

# lex arabiae

## Legal News of the Gulf

Vol. XXII – 4<sup>th</sup> Issue

October 2018

### Meyer-Reumann & Partners

P.O. Box 9353

Dubai, U.A.E.

Tel: 00971-4-331 7110

Fax: 00971-4-331 3832

dubai@meyer-reumann.com

www.meyer-reumann.com

### With offices in

Dubai + Alexandria + Erbil +

Muscat + Riyadh

Though we constantly and carefully review and update the legal news and facts published in *lex arabiae*, the publisher/authors do not accept any legal liability for its contents, and the detailed facts cannot replace a thorough individual legal consultancy.

Publisher and copyrights©: Meyer-Reumann & Partners, Dubai. All rights reserved. Any kind of reproduction is subject to the publisher's prior permission.

### Inside this Issue

#### United Arab Emirates

##### 100 Percent Foreign Ownership in the UAE?

*Dr. Michael Krämer, Dubai* ..... p.1

#### Saudi Arabia

##### Liability of a Limited Liability Company in Saudi Arabia

*Heinrich Köllisch, Dubai* ..... p.13

#### Saudi Arabia

##### Saudi Arabia, Your Next Holiday Destination?

*Hany Kenawi, Riyadh*..... p.16

#### Bahrain

##### New Data Protection Law in Bahrain

*Tarek Jairwdeh, Dubai*.....p.18

United Arab Emirates
----------------------

## 100 Percent Foreign Ownership in the UAE?

### Guiding Principle

*A few months ago, in May, it was announced that the UAE Cabinet has approved "steps that would allow for 100% foreign ownership of UAE based businesses". This article takes a closer look at this announcement and aims to provide an outlook on what to expect.*

### A. The Announcement

As so often in the UAE, the actual announcement was rather brief and left the audience behind with more questions than answers. However, the information that was provided indicates that a new "Investment Law" is being prepared, which will, at least in principle, allow foreign investors to operate businesses in the UAE without having to make use of a UAE national "sponsor". This will be limited to "certain industries", so the new Investment Law will not completely abolish the general rule whereby companies with limited liability (LLC), the most common business vehicle for foreigners, have to be majority owned by a UAE national person or a corporate body that is fully owned by UAE nationals.

### B. What to expect

Foreign investors hope for the complete abolishment of the sponsorship requirement, of course, and would much prefer being allowed to fully own their legal entity. The announcement has left no doubt that this is not going to happen. Instead, 100% foreign ownership will only be allowed for companies operating

in "certain industries" without such industries having been specified.

In order to be able to better gauge the extent to which the local ownership requirement might be liberalized, a closer look at what is at stake for the Emirati economy may be helpful. What would a complete liberalization actually mean for the Emirati economy?

### I. Impact on Emirati Sponsors

The first thing that comes to mind is all the individual Emirati sponsors who would lose a more or less substantial part of their income, would they no longer be required to act as sponsors. Abolishing the sponsorship requirement would affect some UAE nationals more than others and I dare saying that the absolute number of UAE nationals who would lose their main source of income would still be small. For most Emiratis, acting as mandatory majority shareholder in commercial entities is more a side than a bread and butter business.

### II. Impact on UAE Free Zones

The main impact of any abolishment of the sponsorship requirement would be on the numerous UAE free zones. In essence, the free zones' very reason to exist is that foreigners are allowed to fully own free zone entities. If foreigners were allowed to fully own their entities anywhere in the UAE, why would anybody still set up in a free zone where the validity of the license is limited to the geographic area of the free zone in question?

Free zones would most probably lose their appeal, which is something the UAE government is highly unlikely to risk. The UAE free zones are too profitable and provide employment to

too many UAE nationals that the UAE government would possibly risk destroying the foundation on which the free zones are built.

Things may change in the future, of course. Should further taxes be introduced, such as corporate and/or income taxes as is currently being discussed, those operating or working in one of the many free zones could be exempt from such taxes, thus making free zones more attractive again. All this is nothing but pure speculation, however. For the time being it just seems to be safe to state that expectations of a complete abolishment of the sponsorship requirement are not very realistic.

