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The Middle East Quarterly Bulletin
Autumn 2010

Structuring *Shari'ah*-Compliant Funds to Target GCC Capital

Developments in the Asian Gas Markets

Jivraj v. Hashwani and the Enforceability of Arbitral Appointment Clauses

Recent Dubai and Abu Dhabi Real Estate Legislation

foreword

Thank you for your continued interest in our Middle East newsletter, *measure*. As we near the end of another year, we look forward to continued improvement of economic conditions in the GCC region in the ensuing year as well as the opportunity to serve our clients in their increasing transactional activities.

Once again, in this edition we have attempted to offer an array of articles relevant to the needs and interests of our clients in the Middle East. Articles pertaining to *Shari'ah*-Compliant funds, energy, arbitration and real estate are included in this edition. In addition, we are pleased to include information regarding the relocation of our Dubai office to the Dubai International Financial Centre as well as the opening of our new offices in Geneva and Singapore

Best wishes for a prosperous 2011.

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Recent Events, Upcoming Events and Our Practice

In the *Chambers Global 2010* guide, King & Spalding received 34 listings, and 21 of the firm's practices were recognized. Four of the lawyers in King & Spalding's Dubai office were recognized as leaders in their fields.

Structuring *Shari'ah*-Compliant Funds to Target GCC Capital

While 2010 has presented challenges for the funds industry amidst the global economic downturn, a large number of investors in the Middle East still see the value of pooling money into a collective investment vehicle to acquire companies, properties and other assets globally that are undervalued and available and which such investors might be unable or unwilling to acquire individually.

Many investors in the Gulf Cooperation Council (GCC) countries prefer to make investments in a *Shari'ah*-compliant fund rather than a conventional fund for religious reasons. As the *sukuk* market has slowed and the amount of available financing has receded, real estate and private equity firms are increasingly turning towards *Shari'ah*-compliant funds to secure the capital from these investors needed to acquire a stake in these new investment opportunities.

However, while being *Shari'ah*-compliant does impose certain restrictions, in our experience, a *Shari'ah*-compliant fund is more marketable than a conventional fund in the GCC as a number of local investors will only invest in *Shari'ah*-compliant vehicles.

In general, a *Shari'ah*-compliant fund operates like a conventional fund, but several key differences exist: (i) inability to make investments in companies in sectors that are not *Shari'ah*-compliant (*haram*), (ii) certain restrictions on distributions of capital and profits, (iii) inability to utilize conventional financing or invest in companies highly leveraged with conventional debt and (iv) requirement for oversight of fund activities and investments by a *Shari'ah* Board.

Restricted Investments

Whether an investment fund is *Shari'ah*-compliant or not makes a significant difference in how and where the fund may invest its capital. A *Shari'ah*-compliant fund cannot invest in companies, properties or assets that are not themselves *Shari'ah*-compliant. Below is an abbreviated list of activities that would classify an investment opportunity as *haram* or unlawful for a *Shari'ah*-compliant fund. The ultimate list of *haram* investments will be determined by the fund's *Shari'ah* Board.

Companies which engage in the following activities, and properties on which such companies operate their businesses, would be considered *haram*:

- Produce, sell, trade and/or distribute pork or pork-related products;
- Engage in pornography or obscenity;
- Primarily engage in the entertainment business;
- Engage in gambling, casinos, lotteries or related businesses;
- Conduct conventional financing or insurance;
- Produce weapons or are involved in the defense industry; and
- Produce, sell, trade or distribute alcoholic beverages or related products.

Careful consideration must be paid to target investment companies that could derive partial income from *haram* activities, such as supermarkets, airlines, hotels and restaurants that may sell pork, alcohol, etc. It is generally accepted that any *haram* income of a non-compliant target company that does not exceed 5% of overall gross income is considered marginal or incidental. The target company would then be considered acceptable provided

sufficient cleansing or income purification (as described below) occurs in accordance with the guidelines set forth by the *Shari'ah* Board of the fund.

Return of Capital and Distributions of Profits

Generally, in a *Shari'ah*-compliant fund all investors must receive a return of their capital before any investors can receive a preferred return and the fund manager or general partner can receive its promote. However, thereafter, there are no requirements for profits to be shared proportionally. It is important to consider the *Shari'ah* implications on the return of capital and distributions of profits to investors (i) when structuring a fund that implements a distribution "waterfall" and (ii) for funds with different classes and series of shares and units, particularly open-ended *Shari'ah*-compliant funds.

