a bank or a database and under what conditions researchers can access material in these banks. There are also questions involving how this information is collected and stored (e.g. access-rights, disclosure, confidentiality, data security, and data protection).
- Product liability - another question which needs to be considered is who is liable if something goes wrong? For example, if you think about 3D printers who would be liable for defective drugs manufactured using them? Generally, the manufacturer is the entity which is liable for damages resulting from the usage of products they manufactured but where 3D printing is being used to manufacture pharmaceuticals, the courts will need to decide whether it should be the printer owner; the author of the operating software or pharmaceutical formula; suppliers or manufacturers of the printer or ingredients; or the printer operator who is liable for damages.

UAE PERSPECTIVE

The UAE is well-positioned to tap into this medical revolution. Although some work still needs to be done, the UAE has the vision, frameworks, infrastructure and passion to play a meaningful role in pushing the medical boundaries.:

1. Vision: The UAE's Vision 2021 focuses on science, technology and innovation as drivers for progress and sustainable development. A byproduct of this is the UAE's National Agenda 2021, which is a seven year agenda leading to UAE's Vision 2021. This sets out ambitious targets including becoming one of the top ten countries in the world in the Global Innovation Index, increasing R&D expenditure three folds by 2021 and increasing the share of knowledge workers to 40% of total workforce. 2015 was designated the year of innovation during which the UAE adopted its Science, Technology and Innovation (STI) Policy. The STI Policy aims to foster growth and sustainable development through STI and to enable a move away from non-renewable resources in order to achieve the UAE's goals under UAE Vision 2021.
2. Infrastructure: The UAE features prominently and very favourably on many indices including the Global Entrepreneurship and Development Institute's 2016 'Global Entrepreneurship Index'. On this index it is ranked as the preferred destination for entrepreneurs in the Arab World (and ranked 19th globally). The 2016 Global Innovation Index which is co-published by Cornell University, INSEAD, and the World Intellectual Property Organisation has also ranked the UAE higher than any other Arab country and 41th globally. In addition, the UAE has also topped the Middle East and North Africa region in the World Bank's 2017 Doing

Business ranking where it ranked 26th. This is a testament to the UAE's position as the Middle East region's innovation and entrepreneurial hub . The Emirates have many co-working spaces, incubators, accelerators, training programmes, events, and networking opportunities which are designed to support innovation. These initiatives have attracted many entrepreneurs and start-ups to the UAE, including Altibbi which has become a leading telemedicine app.

3. Laws: The STI Policy has identified effective and flexible regulations which foster innovation as one of the key enablers of the policy. One of these legislative enablers is the new bankruptcy law which creates a new regulatory body to oversee bankruptcy court rulings. It also includes provisions which could enable companies to avoid liquidation and provisions which help protect executives from facing criminal charges for bounced cheques. Another enabler is the UAE's tax regulations which offer a tax friendly environment, as no income tax is imposed on companies, except on the oil and gas exploration and production companies. In addition, even though VAT is planned for 2018, the new rates are expected to be minimal and there will be exemptions for various sectors including the healthcare sector, which should also help the development of this sector
4. The free zones regime : An even friendlier business and tax environment is offered through the UAE's freezone regulations. One example is the Dubai Science Park (DSP), a free zone community which serves the science sector value chain and supports entrepreneurs, SMEs and multinational enterprises. DSP aims to play a significant role in the UAE's Vision 2021 by supporting innovation in the sciences through the fostering of growth and change in the areas of human science, plant science, material science, environmental science and energy science.

WHAT'S NEXT

With a well-crafted vision, which is coupled with an enviable infrastructure and an emerging legal framework, the UAE is in pole positon to play a key role in promoting scientific innovation in the healthcare sector. However, there is still room for improvement in a number of areas:

- IP laws: The STI Policy refers to robust IP laws as one of the main enablers of the policy. However, patents in UAE are governed by the Industrial Property Law which dates back to 2002 (as amended in 2006) . This law also covers trade secrets. There is room for law reform in this area in order to help address issues associated with innovation. These include the high cost and lengthy processes for obtaining a patent grant, and the costs and the lengthy processes associated with patent litigation. Another area for development is the provisions on regulatory data protection which is of particular interest to the biopharmaceutical sector. What is positive is that law reform has been discussed in this area, particularly the potential for separate laws to govern patent and trade secrets, but to date this reform has not taken place.
- Data privacy: Data privacy is a major area which could benefit from legislative development. For example, at present the UAE does not have a specific Federal data privacy law. With the rise in modern technology and need to collect personal data, whether in the form of personal information, bio samples or DNA, there is a definite need for a legal framework to regulate the collection, use, storage and destruction of personal data in a way which protects individual privacy but also fosters technological advancement,
- R&D Council: In 2016 the OECD recommended in a report (Entrepreneurship, SMEs & Local Development in Abu Dhabi), that the UAE should establish an R&D Council within its government. It was recommended that this council would have a high-profile membership taken from industry, academia and government and that the body would be supported by staff that can monitor the development of the innovation eco-system and inform council priorities and decisions, and also administer research funding. Such a council would also help define research priorities and ensure research funding is targeted at commercialisable research. It would also be able to favour collaborative research, including research with foreign institutions' support, industry-university collaboration and tap into global knowledge flows.
- Red Tape Reduction: Although the UAE was ranked higher than any other country in the region in the World Bank Group's 2017 'Ease of Doing Business Rankings', there is still room for improvement on reducing red tape. On particular exampe is that there could be reductions in the requirements for licenses and in cases where licenses are still required to extend the duration of the license from one to three years.

It is believed that the average level of human knowledge is now doubling every 13 months. The innovations that are highlighted in this article are only a drop in the ocean of the potential developments which are yet to come not only in the healthcare sector but also in other walks of life. Only the nations which understand that and are getting ready to be part of that knowledge revolution will be able to participate and influence our future. The UAE is definately leading the pack in the Middle East region in this respect and there is no reason to believe it will not continue to improve and build on its achievements and well warranted ambition in the future. ■

Salah Mostafa
Head of Legal NEMEA
salah.mostafa@takeda.com
Takeda

Salah Mostafa is a dual-qualified lawyer in England & Wales and Egypt with broad experience in corporate / commercial work. He has advised and worked closely with clients in the life sciences, telecoms, FMCG and energy sectors across a wide range of matters spanning from M&A, capital markets, commercial work, regulatory matters and corporate governance works .

Dr Dalia Sarhan
Regional Counsel NEMEA
dalia.sarhan@takeda.com
Takeda

Dr Dalia Sarhan has a diverse background working in the government , education and private practice. She has a PHD in corporate criminal liability from Cairo University and an LLM in Comparative & International Laws from the American University in Cairo.

Compulsory Ways

How does the UAE Compulsory Medical Scheme compare with the US 'Obamacare' Scheme? Barry Greenberg of BSA Ahmad Bin Hezeem & Associates LLP looks at the problems and promises in both systems.

The UAE and the USA have both recently enacted mandatory health insurance laws in order to increase the proportion of their respective populations who have health insurance coverage. The benefits of such laws are quite clear, if more of their residents have health cover, and overall access to heath care increases, risks that individuals will suffer financial difficulties when they are faced with long term or emergency medical care needs is reduced. These schemes should also increase societal productivity and overall wellness of the population.

However, these mandatory health insurance schemes are not without their problems and challenges. Although, the US has had greater market penetration of this type of insurance for a longer period and so as a result has also had more experience in dealing with changing markets and healthcare challenges, many of the difficulties which are caused by these two new mandatory cover schemes in both jurisdictions are similar, as are the approaches the Government is taking in order to tackle these problems.

OBAMACARE BASICS

The US Patient Protection Affordable Care Act (PPACA), is commonly known as the Affordable Care Act (ACA) or more simply 'Obamacare', after President Obama, who invested much effort and political capital in getting this piece of legislation enacted, in 2010.

Prior to 'Obamacare' existed, most US residents obtained health cover through their employers on a voluntary basis, although market penetration was relatively high.

However, as those who have followed the US news over the last few months are probably aware, Obamacare has faced a crisis with the recent Presidential election as one of his main campaign promises was to repeal it in its entirety. In addition, a Republican majority in Congress also been promising a repeal, so it appears to be a foregone conclusion that the ACA was doomed. However, there has also been political infighting among the Republican Congress which has prevented any repeal or substantive replacement of this system at present, as a result at the time of writing it remains law, although this law may change as there is still an ongoing effort to repeal it.

ACA IMPLEMENTATION

The ACA is not only complex, but it has made significant changes to the health insurance market in the US. As a result, this law was phased in gradually, and it was not fully implemented until 2015, which was five years after it was enacted. During this time, mostly because of the polarizing effect this law had had on the US political system, there were many attempts in Congress to repeal the ACA and several court challenges were filed, three of which made their way to the US Supreme Court.

ACA BASIC FEATURES

The basics of this very complicated system are that all employers in the USA of at least a specific size must offer health coverage to their employees. Individuals who do not have an employer are provided with health care coverage with Government support.

In order to do this, the US Government has established health care exchanges, where applicants can obtain health coverage for premiums which at least at the scheme's outset were below those they would have paid before the law's enactment if they had purchased that cover in the open market.

In addition, subsidies are provided to those with limited financial means who are seeking cover from the exchanges. There is also a requirement that anyone who chooses not to obtain health coverage, has to pay a surcharge along with their US income tax payments. To ensure access to health care, it is not possible to deny coverage for 'pre-existing conditions' and the age at which insurers must continue to provide coverage for dependent children on their parents' policies has also been increased.

In addition, coverage must also provide for specified items of cover. As a result, it has been estimated that between 11 and 14 million Americans have been added to the health insurance rolls since this scheme was enacted.

UAE HEALTH INSURANCE

While to some extent UAE health insurance is regulated by the UAE Federal Insurance Authority, it is also mandatory at the individual Emirate level, at least in Abu Dhabi and Dubai, so the health cover requirements in the seven Emirates do differ.

For example, Abu Dhabi enacted its mandatory health care scheme in 2005 and rolled it out in phases over the next several years. Meanwhile, Dubai's mandatory health insurance scheme came in later, and went into effect in early 2014. However, like both the scheme in Abu Dhabi and Obamacare it has been phased in, in stages.

As in Amercia, these UAE schemes generally require employers to provide their employees with health cover. The cover requirements also prescribe certain minimum basics this cover must include.

DIFFERENCES IN THE EMIRATES

Since the schemes are enacted at Emirate level, and not Federally mandated, there are important distinctions between the requirements in the Emirates where this cover is mandatory, such as whether employer plans must also cover their employees' dependents, specific cover levels and the availablity of enhanced plans. The northern Emirates in contrast, do not have comprehensive mandatory health care schemes, although they are at various stages in developing them. In addition, a Federal law mandating such cover has also been under consideration for several years.

One significant difference between the US Scheme and the position in the UAE is that Emirati Nationals have guaranteed cover by virtue of their status as citizens and are covered by government sponsored plans. In Abu Dhabi this plan is called Thiqa and in Dubai it is known as SAADA, and Emirati nationals may receive free care at MOHAP government run facilities in the Northern Emirates. However, foreign nationals must obtain cover directly from insurance companies. This is a key difference, to the position in the US where there is no distinction between US nationals and expatriate residents. In addition, in the US there is no government coverage at all, except for that provided to government employees, those of limited financial means (Medicaid), or those over a certain age (Medicare).

BURDEN ON EMPLOYERS

Perhaps the biggest problem that both the US and the UAE schemes face is how to adequately finance mandatory cover requirements in a way which is both affordable and can also be profitable to insurers offering the cover.

Tied to this is the burden that both the respective schemes place on employers who, under these systems, are required to a large extent to fund their employees' healthcare.

FUNDING

Allocation of the resources needed to fund healthcare can be described as a zero sum game. If an adequate system, is to be funded by public or private means, someone has to pay. Where tax revenues are available for Government subsidies, those in the lower end of the economic spectrum who cannot afford adequate cover are assisted. However, as has been the case in the US, there is the potential that this will lead to never ending political battles on the extent to which the Government should be involved in wealth transfer in order to care for those with lesser means.

FUNDING IN THE UAE

In the UAE, the position is that falling Government revenues which have been caused by a mix of the general economic downturn and the recent drops in oil prices, combined with increasing rates of health service use and increases in healthcare costs, have placed limits on the extent to which the Government is able to provide subsidies and help fund national schemes.

UNDERWRITING CHALLENGES

However, a lack of political will or finance for Government subsidies are not the only reasons for health care funding issues. There

"Programmes are also being developed in the UAE which encourage consumers to use healthcare systems more efficiently and live healthier lifestyles."

are also underwriting challenges in both the US and UAE insurance market based systems.

Firstly, an aging population and the effect of life style choices, such as smoking and poor eating habits, have led to an increase in chronic diseases, like diabetes in both the US and the UAE.

In the US, it has been found that the Government subsidised health care exchanges tend to attract a higher proportion of less healthy people than was initially anticipated, and as a result the insurers who are participating in these exchange schemes have had to pay out on higher claims.

This has in turn led to a spiral of increasing premiums payable by those who are actually the least able to afford them. In fact, some insures have even abandoned the health care exchanges as a result of both the losses which have been incurred and the uncertainty on the future of Obamacare.

This in turn has put in question the long-term viability of these exchanges.

Meanwhile in the UAE, destabilising factors including a lack of a long term experiential underwriting base, rapid increases in healthcare usage as the healthcare system expands, and the overall regional economic challenges, have also combined to drive up premiums to the point where companies and individuals are in some cases choosing to select cover with limited benefits at a reduced price instead.

CONSUMER CHOICE

Another point of interest is the way 'healthcare' is viewed. For example, the more mature US model has tended towards treating healthcare as any other product which the consuming public uses. In fact, this trend actually began before Obamacare was enacted.

This means in the US, healthcare is treated as a commodity and the view is that the consumer needs to make choices on how it is to be most cost-efficiently accessed.

In the US, it is no longer the case that patients can access health-care and assume their insurance will cover everything. Increased deductibles, higher co-pays, and reduced benefits have all forced consumers into considering the cost of healthcare before they receive treatment.

In addition, insurers, businesses, and individuals are now being forced into having better awareness of the value of healthy living and preventative care in mitigating healthcare costs and programmes have been adopted which encourage this.

The UAE is also starting to adopting some of these strategies in order to handle increases in healthcare cover.

For example, Government plans, such as Thiqa, which provides cover to Emiratis in Abu Dhabi have been amended so there is a decrease in benefits and beneficiaries are encouraged to use public rather than private healthcare facilities, although some of the copay increases have been rolled back.

UAE PROGRAMME CHANGES

In addition, many employers in the UAE are also offering and their employees are accepting lesser benefits.

Programmes are also being developed in the UAE which encourage consumers to use healthcare systems more efficiently and live healthier lifestyles.

In this way, UAE health insurance systems and practices are beginning to follow health cover practices in the US. ■

Barry Greenberg
Senior Associate
barry.greenberg@bsabh.com
BSA Ahmad Bin Hezeem & Associates LLP

Barry Greenberg has extensive experience in the insurance industry
both in the UAE and as a litigator and claims counsel on behalf of insurers in the New York market.

Under the Microscope

The spread of mandatory health insurance in the UAE has led to an increase in the numbers of clinical laboratories. Donald Moore and Sai Pidatala of Reed Smith look at the impact this has had on their regulation.