### **III. Outlook**

Taking the above considerations into account, the most likely scenario is such that the sponsorship requirement will not be relaxed for companies operating in industries that are "covered" by any of the UAE free zones, so mainly local and international trade, media, healthcare and information technology in all their forms.

It seems equally unlikely that any companies engaged in "trade related" activities (which applies to the vast majority of UAE based commercial entities) will be exempt from the sponsorship requirement. Not only would this affect too many individual Emirati sponsors, but it could also have a negative impact on companies acting as commercial agents for foreign manufacturers. Those foreign manufacturers that, so far, deemed appointing a UAE national commercial agent the more acceptable alternative over taking care of distribution themselves, but with a mandatory

majority shareholder in "their" commercial entity, would now most probably rethink their options.

The most likely scenario is that only those companies will be exempt from the sponsorship requirement, which offer the biggest benefit to the UAE economy as such. Hence, companies that promise creation of things the UAE economy currently lacks the most, being manufacturing. Compared to other countries, the manufacturing sector in the UAE is rather small. A large manufacturing industry is very beneficial to the economy as such, however. It requires comparatively large investments in order to put the manufacturing capacity in place, is difficult to move and thus, relatively sustainable and is likely to create a fairly large amount of jobs.

### **C. Summary**

The UAE government's announcement to allow for 100% foreign ownership in certain industries is interesting and will be welcome news to business operators in the UAE. However, examining the announcement further reveals that most probably only those companies will benefit from this rule that promise the biggest benefit to the UAE economy as such, which we believe to be companies that engage in local manufacturing of products, ideally not only for local use, but also for export to other countries.

*Dr. Michael Krämer  
Meyer-Reumann & Partners,  
Dubai Office*

Saudi Arabia

## Liability of a Limited Liability Company in Saudi Arabia

### Guiding Principle

*There are various options for foreign companies to establish a presence Kingdom of Saudi Arabia. The most natural choice is the establishment of a limited liability company. This article therefore takes a closer look on the transition phase from pre-foundation to post-establishment and what happens to liabilities incurred by the company during the foundation process.*

### A. Introduction

The most notable feature of the legal system of the Kingdom of Saudi Arabia (KSA) is that it is largely governed by Islamic religious law (sharī'a) and that there are two main sources of law in the KSA legal system:

1. The directly applied religious law as mainly derived from the religious sources of the Qur-ān and the Sunna (prophetic traditions). Over centuries, the very complex system of legal rules, derived from these sources, is compiled in a number of commentary literature on these sources (tafsīr) and (sharḥ al-hadīth) as well as in legal text books and doctrines on the applied set of legal rules and jurisprudence (fiqh). To a certain extend in single cases there might be significant differences between different schools of thought, however it is within the discretion of a Saudi judge which ones to apply.

2. The systemized law. The KSA has laws enacted by Royal Orders and Decrees. In comparison to most other Arabic speaking countries, where laws are called qānūn, the KSA coins the term nizām (pl. anẓima) meaning system for its systemized law. This is intended to show that the systemized laws of the KSA are intended to be only a technical systemisation of the set of rules laid out by the sharī'a or the use of discretionary authority of the country's state authorities within the framework set by sharī'a. For the easiness of terminology these Systems will be referred to as Laws in the following statement.

When looking at the hierarchy of these two sources of law it is apparent that the first one overrules the systemized law. This is not only possible in theory, but also every judge has the right to overrule provisions of systemized law that are contrary to sharī'a: In every day legal practice such an overruling is however, very rare. The main areas of law being subject to direct application of sharī'a from its traditional sources are predominantly civil law (including most civil transactions) and criminal law, whereas large parts of commercial law as well as nearly all administrative and regulatory law is subject to systemized laws.

### B. The Saudi LLC and its Incorporation

#### I. General Features of Saudi Corporate Law

Corporate law in the KSA reflects the general dichotomy of the legal system as mentioned above. The general source of systemized law for companies is the

Companies Law enacted by Royal Decree No. (M/3) dated 28 / 1 / 1437 H (CL). Art. 3 Para. 3 CL states that the provisions of the CL shall not apply to companies known in Islamic jurisprudence (fiqh islāmī), unless they take the form of one of the companies set forth in Art. 3 Para. 1 CL). These are the unlimited liability company, limited partnership, partnership, joint-stock company, and limited liability company (Art. 3 Para. 1 CL). This means that a Saudi limited liability company (LLC) will be mainly subject to the rules and stipulations of the CL with sharī'a directly only applying in the circumstances outlined above.