***Shari'ah*-Compliant Financing**

Avoiding interest (*riba*) and conventional debt is critical to a *Shari'ah*-compliant fund when leveraging an acquisition or investment. *Shari'ah*-compliant financing is readily available in the GCC, but in other parts of the world a fund manager may struggle to find a bank that is willing and has the regulatory authority to provide direct *Shari'ah*-compliant financing. In those other jurisdictions, *Shari'ah*-compliant financing has been obtained from conventional banks through the funding of special purpose entities that can then use that funding to provide *Shari'ah*-compliant financing to the fund. Although such arrangements do incur somewhat higher transaction expenses, they are regularly used and are widely accepted by conventional banks as providing the same level of legal comfort as a direct conventional financing. Moreover, banks outside the GCC are often more willing to provide limited recourse financing at more competitive rates.

It is also important to consider the type of Islamic financing the fund will utilize and whether the financing will be obtained by the fund itself or by a subsidiary of the fund. For instance, certain *Shari'ah* Boards might not allow the use of a commodities *murabaha* as acquisition financing for a fund to purchase real property or a portfolio company. Instead, the *Shari'ah* Board may prefer another form of Islamic financing (to finance the actual asset). Generally, a *Shari'ah* Board would waive these requirements only if the fund or fund manager can demonstrate the unavailability of the preferred forms of *Shari'ah*-compliant financing or the substantial negative legal and/or tax implications that utilizing such financing would have upon the fund.

***Shari'ah* Board**

The *Shari'ah* Board for a *Shari'ah*-compliant fund can take a variety of different forms. The fund may have its own advisor or use the advisor of its fund manager, general partner or sponsor(s). Additionally, we have seen the *Shari'ah* Board for a fund range from a single scholar to a group as large as five scholars, who collectively decide matters. Generally, fund managers seek to avoid a large *Shari'ah* Board as they can become administratively

difficult and expensive.

The *Shari'ah* Board's role varies from fund to fund and can range from simple oversight to regular involvement in management and operations. However, fundamentally, the role of the *Shari'ah* Board is to be an independent regulator to ensure that the fund is conducting its activities in a *Shari'ah*-compliant manner.

Shari'ah Boards tend to recognize that many target companies are not completely "interest free," and that if one is a minority investor, the ability to demand such conventional debt be refinanced on a *Shari'ah*-compliant basis may be limited. If a *Shari'ah*-compliant fund proposes to acquire a portfolio company with existing conventional debt, the *Shari'ah* Board may only permit such acquisition if the fund and the portfolio company agree in advance that all or a significant portion of this debt be extinguished or refinanced in a *Shari'ah*-compliant manner within an agreed period of time.

> "Traditionally, fund managers would only market *Shari'ah*-compliant funds, often based in the Cayman Islands, in the Middle East in order to raise money, while deploying the fund's capital in targets in jurisdictions outside the Middle East."

Further, if it is determined that a percentage of a portfolio company's income is acquired from non-*Shari'ah*-compliant sources, this revenue must be removed from the profits of the *Shari'ah*-compliant fund and the *Shari'ah* Board will likely require such percentage of the income to be donated to a charity under the supervision of the *Shari'ah* Board through a process known as "income purification."

In our experience, potential investors in a *Shari'ah*-compliant fund will want to know the names and backgrounds of the members of the *Shari'ah* Board of a fund and will want to see a *fatwa* from the *Shari'ah* Board certifying that the offering documents and overall structure of the fund as well as any acquisitions and financings made are *Shari'ah*-compliant.

Other Considerations and Trends in the GCC

Most funds targeting Middle East investors and capital are *Shari'ah*-compliant. Traditionally, fund managers would only market *Shari'ah*-compliant funds, often based in the Cayman Islands, in the Middle East in order to raise money, while deploying the fund's capital in targets in jurisdictions outside the Middle East. Increasingly, we are seeing *Shari'ah*-compliant funds, whether raised by international or GCC-based fund managers, targeting assets and acquisitions across the Middle East and North Africa (MENA) region. In particular, we have noticed a number of *Shari'ah*-compliant funds recently increasing investments in portfolio companies and real estate in Saudi Arabia, Qatar, Egypt and Turkey.

