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[i]عام سعيد, Bonne Année[ii],С новымгодом,друзья[iii], PrósperoAno Novo[iv], नयासालमुबारकहो[v], 新年快乐, 朋友们[vi] and Շնորհավոր Ամանոր[vii]!

[i]Arabic, [ii]French, [iii]Russian, [iv]Portuguese, [v]Hindi, [vi]Chinese, [vii]Armenian

CONTENTS

Despite the fact that the Arabic world marks Al-Hijra at the start of Muharram (the first month in the lunar Islamic calendar) and the Chinese community celebrate the "Spring Festival" at the turn of the Chinese lunisolar year in late January/early February, the Gregorian calendar's New Year marks a new beginning for millions of individuals across the globe. The way in which we celebrate this varies from place to place – in parts of South America, the colour of one's clothing is said to symbolize hopes and desires for the year to come (red for love, yellow for wealth), whereas in Spain it is believed that consumption of grapes on the strike of midnight will bring prosperity over the coming twelve month. The same may be said of wearing polka dots in the Philippines, and burning torches and fireballs are believed to drive out the impurities of the dying year at the Scottish festival Hogmanay. However the underlying principle is the same – it's out with the old and in with the new.

Yet some things never change. Like your trusty, innovative and high-quality legal publication, Court Uncourt. Marking the New Year with a new volume, we at STA promise to continue in our efforts to bring you the latest legal news with our trademark bespoke twist.

We wish you a blessed New Year and an enjoyable read.

THE LEGALITIES OF BANK TRANSFERS UNDER UAE LAW

Imagine that X transfers some money to Y online. After a couple of months, X approaches Y and asks him to repay the debt. However Y refuses, alleging that the money had been a gift and he was under no obligation to repay it. Neither X or Y are able to provide any evidence proving that his understanding of the transfer is the correct one – therefore how do the courts decide whether Y must repay the money or not?

The reason this question has been asked is obvious – throughout the world thousands of people have been subject to fraud. Despite the oral and undocumented agreement that may have been reached between parties, if funds are transferred from one party to another there is often no way of proving the intention of the proceeds of the transfer. What happens in the following scenario: -

i) An act of someone transferring money to other in a case where no contract exists between the sender and receiver; or

ii) case where someone transfers monies towards investment in a project and no contract exists between the sender of monies and the beneficiary thereof ; and

iii) can the sender claim refund of monies once the transfer has been effected?

The objective of this article is to answer questions posed above and other technical matters surrounding bank transfers, indebtedness, and related aspects.

At the outset the matter relates to law of evidence in the first place as it is required that the transferor asks the beneficiary to confirm the value or amount that may need to be transferred. If transaction relates to loan or investment in project or; a case where payment is a consideration towards sale of goods or services, the burden of proof shall be on the transferor, who should provide evidence to confirm his claim is bonafide. To this effect, one must place reliance on Article 1 (1) of the Federal Law number 10 of 1992 on the Issuance of the Evidence Act for Civil and Commercial Transactions which sets out that any personintending to bring an action against another shall be responsible and must prove his claim with satisfactory evidence.

Article 1 (1) – reads as ***"The plaintiff shall prove his claim and the defendant shall rebut it."***

The plaintiff here is not only any natural or moral person bringing the claim, but it is any person making a legal allegation, either plaintiff or defendant. The court of cassation rules in this regard:

"The court has ruled that the plaintiff is obliged to present an evidence for its claim either as an original plaintiff or a defendant in the claim".

Clearly, evidence must be provided in any claim failing which recipient of money does not acquire status of debtor. To this effect, one may place reliance to Article 37 of the UAE Civil Transactions Law (Federal Law number 5 of 1985) (or; the ***UAE Civil Code***) stipulates:

"There is a presumption that an obligation has been discharged."

Of course, pursuant to the rules of evidence X shall not only need to prove that he is owed a debt by Y, but shall additionally need to evidence the value of the debt. Traditionally bank transfers are not a method of signifying indebtedness, because they are payment instruments, rather than indebtedness bonds. However nowadays people pay their debts via bank transfer instead of giving cash money. *Article 380 (1)* ***of UAE Federal Law Number 18 of 1993(the Commercial ..... "operation pursuant to which the bank enters a specified sum in the debit side of the account of the person who has ordered the transfer following a written order from such person, and in the credit side of another account."***

The Commercial Transactions Law has caused bank transfers to be regarded as a payment method and not an indebtedness bond under more than one provision, including:

1) *Article 380 (3) ....* ***the transfer of a specified sum from the account of one person to another person's account, each of whom having an account with the same bank or in two different banks"***

2) *Article 384 (1),* ***which sets out that, "The beneficiary shall acquire ownership of the bank transfer value as of the time it is entered in the debit side of the account of the person ordering the transfer; the latter may countermand the transfer order until the foregoing entry is made."***

Accordingly, the law considers bank transfers as means to pay and is not in effect an indebtedness bond. To this effect, it must be highlighted that the transfer order may be cancelled by the transferor at any time prior to the debit being made. And although the beneficiary will assume ownership of the funds at the point of transfer (not receipt), *Article 385 states that* ***" if the transfer has been arranged in pursuance of settlement of a debt, the debt shall remain outstanding (with all securities and supplements) until such a time that the funds are received in the account of the beneficiary."***

The Court of Cassation in case number 254 of 2012 and dated 6 March 2013 has held as under:

'the fact that a bank transfer is originally made through the transferor in fulfillment of its obligation towards the beneficiary does not fit just upon proving the indebtedness of the beneficiary in its value paid to the transferor.' In other words, if the sender transfers monies to the account of recipient, the general presumption would be that such payment by sender is towards settlement of debts owed to recipient or in return for goods or services provided by recipient to sender.

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Pursuant to the foregoing, we may conclude that in cases whereby X makes a pure bank transfer without giving reasons, X may not seek a refund of the same on the grounds that the bank transfer originally pays the debt. The payment transfers from the debtor to the transferor to creditor to the beneficiary.

The question posed now is"Is this provision absolute,with no exceptions"?

The answer is no, as the previous rule may establish the opposite, namely the proof that a bank transfer is made for other purposes or reasons save for the payment of a debt. Accordingly, the previously referenced award concluded the rule stating: *"….And it [the transfer] does notprove the indebtedness of the beneficiary,unless the transferor presents an evidence for that".*

The Court of Cassation has also affirmed that the previous order in its award issued on 25 June 2007 same for in case 63, 75, and 86 of 2007 stipulates *"it is stated that the bank transfer shall originally pay the obligation of the beneficiary by the transferor, and it does not fit for the proof of the indebtedness of the beneficiary for the value to the transferor unless the transferor provided a proof for that".*

In the event the transferor desires to demand the amounts transferred by proving that the receiver did not fulfill his part of the obligations, the transferor is legally bound to prove that he did not 'owe' any monies to the receiver for funds transferred. In other words, the transfer was effected by way of consideration and in return for goods or services promised by the receiver which receiver failed to provide.