## **II. Overview over the Main Features of a Saudi LLC**

### **1. Introduction**

As per Art. 151 Para. 1 CL the LLC is a company comprising not more than fifty shareholders, where its liability is separate from the financial liability of each shareholder. The company shall be solely liable for due debts and liabilities. The owner of the company or the shareholder therein shall not be liable for such debts and liabilities. In accordance with Art. 154 Para. 1 CL an LLC may be set up by one person, and all shares of an LLC may devolve to one person. In such case, the liability of such person shall be limited to funds allocated to the company's capital. Such person shall have the powers of the director, the company's board of directors and the general assembly of shareholders as stipulated in this Chapter, and he may appoint one or more directors to represent the company before the court, arbitration tribunals and third parties, and be responsible for its management

before the shareholder owning company's shares.

### **2. Foreign Shareholders**

Foreign shareholders in a Saudi LLC are generally subject to the prohibition of Art. 1 Sent. 1 Anti-Concealment Law enacted by Royal Decree No. M/22 dated 4 / 5 / 1425 H (AL) stating that non-Saudi may not, under any circumstances, engage or invest in any activity unlicensed under the Foreign Investment Law or under any other laws, regulations or decisions. Art. 2 Para. 1 Foreign Investment Law enacted by Royal Decree No. M/1 dated 5 / 1 / 1421 H (IL) establishes the general rule that the Saudi Arabian General Investment Authority (SAGIA) shall issue a license for foreign capital investment in any investment activity in the KSA, whether permanent or temporary. In the given case it is assumed that the shareholders of the concerned LLC are either partly or wholly non-Saudis and thus subject to the above provisions.

### **3. Share Capital**

A minimum share capital for an LLC is not established by the CL. Art. 160 Sent. 1, 2 CL rather state that the company's capital shall, upon its incorporation, be sufficient to achieve its purposes. The shareholders shall determine the capital in the company's articles of incorporation. Due to the assumed shareholdership of non-Saudis, the resulting investment licensing process would however require all foreign investing shareholders together to deposit in practice at least SAR 500.000/- with the SAGIA for obtaining the license. It can be assumed further that this money will have to be deposited as share capital of the LLC during

incorporation.

#### **4. The Basic Contract of the Company ('aqd ta'sis al-sharika)**

As per the general rule of Art. 2 CL a company is defined as a contract under which two or more persons undertake to participate in an enterprise for profit, by contributing a share in the form of money, work, or both, and share profit or loss resulting therefrom. Saudi law thus sees a company first as a contract between parties. In case of an LLC, this contract is usually referred to as the basic contract of the company ('aqd ta'sis al-sharika).

As per Art. 156 CL the basic contract of an LLC shall be signed by all shareholders, and shall specifically include the following data: company's name, type, purpose and head office; shareholders' names, places of residence, occupations and nationalities; names of members of the supervisory board, if any; amount of capital, amount of cash and in-kind shares, and detailed description of in-kind shares, their value and names of contributors; acknowledgment by shareholders that all capital shares are distributed and their value is fully paid; manner of distribution of profits and losses; company's commencement and expiration dates; and forms of notification served by the company to shareholders.

The basic contract and any amendment thereto shall be in writing and certified by the relevant authentication authority. Otherwise, such articles of incorporation or amendments thereto shall be considered null and void. (Art. 12 Para. 1 CL). Furthermore as per Art. 158 Sent. 1, 3 CL The company's director(s) shall,

within 30 days from the date of executing the basic contract, publish the basic contract or any amendment made thereto at the company's expense on the Ministry's website. In general, the enforcement of this provision does take place through several websites and the official gazette Umm al-Qurā. However the websites used therefore by the Ministry change frequently and information published is being removed after some time by the websites without leaving them in a publically accessible archive. M&P has conducted a search on several of these websites with the Arabic spelling of the LLC. However, no results were displayed.