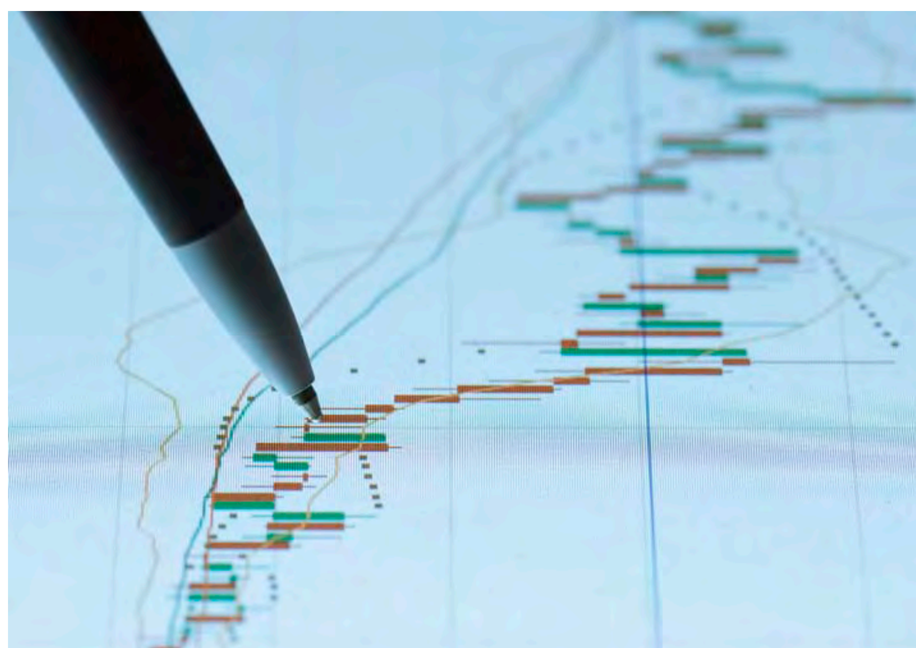
Also, we have seen a growing trend for funds that will be deployed in the GCC to also be based in the GCC rather than in an offshore jurisdiction. Traditionally, Bahrain was the only local GCC jurisdiction in which sponsors were comfortable domiciling their funds, due to the comparatively more robust fund laws and other corporate regulations promulgated there. However, for tax, regulatory, legal and other reasons, fund managers have recently been exploring the benefits of forming their funds in other local jurisdictions. While funds domiciled in the United Arab Emirates or the Dubai International Financial Centre have piqued the interest of many banks and advisors, the jurisdiction to which fund managers have been most attracted is Saudi Arabia mainly in an attempt to tap into the rich and large Saudi market.

This process has not been without growing pains, but the Saudi Arabian Capital Markets Authority (CMA) has encouraged the growth and use of funds domiciled in Saudi Arabia, has attempted to enact user-friendly fund regulations and generally has shown a willingness to be flexible with privately placed funds. However, as opposed to many popular Western jurisdictions (e.g., United States, Cayman Islands, Luxembourg), all offerings of Saudi-domiciled funds must be registered with the CMA and there are no exemptions from the registration requirements based on the type and length of offering, the target investments of the fund being offered or the number, wealth and/or sophistication of the target investors.

Despite the additional regulations, oversight and, inevitably, costs required when forming a locally-domiciled fund, fund managers are willing to deal with such drawbacks as local investors are increasingly preferring locally domiciled funds due to the negative implications of an offshore fund investing in many GCC jurisdictions. For example, a Cayman fund, even if 100% owned by GCC nationals, will be treated like a foreign entity throughout the GCC and be

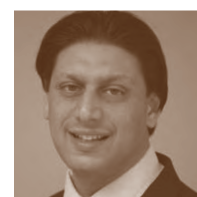
subject to the same investment limitations as a foreign company that is 100% foreign-owned. Also, to the extent foreign non-GCC parties are required to pay higher taxes in a specific jurisdiction, then such higher rate would apply to the offshore fund, even if wholly-owned by GCC nationals.

The foregoing drawbacks for offshore funds investing in the GCC have led to the growing investor preference for GCC-domiciled funds, which benefit from lower tax rates and fewer restrictions, if any, on the fund's target portfolio investments if the fund will ultimately be wholly-owned by GCC nationals. Recently, to take advantage of these sentiments, we have seen an increase in Western and other more established conventional banks and fund managers entering into joint ventures with local banks with an eye to forming 100% GCC-domiciled *Shari'ah*-compliant funds to be offered to the local bank's existing client base and other interested qualified GCC investors.