The requirement for all employees in the UAE to have mandatory health insurance has led to greater demand for sophisticated clinical laboratory facilities and as a result numbers of such laboratories operating in the Emirates have also increased, along with the need for greater regulation. These new regulations are comprehensive and cover laboratory operations, facility management procedures, specimen collection and handling and other corollary protocols involving laboratory personnel qualifications, patient data, record-keeping and safety rules. The UAE's Ministry of Health (MOH) defines a 'clinical laboratory' as 'a medical institution, building or place in which procedures for the examination of materials taken from or originating from the human body are performed through testing by: chemistry, hematology, microbiology, serology, cytology, pathology, immunohematology or other forms of examinations in order to obtain information for diagnosis, prophylaxis or treatment of humans'.

As a result, both new and existing clinical laboratories in the UAE are having to now apply rigorous, technical standards which are compliant with long-established and generally accepted international standards. The relevant regulators in the UAE are also now charged with the task of implementing regulations which are in line with international best practices, including, for example, the World Health Organisation's Good Clinical Laboratory Practice (GCLP) guidelines, which dictate that threshold ethical, managerial and quality assurance standards must apply to the analysis of samples from clinical trials, while simultaneously ensuring the integrity and reliability of data from those trials.

Other generally accepted international standards now being used by UAE authorities include Joint Commission (JCI) standards. This is an independent, not-for-profit organisation which accredits and certifies nearly 21,000 health care organisations and programmes in the United States. Organisations like the JCI monitor developments in the rules on clinical laboratory regulation in the United States (which is seen as a model jurisdiction with a highly complex state and federal clinical laboratory regulatory regime) which are promulgated by the United States' Centres for Medicare and Medicaid Services. (This is a federal agency which inspects clinical laboratories and ensures compliance with the United States' Clinical Laboratory Improvement Amendments of 1988, which are federal regulatory standards which apply to all clinical laboratory testing performed on humans in the United States, except clinical trials and certain research.)

While the UAE's clinical laboratory regulatory regime is sophisticated and comprehensive, it still wants the UAE to enhance regulations in this area so it can remain one of the region's best-in-class providers of clinical and diagnostic medical services.

UAE REGULATORY AUTHORITIES

Clinical laboratories in the UAE are regulated at both a federal and Emirate level and regulations which relate to them are administered by different authorities. The main federal regulatory authority is the Ministry of Health (MOHP), and active Emirate level regulators include the Health Authority – Abu Dhabi (HAAD) and the Dubai Health Authority (the DHA). As these authorities continue to adopt more international standards in the clinical laboratory domain, more granular rules are being adopted to regulate almost every aspect of clinical laboratories' operations, ranging from molecular testing methods to labelling rules and even include the exact necessary dimensions required for certain laboratory spaces.

MINISTRY OF HEALTH (MOHP)

In order to align more closely with international standards like the GCLP and those promoted by the JCI, MOHP and Emirate level regulators have implemented their own healthcare guidelines and policies which contain more exacting standards, particularly on clinical laboratories, than those which existed before. MOHP also administers a number of UAE federal healthcare laws, including Federal Law No. 7/1975 and Federal Law No. 2/1996, which define specific requirements for the establishment and licensing of public and private medical laboratories, clinics and hospitals in the UAE.

MOHP's Clinical Laboratory Regulations (MOH Standards) apply to governmental, semi-governmental, private laboratories and clinical laboratories operating onshore in the UAE and in the free zones. These standards reflect many GCLP principles and are expansive in scope. They regulate registration and licensing, clinical laboratory design requirements, specimen collection protocols, the storage of blood, urine and other specimens, chemical waste and bio-hazard disposal, and laboratory safety rules.

BIO-HAZARDS

The MOH Standards have a strong focus on the handling of biohazardous material. They lay the foundation for a categorisation system of clinical laboratory designation which ranges from laboratories with a basic level of containment which rely on standard microbiological practices with no special physical barriers (and are given a Bio-Safety Level 1 (BSL-1) designation) all the way up to laboratories which are designed and operated to provide maximum containment and protection from exposure to lethal pathogens through working inside biological safety cabinets or through full-bodied positive pressure air-supplied suits, which provide maximum protection from agents posing a high individual risk of life-threatening disease and may be transmitted via the aerosol route and for which there is no vaccine or therapy (which are given a Bio-Safety Level 4 (BSL-4) categorisation). From a legal perspective, clinical laboratory directors, staff and other stakeholders must appreciate the differences between each of these as they are required to develop and implement appropriate safety and operational protocols which need to be enforced to ensure no accidents or mishandling of specimens, as this could lead to potential civil or criminal liability for the laboratory or its individual personnel. Documentation requirements imposed by the MOH Standards are also legally important, as they impose requirements on the maintenance of accurate and updated accession lists. Accession lists are records of all specimens received by a laboratory for analysis and are prepared by laboratories when specimens are received. These record a patient's identity, including name, age, sex, location in the hospital/medical facility, the referring physician's name, investigations requested, date and time of specimen receipt and its condition when received. Laboratories usually assign a unique laboratory number for registering each specimen, which is used to trace it in the laboratory. In laboratories which handle large numbers of specimens, accession lists may be computer generated and conditions of specimen at receipt might not be recorded unless they have been rejected. Data protection measures are also required when handling patient data, including that on accession lists therefore privacy is important. However, there is no overarching, monolithic data protection law in the UAE, so data collection and patient privacy needs careful consideration if laboratories are to avoid being held responsible for violation of an individual's right to privacy, as this can have financial repercussions and lead to criminal penalties.

HEALTH AUTHORITY – ABU DHABI (HAAD)

Unlike MOHP, HAAD only regulates the Emirate of Abu Dhabi. The HAAD Clinical Laboratory Standards (HAAD Standards) are a codified set of standards which specify policies and procedures for all HAAD licensed clinical laboratories. There are requirements for quality and competence of those licensed to provide clinical and medical testing, screening and diagnostic services in Abu Dhabi. These are used by clinical laboratories to develop their quality management systems and assess their own competence.

The HAAD Standards are important from a legal perspective, as they are broad in scope and specific in application. For example, many clinical laboratories in Abu Dhabi could potentially run foul of the HAAD Standards on having properly trained and qualified laboratory directors who understand there is arguably some liability imputed to them flowing from aspects of the laboratory's overall operations. These include ongoing monitoring of quality control programmes, determination and definition of staff qualifications, maintenance of policies on pre-analytic, analytic and post-analytic specimen testing, and assurance of consistent performance of reference and contract laboratory services in line with HAAD laboratory standards and other UAE laws and regulations.

From a legal recordkeeping perspective, HAAD Standards on monitoring of storage areas for blood and blood components are particularly precise and can be document-intensive. They impose strict requirements on the automated recording of refrigerator and freezer temperatures, the regulation of the heat transfer characteristics of temperature-recording probes used with blood and there is a requirement to maintain documented staff remedial actions for at least five years.

DUBAI HEALTH AUTHORITY (DHA)

DHA only regulates the Emirate of Dubai and licenses freestanding, outpatient and diagnostic centre clinical laboratories. It also enforces its regulation by inspecting laboratories and either granting or withholding accreditation to ensure compliance with its DHA Clinical Laboratory Regulations.

All clinical laboratories licensed by DHA must be accredited by any accreditation agency recognised by the International Society for Quality in Health Care (ISQUA), including the JCI, Accreditation Canada International and the College of American Pathologists.

Up until now federal and emirate regulations in this area have not conflicted, and have worked in conjunction with each other to ensure a multi-layered, protective approach.

FUTURE TRENDS

There are a number of possible future developments in this area. Clinical and diagnostic testing for pre-screening and residence visas are in great demand in the UAE because of the large, transient expatriate population. The UAE also has many private hospitals and standalone clinics because of its relatively unregulated and unrestricted environment. While this is slowly changing with the new regulations, the UAE still has a fragmented healthcare sector which is slowly shifting the outsourcing of certain services from outside the country to locally based clinical laboratories. Medical insurance coverage is also now mandatory in Abu Dhabi and Dubai which means there is higher demand in the healthcare sector generally and this has resulted in hospitals, clinics and laboratories outsourcing clinical and diagnostic testing to local reference laboratories such as the National Reference Laboratory in Abu Dhabi, the Abu Dhabi-branch of Al Borg Medical Laboratories, Medsol Diagnostics Laboratories and Thermo Fisher Scientific. If this trend continues, the UAEcould see a marked increase in numbers of clinical laboratories and some consolidation of those which already exist both among locally based laboratories, and large, multinational laboratory facilities. In addition, this could also lead to further development of the rules on establishment and operation of clinical laboratories in the UAE for the ultimate benefit of both laboratory providers and patients. ■

Donald Moore
Partner
dmoore@reedsmith.com
Reed Smith

Donald Moore has a diverse corporate and finance practice for clients around the world. His experience and on-going work includes projects in Africa, Asia, Brazil, Central Asia, Europe, the Middle East and the United States of America.

Sai Pidatala
Senior Associate
spidatala@reedsmith.com
Reed Smith

Sai Pidatala has worked as an attorney at law firms in New York, Washington, DC and the UAE. He concentrates in mergers and acquisitions, cross-border transactions, joint ventures, strategic alliances, reorganizations, financing transactions (whether debt or equity) and other corporate & securities laws matters for domestic and international clients.

Mergers & Acquisitions: A healthy approach

As the UAE healthcare sector continues to grow it is becoming a target for investors. Carlo Pianese, Maria Mourad and Tala Azar of Tribonian Law Advisors explain the specific points to check when purchasing a UAE business in this sector.

Despite a general slowdown in the regional economy, the UAE healthcare sector has not shown any sign of recession but instead has grown in 2016 and the first quarter of 2017.

However, there are numerous aspects which must be taken into account by investors who wish to undertake mergers and acquisitions in this industry. In particular, they need to make sure they have considered the transaction structure, due diligence of the target and its operations and the process which is required to complete the share transfer.

DEFINING THE TRANSACTION STRUCTURE

One of the first issues to be addressed when looking at an investment in the UAE healthcare sector is in common with other industries the statutory restrictions on foreign ownership which could potentially impact the target's shareholding.

If the relevant healthcare facilities are located in mainland UAE and are operated by a limited liability company, under Federal Law No. 2/2015, UAE nationals (either directly or through a corporate entity) must own at least 51% of the issued share capital.

However, if the healthcare facilities are in mainland UAE but are operated by a sole establishment, the position is different, and ownership restrictions will depend on the type of activity being carried out.

For example, non-UAE doctors can set up an establishment through which they operate a clinic and carry out their medical practice in the UAE. However, sole establishments operating pharmacies or drug stores cannot be owned by non-UAE or GCC nationals. Another key issue can be ownership restrictions on the land on which the facility is located. In healthcare businesses land can be a key asset. However, generally, in the UAE the land and buildings on which healthcare businesses operate are not owned by the company operating the facility, so on transfer of the target's shares, ownership of the real estate often will not also be transferred. In addition, even in those infrequent cases where the target business does own the property and it is part of the perimeter of the sale, there can still be restrictions on real estate ownership and the applicable rules will depend on the Emirate where the facility is located.

TARGET'S CORPORATE STRUCTURE

While a limited liability company is the most common form of company in the UAE, it is not always used in the UAE healthcare sector. Many health facilities are sole establishments legally owned by an individual who is personally liable for the sole establishment's liabilities.

In addition, groups operating in the UAE healthcare sector are rarely organised under one holding company in which investors can buy shares. This means investors who wish to acquire an interest in all the group entities, may have to purchase shares in each entity separately which may be costly.

As a result in this industry it can be important to consider the possible reorganisation of the target company or group before completion.

This may include converting the target entity from a sole establishment to a limited liability company and/or transfering all group entities under one holding company. In addition, if a healthcare group also has operations outside the UAE, it is important to seek tax advice regarding any reorganisation .

"In addition, groups in the UAE healthcare sector are rarely organised under one holding company in which investors can buy shares."

LICENSING

Carrying out any economic activity in the UAE is subject to comprehensive regulations. It is not possible to carry out any activity in the UAE without being duly licensed to undertake the specific activity by the relevant authorities. It is necessary to obtain a license from the economic department of any Emirate the individual wishes to operate in. Therefore, an Abu Dhabi company providing homecare services in Dubai would be in breach of its license and Dubai regulations if it carried out those services in Dubai without a Dubai Department of Economic Development license. It is also necessary to obtain a license from the licensing authority of any relevant freezone where economic activity is to be carried out. As a result, legal due diligence generally includes ascertaining the target is not carrying out activity in any Emirate or freezone for which it does not have the appropriate licenses. In addition, the activity will need to be carried out by the person explicitly set out in the license, and within the scope of the activity in that particular license. Therefore, a Dubai based company authorised by the Dubai Department of Economic Development to run an 'orthopaedic clinic' cannot carry out any surgical treatment unless it is also licensed as an 'orthopaedic surgery hospital'. This means when carrying out due diligence careful checks are needed to ensure none of the services the facility currently provides fall outside its license. This can be a delicate exercise given the way activities are categorised by the Emirate's economic departments and Freezone licensing authorities. For instance, the Dubai Department of Economic Development recognises over 90 types of medical related activity and also has specific service descriptions under each activity.

Healthcare facilities operating in the UAE also need a health license issued by the relevant health authority. These licenses must be held before providing any service in the UAE. They must explicitly and specifically include all healthcare and healthcare related services the facility provides.

The facility must also comply with all conditions specified by the health authority and the license must always be valid and renewed within the necessary deadlines. There are other licenses and certificates which healthcare facilities operating in the UAE typically require, and ascertaining these are in place is also generally part of the due diligence. Such licenses typically include a Chamber of Commerce and Industry certificate; advertising board permits, warehouse permits for non-medical goods, medical warehouse permits for medical goods, civil defense certificates on compliance with security and safety requirements and medical waste management certificates. Authorities issuing these licenses may vary in each Emirate.

HEALTHCARE PERSONNEL

As well as the standard UAE labour law requirements which are found under Federal Law No. 8/1980, there are specific healthcare sector requirements which will also apply to employees in this sector. For example, all medical staff employed by a healthcare facility will need to be licensed to provide healthcare services in the UAE before providing such services.

They will also need to be enrolled under a medical malpractice insurance policy. Although we have come across healthcare group companies which allow medical personnel employed and sponsored by one group company to provide services to patients in another group company, this is subject to the consent of the relevant health authority. Those failing to obtain such consents could potentially be subject to warnings and fines by the licensing health authority, so it is important to check.

AGREEMENTS WITH INSURANCE PROVIDERS

Agreements between a healthcare facility and insurance companies to compensate the facility for healthcare services given to patients insured by the contracting insurance companies (the MSAs) can also be important in the UAE.

When it comes to due diligence, red flags can include control provision changes, the insurance company's unilateral right to amend deductible amounts, co-payments and up-front fees payable by insured patients, as such rights can have an adverse effect on the healthcare facility's profits. In addition, restrictions on the facility's right to amend price lists for services which are to be compensated by the insurance company and the scope and quantum of discounts for healthcare services provided to patients who are members of insurance company plans, also need to be reviewed.

AUTHORITY CONSENT

Ownership changes of UAE corporate entities, particularly those which own a healthcare facility, are subject to a specific administrative process which must be followed in order to complete a merger and acquisition.