#### **5. Legal Personality**

As per Art. 14 Para. 1, an LLC shall acquire a legal personality upon registration in the commercial register. However, a company shall have a legal personality during the incorporation period, to the extent necessary for its incorporation, provided the incorporation process is completed. This means in case of failure to incorporate the LLC even the assigned legal personality of the company under formation will be deemed void ex post. As per Art. 158 CL the company's directors shall enter the company or any amendment to its basic contract into the commercial register within 30 days founding the LLC.

Usually a Commercial Registration Certificate with a distinct number as the one mentioned in the contract presented will only be given out, once the company registration process is finished. Thus we assume that the LLC in question here already completed its registration and gained its legal

personality to full extend. As per Art. 11 of the Law of Commercial Register as enacted by Royal Decree No. M/1 dated 21 / 2 / 1416 H (RL), anyone may obtain a copy extracted from the Commercial Register of any merchant or company. In case there is no registration, a certificate to that effect shall be given to the person concerned. Such an extract shall not include judgments of declaration of bankruptcy if judgment of rehabilitation was rendered. Neither shall it include judgments of interdiction or attachment, in case of removal thereof. In order to assure the proper registration of the LLC in question, a commercial registry extract can be obtained upon request.

#### **6. Transactions of the Company**

With regards to transactions undertaken by an LLC all contracts, receipts and other documents issued by the company shall include its name, type, head office and registration number in the commercial register (Art. 15 Para. 1 CL). Furthermore, as per Art. 15 Para. 2 CL, the LLC shall state the company's capital and paid amount thereof in the above mentioned documents.

### **III. Overview of the Timeline of the Setup Procedure**

Under usual circumstances all licenses should be obtained and the basic contract should be drafted and presented to the relevant authorities especially Ministry of Commerce and SAGIA. Afterwards it can be executed in accordance with the required formalities and needs to be published in a summarized form, before the LLC can be incorporated by registering it in the commercial registry.

## **C. Liability in a Saudi LLC**

### **I. The Default Liability Scheme**

In a fully incorporated LLC as per the already quoted Art. 151 Para. 1 CL liability is separate from the financial liability of each shareholder. The company shall be solely liable for due debts and liabilities. The owner of the company or the shareholder therein shall not be liable for such debts and liabilities.

#### **1. Liability of Shareholders**

Exemptions from this rule establishing liabilities for single shareholders are legally foreseen in very rare cases only. Amongst the most prominent of them is a personal liability of the shareholders towards the LLC, in case of a capital underrun of the LLC. Art.181 Para. 1 LC stipulates this for the case if the losses of an LLC amount to half its capital. Then the LLC's director(s) shall record such incident in the commercial register and call the partners for a meeting within 90 days from the date of being aware of such losses to consider the continuation or dissolution of the company. If the mentioned assembly decides on the continuation of the LLC, then shareholders become personally liable.

Another yet less relevant provision in the given case is Art. 173 Para. 4 CL. It is related to confidential information concerning the LLC in particular its general assembly and states that every person who obtains any of the aforementioned information, shall maintain the confidentiality thereof and not use such information for any purpose detrimental to the company or any shareholder thereof, and shall be liable for damages arising from non-compliance.

#### **2. Liability of Directors**

In an operating LLC the directors can be held jointly and personally liable for the company's liabilities in accordance with Art. 152 CL if the company's name does not include the phrase "limited liability" or the amount of the capital is not stated with the company's name. In practice however, many corporate documents do not contain these information. As outlined above, Saudi judges enjoy an amount of discretionary authority not resembled in most jurisdictions. For this reason it might very well be, that a Saudi judge would not make use of this passage and might see a contrary legal custom that he might see in line with *sharī'a* and thus not enforce this passage.

Art. 165 Para. 2 CL sets out the general responsibility of the director stating that the directors shall be jointly liable for damages sustained by the company, the shareholders or third parties as a result of violating the provisions of the CL or the company's basic contract or as a result of wrongs committed by them in the performance of their duties. Any condition to the contrary shall be considered null and void.