Conclusion

While the popularity of *Shari'ah*-compliant funds, in particular those domiciled in the Middle East has grown in recent years, in many parts of the world, they are still viewed as a niche practice for raising capital. However, given the success of many of these funds and the struggles of traditional fund managers to raise money in the West or Asia, fund managers are increasingly exploring (many for the first time) creating *Shari'ah*-compliant funds to improve their chances of accessing liquidity in the GCC. Fund managers wishing to form a *Shari'ah*-compliant fund need to consider all aspects of forming a *Shari'ah*-compliant fund, including: (i) the process of appointing the Shari'ah Board, (ii) local law restrictions and tax consequences depending on domicile of the fund and composition of the investors in the fund, (iii) implementing acquisition structures that contemplate how a *Shari'ah*-compliant financing will be structured in the jurisdiction of the potential target companies or real estate and (iv) how the foregoing considerations and others will affect the marketing of the fund to investors in the GCC. Fund managers should also increasingly consider using funds domiciled in the GCC if such fund will ultimately be comprised of GCC nationals and primarily deploy its capital in the GCC. |



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Energy

Developments in the Asian Gas Market

The Asia-Pacific region is one of the most active gas exploration, production and distribution markets in the world.

Rapid economic growth in the region, particularly in China, has led to an increased demand for energy and has spurred the hunt for additional sources of gas supply. Recent technological advances are making certain conventional and unconventional gas reserves in the region economically viable for the first time, and visionary Asian governments are taking an active role in developing the infrastructure required to produce, distribute, market, import and use these resources.

Recent developments in the natural gas industry could provide the catalyst needed to break through market barriers and to further establish natural gas as the regional energy source of choice. Some of the key developments follow.

Emergence of "Unconventional" Energy Resource Development

"Unconventional" gas reserves are attracting billions of dollars in investment in Asia and Australia. Coal seam gas and shale gas reserves have always been available, but the economics associated with the large-scale development of these resources has historically made such projects technically unfeasible. The development of new technologies, coupled with rising energy prices, has made the exploitation of these reserves economically feasible for the first time. Investors are now racing to market and develop these resources. In fact, almost half of the new liquefied natural gas (LNG) projects proposed worldwide are in Australia, including four coal seam gas to LNG projects. Some forecasters estimate that production out of Australia over the next decade will pass

Qatar's and reach up to 100 million metric tons per annum (mmtpa). Demand in the region is also rapidly increasing, with estimated gas demand for Asia/Pacific buyers reaching 150-200mmtpa by 2020. China has shown a particular interest in importing gas from these unconventional sources to help satisfy the demand of its rapidly growing economy (e.g., Australian coal seam gas and Canadian shale gas via LNG shipments). Whether the further development of these "unconventional" reserves will ultimately lead to an abundance of cheap gas in the Asia-Pacific region remains to be seen.

Project Financing

The recent financial crisis has resulted in a substantial shrinking of the lending capacity and appetite for long-term project finance in the commercial-banking market for the time being. In the post-crisis world, large gas projects are looking beyond the traditional international commercial banks to help fulfill their project financing requirements. For example, in the PNG (Papua New Guinea) LNG project, sponsors looked to banks in the countries of potential gas buyers for financing. One source of supplemental funding has been the Chinese government. China has shown a willingness to commit large sums of money to projects that commit substantial portions of their product to Chinese buyers. Whether in the coming years China will emerge as one of the main drivers of gas development in Asia and beyond may ultimately depend on its continued willingness to take an active role in this type of project financing.

New-Generation "Multi-Use/Multi-User" Project Facilities

An increased emphasis on services flexibility has led to the development of open-access multi-user project facilities. These facilities are owned by a third party and act as a hub, providing LNG importing, reloading and regasification, and storage services through terminal use agreements. Asia's first major multi-user terminal for LNG is now under construction in Singapore. The terminal is currently owned by the Singapore Government and will serve as a hub for physical LNG trading and regional redistribution. Once completed, the facility will have a capacity of 3.5 million tons per annum (mtpa) and will have the ability to be expanded to over 6mtpa. Whether this trend of multi-user facilities will continue to spread throughout Asia will be influenced by the perceived success of the Singapore LNG terminal.