In the light of such reason, if funds are transferred as sale consideration towards a particular item, service or real estate, the burden of proof shall be on the transferor to demonstrate that the specific funds in question were transferred in payment for that particular item in cases whereby ownership was not transferred in keeping with the terms of the sale. If the transferor is able to do this then the balance must be refunded.

The rule that can be concluded is that the transferor, if able to prove that he is not paying a debt may claim a refund where he can additionally prove that the transferred funds have not been used for the agreed purpose by the beneficiary (where he has evidence of the said agreed purpose). In other words, if X makes a bank transfer to Y for investing such funds in a certain project, and X can prove that the bank transfer is made for the sake of investment, the Court may order Y to refund the value of the bank transfer if Y has not invested the funds as agreed. Such refund is subject to the terms and conditions of this investment.

If the agreement states that X incurs the loss and gain, namely if the investment brings profits, Y will refund the value of the bank transfer in addition the share of X in the profit. But if the investment incurs loss, the loss portion of X is deducted from the returned bank transferthereof. Each case will have its own facts and circumstances.

STRATA LAW IN DUBAI

If I purchase an apartment in a communal building, what exactly do I own? Am I entitled to a section of the pool, a corner of the gym and rights over a particular elevator? Or do I only have rights over anything within the boundaries of my specific plot?

Dennis Palvich in his book 'The Strata Titles Act, Condominium Law in British Columbia' suggests that disposition of parts of residential buildings first took place during the Bablonian, Egyptian, Greek and Venetian times. In 'History of Condominiums', Rudd and Gardener emphasize that condominiums were introduced by Romans as early as the 6th century B.C. and the concept has been prevalent in South America for at least two centuries. The concept of 'flat ownership' or 'apartment ownership' has gained and continues to gain prominence. Many jurisdictions across the world refer to condominiums today as 'strata title' while some nations term it as 'flat ownership' (for instance, United Kingdom and India).

The concept of strata law in simplest terms means subdivision of a developed building property or gated community into layers. Each such layer then gets subdivided into one or more units along with common areas forming part of such property. The law regulating division of property in to privately owned units as well as common areas was introduced in the Emirate of Dubai pursuant to law number 27 of 2007 concerning Ownership of Jointly Owned Property Laws (***the Strata Law***) to be effective from 1 April 2008. Prior to the issuance of Strata Law, the Federal Law No.5 of 1985 (as amended) in respect of Civil Transactions for the United Arab Emirates (the UAE Civil Code) recognized and provided for some rights in relation to co-ownership of buildings and units but the provisions contained in the UAE Civil Code cannot effectively address technical matters one faces in Dubai's ever evolving property sector. Article 32 of the Strata Law conferred powers upon the Chairman of Dubai Land Department to issue further regulations and decisions required to enforce the provisions contained therein.

The law passed in 2007 laid out the basic scheme of subdivision and covered clauses dealing with formation and recognition of owners' association. This law was however silent on several key issues such as i) method of sub-division of buildings or gated communities with multiple ownership; ii) compliance and procedural matters associated with operation of owners association; iii) type of documentation required for formation of association; iv) implication of the Strata Law on hotel apartments and serviced hotel units; v) provisions in regard to the powers, duties and licensing of association's manager; vi) the tacit role of owners in managing their properties, to name a few. Accordingly, there was a clear need for further regulations to fully serve the operational requirements of the owners' association. Consequently in April 2010, the Dubai Land Department issued directions on Strata Law providing more clarity for both property developers and owners in complying with the provisions of the Strata Law (the Directions). The Directions required developers to register their jointly owned property declaration within six months.

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These directions are intended to serve as guidance notes and till date it is unclear as to whether these directions constitute regulations as intended under Article 32 of the Strata Law or will be part of regulations to be issued in the future.The Directions broadly encompass the following: i) Directions for jointly owned property declarations, ii) general regulations; and iii) directions for association constitution.These directions are closely related to content of the principal documents that outline all operational and management relating to a development, what are the licensing obligations of the surveyors, consumer protection, role and obligations of the Owners Association Board- it's procedures such as meetings, appointments of Board Members and other administrative directions.

Although significant steps and measures have been implemented by Dubai Land Department in regulating strata titles in Dubai, there are yet few hurdles that call for detailed and in-depth regulations that will help and resolve ambiguities surrounding implantation of Strata Law. These ambiguities have resulted in failure on part of several owners' associations to function fully, freely and effectively in interest of its members. High service charges and maintenance costs continue to be the prime concern of members whilst disputing the association's control and autonomy. Whilst the Strata Law was introduced in 2007, it is pertinent to state that most of these associations have been granted preliminary registration status which makes them bereft of legal powers to act fairly and independently.

Article 18 (1) of the Strata Law sets out that the owners' association is a not for profit legal entity, has a separate legal existence from its members, and has the right to sue in its capacity and to own movable assets. Article 10 of RERA circular number 1 of 2010 and dated 5 September 2010 (the Circular)with regards to Service Charge for Jointly Owned Property provides that Owners Association has the sole right and privilege to take action against Unit Owners in respect of unpaid service charges, and this right remains in force even if an owner attempts to transfer ownership of the unit to another person. Although the legal status of such associations is clarified under the Strata Law and the Circular confers rights in favor of owners' association, such status and rights cannot be optimally exercised. For instance, homeowners' association cannot set up bank accounts, enter in to contracts with third parties, bring an action against defaulting members, enter in to contracts for insurance, obtain court orders or appoint auditors and/or attorneys to carry out affairs of association's management given that homeowners' associations have not yet been fully licensed.

For better and efficient coverage of property developers are required to maintain an emergency fund also known as the sinking fund. Investors have long complained of discrepancies in maintaining such fund. Developers are under the legal obligation to remedy material defects in the property prior to passing over the property to owners' association. It is expected that Dubai Land Department and/or RERA will issue further regulations in this regard and provide for a detailed audit of each property (to ascertain latent defects in property) prior to same being handed over by developer to owners' association.