## II. Liabilities during the Incorporation Process

As long as no steps towards incorporation have been taken, the possibility of a simple civil or *sharī'a* company could be discussed. This however would lead to a lot of potential problems (especially with only foreign shareholders in the LLC), of no or little relevance in the given case.

Beyond this stage a number of liabilities can occur during the incorporation process particularly for shareholders and management.

### 1. No Compliance with one of the Forms of a Company

Art. 3 Para. 2 CL triggers a personal and in applicable case joint liability for anyone, who enters into any kind of transaction under the name of a company not assuming any of the forms provided for in Art. 3 Para. 1 CL. This liability can oblige shareholders as well as to managers/directors or third parties.

### 2. Violating Forms of the Basic Contract

Art 12 Para. 2 CL is one of the core norms with regards to a pre incorporated LLC. It takes care about basic contracts not in the legally prescribed form of Art, 12 Para. 1 CL and explicitly states that a company's directors or board members, as the case may be, shall, as a result of their failure to authenticate the company's articles of incorporation or any amendment thereto as provided for Art. 12 Para. 1 CL, be jointly liable for damages incurred by the company, shareholders or third parties. This norm is in fact substantial in a timely dimension, as it can trigger a liability from the moment to attempt the execution of the basic treaty.

### 3. Violating Rules of Publication and Registration

Art. 13 Para. 3 CL is a parallel liability norm to Art. 12 Para. 2 CL. However it does not focus on contraventions in the area of the treaty but rather on the registration and publication of company documents. Here Art. 13 Para. 3 CL stipulates that a company's shareholders, directors or board members shall, as a result of their failure to publish documents set forth in Art. 13 Para. 1 CL, be liable.

#### 4. Violating the Legal Frame of an LLC by a Shareholder

A very special of these provisions can be found in Art. 155 Lit. c CL, stating that a person owning an LLC shall be personally liable for the company's debts towards third parties with whom he deals in the name of the company, if he engages in activities for the company before it acquires legal personality. This might be the case under the given circumstances. However some questions with regards to the applicability of this norm arise in the given context.

Firstly the provision uses the term person owning an LLC (*mālik al-sharika*) in opposite to the usually employed term shareholder (*sharīk*). This and the systematic position in the context of norms treating the one shareholder LLC could imply that this norm only applies to one shareholder LLCs where by default of Art. 154 Para. 1 Sent. 3 CL powers of the director, the company's board of directors and the general assembly of shareholders are being combined in one person. This bundling of powers and competences increases the risk of engaging in activities before the creation of a legal person. However as Art. 154 Para. 1 Sent. 3 CL further stipulates, directorial competences could also be separated and the term person owning an LLC would still only apply to the shareholder, whose position then would not be largely different from the one in a multi shareholder LLC. Furthermore the term shareholder is also used in the context of a single shareholder LLC (e.g. Art. 154 Para. 1 Sent. 3 CL at the end). Both ways of interpretation are possible and it could be thinkable that within the wide scope of discretionary authorities of

Saudi judges even both interpretation could be applied in court rulings. However as per the practical experience of our lawyers on the ground, the term person owning an LLC should apply to both: One person and several person LLCs.

Secondly it might be questionable if the persons who might have executed the agreement can be seen as persons owning the LLC. It is assumed that they are not personally shareholders in the LLC. Thus, the only option for them to be considered as persons owning the LLC would be, if they would be legal representatives of one (or more) of the shareholders of the LLC. Therefore however, we do not have any indication.

#### 5. In Kind Shares

Art. 157 Para. 2 CL applies to liability of shareholders for in kind shares and should probably be out of the scope of interest under the given case facts.

#### 6. Void LLCs

Art. 159 CL is the norm creating liability for shareholders, if they caused the LLC to be void due to several reasons. These can be the assumption of activities forbidden for an LLC as per Art 153 (banking, financing, saving or insurance activities, or investment of funds for third parties as well as using initial public offering to create or increase its capital or to obtain a loan, the issue of negotiable instruments), Art. 154 CL (Owning multiple One Person LLCs), Art. 156 (violating the minimum requirement for the basic contract as set out above) and Art. 157 CL (incorporation before all cash and in-kind shares of the shareholders are determined and are fully paid). If

particularly the last possibility could be the reason, why the LLC in question is still not incorporated this could be a reason for triggering shareholders' liability in this case. However this must have led to result of the LLC being declared void in order to trigger the liability as set out in Art. 159 CL.