The main steps are as follows:

1. Obtaining initial approval from the economic department in the relevant Emirate, e.g. the Dubai Department of Economic Development in Dubai in order to change the target's ownership.
2. Executing and notarizing the share transfer agreement and target's amended constitutional documents before a notary public.
3. Obtaining a no-objection from the relevant health authority to the change of target ownership. In the UAE, the health authority may be at the Emirate level, e.g. the Dubai Health Authority and the Health Authority of Abu Dhabi are the licensing health authorities in Dubai and Abu Dhabi or at the Federal level, e.g. the UAE Ministry of Health and Prevention is the licensing health authority for facilities in Ajman, Fujairah, Ras-Al-Khaimah, Sharjah and Umm Al-Quwain.
4. Obtaining an amended main license of the company from the relevant economic department.
5. Obtaining an amended health license from the relevant health authority.

A thorough assessment of transfer requirements under the laws and regulations of the relevant Emirate must be completed in order to identify the required consents.

TIME OF PAYMENT OF THE SALE CONSIDERATION

Another consideration is the UAE market practice on the time of payment of the sale consideration in a merger and acquisition transaction.

Generally, in the UAE, the consideration is paid by the purchaser to the seller on the date the amended main company license is issued by the relevant Economic department and this date is known as the Transfer Date.

However, the UAE healthcare sector does not always follow this approach.

The reason for this is that healthcare facilities will normally also require consents from the relevant health authorities which are generally provided after the Transfer Date.

Therefore, in the healthcare sector sellers typically mention that the sale consideration must be paid on the Transfer Date but purchasers' standard position is usually for the sale consideration to be paid when the amended license is actually issued by the relevant health authority.

Therefore, in order to manage parties' expectations on the payment of the sale consideration this point is normally covered when drafting transaction documents.

Common alternatives are either to transfer the full sale consideration to an escrow agent on the Transfer Date (and release it to the seller when the amended health license is issued), or to transfer part of the sale consideration on the Transfer Date and then transfer the balance when the amended health license is issued. ■

Carlo Pianese
Partner
cpianese@t-lawadvisors.com
Tribonian Law Advisors
Carlo Pianese's practice focuses on cross-border and domestic mergers and acquisitions, joint ventures, early stage investments, fund formation and corporate finance. He has extensive experience working on cross-border transactions across Europe, North America, the Middle East and Africa.

Maria Mourad
Associate
mmourad@t-lawadvisors.com
Tribonian Law Advisors
Maria Mourad's practice focuses on cross-border and domestic mergers and acquisitions as well as wide variety of corporate, restructuring and financial transactions.

Tala Azar
Trainee
tarar@t-lawadvisors.com
Tribonian Law Advisors
Tala Azar's practice focuses on cross-border and domestic mergers and acquisitions, as well as wide variety of corporate, IT and joint venture transactions.

"As a result of Dubai's international position there are special responsibilities in this area which need to match the city's status as a preferred destination for residence, investment, tourism and travel. This is why we need a health insurance system which is based on law and clear regulation, and why we cannot tolerate any violations or transgressions when it comes to health transactions."

His Excellency Humaid Al Qatami, Chairman of the Board and Director-General of Dubai Health Authority speaks to Sogol Kaveity, Roudha Al Shamsi and Mohamed Al Yafeai.

"The UAE is a pioneer in the development of health laws and legislation, with its own approach to creating modern laws which govern life and individuals' rights, responsibilities and affairs," states His Excellency Humaid Al Qatami, Chairman of the Board and Director-General of Dubai Health Authority (DHA).

"There are specialist laws which cover areas including health, which are both objective and transparent. However, the country has also adopted an overall approach to judicial science which is compatible with its social values and the UAE's old traditions, and takes into account the nature of the society and the way the country has also been able to embrace the needs of residents from over 200 nationalities who have different races and cultures."

DJI ROLE

"The Dubai Judicial Institute has helped play a key role in ensuring the appropriate development of specialist laws, in areas such as health legislation, and the development of expertise and competency in the judicial area," His Excellency continues. "In fact, in record time the Institute has become one of the most specialist scientific, educational and research beacons in the region, and a centre of excellence in training and human development."

"When it comes to health legislation a key aim of the UAE is to protect the country's assets, and prosperity, and ensure sustainable development."

COMMUNITY AWARENESS

"There are two topics which I think are particularly important in the health context," explains Al Qatami. "The first is the importance of developing community awareness of regulations and legislation on medical responsibility as the law aims at developing the health system and related medical practices and the treatment of doctors and patients, which should not just be looked at from the perspective of punishing doctors and their potential medical errors."

"It is important that we work together to preserve rights, and safeguard responsibilities and duties," Al Qatami adds. "We need to look at such matters and legislation in a positive manner, and contribute to awareness with controls."

HEALTH INSURANCE

"A second key topic is health insurance", His Excellency continues. "As a result of Dubai's international position there are special responsibilities in this area which need to match the city's status as a preferred destination for residents, investment, tourism and travel."

"This is why we need a health insurance system which is based on law and clear regulation, and why we cannot tolerate any violations or transgressions when it comes to health transactions. It is important we preserve the right of all individuals, via enforcement, to receive high quality medical services provided through an advanced insurance umbrella."

"However, it is not just compliance which is important, we must also develop awareness of health insurance, with insurance companies and health institutions participating in a civilized manner, so procedures and transactions are conducted in accordance with the law and regulations."

"The Dubai Health Authority also intends to develop the health insurance system in Dubai, so it also includes those visiting the Emirate," Al Qatami adds.

"In fact, ongoing coordination is happening in this area with concerned and specialist parties so that there are medical packages which also cover visitors provided by health insurance".

SAADA'S INITIATIVE AND OTHER PROGRAMMES

"In this context it is also worth mentioning the 'Saada' initiative, which was launched by His Highness Sheikh Mohammed Bin Rashid Al Maktoum, in his capacity as Ruler of Dubai. This is one of the most important and advanced projects for health insurance for citizens in Dubai. However, there have been other programmes covering health insurance in general, including the 'Enaya' programme."

"Through these programmes, the highest standards of good health life for citizens are being achieved, along with ongoing efforts to achieve health security and enable application of the best medical practices here."

DUBAI LAW NO. 11/2013

"As for health insurance, the Authority is responsible for enforcing the Dubai Health Insurance Law," His Excellency continues. "There are 4.6 million beneficiaries of the insurance system, which was launched by the Authority under Dubai Law No. 11/2013. In applying this system the Authority decided to take into account the highest international standards, economic and social variables and the population's health needs. Care was also taken to ensure a gradual application of the law."

"The Dubai Health Insurance System is based on an electronic system which is the latest in the world. As a result, the Authority is able to follow up, monitor and evaluate the system, compare prices with the level and quality of available insurance services, and make the necessary decisions to support its development in terms of flexibility and transparency."

STRATEGY AND TARGETS

"Development of the health sector is a top priority in Dubai," His Excellency explains.

"All of the ambitious targets in the 2016-2021 Dubai Health Sector Development Strategy are based on the generous patronage of the Ruler of Dubai, His Highness Sheikh Mohammed Bin Rashid Al Maktoum and the unlimited support we have received from of His Highness Sheikh Hamdan Bin Mohammed Bin Rashid Al Maktoum, Crown Prince of Dubai and Chairman of the Executive Council, and the continuous follow-up from His Highness Sheikh Hamdan Bin Rashid Al Maktoum, Deputy Ruler of Dubai and Minister of Finance."

"As a result of this patronage, the DHA has been able to identify objectives, which aim at achieving a strategic objective of creating 'a healthier and happier community'. We want people to be able to enjoy a host of high-level medical services, through hospitals, medical centres and clinics which are equipped with the latest technology and smart devices, managed by a medical elite who are known for their competence."

INVESTMENT

"The DHA has a clear policy of being open to society and various institutions and sectors, including the private health sector, which we consider a strategic partner of the Authority and a main supporter in all the objectives we are working on," Al Qatami explains.

"The Dubai Health Authority has a clear policy of being open to societyand various institutions and sectors including the private sector."

"Based on this strategic vision, we are working hard to open up opportunities to all those responsible for the private health sector so we can achieve the best investment environment and they can benefit from the package of facilities which are provided by Dubai, its economy and international position, and are fundamental to the success of any economic development activity."

GROWTH LEVELS

"To date, growth levels have been remarkable in terms of the private health sector and the promising opportunities offered by Dubai to investors in this important sector. For example, there are 3018 private health facilities in Dubai, that includes 26 hospitals, four fertility centres, 34 one-day surgery centres, 1,624 specialist and general medical centres, 82 dental treatment centres and laboratories, 868 pharmacies, and 38 health facilities for visual examination and home nursing."

"In addition, in terms of professional licenses granted to individuals in the private medical sector in Dubai there are 36,055 licensed medical professionals, of which 13,594 are new licenses," His Excellency continues.

PRIVATE CAPACITY

"The DHA statistics and indicators have also revealed a steady growth in private health facilities, which are expected to continue in Dubai until at least 2020. For example, data provided to the Health Regulatory Authority on hospital licenses, shows 12 new private hospitals are expected to be established over the next three years with a capacity of 875 beds, bringing the total number of private hospitals in Dubai to 38. There will also be a further seven other hospitals with 750 beds."

PRIVATE SECTOR POLICY

"The DHA has adopted a clear policy and methodology in order to strengthen its relationship with its strategic partners and help build new partnerships," Al Qatami explains.

"Before formulating its strategy and building development plans, the Authority asked private hospital owners, officials, pharmaceutical, optical and insurance companies to discuss the trends and challenges of the next phase, along with the role of the private health sector, its future needs and expectations. "

"Through meetings and open discussions, we looked at ways of them participating effectively in upgrading service levels and enabling a smart transformation."

"We consider the private health sector an important partner and are keen on its participation in the preparation of our strategic development and its formulation. The Authority has also strengthened its relationship with many private hospitals and insurance companies through memorandums of understanding (MOUs) and agreements which serve the interest of clients and patients."

"Such agreements and MOUs have been made with many international and multinational health institutions, both inside and outside the UAE, showing clearly the UAE is an ideal and future destination for health investment," His Excellency continues.

"The Dubai Health Authority is always working to facilitate procedures for establishing and licensing private sector health facilities, which support them, enhance community confidence in their services, and enable them to participate in the development of the health system in Dubai, in accordance with internationally applicable and approved standards."

MEDICAL TOURISM

"Dubai's international position has helped pave the way for a healthier future in the country and enabled the Emirate to be at the forefront of international medical and health tourism," His Excellency notes.

"In light of this, High Highness Sheikh Hamdan Bin Mohammed Bin Rashid Al Maktoum, Crown Prince of Dubai and Chairman of the Executive Council, launched a project to make 'Dubai a global destination for medical tourism'. This project has been adopted by the Dubai Health Authority which aims to contribute to the revitalization of tourism, by making Dubai the preferred destination for healthcare. We hope to attract over 500,000 therapeutic tourists by 2020, as a result of Dubai's advanced position on the international tourism map and the promising global investment opportunities found here."

"The Dubai Health Authority has developed an ambitious project and leads the health tourism sector through the 'Dubai Health Experience, DXH' programme. As well as providing a high-level package of medical specialties, in collaboration with a range of strategic partners, including the Emirates Airline, the Tourism

and Commercial Marketing Department, the General Directorate of Residency and Foreigners Affairs, we are also working with a range of relevant private sector institutions."

"The DHA has also developed a project identity and brand which matches Dubai's cultural aspect, and has developed a portal supported by smart technology which is able to promote and revitalize medical tourism, in partnership with over 25 high-level healthcare facilities."

QUALITY STANDARDS

"When it comes to competition within the health sector, our standard both locally and globally is customer satisfaction and their level of happiness. It's our goal, and the 2016-2021 development strategy priority," His Excellency explains.

"It is also part of our projects and initiatives. The Authority is striving to achieve high levels of excellence in its services within a competitive framework. We want to provide leadership for facilities. We are also aware that customer happiness in a typical hospital environment lies in levels of preparedness, response, service quality, and the quality and efficiency of health service providers. We have made significant progress enabling hospitals, centres, clinics and specialist medical departments to access our facilities and in achieving international accreditation. In fact there are a couple of examples of this."

"Three authority hospitals – Rashid, Dubai and Latifa have obtained international accreditation (which has been renewed for the fourth successive time) from the Joint Commission International (JCI), an institution known for its strong commitment and rigorous standards of accreditation. This shows how modern our hospital facilities are, the efficiency of our staff and the superior hospital environment provided. In addition, Hatta Hospital and Dubai Physiotherapy and Rehabilitation Centre have also received this accreditation. In addition, the Thalassemia Centre's accreditation was also renewed for the fourth time, while the Medical Airport Centre's was renewed for the third time. There are also ten Dubai Health Authority primary health care centres which have received this accreditation, and 11 Dubai Health Authority primary health care centers which have received six ISO global certificates in six critical areas (ISO in the Quality Management System (ISO 9001: 2015), ISO in Environmental Management Systems (14001: 2015), ISO Occupational Safety and Health Management Systems (18001: 2007), ISO in Social Responsibility (26001: 2010), ISO in Customer Satisfaction (10001: 2007) and ISO in Complaints Management System (20142: 2014)).In addition, the Dubai International Endoscopy Center at Latifa Hospital has received international accreditation from the American Association of Gynecologic Laparoscopy, and was the first of its kind in the region to become an integrated centre in this critical field," Al Qatami notes. "Latifa and Hatta Hospitals have also received accredited by the UNICEF as child friendly hospitals."

"There are also nine health centres which have received the Arab Council for Health Specialties accreditation as training and educational centres for the Arab Board of Family Medicine programme, which is the most important Arab accreditation in this area, and shows the high level of capability our centres have. In addition, the Dubai Gynecology and Fertility Centre has received the Canadian International Accreditation, and is the first of its kind in the Middle East to receive international the accreditation and licensing.The Dubai Blood Donation Centre has also received international accreditation from the American Association of Blood Banks for its equipment and operation which follow the highest standards of blood safety," His Excellency adds. "I am also pleased to say that many of our centres and hospital departments have received international accreditations for their fast response, efficiency and outstanding medical services, including the emergency departments, stroke and catheterization departments at Rashid and Dubai Hospital. These are all examples of steps which have been taken globally to achieve excellence, although we are continuing to work to achieve more in this area. "

INNOVATION

"The UAE is one of the first countries in the world to establish the concept of excellence," Al Qatami explains. In fact, it is one of the fastest growing countries in the transition from quality to innovation. When His Highness Sheikh Mohammed Bin Rashid ordered the rapid transition to the fourth generation system, it meant having more enabling tools and creating an innovation phase. In this respect, the DHA aims to be more competitive both inside and outside the country. In order to be at the forefront of the 4G system institutions, the DHA has formed an 'Institutional Excellence Board', which is followed by a group of teams in order to achieve the desired transformation. Each team is assigned a specific system standard so as to meet its requirements, and then take the DHA where His Highness Sheikh Mohammed Bin Rashid Al Maktoum requires."