The Directions provide that an entitlement for each owner's lot determined as under:-

i) Calculating the common areas of the building that can be attributable to owner's unit based on area and the extent that the unit draws on the resources of the association: From a practical standpoint, mutual agreement as to creating borderlines for a mixed use development comprising of commercial, retail and residential units often raises concerns as to sharing of service fees and maintenance charges as clear delineations may not necessarily always result in clear cost sharing. To illustrate, if a mixed use development comprises eighty percent residential units and twenty percent retail units, the retail unit owners are likely to dispute inclusion of cost of service or services that are not in fact consumed or utilized by them.

ii) On just and equitable basis wherein entitlement for each lot is derived by calculating total liabilities created by specific unit.

Whilst Dubai awaits further regulations in regards to strata law, property developers in Abu Dhabi have started implementing strata style governance structures in place. The Emirate is likely to introduce strata law to ensure transparent and fair arrangements for property owners and developers.

In matters involving small claims and disputes, the dust might settle and both developers and owners today realize their long term objectives, but it seems reasonable to conclude that there remains a need for clear and detailed strata regulations.

[i] *Dennis Pavlich, The Strata Titles Act, Condominium Law in British Columbia, Butterworths and Company, 1978, page 5*
[ii] *'History of Condominiums', The Beatt, Spring 1996, Volume 7, Issue 1*

CROSS-BORDER CRIME AND EXTRADITION, PART II

Cooperation in International Financial Investigations

Apparently "money talks" but "crime doesn't pay".

It therefore follows that financial crime is rife, yet the methods in place to control and reduce it are effective.

The evolution of banking means that there are now more ways than ever conduct financial activity, with online systems, payment technologies and bitcoins all assisting us in our transactions. But along with new methods come new offences, with money laundering, tax evasion, online fraud and the funding of terrorism featuring regularly on court lists across the continents. And given that global communication and transport have had the effect that the world is now a relatively small place, it is of no great surprise that these crimes have taken on an international dimension.

So what systems are in place to police transnational financial crime and bring any perpetrators to justice? In this second installment of our international criminal law series we shall discuss the ways in which the UAE cooperates with nations requesting assistance in conducting financial investigations.

1. Is Dubai party to any international agreements regarding the exchange of information in cases of tax and criminal investigation?

As we are all aware, one of the major benefits of living in the UAE is that our UAE-generated income is not taxed. However it is not unusual for expats to have an additional source of income in their home countries, which may well be subject to tax in accordance to the local law. And elsewhere in the world, an expat may find that not only must they pay tax on their income at home, but they may also have to declare this income in their country of residence, where it could again be subject to taxes or charges. This has the effect that the same income is taxed twice – once in the home jurisdiction and once in the country of residence. In order to avoid this, many nations enter into double tax avoidance agreements (DTAAs). DTAAs aim at taxing revenue earned from sale of shares, dividends, royalty payments and fees in the state where income is earned, subject to terms mutually agreed between two member countries.

Taxation law is jurisdictionally-specific – that is to say, it is not international. The taxation law of a country is applicable to citizens and residents of that country alone, and cannot be extended to other jurisdictions.Yet a similar feature in the majority of national tax law is the way in which avoidance is criminalized, with persons convicted of tax evasion often liable to fines and/or imprisonment.

It is worth noting that DTAAs are not considered as tax avoidance – the obvious reason being because they are not a method through which an individual or corporation may avoid tax, but merely a sanctuary under which the entity may seek relief from making two payments in relation to the same asset. DTAA participation therefore does not incur any criminal liability, and the main objective is to foster economic growth between the parties who have signed the same.

UAE Federal Law Number 39 of 2006, which relates to International Judicial Cooperation on Criminal Matters (Law 39), provides for the extradition of criminal suspects in cases where the individual in question is subject to criminal investigation overseas. As we discussed in Part I of this series, the UAE has signed extradition treaties with several countries, and these treaties impose additional requirements on respective member states. It is possible for foreign countries (including countries that have not signed a criminal treaty) to request extradition of a person residing in the UAE for interrogation, prosecution or enforcement of criminal awards, although it is of note that the police, prosecution authorities and courts in the UAE have absolute discretion to refuse extradition on certain grounds. Additionally, in relation to awards or judgments from countries with which the UAE does not have a bilateral treaty, the provisions of the UAE Civil Procedure Code must be satisfied.

2. When and how is Dubai required to disclose such information?

UAE follows internal procedures and acts in accordance with the requirements of UAE Civil Code, UAE Commercial Transaction Law and the UAE Penal Code.

As the UAE is party to several international conventions and bilateral treaties, acting in conformity with several DTAAs and Mutual Legal Assistance Treaties (MLAs) the UAE Government can cooperate with foreign authorities in the process of investigation and prosecution of criminal offences. Although tax evasion is not specifically addressed in most MLAs, the treaties refer to assistance being provided "for the purpose of proceedings". This implies that the exchange of confidential bank information may be permissible under the provisions of an MLA, particularly where a criminal tax implication has arisen in the foreign country.

No bank account can be frozen unless by an order of the court or in accordance with the anti-money laundering law and the law pertaining to the financing of terrorism, namely UAE Federal Law Number 1 of 2004. The UAE permanent mission at the United Nations sends a list of 'suspected' individuals to the National Committee for Combating Terrorism ***(NCFCT)*** which then send this list to the Central Bank. From the Central Bank, orders for the necessary information are served on the list of 'suspected' individuals.

3. What is meant by "bank secrecy" under the law of Dubai? In what cases is the bank obliged to disclose information? If there are such cases, what is the nature of the disclosure procedure: criminal or administrative? Is the right to receive such information limited to the police, prosecutors and the criminal courts, or are the tax authorities and municipality also entitled? Is any special order required for disclosure?

The term 'bank secrecy' per se is acknowledged generally under the prevailing laws of the UAE. For the purpose of this article, we limit the scope of our response to wider UAE and exclude the DIFC legislation, details whereof can be obtained from STA's website (www.ama.ae). All bankers, traders and other professionals who are in a position to collect and store data from the public are bound by the duty of confidentiality - the breach of which is an offence under Article 379 of UAE Penal Code (Federal Law number 3 of 1987, as amended). Article 379 reads as under:-

"Punishment by detention for a period of not less than one year and by a fine of not less than twenty thousand Dirhams or by either of these two penalties, shall apply to any one who is entrusted with a secret by virtue of his profession, trade, position, or art and who discloses it in cases other than those lawfully permitted, or if he uses such a secret for his own private benefit or for the benefit of another person, unless the person concerned permits the disclosure or use of such a secret.