### 7. Liabilities of Shareholders towards the LLC

Furthermore, Art. 6 and 7 CL do contain provisions of liability of the shareholders towards the LLC, which might not be in the focus of interest under the given circumstance.

### 8. Take Over of the Liability after Successful Incorporation

The remaining question is, to what extend does an LLC take over responsibilities arisen outside it and attributed to it after its successful incorporation. A written rule thereon does not exist. The general rule is, that LLC will take over these responsibilities to the extent the management could have known about this and tolerated it. Again, however reference is to be made to the far reaching discretionary authority of Saudi judges and their possibility to assess the matter as per their own discretion.

### III. A Short Remark on the Compensation

In general the compensation to be expected under Saudi law is less encompassing then the one under other jurisdictions as this is subject to direct *sharī'a* jurisdiction. *Sharī'a* is bound to a number of principles amongst them the prevention of speculation and speculative elements (*gharar*). In consequence any damage to be proved

has to be very clear and free of speculative elements. This applies in particular to lost profits etc. which are subject to far stricter standards than in other jurisdictions.

*Heinrich Köllisch*  
*Meyer-Reumann & Partners,*  
*Dubai Office*

Saudi Arabia

## Saudi Arabia, Your Next Holiday Destination?

### Guiding Principle

*Moving towards an economy that is less dependent on oil, Saudi Arabia announced in April 2016, its decision to develop the tourism and leisure sectors in the country. The decision is for developing local tourist sites in accordance with the highest international standards and facilitating the procedures for issuing visas to visitors. This in addition also to the development of the historical and heritage sites in the country. The announcement came as part of the Saudi Vision 2030's plan to diversify the national economy. To achieve this target, the plan was composed of several pillars including developing public service sectors such as tourism. An activity that was mainly limited to religious pilgrimages to the cities of Makkah and Madinah. Since 2016, several huge touristic projects were set to be established in the Kingdom. Projects that are intended to make Saudi Arabia one of the most attractive countries for tourism.*

### A. Tourism in Saudi Arabia

Being a conservative Islamic country, developing touristic activities in Saudi Arabia was facing major obstacles. As the country is now keen on moving towards an economy that is less dependent on oil in light of its plan “Saudi Vision 2030”<sup>1</sup>, it decided to develop the services sectors including tourism and leisure industry and overcome any obstacles preventing the developments of these sectors.

Tourism has received accordingly an increasing support from the Saudi government represented by *the Saudi Commission for Tourism and National Heritage* (SCTH)<sup>2</sup>. The Commission worked towards transferring the sector into an economic one that would contribute increasingly to the GNP. Consistent with this target, the SCTH has compiled the necessary statistics to reach its goal, which can be found at the Commission’s website dedicated specially for this statistics: [www.mas.gov.sa/](http://www.mas.gov.sa/) In addition, the Commission has launched a new website for promoting tourism to the Kingdom at the following address: [www.sauditourism.sa/en/](http://www.sauditourism.sa/en/)

The SCTH has announced that 200,000 tourist visas are available for the year 2018 reaching 1 million visas in 2019. Tourists desiring to obtain such visas shall obtain it through locally licensed bodies who shall supervise arrangements of the tourist’s visits as well. The tourist should come in groups no less than 4

<sup>1</sup> The Saudi Vision website: <http://vision2030.gov.sa/en>

<sup>2</sup> The SCTH website: <http://www.scth.gov.sa>

people. Women, less than 30 years should be accompanied by a male 1st degree relative.

### B. Developing Local Tourist and Entertainment Sites

Several announcements were made following the announcement of the Saudi Vision 2030, concerning the planning for establishing huge touristic projects in Saudi Arabia. In April 2017, a project for building the largest entertainment, sports and cultural city in the world “Al Qadeya Project”, was unveiled as the future entertainment capital of Saudi Arabia.

Moreover, several non-Saudi entertainment companies including Six Flags company were granted an investment license to operate in the Kingdom. This comes in line with the announcement of the launch of a global tourism project in the Kingdom under the name of the “Red Sea” project on the waterfront of the Kingdom on the Red Sea.