"As well as the transformation of the DHA into the fourth generation system, and within the 'Dubai 3D Printing Strategy' framework and 'Future Accelerators' initiative, the Authority is fulfilling its responsibilities in the field of 3D printing which His Highness Sheikh Mohammed Bin Rashid ordered in many fields, including medical specialties. We are also developing scientific research and forming strategic partnerships at home and abroad in order to strengthen Dubai's position and to be at the forefront of the manufacture and export of medical technology printed in 3D. In fact, recently, our hospitals have succeeded in conducting accurate and complex surgery using 3D printing technology, including major surgery to remove rare tumors."

DHA FACTS & FIGURES 2016

Hospitals

- 4 Authority hospitals - Rashid, Dubai, Latifa and Hatta.
- 937,787 outpatients treated in hospitals.
- 25,865 operationsin Dubai hospitals (averaging 2,155 operations per month and a total of 13,567 majory surgeries.

Clinics and Centres

- 15 primary health care centres.
- 25 fitness and specialist centres.
- 2,186,787 outpatients treated in outpatient clients in Authority establishments.
- 1,045,000 outpatients treated in healthcare centres.
- 168,000 outpatients treated in specialist centres.
- 1,898,000 medical fitness examinations in medical fitness centres.

SMART TECHNOLOGY

"The health sector in Dubai is an integral part of the transformation and future foresight system. The 2016-2021 development strategy has been formulated in light of the national agenda and the direction of the state in general, and Dubai in particular," His Execellency explains. "Rapid advances have been achieved by the UAE, particularly Dubai, and the DHA is working to keep pace with world health and medical science in terms of its smart and innovative practices, technology and methods. Currently, the DHA through a package of smart services, programs and applications, has succeeded in placing itself at the top of this important sector, regionally and internationally, and is committed to continuing to provide its services using in the most smart and innovative methods which help achieve customer satisfaction and happiness. The DHA, has a portfolio of projects and initiatives, which aim to provide its services in smart ways, which are in line with Dubai's vision and duties, and overall strategic objectives on achieving leadership in all fields, leading creativity and innovation in various specialties and sectors, including the health sector."

"The DHA has adopted a specific methodology for smart services, applications, methods, and equipment," His Excellency notes. "For example, the smart pharmacy and pharmacist robot, at Rashid Hospital, will be in all Authority hospitals by the end of this year. We also have Dubai RoboDoc, which allows doctors to communicate remotely on the diagnosis and treatment of emergency cases, telemedicine, and a mobile smart clinic, which is the first of its kind, and only started to work a few days ago. This provides a range of diagnostic services, including examinations for diabetes, blood pressure, heat, body mass, blood oxygen rate, cholesterol, pulse rate and ECG. It was launched within the framework of the DHA's projects for 'Dubai Future Accelerator' initiative, and has many other possibilities, including telemedicine, which is the most important one, as it enables prompt communication with a competent doctor at any Authority hospital after conducting an examination and discussion of examination results inside clinics, so appropriate medical advice can be quickly provided."

"There are also a range of other medical applications now being used including Hayati which enables self-monitoring by diabetics, the Tashkhees application which provides medical information on various diseases, the Tefli or 'my baby' application which provides specialist information for women, and Smart Mazad, which allows investors to bid on certain unexploited products, areas and shops which are being leased within Authority facilities via a smart electronic system. There is even a recent application for the smart inspection of health facilities, and the Sehaty or My Health and Dubai Doctors app on Apple Clock, which include all information relating to a patient's medical records and information on licensed physicians in Dubai."

AT A GLANCE: HIS EXCELLENCY

His Excellency Humaid Al Qatami was Minister of Health from 2006 to 2009 and worked as Minister of Education between May 2009 to August 2014. Since then he has been Chairman of the Board and Director-General of the Dubai Health Authority. His Excellency is passionate about history. He takes a deep interest in world events, developments and the personalities which have shaped history and human civilization. He is also fond of research and study of management sciences and strategic planning, and human development, health and education. A passion for reading and knowledge drove him to create a special library of books, which includes rare and important books, documents and studies. His Excellency does sport every day and believes in the importance of physical fitness and the achievement of an intellectual, mental and physical balance. He enjoys participating in sport with his friends and relatives on a regular basis. His Excellency has a range of interests including politics, economics and the social and media fields

THE CRIME OF FRAUD

A crime of fraud which began in Dubai and continued in the UK, helps with the understanding of what constitutes fraud in the UAE as Jouslin Khairallah of Khairallah Advocates & Legal Consultants explains.

Under UAE law the crime of fraud is covered under the Penal Code (Article 399 of Federal Law No. 3/1987) which states that fraud, 'Shall be punishable by confinement or by fine of any individual who, by using a fraudulent practice, assuming a false name or quality, takes possession for himself or for others of any movable property or written instrument, or obtains any signature upon such an instrument, cancels it, destroys or amends it, whenever it is intended to deceive a victim and bring him to surrender a legal right.'

Those who alienate an estate or movable property while being fully aware that it is not their own or that they have no right to dispose of it are also be liable to the same punishment.

In additon, 'he who alienates any of the above-mentioned after having previously disposed thereof or having concluded any agreement thereof, whenever such an act operates to the injury of others' would be guilt of fraud'.

TWO FEATURES

Basically this means fraud in the UAE has two features. On one hand, it is an 'assault against monies' as the accused has to deceive the injured party in order to make him surrender the money.

On the other hand, a change in the facts as it forces the injured party to accept an act which damages them or a third party.

MATERIAL ELEMENT

In addition, the material element of a fraud crime must include three components.

These are as follows:

1 The act of fraud which is the use of fraudulent means as prescribed with limitation under Article 399 of Federal Law No. 3/1987, e.g. using a fraudulent practice, assuming a false name or quality or disposing of an estate or movable property which is not the perpatrator's own or they have no right to dispose of.
2 The result from this particul act, which is that the injured party has surrendered their money to the criminal.
3 A causation between the act and result, e.g. the injured party has been cheated as a result of the criminal's fraud and they have then surrendered their money.

CRIMINAL INTENTION

In addition in the UAE, within the crime of fraud there is a moral element which represents the perpatrator's criminal intention. However, the law does not set out the concept of an unintentional crime of fraud which might apply, if for example, the accused has made a serious mistake which has resulted in a fraud. Although, if an intention is not proven, in the UAE the crime of fraud will not have judicial merit. This means a criminal intention must also be present and this intention has to include the following two components - the general criminal intention and special criminal intention.

THE GENERAL CRIMINAL INTENTION

The general criminal intention is the accused's awareness of a criminal incident and their alteration of the facts using a fraudulent practice in order to take the injured party's money. The criminal must also have an intention to make the injured party surrender their money by lying and cheating.

SPECIAL CRIMINAL INTENTION

As well as the general criminal intention, there is also a requirement for a second component. There must be a special criminal intention. This is the accused's intention to take possession of the money and their desire to seize a third party's money.

FALSE NAMES OR QUALITIES

There is one particular case which is useful when looking at this area. A Dubai Court of Cassation ruling (DCC No. 405/2011 of 17 October 2011) established that the crime of fraud set out in Article 399 of Federal Law No. 3/1987 is relevant if the person who wishes to seize the injured party's money has assumed a false name or quality in order to achieve their purpose.

If they have done this, fraud can be claimed even if no other fraudulent means is used to assist in completing their crime.

EXTERNAL FACTOR

In a further Dubai Court of Cassation case (DCC No. 51/2011 of 28 February 2011) it was also decided that the crime of fraud set out in Article 399 of Federal Law No. 3/1987 coud be available when a criminal has assumed a false name or quality even if they have not supported this with any external factor on the basis that they would not have obtained the money from the injured party unless they had assumed that false name or quality.

SPECIFICS OF FALSE QUALITY

Assuming a false quality is a type of fraud, where the crime of fraud is available even if it was not supported with other fraudulent means. In addition, the criminal does not have to use cheating and deceiving in such cases for the crime of fraud to have taken place.

If the perpatrator has assumed a false name or quality in order to take the injured party's money, all elements of fraud crime will be available.

FRAUDULENT PRACTICES

In addition, under Article 399 of Federal Law No. 3/1987 the crime of fraud as set out in that provision involves seizing movable property owned by a third party. The elements of this crime are available if the accused has cheated the injured party in order to obtain their money, using fraudulent practices or by assuming a false name or quality.

In this case fraudulent practices include not only false statements and allegations (regardless who gives such statements and insists on their validity) but this falseness can also be accompanied by material acts or external factors which make the injured party believe the validity of these statements and as a result deliver their money because of this belief. This can be either with the assistance of a third party who affirms the accused's allegations or because written papers or documents have been used which are ascribed to a third party. The Dubai Court of Cassation Case, DCC No. 19/1995 of 29 October 1995 provides more details of this.

FRAUD AND THEFT

However, there are some key differences between the crime of fraud and the crime of theft. The injured party in the case of fraud actually wishes to transfer possession of the property to the criminal. If the perpatrator is merely preparing certain circumstances which enable the criminal to seize the money without the injured party's approval and consent the crime of fraud is not available. In such cases the criminal is charged instead with theft.

FRAUD AND BREACH OF TRUST

The crime of fraud is also different from the crime of a breach of trust. This can include the embezzlement or squandering of movable funds which have been delivered to the criminal under a trust contract; or damage to an owner of such funds or taking such funds by force.

However, the crime of fraud and the crime of breach of trust both have similarities and differences.

For example, the crime of a breach of trust is similar to fraud as there is normally a handover. In addition, in both cases, movable funds are usually delivered after the approval of the owner of the actual property.

However, delivery in a fraud crime normally happens because the owner has been cheated by a criminal so that they can seize the funds and the crime is possible once the funds have been delivered.

On the other hand, in the case of a breach of trust crime delivery involves no cheating or fiction and the crime is possible after the funds have been delivered by the injured party to the criminal and they dispose of the funds.

A delivery of funds in the crime of fraud also enables the perpetrator to have full possession of the funds and the crime is not available if the delivery aims to get partial or incidental possession.

Whereas with a breach of trust, the delivery can involve transfer and partial possession. However, the crime of a breach of trust is still unavailable if the delivery transfers full possession.

A CASE STUDY

Based upon the provisions of the UAE Penal Code and precedents established by Dubai Court of Cassation, our firm acted as the attorney for some claimants who were British nationals, residing in Dubai. They had opened a criminal complaint against a Pakistani national, who also had a place of residence in the UAE, based on the charges of fraud and forgery, and usage of forged documents.

This charge was in line with Articles 399, 216 and 222 of Federal Law No. 3/1987 and Articles 6, 9 and 42 of Federal Decree - Law No. 5/2012 On Combating Cybercrimes.

In this case, the claimant claimed the respondent had falsely stated they were a broker certified by a governmental financial entity in UK and that as a result of having this status they were able to buy property at auction at lower prices than would usually be the case. As a result, they could then resell these properties in return for commission to anyone who provided an investment.

This individual had forged letters which it was claimed were sent by law firms who it was stated were undertaking in their capacity as attorneys for persons who wished to purchase property and had deposited 25% of the purchase price although they did not have the right to claim this amount.

The accused had also provided the victims with a letter of guarantee which it was stated was issued by a bank which undertook to release an amount equivalent to the deal amount on a specific date.

The claimant believed these documents were real and delivered money so that they could make the deals with the respondent in Dubai. The idea was that they would purchase a number of properties and there would then be amounts transferred from the claimant's account in Dubai to the respondent's account in the UK. These amounts were transferred to the respondent.

However, the respondent refused to either refund the transferred amounts to the claimant or provide them with the profits which should have been generated from these transactions.

FALSE QUALITY ESTABLISHED

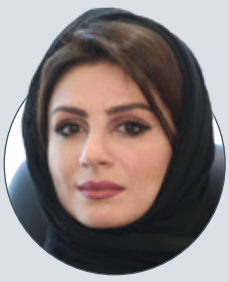
In this case it was found the respondent had assumed 'a false quality' using fraudulent practice since neither the real estate or the letter which it had been claimed had been issued by law firms undertaking to purchase and pay the sales price by installments actually existed.

UAE TERRITORY

This claim was recorded in Dubai and Article 16 of Federal Law No. 3/1987 stipulated as follows, 'The provisions of this Law shall apply to all crimes committed on the territory of the State. The State's territory include its lands and any place governed by the State's sovereignty, including the territorial waters and the atmospheric layer which covers them.'

It is also stated that, 'A crime shall be deemed to have been committed on the State's territory if one of the acts constituting it has been committed there or if its results have been or were intended to be produced there.'

As a result of this the investigations on this complaint have been conducted by the competent authorities in the UAE. ■



Jouslin Khairallah
Managing Director & Senior Lawyer
jouslin@khlegal.ae
Khairallah Advocates & Legal Consultants

Jouslin Khairallah is the founder of this boutique law firm. Her specialist areas include litigation, international and domestic arbitration, criminal law, maritime law, labour law and corporate affairs.

BUSINESS HUB

Filippo Cossalter who heads the legal support function of Johnson & Johnson across Africa, Turkey and the Middle East discusses his route into the pharmaceutical industry and how it works in the UAE.

WHAT IS YOUR ROLE?

"I head the legal support function for the Pharmaceutical group of Johnson & Johnson across Africa, Turkey, and the Middle East. I also serve as a member of the Janssen Emerging Markets Operating Committee and as a Senior Director at the Johnson & Johnson Law Department."

"As legal lead for a large region, I would split the legal services I provide into a number of areas. First, our team provides strategic support, which is probably the part which as in-house counsel I enjoy the most . In practice this means contributing to shaping the company's strategy for the region, trying to capture possible new trends in advance or being able to foresee risks and opportunities which may arise in the mid to long term. Shaping the strategic agenda means your capability must go beyond specific areas of expertise. For example, when I sit on the emerging markets' board, I am not a functional expert but a business partner with a legal background. This switch is not always easy, and it means I have to work more on managerial skills."

"The other part of my responsibilities include support for day to day operations. This covers tasks people typically associate with an in-house counsel role, such as support of commercial transactions, managing litigation, relationships with major stakeholders, support of the full life-cycle of our products, corporate governance, employment law, and overseeing and implementing the company compliance agenda."

"Then the third area includes special projects such as support to global M&A, driving local deals, such as licensing opportunities, partnerships with private or public partners, and new deals with distributors. In reality this is a trend across a whole range of companies to appoint in-house counsels as project leaders of cross functional teams and that was the reason I moved to Dubai."

WHY WAS THAT?

"Four years ago I was appointed as the leader of a project which aimed at revisiting our business model and corporate structure across Africa and the Middle East."

"Within the remit of this initiative, 1 was designing a new operating model which was fully integrated with a new regional hub. After exploring different options we decided to establish this hub in Dubai , where I then relocated in November 2015 to oversee the go-live of the new model and also serve as a member of the board of directors and corporate secretary for Johnson & Johnson Middle East FZ LLC."

WHAT ARE INHOUSE ROLES LIKE IN THE REGION?

"The numbers and quality of in-house roles in the region have significantly increased recently, although this is linked more to awareness of the different contributions of the role than was the case previously."

"However, there are still significant differences among companies in terms of expectations, recognition and scope of work. I recently joined the ACC, the largest global in-house association, as a board member for the Middle East and North- Africa chapter. There is a new leadership team in place there and following on from the good work which was done in the past, we are planning to structure a series of activities to support the growth of this role, and in particular support more junior colleagues with education sessions on fundamental soft-skills, seminars tackling specific legal issues, mentoring and other social activities."

YOUR BACKGROUND?