A penalty of imprisonment for a period not exceeding five years shall apply to a culprit who is a public official or in charge of a public service, and has been entrusted with the secret during, because of or one the occasion of the performance of his duty or service."

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Further, Article 106 of the Union Law (Law number 10 of 1980 concerning the Central Bank, the Monetary System and Organization of Banking) also provides for the obligation to keep confidential all banking data submitted to the Central Bank.

In a criminal matters (whether pertaining to an international or a domestic offence), information must be disclosed to the investigating authority. While the banks can be required to make statements before prosecution, in practice material and formal disclosure can be ordered by the court.

4. Under what circumstances may my Dubai bank account be blocked/frozen? What authority is able to block it?

In international matters, the freezing of a UAE-based financial account would largely depend whether a treaty was in place between UAE and the country making the request. In any event, the power to make any decision with regards to freezing a bank account is vested in the public prosecution and/or court authorities. In instances of suspected money laundering or the financing of terrorism the Governor of Central Bank has the power to order the freezing of a bank account. Dubai Prosecution is vested with powers of investigation, and is able to bring an action against the accused and forward the matter to court for trial in domestic cases.

5. For how long will my account remain blocked?

Time scales are entirely dependenton the nature and level of the charge, and may be set by the prosecution or the court.

In cases pertaining to money laundering and in accordance with Law No. 1 of 2004, the Governor of Central Bank can issue a notice for the freezing of a bank account for a period of seven (7) days. For the purpose of investigation, the Governor and/or the Attorney General may extend this period for as long as it may take to complete the investigatory process.

6. If my account has been frozen, may I appeal? To which court?

In criminal matters the hierarchy (lower to highest) is as follows:

(a) Police; (b) Prosecution; (c) Court of First Instance; (d) Court of Appeal; (e) Court of Cassation.
If account is frozen then an appeal is heard by the higher court.

7. Is the tax evasion a crime in Dubai? What are the tax laws of UAE?

The UAE is, in general, a tax-free country. There are a few exceptions which apply to the oil and gas companies, branches of foreign banks. In the Emirate of Abu Dhabi, taxation principles are governed pursuant to Abu Dhabi Income Tax Decree of 1965 (and amendments thereto). Taxation in Dubai is covered under the statute being 'The Dubai Income Ordinance of 1969' (and amendments thereto) whereas Sharjah's tax system is controlled in line with the provisions contained in 'The Sharjah Income Tax Decree of 1968'.

"What a Load of Rubbish!"

Environmental Law and the Disposal of Construction Waste in the UAE

Yours sincerely
Mr A
Manager
XYZ Corporation
In line with our environmental practices please do not print this email unless strictly necessary.

Have you ever read through the small print that follows your office email signature? The chances are that it will contain a phrase similar to the above. Yet ironically, in general we have a globally cavalier attitude towards conservation. Yes, we are aware that natural resources will eventually deplete, the ice caps are melting and global warming may one day result in a dramatic over-hall in the environment as we know it – but still, so unlikely are such factors to occur within our lifetimes that conservation becomes a secondary concern. After all, despite the typed warning, a polar bear won't suddenly become homeless just because we have printed this one little email…

Born and raised in England, I am familiar with strict policies and law relating to recycling, refuse and littering. Failure to adhere to the relevant provisions can escalate to the point of imprisonment – a threat which makes us think twice before discarding a cigarette butt on the street as opposed to locating the appropriate disposal receptacle. But what is the position here in the UAE? The lack of itemized recycling bins outside of every residence may lead us to assume that environmental protection and conservation are not major concerns, yet we would be very wrong in thinking this. Under Federal Law Number 24 of 1999 (the ***Environmental Protection Law***), contravention of certain provisions implemented with a view to protecting the environment can incur the death penalty. Extreme perhaps – but it certainly grabs our attention!

Environmental law becomes an interesting concept when we consider the way in which the UAE is a major hub for development. Readers in Dubai, take a look out of your window right now – the chances are that there will be one or two cranes on the horizon. Of course, the largest increase in environmental pollution in history occurred alongside the Industrial Revolution of the late 1700s, but the fact that the UAE has been undergoing such a construction boom cannot be overlooked as having a detrimental effecton our present-day environment. The harvesting of resources and preparation of sites destroys habitats, factory production creates air pollution, and heavy plant machinery causes noise, and along with development comes construction waste of which we need to dispose.

The disposal of construction waste has become a major factor in influencing the various environmental policies in the UAE. In 2008 Abdulla Rafea, assistant director general of health an environmental services at Dubai Municipality,

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announced that Dubai was producing approximately 30,000 tonnes of construction and demolition waste on a daily basis. For reference, this would be the equivalent of 150 fully-grown blue whales or roughly half the weight of the ill-fated cruise liner Titanic. *Daily*. This pushed Dubai (along with other GCC nations) into the league of the world's top 10 waste producers, with the collective total of waste and refuse materials predicted to reach 350,000 tonnes per day by the end of this year. With the Environmental Protection Law offering no guidance on the most appropriate method of disposal, the vast majority of this rubbish was deposited in landfill sites. Given this overwhelming volume, the increasing rate of construction and the predicted inflated statistics alternative solutions were clearly needed. This, coupled with the Dubai Municipality's announcement that the Emirate would be the most sustainable city in the world by the time the 2020 World Expo comes around, has paved the way for change.

So how have these changes affected the disposal of construction waste across Dubai and the UAE? Dubai Municipality's Green Building Regulations and Specifications in cooperation with Dubai Electricity and Water Authority (DEWA) of 2012 (the Green Building Regulations) have gone some way towards reducing the amount of construction waste produced by implementing strict conditions on the usage of building materials and requiring under section 701.06 that recycled content must account for a minimum of 5 percent of the total construction materials used. Moreover section 702.01 places developers under obligation to dispose of at least 50 percent of the waste generated via means other than depositing the same in landfill sites. Suggestions contained within the regulations include the recycling of woods, plastics and metals, the diversion of concrete waste to the Construction Waste Treatment plant and the clearance of excavated soil to a site nominated by the Dubai Municipality.

Although domestic waste contributes to such a situation, the fact remains that landfill sites within Dubai are under huge pressure to accommodate the waste produced by the Emirate, and in addition to that are obviously hazardous and unpleasant. In fact, in 2012 Al Qusais landfill (one of only two sites in existence at the time) was dubbed by The National UAE's Mohammed N Al Khan as being "a two kilometer-square, 20 meter-high layer cake of rubbish[1] ". Yet in April 2014 the site was awarded an environmental prize in recognition for the initiative implemented by Dubai Municipality whereby the plant converts gases produced by the waste and uses the same to meet 100 percent of the site's power requirements. This in turn also reduces greenhouse gas emissions.