The new waterfront provides an opportunity to explore the nature of the Kingdom from islands, coasts and extinct volcanoes as well as nature reserves and antiquities.

One type of tourism and entertainment that Saudi Arabia focuses on is the \$ 260 billion adventure tourism as estimated by the World Tourism Organization (WTO).

### C. Saudi World Heritage Sites

Saudi Arabia is interested also in developing its heritage sites to attract visitors. In 2008, *the United Nations Educational, Scientific and Cultural*

*Organization* (UNESCO)<sup>3</sup> declared *Madain Saleh*, a World Heritage Site, thus becoming the first site in Saudi Arabia to join the World Heritage List.

### I. Madain Saleh

*Madain Saleh* used to be known as “the city of stone”, is an archaeological site located in the north-west of Saudi Arabia, specifically in the province of Ola of the Medina. The place is strategically located on the road linking the southern Arabian Peninsula with Mesopotamia, the Levant and Egypt. The place has its historical reputation from its location on the ancient trade road connecting the south of the Arabian Peninsula and the Levant, and the stone is called Diyar Thamud in the valley of villages between Medina and Tabuk. The stone was mentioned in the Qur'an as the home of the Thamud people, who responded to the call of the Prophet of Allah, and then turned away from their religion and disobeyed the camel that Allah sent to them, and destroyed them with a shout. *Madain Saleh* is one of the most important cities of the Nabataeans after their capital, Petra. It contains the largest southern settlement of the Nabatean kingdom after Petra in Jordan, which is separated by a distance of 500 km. The most important cultural role dates back to the first centuries BC and the first century AD. It was believed that the stone continued in its civilization until the fourth century AD, and was the capital of the kingdom of Lahian in the north of the Arabian Peninsula.

The monuments of *Madain Saleh* contain 153 carved rock facades and a

number of Islamic monuments, including a number of castles and remains of the Hejaz railway, which extends 13 kilometres, as well as the station and locomotives. In 2008, the site was listed as a World Heritage Site, becoming the first site to be registered in Saudi Arabia. Another archaeological site known as Shu'ayb is located north-west of *Madain Saleh* and follows the Tabuk region, where the site contains traces very similar to those in *Madain Saleh*.

### II. Diriyah

In 2010, the city *Diriyah* was added to the list. *Diriyah* is an Arab city located in the region of Yamama, a historic city in the southern plateau of Najd. It is about 20 km away from the Saudi capital, Riyadh. *Diriyah* is a prominent national symbol in the history of Saudi Arabia. It was the capital of the first Saudi state. The city was a historic turning point in the Arabian Peninsula after Muhammad ibn Saud supported the call for the renewal of the religion by Abd al-Wahhab in 1744.

### III. Historical Jeddah

In 2014, the historical Jeddah was added to the same list. Historical Jeddah or as known locally “Jeddah al-Balad”, is located in the centre of the city of Jeddah at the eastern province of Saudi Arabia. Its history dates back to pre-Islamic times. The region includes a number of monuments and buildings of heritage, such as the wall of Jeddah and its historical lanes: Al-Mazloun lane, Levant lane, Yemen lane and Sea lane. In addition to a number of historical mosques such as Othman ibn Affan Mosque, Al-Shafi mosque and historical markets.

<sup>3</sup> UNESCO website: <https://en.unesco.org/>

#### IV. The Rock Arts in Hail

The rock arts in Hail were added in 2015 to the World Heritage List. These are the drawings at Mount Umm Sinman in the city of Juba, Ratt and Manjour in Shweimis, where the area of the Mount Umm Senman was an ancient lake and its inhabitants left many inscriptions about their lives. Ratt and Manjour were two valleys with drawings of ten-thousand years.

*Hany Kenawi*  
*Meyer-Reumann & Partners,*  
*Riyadh Office*

#### Bahrain

### New Data Protection Law in Bahrain

#### Guiding Principle

*The new law of personal data protection was published on 19 July 2018, and will come into effect on 1 August 2019.*

#### A. Introduction and Brief Explanation of the Law

Data protection so far has not been a high priority topic for most businesses in Bahrain, with the limited exception of international entities subject to data protection requirements in other jurisdictions in which they operate. While the publication of the new Law provides a considerable lead-in period during which entities subject to the Law will need to comply, the fact that the Law creates criminal offences means that compliance is all the more important and should be treated with high priority.