"After completing my Law degree in Italy, I began working as a junior in-house counsel for some small IT companies. Then in 2005 the Barilla Group offered me a temporary position at their HQ in Parma. This was important on a personal level as my father had worked there 25 years before as General Counsel and even though at that time I was a child, it was when I started getting curious about this job. Some lawyers pass their firms on to their sons, but inhouse counsels can only transfer their passion."

"I joined Barilla group while the group was going through a particularly intensive period straight after a big acquisition. My temporary contract soon became permanent, and I had the chance of developing and being exposed to many different roles. It was at this time, I also was admitted to the Bar in Milan."

"It was these experiences which meant I was ready when the call from Johnson & Johnson came - which was my big move."

"I changed sector, switched to pharma, which is one of the most regulated sectors, moved from Italy to Belgium, and in terms of group and size was now in a larger group, with a huge level of internal complexity which was subject to specific US regulation. My focus also changed as Johnson & Johnson was investing heavily in Emerging Markets. In situations like this, you either make it or break it. However, I realised from my very first interview that Johnson & Johnson was the place I wanted to be as the law department's level of professionalism was impressive, and I was being offered great learning possibilities in a highly rewarding global organisation."

ABOUT JOHNSON & JOHNSON

"Even though Johnson & Johnson is a group with $75 billion in sales, it has a strong culture and its company's values are very similar to those I had enjoyed at Barilla, which was a key factor for me. Most corporations talk on in their websites about things like supporting employees, and protecting the environment, but in many cases these values have just been added when they became 'trendy'. Johnnson & Johnson published its credo in 1943 and was the first company to write about corporate social responsibility or having a higher purpose than mere profits, responsibility to stakeholders and introducing a set of moral principles which will guide future generations. In a couple of days I fly to South Africa where, together with the regional Managing Director, I am moderating a 'Credo' session with the local team and there will be an hour and half discussion on ethical challenges and the practical implications for each of us. It was a bit different than typical business review and having more agreements to draft. "

"The numbers and quality of in-house roles in the region have significantly increased recently, although this is linked more to awareness of different contributions of the role than was the case previously."

UAE AND GCC OPERATIONS

"Johnson & Johnson has established its cross-sector regional head quarters in Dubai, but we also have additional offices in Abu Dhabi. In the UAE we have over 350 employees and numbers are continuously increasing. Across GCC we are in the process of setting up new legal entities in KSA, and expansion into other markets is currently under evaluation. Each sector has its own business model and our distributors are key-partners to our success."

INTELLECTUAL PROPERTY RIGHTS

"Intellectual Property rights are extremely important for pharma companies especially in countries which want to foster an innovative environment while encouraging foreign R&D investments. The UAE has made significant efforts on protecting intellectual property."

"The current law states that patents are awarded to inventions of industrial use for a period of 20 years. However, the most important thing is the actual enforcement of the law and making sure there are no infringements. In the case of intellectual property violations, the UAE judicial system should provide adequate mechanisms to resolve any litigation arising from such cases. I believe the current environment in the UAE is leaning toward intellectual property protection. The challenge pharma companies in the UAE may face relates to the intellectual property protection within the GCC as there have been some cases of potential infringements in neighbouring countries and we are waiting to see how the local judicial systems respond to these and how the GCC Council and the UAE as a GCC Council member will react to these decisions."

PRICING

"The UAE government regulates the prices of pharmaceuticals to make sure they are fair and affordable to patients. We as a pharmaceutical company have the same objective, to make sure the prices we charge are fair and affordable to the patients too. The main challenge pharma companies have is the sustainability of prices over time."

"Although there have been many initiatives over time to reduce the list price of pharmaceuticals in the UAE, the Ministry of Health (MOH) has worked closely with pharmaceutical companies to make sure proposed price reductions are feasible and the value of innovation is protected. We acknowledge the efforts the MOH has made to ensure pharmaceutical prices are fair and affordable, but I think there are still areas of the law that may need more clarification. These mainly involve pricing in the private sector and the interaction between pharmaceuticals, insurance companies and private pharmacies."

COMPULSORY HEALTH INSURANCE

"The move to compulsory health insurance in Abu Dhabi and Dubai is a major initiative by the Government to ensure residents, regardless of their income levels, have access to basic treatments if needed. It has meant that demand for basic insurance plans have increased, but most of these basic plans do not cover branded pharmaceuticals."

"So although we support the rationales behind this initiative, our business has not been affected by it."

"However, there are other UAE legal developments which could impact our business such as regulation on 'Data Exclusivity'. This ensures protection of undisclosed tests or other data submitted to Public Authorities during the registration process of pharmaceutical products. It is important to have clear laws and enforcement in order to preserve R&D and innovation. In this context, data exclusivity is an essential component for innovative companies and investors." ■

Small But Significant

Mariam Deen of the DIFC Courts explains the reasons behind the increasing popularity of the DIFC Small Claims Tribunal.

The DIFC Courts are made up of the Small Claims Tribunal (SCT), the Court of First Instance (CFI) and Court of Appeal (CA). Generally, all civil and commercial claims under 500,000 AED in value are within the jurisdiction of the SCT and those with a value between 500,000 and 1 million AED may still be dealt with by the SCT if both parties consent in writing. There are many reasons why an increasing number of parties are choosing to do this.

EMPLOYMENT

Under Article 5(A) of Dubai Law No. 12 /2004, (Judicial Authority Law), the DIFC Courts have exclusive jurisdiction over employment disputes arising out of employment by a DIFC body or establishment, or an employment contract partly or wholly concluded, finalised or performed within the DIFC.

Therefore, the position for employment cases falling within the jurisdiction of the DIFC Courts is unique as parties may 'opt-in' to SCT jurisdiction regardless of the value of the claim. Therefore, most DIFC employment cases are heard by the SCT.

PROCESS

The process used within the SCT is user friendly and efficient as claims can be filed online and there is a quick turnaround, with 90% of cases being resolved within four weeks of papers being successfully served on the defendant.

MEDIATION

Once a claim is filed, a consultation is then arranged with a mediator. This provides an opportunity for the parties to come together and discuss the issues and remedies sought in order to try and reach an amicable settlement.

This mediation phase which is offered to the parties, is another reason why the SCT route is so popular. There are remedies available to parties reaching a settlement that cannot be ordered by a

judge following a hearing. Many of the cases are actually successfully concluded at the mediation stage and do not need to progress to a formal hearing before a judge.

For example, there have been cases involving disputes where an employer has offered to provide a former employee with a good reference letter as part of their settlement. In some cases, this has been far more valuable to the employee than the value of the claim itself, as it would potentially help them to secure further employment.

Apologies have also been offered and accepted as a negotiating tool following a disagreement or falling out. A judge would be unable to order these types of remedy, and in some cases which are emotionally driven, these gestures can be more important than the claim's monetary value.

REPRESENTATION AND USE OF LAWYERS

If the parties are unable to reach settlement, a hearing is scheduled before an SCT judge and the parties are required to attend in person or via teleconference in order to make their submissions. Parties may be able to authorise someone else to represent them or accompany them to both the consultation and hearing stages. However, lawyers are not permitted to attend without the express permission of the judge, unless they are an in-house legal counsel. (In-house lawyers can represent a company which is one of the parties to the dispute.)

The aim of taking this approach is to keep the process within the SCT as simple and affordable as possible. However, lawyers are occasionally necessary and can be properly justified and used when cases involve highly complex legal issues or the SCT judge is satisfied a party is unable to present their arguments sufficiently well without the aid of legal representation.

CONFIDENTIALITY

One of the most notable benefits of an SCT case is that resulting settlements and judgments are confidential. This provides for a discreet process in which companies and individuals can resolve their disputes.

All orders or judgments subsequently published are carefully anonymised. This has proved to be a particularly attractive feature of the SCT, and it helps to ensure parties feel comfortable in airing (and often settling) their grievances in what is a safe and private environment, without the risk of attracting adverse publicity.

COSTS

Another advantage of using the SCT for cases is the ability to keep costs low. Lawyers are not required, so, the only necessary expense for claimants is the initial court filing fee.

These are 2% of the value of the claim in the case of employment disputes and 5% of the value of the claim for all other types of dispute.

In addition, as is the case with DIFC CFI and CA cases, if a claim is successful these costs can be recovered from the defendant.

SPEED

The speed of the SCT process also makes it an attractive option for both claimants and defendants. Cases can be filed and resolved in weeks rather than months.

This can be particularly important for employees who are waiting for salary payments which they rely on to pay rent or utility bills or for those awaiting the return of their passport in order to be able to travel.

A quick resolution can be equally significant for defendants in cases where interest is accruing on a debt, particularly employers in cases where Article 18 of DIFC Law No. 4/2005 applies and there is a daily penalty (equivalent to the employee's daily wage) imposed as long as the employer is in arrears.

THE HEARINGS

In cases which proceed from mediation to hearing, parties are given time to provide written submissions and produce evidence in advance of the scheduled hearing date.

SCT hearings offer a relatively informal setting for the parties to present their cases before an SCT Judge. For example, the parties are often representing themselves unless permission has been granted for lawyers to attend.

Occasionally, even at this stage, once the cases have been argued more thoroughly, the parties wish to settle the case and are not precluded from doing so at any time prior to the judgment being delivered.

This process is far more conducive to reaching an amicable solution between the parties than formal litigation, and can be particularly helpful for parties seeking to try and maintain a business relationship or even continued employment.

COMPLIANCE

Compliance is normally another factor to bear in mind when parties are attempting to settle a claim. It is far more likely that parties who have reached a settlement will comply with the terms of that settlement. Therefore, the pro-settlement approach taken by the SCT is useful in this context.

In addition, SCT Judgments are enforceable so parties can rest assured there is certainly recourse through the Courts in cases where there is non-compliance with an Order of the Court. However, this does involve an additional process and time which is avoided in cases where compliance is not an issue.

UPTAKE EXPECTATIONS

Overall, the SCT offers a method of dispute resolution which is not only time and cost effective, but also encourages parties to reach amicable solutions and resolve cases in a discreet way which allows for continued business relationships where possible. As a result, an increasing number of parties are 'opting-in' to the jurisdiction of the DIFC's Small Claims Tribunal before disputes occur and as awareness of this option grows it seems likely it will also be taken by more parties post-dispute. ■

Mariam Deen
Judicial Clerk
DIFC Courts
Mariam.Deen@difccourts.ae

As well as being a Judicial Clerk in the DIFC Courts, Mariam Deen is also a Judge in the Courts' Small Claims Tribunal.

LAWYERS' HUB

It may seem strange that Paul Bugingo, Co-Chair of Simmons & Simmons's Africa practice is based in Dubai. However, he explains why this was such a necessary requirement.

Tell us about your background?

I was educated in Uganda, Kenya and the UK and have spent my entire career working for UK law firms in a number of locations including London, Oxford, Bristol, Guernsey and Dubai. However, I am currently a partner at Simmons & Simmons, who are an international law firm with 22 offices across the globe and am based in the firm's Dubai office. I am the co-chair of Simmons and Simmons' African practice.

Simmons & Simmons has three co-chairs of its Africa practice – one based in Paris (France), the other in Durban (South Africa) and myself based in Dubai (UAE). The reason for this is that Dubai is increasingly becoming an important hub for Africa

related business. There are a number of reasons why Dubai is so important for our Africa business. Firstly there are an increasing number of businesses based in Dubai and the wider UAE who are investing in Africa. There are also more Asia and Asia-Pacific businesses using Dubai as their hub for Africa related business. In addition, many African businesses are investing in Dubai because they are attracted by the incentives offered in Dubai. The final reason is the UAE's aviation links (Emirates, Etihad, Fly Dubai, Air Arabia) with Africa make it probably the most convenient international city to fly in and out of Africa. Most African countries can be reached in between three to eight hours' flying time from the Middle East. These are the main reasons, although there are other reasons why Dubai is an important place for our firm to focus part of its Africa business.

How long have you been in Dubai?

I've been in Dubai for six years and my experience here and with Simmons & Simmons has been very positive. Being based in Dubai has enabled us to win major new Africa related mandates such as advising on the development of the legal and regulatory framework relating to Islamic Finance in Kenya and advising on the development of a port at Berbera, Somaliland by DP World. The good thing is that we have the appropriate skills and expertise in our Dubai office to handle this type of work. Travelling from Dubai to Africa is also more convenient than from any other city in the world because of the aviation links. Dubai is also well served by African airlines. We are finding an increasing number of our clients are establishing or growing their businesses in Dubai so by being located here we can better serve them. A key part of our Africa business also involves advising investors from different parts of the world and Dubai is also well positioned geographically.

Is investment in Africa changing?

It is changing in a positive way. Investor interest from the UK and France is growing in Africa as a whole. There may be changes in investment flows and appetite towards investment in different countries but the levels of investment into the continent as a whole is growing. One noticeable change, has been for example a recent increase of investment (and interest) by French companies into Eastern Africa.

There has certainly been an increase in appetite and investment by Middle Eastern businesses in parts of Africa. This has been driven by many factors including the commitment from the Governments in the Middle East and Africa to forge closer trade links with each other, increasing opportunities on the African continent particularly in areas such as trade, logistics, tourism or leisure, real estate, agribusiness, infrastructure and finance; and stronger aviation links. There are also a number of grants and support programmes available particularly from Middle East Governments which have been assisting in relation to social infrastructure projects. Going forward I would expect these links to develop and there to be increased investment from the UAE into Africa.

What are the main legal differences between different African countries?

Most of the jurisdictions follow either common law or civil law systems, but some are hybrids of the two, which makes simple classification difficult. The lusophone countries (Angola, Mozambique, Cape Verde, Sao Tome and Guinea (Bissau)) are predominantly governed by Portuguese law. Although investors

can choose the governing laws of their agreements, local laws will still apply and therefore it is key to retain local counsel to understand the applicability of local laws. Although many countries have adopted common law, civil law or Portuguese legal systems, each country has its own laws and regulations for which legal advice will be needed. Like elsewhere in the world, there are legal risks associated with doing business in any country. The important thing is to have good legal advice (from local and international counsel) who can identify and mitigate the risks.

Are there particular skills lawyers need to operate effectively in Africa?

It is important to work closely with, and be guided by local counsel in each country in order to properly understand the legal regime there. Local knowledge is also equally important in order to understand the nuances of doing business in different countries in Africa.

What has been your most interesting Middle East-African deal to date?

Along with with my Partners, David Risbridger an James Coleman, I am currently advising the Government of Somaliland on several aspects relating to the development of the port of Berbera in Somaliland by DP World. It is a complex infrastructure project with multi-jurisdictional issues which will have a significant impact on the development of Somaliland and the wider horn of Africa.

Which GCC states are most interested in Africa?

In my opinion the UAE has been leading the way for a number of years because of the diversity of investments being made in Africa and its consistent approach in such investments.

This growing interest has been supported by the growth of the strong UAE based airlines and the coordination efforts of bodies such as the Dubai Chamber of Commerce (which has established offices in Africa and established regular trade delegation missions there). Clients in the UAE, like elsewhere around the world, are interested in profitable opportunities whether or not they come from privatisations or other investment avenues. Middle Eastern investors are showing particular interest in trade, logistics, tourism or leisure, real estate, agribusiness, infrastructure and finance.

Are African investors and companies interested in doing business in the UAE?