This demonstrates that alternative methods of construction waste disposal not only make for a healthier, happier, more sustainable environment, but also create economic benefits. And Dubai is not the only Emirate to realize this, with Abu Dhabi's Al Dhafra Construction and Demolition Recycling Facility operating on the same principles. Having opened in May 2010, the plant now processes between 5,000 and 8,000 tonnes of construction waste on a daily basis.

[1] *The National UAE, 23 September 2012: www.thenational.ae/news/uae-news/dubai-running-out-of-landfill-space-to-dump-its-rubbish*

As well as separating out materials such as timber, which are suitable for recycling, the plant converts waste into new materials suitable for re-sale back into the construction industry, such as road base, trench bedding and structural fill. Not only does this reduce the amount of waste deposited in landfills, but also decreases the need to harvest naturally-occurring materials, thus protecting the wider landscape. In keeping with Abu Dhabi's Economic Vision 2030 the Government has announced its intention to place a mandatory 40 percent minimum requirement on the inclusion of such materials in all new developments. A similar initiative is also in place in Sharjah under the supervision of environment and waste management company Bee'ah. Having already successfully diverted 60 percent of the Emirate's waste away from landfills over the past 5 years, Sharjah aims to dispose of 100 percent of its waste via other means by 2015.

It may have come to your attention whilst reading the above that although the schemes, initiatives, practices and systems discussed are evidently effective ways of meeting the various green objectives in place across the UAE, they are not law, and as such there is a limited amount of power vested in the authorities to enforce the relevant provisions. Although the Green Building Regulations impose obligations upon developers regarding the usage of construction materials and the depositing of waste, the rules do not go so far as to outline the liability of those failing to meet requirements. However, as a federal law, the Environmental Protection Law differs greatly, and provides for a range of monetary fines or periods of imprisonment depending on the nature of a breach. Yet the problem seems to be this – despite taking steps to prevent pollution, protect natural resources and enhance the environment, the Environmental Protection Law came into force 15 years ago, and is therefore exclusive of any of the more recent issues posed by the construction boom.

Fortunately, new draft laws presented to the Federal National Council in 2014 look to regulate construction waste far more strictly, implementing separate disposal systems for solid, liquid, medical and hazardous waste. In addition to this local authorities and the Ministry of Environment and Water shall be given greater authority to deal with perpetrators accordingly, with a more severe range of penalties to be introduced. It therefore seems reasonable to conclude that the holes that development has torn in the Environmental Protection Law will soon be plugged by way of new legislation.

And as for the fact which inevitably helped to keep you reading – under Article 73 of the Environmental Protection Law, the death penalty (or a one to ten million dirham fine) may be incurred by anyone failing to adhere to the prohibitions regarding the importation, storage or disposal of nuclear substances within the UAE. Evidently this is not a provision of which many of us are likely to fall foul – nonetheless, it goes some way towards emphasizing the seriousness with which offences against the environment are treated. Of course, our readers will be archiving this newsletter along with previous editions for later reference, but we conclude in the hope that other paperwork that has served its purpose will henceforth be disposed of in the appropriate, environmentally-friendly manner…

CHECKING CHEQUES:

Reforms in Police Cases against UAE Nationals and Foreigners

If you think about it, "bounced" is a strange choice of word to apply to a failed cheque. "Bounce" implies lively, rejuvenated, excitable, energetic – a collection of adjectives which certainly wouldn't fit your mood in the instance of a bounced cheque, whether you are the issuer or the recipient. Having a cheque bounce is undoubtedly frustrating and concerning in any jurisdiction – but perhaps more so in the UAE, where issuing a cheque which bounces on account of insufficient funds is an offence under the applicable law.

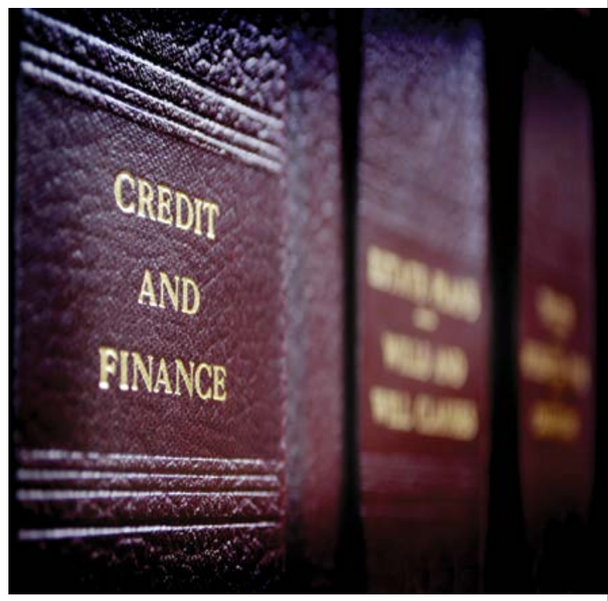
Issuing a cheque which subsequently bounces is criminalized under Article 401 of the Federal Law Number 3 of 1987 (the ***Penal Code***), reads as under:

"Detention or a fine shall be imposed upon anyone who, in bad faith, gives a draft (cheque) without a sufficient and drawable balance or who, after giving a cheque, withdraws all or part of the balance, making the balance insufficient for settlement of the cheque, or if he orders a drawee not to cash a cheque or makes or signs the cheque in a manner that prevents it from being cashed. The same penalty shall apply to any one who endorses a cheque in favor of another or gives him a bearer draft, knowing that there is no sufficient balance to honor the cheque or that it is not drawable".

Accepted, that's a lot of information to absorb from one clause, and questions will inevitably be raised with regards to the issuer's knowledge of balance and so on. But for the purpose of this discussion only a couple of key points are relevant: 1. If a cheque bounces, the issuer is liable to criminal prosecution, and 2. The issuer of a bounced cheque is liable for a fine or a term of imprisonment.

According to the recent directives and circulars issued by the state presidency, public prosecution and police, the provisions stipulated in Article 401 of the Penal Codehave been amended in practice in cases whereby the perpetrator is a UAE national citizen. Henceforth, in cases where it has been proved that the cheque was issued as a guarantee to pay off a financial obligation in favor of the financial facility at which the debt was incurred (for example, a bank), there shall be no prejudice or influence on the cheque's authenticity in proving the debt. It shall be considered as a commercial paper which proves the liability and accordingly gives all rights to the UAE National to claim in a civil litigation procedure.