The law is a pioneering legislative step on both regional and international level as it complies with the UN's policies to urge states to issue laws regulating the collection and preservation of personal information by use of computer, data banks and other means, in addition to inclusion of provisions concerning civil and criminal liability in case of violation.

Under the new law, the Personal Data Protection Authority intends to provide legal protection for privacy, in light of the widespread use of social media networks that may pose a threat to individuals' private lives.

It comes as part of the Kingdom's commitment towards having a friendly and regulatory environment where startups and businesses can thrive. Additionally, the promulgation of this pioneering law and the inclusion of comprehensive provisions on the protection of personal data will reflect positively on the principle of respect for and protection of the right to inviolability of private life. A right that is guaranteed by the Bahraini Constitution, where Article 26 stipulates that "*the freedom of postal, telegraphic, telephonic and electronic communication is safeguarded and its confidentiality is guaranteed. Communications shall not be censored or their confidentiality breached except in exigencies specified by law and in accordance with procedures and under guarantees prescribed by law*".

The Personal Data Protection Law is also in line with Article 17 of the International Covenant on Civil and Political Rights, ratified by the kingdom as per Law 56/2006, which states that

“(1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation. (2) Everyone has the right to the protection of the law against such interference or attacks”.

The Law is composed of 60 articles divided into three broad sections, as follows:

1. Processing Provisions – Including definitions and general rules for the legality of processing, controls of data processing and transfer, statements as well as the rights of the data holder.
2. Data Protection Authority – Including provisions relating to the establishment of the regulator, and its rights and responsibilities.
3. Accountability of the data manager (data controller) and data processor – Including provisions relating to accountability to the regulator, investigation procedures, civil and criminal liability, and penalties for violation.

### **B. The key outcomes of the Personal Data Protection Law**

Data protection is one of the fundamental steps towards having a Digital Economy. On a larger scale, economic growth, job creation and increased collaboration can result from accessing new markets and opportunities through cross-border data flows. In addition, it will encourage a greater exchange of digital information. Finally, individuals and businesses will have the opportunity to increase growth and trade through making use of data flows.

### **C. To whom the Personal Data Protection Law applies**

The Personal Data Protection Law applies to:

- Every individual residing normally in Bahrain or having a workplace in Bahrain, and every legal person (corporate) having a place of business in the Kingdom of Bahrain; and
- Every individual not residing normally in Bahrain or having a workplace in Bahrain, and every legal person (corporate) not having a place of business in the Kingdom of Bahrain, where such persons are processing data using means available in Bahrain, except where such processing means are solely for the purpose of passing data through Bahrain.

### **D. Penalties for violating the Personal Data Protection Law**

The Personal Data Protection Law criminalises a variety of acts that would, at most, be the subject of administrative penalties in data protection laws elsewhere. Penalties generally comprise up to one year in prison and/or a fine of between BHD 1,000 and BHD 20,000. The following are examples of activities that attract criminal penalties under the Law:

- Processing sensitive personal data in violation of the provision specifying requirements for processing sensitive personal data;
- Processing personal data without notifying the new Data Protection Authority in accordance with the provision that sets out the obligation to notify the Authority before

commencing any data processing activities (except where certain exceptions apply), or failing to update such notification to the Authority;

- Transferring personal data outside Bahrain contrary to the provisions specifying requirements for transfers to jurisdictions that provide an adequate level of data protection, and associated exceptions;
- Processing personal data contrary to the provision that requires prior authorization from the Authority before processing personal data in certain circumstances;
- Providing false or misleading information to the Authority or to a data subject, or withholding relevant information from the Authority, or otherwise hindering the Authority's work;
- Disclosing any data or information accessed due to work, or using the same for own benefit or for the benefit of others unreasonably and in violation of the provisions of this law.

***Tarek Jairwdeh***  
***Meyer-Reumann & Partners,***  
***Dubai Office***