There are certainly increasing signs of African companies investing in the UAE. There are high profile companies like MTN, one of Africa's leading telecom companies, investing in the UAE and undertaking some of their key business functions here. Investments from Africa are also happening in areas such as manufacturing, aviation, real estate and oil trading and logistics.

What sector or area you would advise potential African investors to look at?

Africa, with its 54 plus countries, has an abundance of opportunities so I'm reluctant to single out any particular area GCC investors should invest in. I would be more inclined to advise investors on particular countries to focus on where the investment climates are particularly attractive.

Has Islamic Finance played a role?

Simmons & Simmons have been centrally involved in the development of the legal and regulatory framework to enable Islamic Finance in Kenya.

Together with strategic partners, we advised the Kenyan National Treasury on amendments to existing laws and regulations from Central Bank-level and capital market rules to tax and village microfinance, which were aimed at facilitating the development of Islamic Finance in the country and creating a level-playing field for the industry.

This is a key project under the Kenya Vision 2030 (the national long-term development policy) strategic plans to develop the banking sector, promote financial inclusion and develop Kenya as a hub and centre for Islamic Finance in the East Africa Community (EAC) region. Our work culminated in the drafting of the Kenyan Finance Bill 2017, which hopes to implement our recommendations to develop Islamic finance in the country. We have also been involved in providing legal advice and recommendations on the drafting of the bill creating the Nairobi International Financial Centre (NIFC) – which is another Kenya Vision 2030 project which aims to promote and develop Nairobi as a financial services hub for Africa. Both projects have been led out of Dubai by our Finance and Regulatory team, Muneer Khan who is a Partner and Samir Safar-Aly who is an Associate. ■

COMPETITION CHANGES AND M&A

The legislative framework of the UAE's competition law was completed with the recent issue of Cabinet Resolution No. 13/2016. James McCarthy and Katherine Nixon of Clifford Chance LLP consider how these changes will impact mergers and acquisitions in the UAE.

UAE COMPETITION LAW

The UAE Competition Law (Federal Law No. 4/2012) came into force in February 2013, and established a specific competition law regime in the UAE. Cabinet Resolution No. 37/2014 (the 2014 Regulations) were then issued to supplement it and set out, amongst other things, procedural requirements for:

1 applying for exclusions for restrictive agreements or dominant market practices;
2 seeking approvals under the merger control regime;
3 filing of complaints by concerned parties alleging violations of Competition law.

Cabinet Resolution No. 13/2016 (the 2016 Regulations) was issued and came into force on 31 July 2016, completing the legislative framework on this area.

The 2016 Regulations provide relevant market share thresholds for establishing a restrictive practice or agreement; a dominant position; or an 'economic concentration'.

There are also certain sectoral and ownership exemptions and exemptions which relate to small and medium size enterprises covered in these regulations.

OPERATIONAL COMPETITION AUTHORITY

The UAE Ministry of Economy (MOE) has also established the UAE's Competition Authority (the authority).

This means that there is now an operational authority which is ready to accept filings and parties will need to consider the competition law regime from the initial stages of their UAE M&A transactions.

RELEVANT MARKET SHARE THRESHOLDS

The relevant market share thresholds under the 2016 Resolutions are as follows:

1 **Restrictive practice or agreement** - these will be deemed to have limited impact if the total share of the parties to such an agreement does not exceed 10% of the total transactions in the 'Relevant Market'.
2 **Dominant position** – this is established when the total share of any company is over 40% of the total transactions in the 'Relevant Market'.
3 **Economic concentration** - this is established when the total share of the parties to the transaction exceeds 40% of the total transactions in the 'Relevant Market' and the transaction may have an effect on competition within that market.

The term 'total transactions' (used to determine a relevant market share thresholds) is a slightly unusual expression of the market share test (which, in other jurisdictions, and is often stated by reference to total value or volume of sales).

In the absence of further guidance from the MOE at this stage, a reasonable equivalent for 'total transactions' would be total revenue.

WHAT IS A 'RELEVANT MARKET

The 2016 Regulations provide a definition of what constitutes a Relevant Market. Each Relevant Market includes only those products which, based on price and other relevant features, consumers would consider interchangeable with one another, i.e. each product falling within the market definition would enable the customer to meet a particular need in a particular geographic area.

No further guidance is available on how narrowly the Authority will apply this concept and as such, practical application of this definition is unclear at this stage.

Broad definitions of relevant or concerned markets are not, however, uncommon in other jurisdictions operating a competition regime. For instance, the EU definition of a relevant market is relatively similar to the UAE one.

Under EU rules, a relevant product market comprises all products and/or services which are regarded as interchangeable or substitutable by the consumer by reason of the products' characteristics, their prices and their intended use.

However, more specifically a relevant geographic market comprises an area in which the firms concerned are involved in the supply of products or services and in which the conditions of competition are sufficiently homogeneous.

Therefore, subject to further Ministerial guidance, it is reasonable to look to the EU, and other jurisdictions with a similar approach to market definition, for initial guidance on the application of the UAE's 'Relevant Market' definition to particular sectors. However, the Authority is likely to have

broad discretion when determining the scope of the 'Relevant Market'.

Therefore, parties may prefer to adopt a conservative approach, e.g. by calculating market share on the basis of the narrowest possible set of products which might be considered substitutable.

M&A IMPLICATIONS

With the UAE's competition law regime now 'live', these requirements need to be considered in relation to M&A transactions involving enterprises which are 'engaging in economic activity or holding intellectual property rights in the UAE'.

FILING

Federal Law No. 4/2012 requires any activity which will result in an economic concentration (such as a merger or acquisition) to obtain prior approval from the Authority.

The Authority has issued a filing form for this purpose. From discussions with the Authority, we understand they are aware that such applications contain highly sensitive information and the current intention is for the publication of any deal information to occur post-closing of the relevant transaction.

Nevertheless, the transaction parties should confirm with the Authority the proposed content and timing for any public disclosures, particularly if there are any sensitive terms such as purchase price included.

DEAL TIMETABLE AND DOCUMENTATION

If it is likely that transaction parties will need to file with the Authority for approval of the relevant transaction there will need to be early consideration of how this will impact the deal timetable.

The 2014 Regulations stated that an application would need to be submitted within 30 days of entry into a 'draft agreement' resulting in an economic concentration. The 'draft agreement' could for example, either be a signed conditional SPA (sale and purchase agreement) where closing is pending, or a more preliminary agreement, such as a memorandum of understanding or letter of intent (a similar approach to this has been adopted under the Saudi Arabian competition law regime).

Basing the filing timetable on the submission of a preliminary agreement (rather than waiting to sign the SPA) may help the parties by making it easier to truncate, or re-align, the approval process within the deal timetable.

However, the legislation is unclear on what constitutes a 'draft agreement'.

APPROVAL TIMETABLE

Once the filing is submitted (and accepted), the Authority has 90 days under Federal Law No. 4/2012 (which is extendable by a further 45 days) to approve the transaction. If Ministerial approval is not provided within this period, the application for the economic concentration is deemed to have been approved.

As the merger control regime is suspensory, transaction parties will be subject to standstill obligations until the earlier of either the expiry of this period or the date approval is granted. These obligations will need to be factored into the SPA, e.g. by way of appropriate conditions precedent and a separate assurance that obligations on the parties set out in the SPA for the period between signing and completion (and the conduct of the parties in practice) do not give rise to a risk of 'gun jumping', e.g. conduct which suggests the parties have ceased to act as independent entities in the relevant market before receiving a merger clearance decision from the Authority.

PENALTIES

If approval is not sought, a violating company can be subject to a fine of between 2% and 5% of the annual revenues of the business which is the subject of the violation in the state. The full reach of this penalty is unclear as the law is drafted widely enough to potentially capture the seller, buyer or resultant economic concentrations. If annual revenues cannot be determined, a financial penalty of between 500,000 AED and 5 million AED may be imposed.

Continued violation of Federal Law No. 4/2012's provisions may result in fines being doubled.

In addition, in the severest cases, the court may order a violating company to shut down operations for a period of between three and six months.The penalties are severe, wide in scope and also have the potential to inflict considerable reputational damage.

Although, the UAE competition law regime is now more comprehensive in terms of its legislative framework, it remains

"However, we understand from discussions with the Authority that they are seeking to expedite the timetable for providing approval which should help maintain a balance between the Competition Law's stated aims to protect and enhance competition in the UAE and the general economic benefits of an active M&A market."

in a nascent phase in terms of its practical implementation and interpretation. There are a number of areas within the legislation which still need to be worked through.

For example, given the breadth of the Relevant Market definition provided in the 2016 Regulations, it is likely that the clarity on its application will only be obtained once a body of judgments has had time to develop or the MOE issues guidance on this point. The Authority itself will also need to compile relevant market data in order to examine potential anti-competitive behaviours in the Relevant Market properly. In addition, the application procedures (which, with the need to provide extensive supporting documentation to the Authority in Arabic, are a little cumbersome for foreign market participants) are likely to evolve as they become more established. However, we understand from discussions with the Authority that they are seeking to expedite the timetable for providing approvals which should help maintain a balance between the Competition Law's stated aims to protect and enhance competition in the UAE, and the general economic benefits of an active M&A market. ■

James McCarthy
Partner
James.McCarthy@CliffordChance.com
Clifford Chance LLP
James McCarthy is a Corporate Partner, specialising in advising regional and international clients on mergers and acquisitions, joint ventures, restructurings and public takeovers, particularly in the UAE. He has advised on some of the highest profile transactions in the region and has a particular focus on the consumer goods and retail sector.

Katherine Nixon
Professional Support Lawyer
Katherine.Nixon@CliffordChance.com
Katherine Nixon is a Professional Support Lawyer in the firm's Middle East Corporate practice. She joined Clifford Chance in June 2015, having trained and worked as a corporate transactional lawyer in London and Dubai. Katherine has substantial local law experience in UAE corporate and commercial matters.

A Celebration of Success

The Middle East Legal Awards which were jointly hosted by Legal Week and the Association of Corporate Counsel (ACC) Middle East took place on 11 May 2017 at the Ritz Carlton Dubai. Here are details of the winners.

ACC MIDDLE EAST ACHIEVEMENT AWARD

Winner: Salman Al-Ansari - who promoted the welfare of professional footballers in Qatar, by establishing the infrastructure and professional bodies to promote the sport and players and advised the Government on important football issues.

GENERAL COUNSEL OF THE YEAR

Winner: Khalid Khan, The Zubair Corporation - who has led his team on a number of high-profile deals across the group's 60-odd business units in the GCC. He also provided regular, free legal advice and assistance to start-ups as part of his company's CSR programme.
Highly Commended: Clint Hermes, Sidra Medical and Research Centre

SENIOR CORPORATE COUNSEL OF THE YEAR

Winner: **Rahul Sharda, Al Ghurair Investment** - who through workshops and regular visits to different business units, ensured his legal department was seen as an integral and inseparable part of the company.
Highly Commended: Shafiq Jamoos, Deyaar Development

JUNIOR CORPORATE COUNSEL OF THE YEAR

Winner: Rabah Bashir, Legal Counsel, Zakher Marine International - for negotiating and advising on a $192 million shipbuilding programme, aligning the deal's commercial ambitions with the legal strategy needed to hedge contract risk.

LEGAL DEPARTMENT OF THE YEAR - LARGE TEAM

Winner: Pepsi Cola International Ltd - for being a business partner and strategic adviser in a region that is becoming increasingly significant for the company.
Highly Commended: OSN

LEGAL DEPARTMENT OF THE YEAR - SMALL TEAM

Winner: Total Marketing Middle East

LEGAL DEPARTMENT OF THE YEAR - GOVERNMENT DEPARTMENT, AGENCY OR PUBLIC BODY

Winner: Qatar Financial Centre Authority

INTERNATIONAL LAW FIRM OF THE YEAR

Winner: DLA Piper – their breadth of capabilities and regional experience is paying dividends in terms of key client wins and some of the region's most sought-after projects.
Highly Commended: Clifford Chance

MIDDLE EAST LAW FIRM OF THE YEAR (LARGE PRACTICE)

Winner: Al Tamimi & Company – for honing its strategy to focus on key growth areas for legal services in the region.
Highly Commended: BSA Ahmad Bin Hezeem & Associates

MIDDLE EAST LAW FIRM OF THE YEAR (SMALL PRACTICE)

Winner: Al Jallaf Advocates & Legal Consultants – for taking on larger and better resourced competitors and reinventing itself as a specialist aviation, banking and commercial disputes boutique firm.
Highly Commended: Afridi & Angell

ASSOCIATE SOLICITOR OF THE YEAR

Winner: Christina Sochacki, Al Tamimi & Company – for her tireless work helping build the firm's healthcare practice, a new practice area for the UAE.
Highly Commended: Fareya Azfar, Associate, Gateley

DIVERSITY INITIATIVE OF THE YEAR

Winner: Clyde & Co - for their gender diversity programme which includes a scheme that provides internships for students

at universities in the region and an internal training programme which targets up and coming female managers.
Highly Commended: Dentons

CSR INITIATIATIVE AWARD
Winner: Dentons - for their ongoing work helping Syrian refugees
Highly Commended: Al-Ansari & Associates

INNOVATION AWARD
Winner: The Bench - for their alternative business model, providing flexible legal services in the region.
Highly Commended: Shelf Drilling

EMPLOYMENT TEAM OF THE YEAR
Winner: Stephenson Harwood Middle East - for their work in advising on the DIFC's employment law, which created a body of legal precedents which will help employers better understand the DIFC laws and how they should be interpreted and applied
Highly Commended: Al Tamimi & Company

TMT TEAM OF THE YEAR
Winner: Simmons & Simmons Middle East LLP - for advice on a project that aims to provide affordable high-speed internet to millions of unconnected people in developing markets.
Highly Commended: The Bench FZE

REGULATORY & INVESTIGATIONS TEAM OF THE YEAR
Winner: Clyde & Co LLP - for advising on a highly confidential public law project that positioned the firm as a leader in this field.
Highly Commended: Simmons & Simmons Middle East LLP

LITIGATION TEAM OF THE YEAR
Winner: Baker McKenzie - advised on a confidential dispute which, was successfully resolved in favour of their client as a result of the forward-thinking and professional approach by the legal team.
Highly Commended: Al Tamimi & Company

ARBITRATION TEAM OF THE YEAR
Winner: Reed Smith - helped one of the UAE's leading construction contractors resolve a conflict that could have a major impact on future construction disputes in the Emirates.
Highly Commended: Charles Russell Speechlys

REAL ESTATE TEAM OF THE YEAR
Winner: Hadef & Partners - for their work on the UAE's first regulated Sharia-compliant real estate investment trust.
Highly Commended: Al Tamimi & Company

CONSTRUCTION TEAM OF THE YEAR
Winner: Dentons - for their innovative solution to a complex, high-stakes construction dispute.
Highly Commended: Berwin Leighton Paisner

INFRASTRUCTURE AND ENERGY PROJECTS TEAM OF THE YEAR
Winner: Bracewell LLP - for work on one of Jordan's largest renewable energy developments the Al Rajef Wind Power Project.
Highly Commended: Akin Gump Strauss Hauer & Feld

BANKING & FINANCE TEAM OF THE YEAR
Winner: Dechert - for advice on Egypt's largest-ever public government debt deal.
Highly Commended: Clifford Chance

CORPORATE TEAM OF THE YEAR
Winner: Hadef & Partners - acted on the first mandatory convertible bond to be approved by the UAE Securities and Commodities Authority.
Highly Commended: Al Tamimi & Company ■

Genocide in Case Law

In the third in the series on International Criminal Law, editor Sogol Kaveity uses case law to explain how the differing elements of genocide are treated.