Let's break this down. We often think of cheques as simply being payment instruments, so what is meant by the term "guarantee cheque"? Those of us in the UAE may find it useful to consider our rental cheques, which are issued to the landlord at the start of the tenancy, but are post-dated in keeping with the required installment dates. Or security deposit cheques, on which we write a cheque amount, but do not date (as the cheque will not be cashed unless damage is caused). Guarantee cheques should therefore be considered as cheques issued in guarantee of a payment due at a later date, rather than a cheque issued in payment of an immediate financial obligation. Therefore the circulars have the effect that when a guarantee cheque has been issued by a UAE national, the sole fact that the cheque was issued cannot be used as evidence that the issuer was ever liable for the cheque amount. However circulars have allowed the judicial authorities of the courts, public prosecution and police to search for the purpose behind the issuing of a cheque in order to ascertain whether or not it was a guarantee from the UAE national towards settling his financial obligations.



In cases whereby it is proven that the cheque has been issued as a guarantee instrument, anycriminal complaint filed by the bank(as opposed to the recipient of the cheque) shall be stayed until such a time that it is established whether or not there has already been a parallel case filed or presented to the court against the UAE nationalby the recipient of the bounced cheque. In this instance the case may be terminated. Additionally, if it is proven that the cheque was issued as a guarantee only, the public prosecution may release any UAE national who is detained or under investigation for such an offence, regardless of whether the offence occurred prior to the issuance of the said directives and circulars.

Practically speaking, the police should question the complainant bank with regards to the reason behind the issuing of the cheque by the UAE national, with a view to establishing whether the national has issued the cheque as a guarantee instrument. Pursuant to the aforementioned circulars, the police should additionally take a copy of the cheque in question and return the original to the complainant bank after marking it with an official stamp, register the complaint under a crime number and present the file to the public prosecution. It is worth mentioning that the police procedure of registering the complaint under a crime number is a preamble to retaining the complaint at the public prosecution level, in case the cheque is a guarantee instrument issued by a UAE national.

So what consequences will the new practices have for expatriates? At present there is no stable principle, but nothing suggests that the normal practice (namely that the criminal complaint shall be referred from the police to the public prosecution in order to investigate the facts, and thereafter the matter is referred to the criminal court) shall differ. In such situations precedent would suggest that the court is generally lenient with regards to sentences of imprisonment against foreigners, despite such a sanction being available under the Penal Code, and instead will order them to pay fines without needing to serve any period of incarceration.

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We have established that, in cases whereby cheques have been issued as a guarantee instrument by a UAE national, a certain degree of protection from criminal prosecution under the Penal Code shall henceforth be afforded. Although this is not the case where the issuer of the cheque is a foreign national, it is often the case that the criminal courts will not apply the full force of the law. We must also take into consideration the fact that the criminal courts have limited power with regards to ordering that the financial obligation demonstrated by the cheque is fulfilled – although they may issue judgment in favor of the recipient and order that the issuer pays a fine or serves a period of imprisonment, they cannot order that the issuer makes payment via an alternative means to the recipient. The debt created by the bounced cheque may only be enforced via the civil courts. It therefore may initially appear that the practical approach taken in cases of bounced cheques is to the detriment of the intended beneficiary and/or the bank. However, regardless of the circumstances or the protagonists involved, thebank shall have the option of pursuing a civil case against the defaulting party. A ruling in favor of thebank in the civil courts will prove to be of greater benefit than in the criminal courts, because whereas the criminal courts may fine or imprison the defaulting party, the civil courts may order that the actual debt amount is repaid. Additionally, any judgment issued by the civil courts may attach without limitation the debtor's financial accounts, cash funds, gratuity from their work place, stocks in the UAE stock market and/or vehicles, not to mention assets such as real estate.

If the litigating party is not aware of the full extent of a debtor's assets, then an application can be presented to the judge to investigate. In the interim a provisional attachment application may be made with regards to the existing assists whilst the investigation takes place.

It seems reasonable to conclude, then, that despite the fact that national citizens are now provided with certain sanctuaries with regards to bounced cheques and precedent suggests that foreign citizens may not be punished to the full extent permitted by law, the remedies claimable under civil law (including the full debt amount, plus interest, damages and compensation) remain vast. And given that this list of potential claim elements is without limitation, any respondent partaking in civil proceedings further to a cheque bouncing may well feel even less lively, energetic, excitable etc. than if he found himself subject to criminal prosecution…

What a Difference a Euro Makes

€1 Company Formation in Portugal

Since 2005 Portugal has been focused on increasing its competitive presence. The implementation of this so-called "technological plan" has consisted of the modernization of national laws, the improvement of efficiency in the public sector by the reducing of bureaucracy and the optimization of resource allocation. In this context a new model of company set-up has been created: the On the Spot Firm, nationally known as the Empresana Hora.

So what is an On the Spot Firm?

The 'On the Spot Firm' is an innovative procedure that facilitates the incorporation of a company in a quick, cheap and effective way.An investor is able to set up a civil or commercial company (which in Portugal may take the form of a sole proprietorship company, a private limited company or public limited company)at any On the Spot Firm service desk, which is known as a "one stop office", without needing to disclose the location of the company' intended registered office. The incorporation is effective immediately and the total cost of the same, including the mandatory publications, will amount to €360 (equal to approximately AED 1625). Should the chosen principle activity of the company be related to technology or research and development, and the cost of incorporation will be reduced to €60 (approximately AED 270).

The truth is that the set-up of the On the Spot Firm is a simple and effective procedure – the main qualifying requirement is that all the future partners must be present or be represented by proxy at incorporation, and must be in physical possession of their identification and tax payer number documents.

In order to further simplify the process, the authorities have made available both at each service desk and online pre-approved models of company statutes, which can be chosen by the shareholders when incorporating the company. The same applies to the trade name – representatives of the company may select a name from a list of pre-approved names provided both online and at the service desk, however this will only be definitely assigned at the point of incorporation–in other words, it is not possible to reserve the name in advance. It is also noteworthy that the list of pre-approved trade names does not in any way limit the choice available, nor does it restrict the activity of the company as per its generality. If in any case the partners wish to use a specific name, they must first obtain prior approval – a Certificate of Eligibility – to be provided to the National Register of Companies(the ***RNPC***).