GENOCIDE CONVENTION 1948

In Article 1 of the Genocide Convention 1948 (the Convention) contracting parties confirm genocide, whether committed in peace time or time of war, is a crime under international law which they undertake to prevent and to punish. Under Article 2 of the Convention genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such, e.g. killing members of a group; causing them serious bodily or mental harm; deliberately inflicting conditions of life designed to bring about the groups' physical destruction in whole or part; imposing measures intended to prevent births; or forcibly transferring the groups' children to another group. Article 2 of the Convention protects a national, ethnic, racial or religious group, as such. The question remains, is the list of protected groups exhaustive and are political and economic groups excluded? The Khmer Rouge regime (1975-1979) killed approximately 1.7 million civilians who were subjected to very poor life conditions resulting in their death. The targeted group was not a national, ethnic, racial or religious group, but a group based on educational status or political affiliation, as the Khmer Rouge regarded those with a university education or political status as a threat (only a minority were killed because of their religion).

The Akajesu (ICTR-96-4) Trial Chamber treated the protected group of Article 2 as meaning any stable and permanent group. However, in the strict letter of the law the list is exhaustive.

PROTECTIVE GROUPS

It can be difficult to define a protective group, issues around identifying an ethnic group by physical features, and clarifying who is part of a religious group may arise. Academics conclude that protective groups are minority groups with a distinct identity within a state, which has elements of a national, ethnic, racial or religious identity.

The concept of an ethnic group involves 'internal subjective identification': members of that group believe they are a group as such. Subsequent is the 'external subjective identification': the view of the group itself that they belong to the group. In ICTR case law the local, historical, political, social and cultural context are used to confirm how a group is constructed and how it should be protected. The ICTR cases involve a mixed approach based on 'subjective identification' (views of the perpetrating and victim groups) and objective contextual factors, e.g. during the Rwanda Genocide members of the Hutu ethnic group killed members of the Tutsi ethnic group. Prior to the genocide, the Government had

issued identifying documents which listed people as Hutu or Tutsi, codifying subjective perceptions on who belonged to which group.

CONDITIONS OF LIFE

The actus reus of genocide is not limited to mass killing it can also be committed causing serious physical or mental harm. The Akajesu Case (ICTR-96-4) and Krstić Case of the ICTY (IT-98-33) included bodily or mental torture, acts of sexual violence and rape and deportation to inflict serious harm to members of the group.

The Akajesu Trial Chamber, 2 September 1998, para 505-506 noted: "Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part should be construed as the methods of destruction by which the perpetrator does not immediately kill the members of the group, but which, ultimately, seek their physical destruction." This includes subjecting a group to a subsistence diet, systematic expulsion from homes and reductions in essential medical services below minimum requirement.

Thus, conditions of exposure, starvation and medical neglect can lead to physical destruction. The Kayishema and Ruzindana Trial Chamber, 21 May 1999, para 115-116, provided additional circumstances which would lead to a slow death such as lack of proper housing, clothing, hygiene and medical care, excessive work or physical exertion, and methods of destruction which do not immediately lead to death of group members, e.g. rape, starving a group, reducing required medical services below a minimum, and withholding sufficient living accommodation for a reasonable period. In Brđanin (IT-99-36) the Trial Chamber of the Yugoslav Tribunal, 3 April 2007, stated throughout its conclusions that it was satisfied beyond reasonable doubt the camps and detention facilities intentionally inflicted serious bodily and/or mental harm on Bosnian Muslim and Bosnian Croat detainees."

These case findings are also supported in the ICC Elements of Crimes (guidance to the ICC on interpreting its statute), in footnote 4 that "the term 'conditions of life' may include, but is not necessarily restricted to deliberate deprivation of resources indispensable for survival such as food, medical services or systematic expulsion from homes."

BIRTH PREVENTION

The Akayesu Trial Chamber, 2 September 1998, para 507-508, gave examples imposing measures intended to prevent births within the group. These included sexual mutilation, sterilization, forced birth control, separation of the sexes and prohibition of marriages.

Where group membership is determined by the father's identity, examples can include cases where, during rape, a woman of one group is deliberately impregnated by a man of the other group to prevent the child to belong to its mother's group. The Trial Chamber noted the measures could be mental or physical, e.g. rape can be used to prevent births if the raped person then refuses to procreate.

Group members can also be led, through threats or trauma, not to procreate.

FORCIBLY TRANSFERRING CHILDREN

The Akayesu Trial Chamber, para 509, stated this act's objective is not only to sanction a direct act of forcible physical transfer, but also to sanction threats or trauma which would lead to forcible transfer of children from one group to another. Another example of this category are the so called 'stolen generations of children' cases in Australia and Canada. This was the practice of removing children from indigenous groups and placing them deliberately with families of European descent. The question was whether the intent was to destroy the original group (genocide).

There was an official belief in Australia that the indigenous population was becoming extinct in any event, and the only way to save members of the group was to transfer them into the dominant culture. The argument of an attempted genocide did not succeed.

SPECIFIC INTENT

The Genocide Convention 1948 does not require a systematic and/or widespread attack carried out by a Government or further to a governmental or organisational policy, it refers to the dolus specialis. This leads to the 'lone genocidaire' question: can a sole individual commit genocide? The Jelisić (IT-95-10) ICTY Appeals Chamber, July 2001, para 48, stated that the existence of a plan or policy is not a legal ingredient of the crime. However, in this context, existence of a plan or policy may become an important factor in most cases.

A policy is not a requirement, but may help prove the required mental state to prove the dolus specialis. In an age of weapons of massive destruction, it is logical to assume a sole individual can destroy a group, in whole or part, as such without an existing governmental policy. Professor Antonio Cassese, a founding ICTY judge, concluded that a 'lone genocidaire' is acceptable, however certain crimes, e.g. imposing measures intended to prevent births require a policy because they are difficult to commit without state or organisational backing.

MENS REA

The mens rea of genocide is strict and requires a dolus specialis: a special intent to destroy, in whole or part, a protected group, as such (killing solely an individual of the group does not constitute genocide). It has to be proven the perpetrator intended or knew his conduct would form part of a manifest pattern of conduct constituting genocide.

However, intentionally causing or participating in mass killings is insufficient; the perpetrator must intend to destroy a protected group, in whole or part, as such.

Leaders and combatants in genocidal attacks can both be convicted of genocide if they have that required special intent, without it, it may be aiding and abetting genocide, or a crime against humanity.

The Akayesu Trial Chamber, para 539, stated intent or mental element of complicity implies, at the moment the accomplice acted, they knew the assistance they were providing was in commission of the principal offence. The accomplice must have acted knowingly and he is not required to wish that the principal offence be committed.

Those who know each others' criminal purpose, voluntarily aid them in it can be convicted of complicity even if they regretted its outcome (para 541).

The mens rea required for complicity in genocide is knowledge of the genocidal plan.

The Semanza Trial Chamber, 15 May 2003, para 395, added that the accused must have acted intentionally and with the awareness they were contributing to the crime of genocide, including all its material elements. ■

FIGHTING BRIBERY AND CORRUPTION

Muneer Khan and Samir Safar-Aly of Simmons & Simmons consider the UAE's Federal anti-bribery and corruption laws, the organisations that enforce them and insights into developments in the US and UK.

According to the 2016 edition of Transparency International's Corruption Perceptions Index, the UAE is the least corrupt Arab nation and the 24th least corrupt nation in the world . Within the UAE, there are both Federal and Emirate specific laws which deal with bribery. The UAE's Federal State Audit Institution (SAI) has the power to investigate any allegations of fraud or mismanagement of federal funds or assets. The SAI actively monitors, detects and enforces Federal anti-corruption laws. Any individual who wishes to report these activities can do so anonymously through the SAI. Similarly, the Abu Dhabi Accountability Authority (ADAA) seeks to ensure that all public organisations in the Emirate of Abu Dhabi abide by transparency standards and use their funds ethically. The Dubai Financial Services Authority (DFSA) works to address corporate misconduct and financial crime in the private sector within the Dubai International Financial Centre (DIFC) through enforcement initiatives and publication of its enforcement notices. However, the key investigators in the UAE remain the Economic Crime Units of various Emirate-level police forces and relevant Public Prosecutors Offices across the UAE. It is expected the UAE Government will establish the Federal Authority for Combatting Corruption, which will ensure the terms of the United Nations Convention Against Corruption (UNCAC) are enforced.

Most of the UAE's laws on anti-bribery and corruption have been in place since the 1980s and are found in the Federal Penal Code, Federal Law No. 3/1987. However, last year, Federal Decree-Law No. 7/2016 introduced wide-ranging reforms which altered 130 existing articles and added an additional 23 provisions to Federal Law No. 3/1987, revamping many existing provisions on anti-bribery and corruption. The amended Article 234 of Federal Law No. 3/1987 states that a 'public servant' or a person entrusted with a public service, a foreign public servant or an employee of an international organisation (e.g. private sector), who directly or indirectly requests or accepts a gift, benefit, or other grant not due (or even a promise of one), whether to benefit them or another entity, in order to commit or omit an act included in their duties even when they have intended not to commit or omit such an act (including such requests, acceptances or promises made after the fulfilment or omission of these acts), shall be sentenced to 'temporary imprisonment'. In addition, under Article 237 of Federal Law No. 3/1987 those who promise, offer or give such persons the same shall be sentenced to a maximum five years imprisonment. Article 236 bis of Federal Law No. 3/1987 states any person who administers an entity or establishment pertaining to the public sector, or is employed by either one in whatever capacity, shall be imprisoned for a maximum of five years for committing any of these offences. A key development in the amendments to the Federal Penal Code was the expansion of the 'public official' or 'public servant' definition in Article 5 of Federal Law No. 3/1987. Notably, chairmen, board members, directors and other employees of public authorities and institutions, and companies wholly or partially owned by UAE Federal or Emirate-level governments are now specifically included as is anyone who is not included in the list of what constitutes a 'public servant' but is still engaged in public service work assigned to them by a 'public servant' in charge (under powers vested to such a person under relevant laws and/or regulations), is deemed to be a 'public servant' in relation to that task. Therefore, private organisations, potentially including law firms acting under UAE Federal or Emirate-level governmental entity instruction, could potentially fall within the 'public servant' definition following the 2016 amendments.

The Federal Human Resources Law, (Federal Decree No. 11/2008) also prohibits UAE Federal employees from accepting any gifts unless they are symbolic and bear the name of the entity presenting them. Each ministry also has to assign a unit permitted to accept gifts in accordance with that ministry's regulations. Under under Article 70 UAE Government employees are prohibited from distributing gifts unless they bear the name of the ministry and are distributed through the aforementioned unit.

PRIVATE SECTOR AND CORPORATE LIABILITY

Federal Law No. 3/1987 also criminalises private sector bribery. Article 236 bis of Federal Law No. 3/1987 states that 'any person' who promises another person managing a private sector entity or establishment or who is employed by such person in any capacity, a gift, benefit or grant not due, either directly or indirectly, whether to benefit that person or another person, so that person can perform or omit an act included in their duties, could receive a maximum of five years' imprisonment. This also applies to an individual who intends to be rewarded

after committing the act even without a prior agreement. Under Article 65 of Federal Law No. 3/1987, private organisations can also be criminally liable for crimes committed by their representatives, directors or agents acting in their benefit or in their names, resulting in the confiscation of any bribery offence proceeds and fines of up to 500,000 AED vicariously (increased from 50,000 AED after the 2016 amendments). This does not prevent perpetrators of the crime being personally liable for any of these punishments under the provisions mentioned. In comparison, the UK Bribery Act 2010 created a wholly new strict liability offence for failure of a relevant commercial organisation to prevent a bribery offence (Bribery Act 2010, s7). However, the UK Bribery Act 2010, s7(2) provides a defence if the commercial organisation can demonstrate, that on the balance of probabilities, it had 'adequate procedures' in place designed to prevent associated persons from undertaking bribery. A company may potentially be prosecuted under s7 for a bribery offence even if its managers were unaware of it, including if the crime was committed by a third-party agent acting on their behalf. The 'adequate procedures' defence in the Bribery Act must be an integral business consideration and not just a static corporate policy.

Whilst the UK Bribery Act does not provide further detail of what is expected in terms of 'adequate procedures', a UK Ministry of Justice guidance note on the Bribery Act, published in 2011, outlined a risk-based approach following six principles: proportionate procedures; top-level commitment; risk assessment; due diligence; communication (and training); and monitoring and review. The introduction of the 'adequate procedures' defence in the UK as a result of the Bribery Act has encouraged companies to assess their internal controls and procedures, and has led to increased awareness of ethical issues forming part of broader emerging international norms and conventions. However, adequate anti-bribery and corruption procedures should be an essential part of any corporate ethics policy in the UK, UAE and elsewhere, as without a strong corporate culture and a genuine desire to stamp out poor behaviour, no written policy will ever be sufficient. In the UK, there have only been a handful of successful cases against both individuals and corporations under the Bribery Act. However, the relatively new Deferred Prosecution Agreement (DPA) framework means that public prosecutors and courts have an alternative to the current choice of civil recovery orders and no criminal action. The aim of DPAs is to enable public prosecutors to hold alleged offending organisations to account for their wrongdoing in a focused way without the uncertainty, expense, complexity, or length of a criminal trial. DPAs are often used in the US by the Department of Justice (DOJ), guided by the 'Principles of Federal Prosecution of Business Organisations' and the 'Yates Memorandum'. However, they are a new kind of disposal of criminal risk in the UK, based on an agreement between the UK's bribery regulator - the Serious Fraud Office (SFO) - and the accused company. In the UK system, unlike the US one, DPAs are only effective once they have court approval. Judges must make a declaration that the disposal of criminal charges through the DPA is in the interests of justice; and its proposed terms are fair, reasonable and proportionate. A DPA Code of Practice was published by the SFO and Crown Prosecution Service on 14 February 2014 to guide prosecutors assessing whether a DPA is appropriate. On 30 November 2015, the UK's first DPA between the SFO and ICBC Standard Bank plc was approved. It suspended an indictment against Standard Bank alleging failure to prevent bribery contrary to the UK Bribery Act. Days later, Sweett Group pleaded guilty to failing to prevent an act of bribery intended to secure and retain a contract, contrary to the UK Bribery Act. Both Standard Bank and Sweett Group paid substantial penalties as a result of these breaches which confirmed that corporate criminal liability under the UK Bribery Act is no longer just theoretically possibility. A DPA between the UK SFO and Rolls-Royce PLC this year included a settlement of £497.25m (plus interest and SFO's costs of £13m), which shows DPAs help encourage responsible behaviour, and active engagement with authorities. However, it is still unsure if the UAE will explore using them to encourage cooperation in investigations and self-disclosures.