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Either individuals or corporate entities can set up this type of company. Foreign legal persons are subject to the additional requirement that they submit corporate documents, including a document proving the legal existence of the entity in the country of origin, its articles of association, the board resolution or minutes of the meeting at which the incorporation of the new entity was approved, and identification of the legal representatives of the company. It is also necessary to request in advance before the RNPC the ID number of a legal person that will make identification of the company possible in Portugal. These documents must all be duly translated, unless the originals have been prepared in the French, Spanish or English languages (where the desk employee knows the language) . Thus, nothing prevents a foreign individual or entity from incorporating a company in Portugal, with the only requirement being the possession of a tax identification number.

Currently, and since 2011, one of the most intriguing aspects of starting a business in Portugal is the minimum share capital requirement in the event that the entity is a sole proprietorship or a private limited company. In order to boost small businesses the Portuguese Government decided to go so far as to change the prevailing companies law in order to provide that these types of company could be established with a minimum capital of €1 (less than AED 5) per partner instead of the€5,000 (approximatelyAED 22,500) hitherto required. This measureavoids the mandatory initial investment requirement and allows micro-enterprises to be created without the significant capital necessitated by law – an amount which was controversialat the time of its implementation and remains so today. The main reason for this legislative amendment is stated within the preamble of the law decree: the high social capital of a company does not necessarily ensure a good financial situation, as often such capital is fully utilized to cover initial costs. The Government also stated that creditors of the companies should focuson the turnover and sustainability of the company to determine its viability, instead of taking the capital as a guarantee of such factors.

At the time of setting up the On the Spot Firm, the share capital should already be deposited in a financial account opened in the name of the company, or must be deposited within 5 (five) working days thereafter, as the money should be withdrawable at any time following the set-up of the company.

It is remarkable to consider that this procedure can be completed in less than an hour, and that when incorporating the company the partners will be immediately given the access code to the company's e-card and the Social Security identification number. The registration of the company's statutes is immediately published on the website of the Ministry of Justice, whose access is public and free. Finally, also included within the price of the incorporation isthe assignment of a domain name registration taken from the company's trade name, which is free of charge for thecompany's first year.

So rather than frantically spending all of our small change at the airport on the way home from vacations in Europe in future, perhaps we could instead consider the incorporation of an On the Spot Firm?

COLLECTIVE INVESTMENT SCHEMES: SKYLINING DUBAI INTERNATIONAL FINANCIAL CENTRE (DIFC) LAW

"The first step towards getting somewhere is to decide that you are not going to stay where you are."

Investments require one to take a risk and it is often advised that this risk should be a calculated one. According to K Geert Rouwenhorst in The Origins of Value, the concept of an investment company dates back late 1700th century Europe, when a Dutch merchant and a broker invited subscriptions from investors to form a trust, thus providing small investors with limited means an opportunity to diversify[1] . With the pace of economic transitions worldwide, the approach of investors has also varied enormously. The availability of different opportunities to make money and the competition in the market inevitably have the scope to create confusion. However, there are many options which allow a person to make comfortable investments in anticipation of easier returns.

In the UAE, the Dubai International Financial Centre (the DIFC) offers an optimal environment for making investments and has been regarded as one of the most developed frameworks in the world. It is based upon the principles of common law and tailored to the region's specific need. Economists expect the investment market in the UAE to remain steady and thrive. This should encourage investors who are looking to add risk to their portfolios at present, ahead of the lean summer period. In this article shall discuss the flexibility and operations of Collective Investment Schemes (the CIS) which can be established in the DIFC - an onshore financial and business hub connecting the region to the world, and the world to the region.

The DIFC was established by Federal Law and is regarded as an autonomous jurisdiction within the UAE. Funds are regulated by the Dubai Financial Services Authority (the DFSA) which is an independent authority responsible for managing and distributing the funds. As the name itself denotes with regards to the concept, CIS are the collection of money from different investors, pooled to create an investment fund. The concept of CIS is considered as a secured investment opportunity because each scheme will have a specific objective, projected target return and risk profile which is generally set out in the proposition document. CIS are more or less similar to mutual fund type of investments, insofar as that they provide absolute control over the investment from the company pooling to the investing the money. The recent economic downturn around the world has made this need more pressing. One of the considerable advantages of investing in a CIS is that it is a type of passive investment, and one does not have to actively watch every financial transaction that takes place. You can simply opt for a good scheme and let the fund manager take care of the rest. If you choose an effective scheme in which to invest your money, you can be sure to look forward to some potential and consistent returns.

[1] *Markham, Jerry W., Mutual Funds Scandals - Comparative Analysis of the Role of Corporate Governance in the Regulation of Collective Investments (Fall 2006). Hastings Business Law Journal, Vol. 3, No. 1, 2006; Florida International University Legal Studies Research Paper No. 10-55.*

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Although a CIS can be very profitable in certain situations there are a few elements of which a potential investor should be cautious. One of the potential drawbacks of this type of investment is that there is certain fees payable in order to subscribe, in addition to the fund, a management fee other variable hidden charges. Such fees can significantly eat into the returns that are generated by the investments. Therefore an investor should pay careful attention to the performance of the fund and make sure that it justifies the fees necessitated. If the fees get too high, a fixed-rate investment with a low interest rate pay be a more suitable option[2] .

REGULATORY ASPECTS OF CIS IN DIFC

The DFSA introduced the first Collective Investment Fund regime (the Fund Regime) in the year 2006. This was designed to provide adequate investor protection, meeting international standards for regulation. However in 2010[3] certain remarkable changes were implemented into the Fund Regime in order to make it more accessible and market-friendly, and moreover to ensure that greater respect was paid to the principles of the International Organization of Securities Commissions (the IOSCO) for regulating the CIS. The Fund Regime focuses on disclosure, corporate governance, valuations and service providers. The DFSA takes into account a range of matters when licensing and supervising firms that manage and market funds in or from the DIFC.

The DFSA also regulates the key players in the funds management service sector, such as fund administrators, asset managers, custody providers and trustees, in order to ensure adequate investor protection by promoting high industry standards that meet international best practice. The investments of funds is made by specialized management (directors or the managers) and can consist of securities, bonds, and other financial instruments. It accumulates funds of high net worth in a collective scheme, which is flexible, with minimum regulatory supervision. CIS may be used as investment vehicle for property investments.

KEY FEATURES OF THE FUND REGIME

1. Objective

The Fund is the collection with respect to property of any description, including money, and enables those taking part in the arrangements (the Unit Holders) (whether by becoming owners of the property or any part of it, or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property, or sums paid out of such profits or income. However the arrangements is such that the Unit Holders do not have day-to-day control over the management of the property irrespective of their rights to be consulted or to give directions.

2. Requirement of Funds

A fund can be established in the DIFC either by becoming: (a) a DFSA licensed Fund Manager; or (b) an External Fund Manager[4] .

[2] *http://www.econguru.com/understanding-how-a-collective-investment-scheme-works/*
[3] *Collective Investment Law DIFC LAW No. 2 of 2010*

3. Types of Funds

There are two types of Funds that can be established in the DIFC, and be managed by either a DFSA-licensed Fund Manager or an External Fund Manager (DFSA licensed fund managers being able to establish and manage funds in the DIFC, as well as in jurisdictions outside the DIFC)[5] :

a **Public Funds:** These funds are open to retail investors, and can be marketed by way of public offer. As Public Funds are open to retail investors they must abide by stricter regulatory requirements so as ensure the greater protection and transparency to the retail investors. The requirements honor the principles of IOSCO and meet international standards for retail protection. Detailed disclosure is included in the fund's prospectus to enable retail investors to make an informed investment decision relating to the fund, and an independent oversight of the fund management is provided either by a member oversight committee or by the Trustee or Eligible Custodian of the Fund.

b **Exempt Funds:** Exempt Funds replaced the existing Private funds regime, and are open to professional clients who make at least a minimum subscription of $50,000 (US Dollars fifty thousand) each. Such Funds can only have 100 or fewer Unit Holders and cannot be offered to the public, with distribution being only by way of private placement. They are subject to lenient regulatory requirements

4. Fees of Funds

In the recent regime the range for marketing of Foreign Funds in or from the DIFC has been expanded. The Fee structure has been made more competitive as the fund manager application fee reduced from $40,000 (US Dollars forty thousand) to $10,000 (US Dollars ten thousand).

[4] *A foreign fund manager may establish and manage a fund set up in the DIFC without a physical presence in the DIFC and a DFSA license. (Amendment by the scheme of 2010)*
[5] *A guide to the DFSA Funds Regime*

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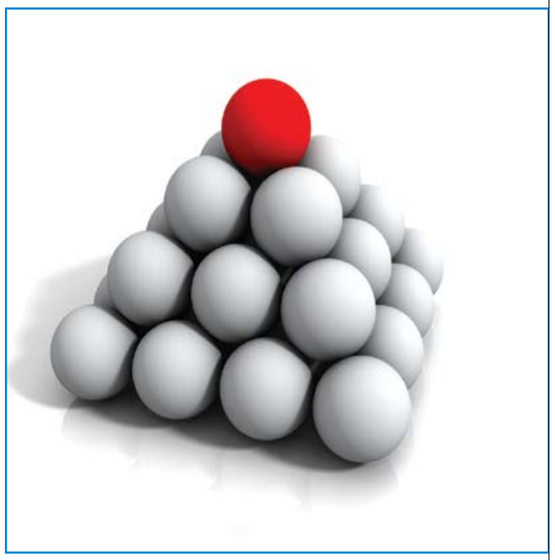
5. Other Requirements

For obtaining a DFSA license, the fund manager has to demonstrate the adequate systems and controls necessary for the management of the type of proposed fund. The individuals performing certain functions within the Firm, such as its Board Members, senior management and key control functions (for example, the compliance and anti-money laundering officers) meet the relevant suitability and integrity criteria. Once the license has been granted, the DFSA supervises the fund manager's activities on an ongoing basis. In order to comply with the best international practices the funds must have a registered auditor who is required to prepare a report on the financial accounts of the Fund on an annual basis. A Fund Manager is obliged to provide interim and annual reports to Unit Holders and the DFSA. The annual reports must include a valuation of the fund assets which is acceptable to the Fund's registered auditor.



CONCLUSION

Investment in CIS is voluntary and requires for there to be a sufficient number of citizens with surplus savings to support the same in order for them to remain viable and effective. Additionally, because of the requirements for diversification and the need for liquidity to accommodate regular injections and outflows of money, CIS require relatively highly developed stock, bond and money markets to provide an adequate range of investable securities. Therefore such schemes are more common in developed African countries, where higher levels of disposable income for discretionary savings are available. Nonetheless, the introduction of new structure in DIFC fund regime is a fair indication of Dubai's inclination to emulate with major global fund domiciles such as Luxembourg and the Cayman Islands, and of the DIFC's commitment to adapting to market demand. The regime is sufficiently light to be attractive to fund managers from various aspects, but simultaneously ensures that investors are being given greater protection through a robust regulatory framework.

Coming Soon...

Like what you've seen? Then come and meet the team!

Are you a company or an individual looking for assistance in corporate, commercial or litigation matters? Do you enjoy STA's newsletter updates? If so then STA may well be the firm for you. Still looking for that extra little bit of reassurance…?

Over the past year STA has gone from strength to strength, and has enjoyed a period of unprecedented growth. New and widely-publicized office openings in Doha and Bahrain added pins to the map, whilst the growth of our team in the UAE has allowed us to extend our expertise across a wider range of practice areas.

As well as expanding as a firm STA has also grown as a brand. Your trusty legal publication Court Uncourt is now circulated more widely than ever before, and we were delighted to appear on renowned television series Property scape. With our associates featuring regularly on weekly radio show Josh Magazine to discuss a variety of pressing legal issues, it is no wonder that an increasing number of people are associating the name "STA" with high-quality legal advice and seamless counsel.

Yet STA is proud of its growth beyond that in the physical sense. Our careful yet open and organic expansion has resulted in a larger client base, and our increasing capabilities are such that we are now able to go further towards fulfilling our clients' specific needs. Our bespoke service and core strengths now extend to over thirty varied practice areas, each being specially structured in order to meet your current legal needs, whilst at the same time preparing for the future by taking into consideration your commercial objectives and long-term business plans. However we understand that the needs of a company extend far beyond the legal, and appreciate the way in which entering into suitable synergies and commercial relationships may take a business to new heights. With this in mind, why not combine the opportunity to meet STA with the chance to interact with other companies and corporate bodies?

In the interests of introducing ourselves properly and presenting our existing and prospective clients with the opportunity to network so as to expand their business portfolios, STA shall be hosting its first corporate event in 2015. Scheduled to take place in Abu Dhabi, STA will host representatives of commercial entities from across the globe. The evening shall include presentations on prevalent legal topics with STA's trademark unique twist, along with further information about the firm, thus allowing you to make an informed decision as to your next legal representatives.

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More information coming soon!

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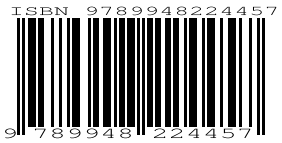

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