PENALTIES

All the penalties under the Federal Penal Code above require the bribe receiver to pay back the value of the bribe and a fine equalling the same value, or no less than 5,000 AED (previously it was 1,000 AED) under Article 238 of Federal Law No. 3/1987. All criminal cases under these bribery offences cannot be terminated due to a time limitation lapse, as, no statute of limitations applies, under Article 239 of Federal Law No. 3/1987. Intermediaries between the

bribe-giver and taker are also sentenced to up to five years imprisonment under Article 237 bis of Federal Law No. 3/1987. However, there is some leniency for whistleblowers as the briber or intermediary can be exempt from punishment if they report the crime to the authorities before it is discovered under Article 239 of Federal Law No. 3/1987. However, it is unclear if a self-reporting company will benefit from the protections given to whistle-blowers. In comparison, the UK SFO has removed guidance from its website that previously confirmed self-reporting companies would not be prosecuted. Its current policy appears to demand a self-report but following that they will still consider charges against the company and individual directors. Encouraging self-reporting may be a useful way to overcome some of the international hurdles associated with Mutual Legal Assistance (MLA) Agreements with other countries. In April 2016, the US DOJ, Fraud Section's under its guidance to the US Foreign Corrupt Practice Act 1977 (US FCPA), launched a one-year enforcement 'Pilot Programme' to promote greater accountability by 'motivating companies to voluntarily self-disclose FCPA-related misconduct, fully cooperate and, where appropriate, remediate flaws in their controls and compliance programs'. Companies which meet these requirements are eligible for reduced fines and penalties of up to 50%. In March 2017, it was announced this programme would be extended. In other US compliance areas, such as sanctions compliance, the US Treasury Department's Office of Foreign Assets Control (OFAC) Economic Sanctions Enforcement Guidelines (General Factor G) considers self-disclosure a key mitigating factor that may reduce penalties by up to 50%. It is also yet to be seen if the UAE will explore promotion of corporate self-disclosure.

FINANCIAL FREE ZONES

Whilst financial free zones like the DIFC and the Abu Dhabi Global Market (ADGM) have their own separate civil and commercial legal regime and financial services regulatory framework and Federal Penal Code still applies within them However, the DFSA and the Financial Services Regulatory Authority (FSRA), the DIFC's and ADGM's respective independent financial services regulators provide guidance to those under their supervision through their own AML Modules.

FOREIGN AND EXTRATERRITORIAL MATTERS

A key change in the 2016 amendments was the inclusion for the first time of bribery of foreign public officials as a bribery offence. Foreign public servants are specifically mentioned in the offences under Articles 234 and 237 of Federal Law No. 3/1987. In the UK, it was only through the UK Anti-Terrorism, Crime and Security Act 2001, s108(1) that the common law offence of bribery extended to those holding public office outside the UK. In line with its commitments under the OECD (Organisation for Economic Cooperation and Development) Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions (the OECD Convention), the offence was clarified and codified in the UK Bribery Act, s6. It is not yet known if the UAE will adopt the OECD Convention, although the 2016 amendments to the Federal Penal Code are a significant development towards its goals. Another key change to the UAE regime was the introduction of extraterritoriality for bribery offences. Under 239 of Federal Law No. 3/1987 the bribery offences apply to any person who commits these 'outside the country', if the criminal or the victim is a citizen of the UAE, or if the crime is committed by a public or private sector employee of the UAE, or involves public property. The UK Bribery Act also has extra-territorial jurisdiction, which were initially introduced in the UK Anti-Terrorism, Crime and Security Act 2001, s108 -10 (and any later UK Bribery Act). Bribery offences in the UAE are now connected to the embezzlement and damage to public property offence in Chapter 6 of the UAE Federal Penal Code, whose provisions apply if the criminal or victim is a UAE citizen or if such a crime is committed by an employee in the public or private sector of the UAE, or involves public property (see Article 230 bis of Federal Law No. 3/1987). This provision specifically covers actions committed 'outside the country'. However, international co-operation will likely remain a major challenge to the extraterritoriality provisions generally. As well as practical issues like resources and time, bribery and corruption allegations often occur in jurisdictions considered high risk or 'red flag'. By entering into MLA Agreements with other countries, in addition to any extradition treaties already in place which allow for prosecutions, both the UK and UAE will be able to increase their evidence gathering internationally. Companies with multinational interests must also consider the extraterritorial scope of certain pieces of foreign legislation, e.g. the US FCPA applies to any entity with securities listed within the US and the UK Bribery Act penalises bribery offences committed by British citizens or corporations (whether or not they are in the UK). The UAE has also ratified the UNCAC under Federal Decree No. 8/2006, which requires its signatories to implement anti-bribery measures, aid in asset recovery and extradite those accused of bribery. The UAE must also provide other UNAC signatories with technical assistance in bringing corrupt individuals to justice. Therefore, the UNCAC, the US FCPA and UK Bribery Act must be taken into consideration when assessing anti-corruption compliance risks in the UAE. ■

Muneer Khan
Partner
Simmons & Simmons Middle East LLP
muneer.khan@simmons-simmons.com
Muneer Khan heads Simmons & Simmons' multi-award winning Middle East financial markets and international Islamic finance practices. He advises on a wide range of regulatory issues and has coordinated sensitive advice, often in response to investigations, on issues such as anti-bribery and corruption, anti-money laundering, sanctions and misselling. As well as advising many leading financial institutions, asset managers and corporates, he has advised governments around the world on major regulatory reform initiatives, including the governments of the UK, Indonesia, Kenya, Cyprus, Kyrgyzstan and the Maldives..

Samir Safar-Aly
Associate
Simmons & Simmons Middle East LLP
samir.safar-aly@simmons-simmons.com
Samir Safar-Aly advises on Middle East financial markets, with a focus on financial services regulation, anti-bribery and corruption, AML, sanctions, investigations and, asset management. He regularly advises governments on legal and regulatory reform. He has received training from the City of London Police Economic Crime Academy and the US Department of Justice.

Emirates Law 2nd Anniversary Dinner

On 22 May the Dubai Judicial Institute held a dinner to celebrate the second anniversary of its Emirates Law Business & Practice magazine and present awards to those who have contributed and supported the magazine in the last year at the Intercontinental Hotel in Dubai's Festival City.

SPEAKERS

Dr Jamal Al Sumaiti, Director General of the Dubai Judicial Institute, welcomed the attendees and spoke about the evolution of Emirates Law Business & Practice magazine to date. Dr Jamal explained how the magazine's aim is to enable legal practitioners from the in-house, private and Government sectors to learn from and be inspired by each other.

LEGAL EXCELLENCE

A key feature of the magazine has been the promotion of technical legal excellence and of the UAE as a global legal services hub. Attendees were shown a video to launch Emirates Law's new website: www.emirateslaw.ae.

SPEED NETWORKING

With sharing best practice, a key aim of the magazine, it was decided the event should include a facilitated networking opportunity in the form of speed networking, seen by many as one of the evening's highlights. Attendees had three rounds of seven minutes to get into discussions with others on their table, before swapping to another table to start again.

AWARDS

Awards were also given to recognise the hard work of a range of contributors to the magazine in the last year. Recipients included the Founding Partner of Al Tamimi & Company, Essam Al Tamimi, the Founding Partner of Baker McKenzie Habib Al Mulla Dr Habib Al Mulla and the Senior Partner of BSA Ahmad Bin Hezeem & Associates Dr Ahmad Bin Hezeem. In addition, Clifford Chance's Middle East Managing Partner Robin Abraham, Clyde & Co Consultant Alec Emmerson, were also honoured.

Other members of the Advisory Board including His Excellence Justice Omar Al Muhairi of the DIFC Courts, Managing Partner of Hadef & Partners Sadiq Jafar, Hogan Lovell's Office Managing Partner Rahail Ali and the firm's Business Development Manager Alison Anderson, Jones Day's Managing Partner









Sheila L. Shadmand, Latham & Watkins' Managing Partner Villiers Terblanche, the Managing Partner of Norton Rose Fulbright Patrick Bourke and Simmons & Simmons's Head of Financial Markets Middle East Muneer Khan were amongst the recipients.

Particular recognition was also given to the firms' business development and knowledge managers who have supported Emirates Law Business & Practice, provided advice on potential themes and approaches.

Certificates were given to Al Tamimi & Company's Marketing & Business Development Director Angela Maglieri & Events Executive Chantal Coetzee, Baker McKenzie Habib Al Mulla's Senior Business Development & Communications Manager Asabe Makele and Knowledge Manager Ghada El Ehwany, BSA Ahmad Bin Hezeem & Associates' Head of Marketing Dr Christel Marshall, Clifford Chance's Professional Support Lawyer Shamim Khan and Regional Head of Knowledge and Information Anna Rimmington.

In addition, Clyde & Co's Head of Knowledge Management Justine Reeves, DIFC Courts' Judicial Clerk Mariam Deen, Hadef & Partners Knowledge Manager Kerie Receveur, Latham & Watkins' Business Development Coordinator Hollie Corderoy, Norton Rose

Fulbright's Business Development Manager Hannah Dennehy and Business Development Executive Victoria Brewerton-Owen were recognised for their hard work and support to Emirates Law Business & Practice. ■

THE BIRTH OF THE LEGAL PROFESSION

In ancient Greece there was actually a written rule that a plaintiff was required to plead their own case and this was what commonly happened. Despite this in Athens, although this law existed that only the plaintiff could argue their case, many inviduals would bring a 'friend' with them to help which in time led to the birth of the legal profession, and around the middle of the fourth century, the original rule was dropped. Many of these early lawyers were actually orators. However, a similar rule that this 'friend' could not be paid money for these services was never abolished in Ancient Greece, although it was also rarely followed. As a result of having to pretend they were actually helpful amateurs, these early Greek lawyers were unable to organise themselves into a profession.

In Ancient Rome, there was also initially a ban on these so called 'friends' of plantiffs being paid but as had been the case in Greece it was also rarely followed. There a group of what were known as iurist consulti developed, who were amateurs who dabbled in the law as an intellectual hobby. Fortunately, the Emperor Claudius not only revoked this rule but also set about making being a lawyer a legitimate career. These newly recognised lawyers were called 'advocates'. However, at this time there was still no professional body or regulator overseeing the practise of law. This meant that a lawyer's personal reputation was an important part of their trustworthiness and would be the key to an individual lawyer's success.

Sadly, however at this time being a lawyer was not a particularly profitable career as the Emperor Claudius had put a cap on the amount a lawyer could earn.

Although, by the start of the Byzantine Empire, the legal profession had become well established and heavily regulated, and the role of those iurist consulti declined. The Emperor Leo then issued a requirement that new advocates needed testimonials from their legal teachers. In the late Roman period notaries or tabelliones also began to appear. Sadly, however, during the Dark Ages in Europe the legal profession collapsed until a small group of men became experts in the Canon law of the Catholic church. Regulation of the legal profession by the authorities then began in earnest again in the 1200s when those wishing to appear before courts in France, England and Sicily were required to swear an oath. It was also around this time, that the civil courts in England stated professional lawyers who were guilty of deceit would be punished. The Lord Mayor of the City of London's court also issued a whole host of regulations on admission procedures and oath taking for lawyers. An early professional body for lawyers, the London Law Institution, (which went on to become the Law Society of England and Wales) was founded in 1823 when a group of local lawyers came together to raise the profession's reputation by setting standards and ensuring good practice, although there were no proceedings against dishonest practitioners until 1834. Finally, the first woman lawyer in the English speaking world, Belle Aurelia Babb was admitted to the bar in Iowa in US in 1869.

Whereas in England, bizarrely, the first four women who had passed the Law Society's exams were in 1922 required to run an actual race along Chancery Lane (the London street on which the Law Society headquarters is found) so that the winner of the race , Carrie Morrison could be officially declared the first woman member of the English Law Society. ■

Remarkable

In part because of the size of the awards but also because of the so called 'Litigation Culture' American personal injury cases are often a source of amazement to lawyers and the public in other jurisdictions. However, one of the most renown cases there was the 'McDonald's coffee case'. At the time there was a worldwide reaction to this case and even an article written about it on its 20 year anniversary received over a million views.

In 1992 Stella Liebeck, a 79 year old, ordered a $0.49 eight ounce cup of coffee from a McDonald's drive-thru in New Mexico. The car was not moving when she was scalded as many commentators have claimed but she did place the coffee between her knees to open the lid and accidently spilled it on herself resulting in third degree burns on her groin area. Stella ended up having skin grafts, and spent eight days in the hospital. The resulting product liability case in 1994 triggered a major debate on the reform of tort law in the US. Initially, Ms Liebeck was awarded $2.86 million by the New Mexico Civil Jury, of this amount $2.7 million was in punitive damages, believed to have been based on one or two days' coffee revenues for the company.

Ms Liebeck's lawyers claimed the coffee was defective as it was around 190 degrees Fahrenheit or about 30 Degrees hotter than some other providers and accused McDonald's of gross negligence for selling 'unreasonably dangerous coffee'. They stated as the coffee was served at a drive-thru it had to be hotter than normal as drivers may not drink it immediately. There had been a warning on the cup but it was claimed this was not visible enough. McDonald's were given opportunities to settle pre-trial, with a mediator suggesting an amount of $225,000 which was rejected. In the end however, the parties settled on appeal for an amount believed to be less than $600,000.

Many people saw this case as proof the jury system used in this US personal injury case was out of control. Similar cases since then in both the US and the England have been rejected. McDonald's did not reduce the temperature of its coffee as a result because their coffee conformed to industry standards and other coffee providers used higher temperatures. They have since relied on sterner warnings on the cups. In addition, both they and other coffee providers continue to face coffee lawsuits, although judges often throw these out before they even reach the jury stage. ■

By Definition

Quantum (Latin)
Amount or Extent

The term 'quantum' basically means the amount or extent and there are a number of variations to it, including quantus and quanta. In personal injury cases it is used to denote the monetary damages a successful claimant will receive in a court action with the term quantum of damages used. It is also used to refer to an assessment a lawyer will make which guides their client on whether the case is worth pursuing. 'Quantum' also appears in a number of other legal terms including the similar latin term 'quantum meruit'. This is a legal principle developed in the seventeenth century by the court of chancery in England but which the US courts apply in a wide range of cases including for doctor and lawyer's fees and even palimony. It is a doctrine within contract law which is used even in the absence of an enforceable agreement between the parties. Under this principle, a person should not be obliged to pay or a person should not be allowed to receive more than a reasonable value of the services rendered. Bascially, 'quantum meritum' prevents unjust enrichment from taking place. 'Quantum' also makes an appearance in the legal term 'quantum valebant' which is used to recover the reasonable value of goods sold and delivered.

Emirates Law

Business & Practice

EMIRATES LAW

EMIRATESLAWMAG

WWW.EMIRATESLAW.AE

حكومة دبي
GOVERNMENT OF DUBAI

هيئة الصحة بدبي
DUBAI HEALTH AUTHORITY

مؤتمر دبي الثالث للتغذية
The 3rd Dubai Nutrition Conference

26 - 28 Oct 2017 | Dubai, United Arab Emirates

The 3rd Dubai Nutrition Conference is an annual conference organized by the Dubai Health Authority at the local, regional and global level. The conference will provide an overview of the latest developments, studies and research on addressing the challenges of nutrition in children, adults and even the elderly to achieve the global nutrition goals by 2020.

800342 (DHA) | dha.gov.ae | @dha_dubai | Dubai Health Authority

mci Conference Secreteriat: MCI Middle East, Tel: +971 4 311 6300, Fax: +971 4 311 6301, Email: dubainutrition@mci-group.com