Floating Technology

Advances in technology surrounding offshore floating LNG import terminals could open the door to floating LNG liquefaction in Asia. The world's first gravity-based offshore LNG facility (Italy's Adriatic LNG terminal) received its first cargo in August 2009. The Adriatic terminal has an annual capacity of 6mpta (about 10 percent of Italy's yearly gas demand) and is linked into an onshore metering station tied to Italy's gas network. Golar LNG recently developed the world's first Floating Storage Regasification Unit (FSRU) converted from an existing LNG carrier (the *Golar Spirit*). The *Golar Spirit* (currently in Brazil) has the ability to receive LNG from standard LNG carriers, re-gasify the LNG on board and provide gas send-out through flexible risers and pipeline to shore. However, the trend has yet to actually occur on the liquefaction side. As floating technologies continue to emerge, will these advancements lead to Asia having the world's first offshore liquefaction plant?

> "Governments are taking an increased role in promoting gas exploration and development and gas utilization in new and developing markets."

De-Linking of Oil and Gas Price Movements

Broad price gaps between crude oil and natural gas have created pressure on many long-term oil price-linked LNG and gas contracts. Over the past two years the market has seen some de-linking of oil and gas price movements (with international oil prices ranging from $10 to $15 per million Btu higher than the average spot gas price). These broad price gaps have led to a rash of price-reopener requests and, subsequently, an increase in international arbitration proceedings resolving these price disputes. Will this price disparity continue and ultimately result in Asian gas prices being somewhat delinked from oil prices? If so, future long-term gas contracts in

Asia and beyond will need to develop and employ alternative pricing mechanisms that are not firmly tied to crude oil indexes.

Government Intervention Forcing Market Gas Development

Governments are taking an increased role in promoting gas exploration and development and gas utilization in new and developing markets. Clean energy policies and rising fuel costs are motivating governments to pass legislation and to provide concessions that promote the growth of a secure and reliable energy supply. Natural gas is continuing to emerge as the preferred source of energy in the Asia-Pacific region. In addition to contributing to project equity and debt financing, governments are instigating interim-period pricing support and are taking a much more active role in the construction of critical infrastructure. The development of domestic gas markets in Asia could be the answer to the region's energy demand needs. However, the speed of market development will be key in determining whether a sustainable energy supply can be established before the limited life cycle of government support expires.

"Natural gas is continuing to emerge as the preferred source of energy in the Asia-Pacific region."

Thus, recent developments in the gas industry, coupled with strong governmental support in the region, have led not only to a continued and increased demand for natural gas in Asia, but also to an increase in the exploration and development of natural gas reserves around the world. As the natural gas market continues to develop in Asia, energy practitioners must be able and ready to respond to the demands and innovations that will follow. |

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Jivraj v. Hashwani and the Enforceability of Arbitral Appointment Clauses

Mike Rainey and Asal Saghari explain the facts of this case and discuss how the court's decision affects parties' rights to appoint arbitrators as well as arbitration provisions in certain Islamic finance transactions.

In June 2010 the English Court of Appeal decided the case of *Nurdin Jivraj v. Sadruddin Hashwani* and held that, for the purposes of the Employment Equality (Religion and Belief) Regulations 2003 (the Regulations), arbitrators are "employees." The Regulations make it unlawful for an employer to discriminate against a person applying for employment on the grounds of religion or belief.

Therefore, an arbitration clause in a commercial agreement requiring all appointed arbitrators to be members of a particular religious group was declared void in its entirety.

Background and Court of Appeal Decision

The parties entered into a joint venture agreement for investment in real estate. The arbitration clause in the joint venture agreement required all three arbitrators to be respected members of the Ismaili community and for the arbitration to take place in London, with disputes being determined in accordance with English law.

Following the termination of the joint venture, a dispute arose in connection with the division of the assets between the parties. The matter was referred to arbitration. Mr. Hashwani appointed a non-Ismaili as arbitrator, and Mr Jivraj applied to the Commercial Court to seek a declaration that such appointment was invalid, as the appointee was not a member of the Ismaili community. Mr. Hashwani subsequently made an application to the court that the arbitration clause in the joint venture agreement was void under the Regulations.

The Court of Appeal determined that the arbitration clause was in breach of the Regulations and considered the following issues in reaching its decision:

Are arbitrators "employees" in terms of the Regulations and did the arbitration clause breach the Regulations?

The Court of Appeal held that arbitrators are "employees" for the purposes of the Regulations. Therefore, the stipulation that all arbitrators be from the Ismaili community was held by the Court of Appeal to be in breach of the Regulations.

> "Mr. Hashwani made an application to the court that the arbitration clause in the joint venture agreement was void under the Regulations."

Was being an Ismaili a "genuine occupational requirement"?
The Court of Appeal considered whether being an Ismaili was a "genuine occupational requirement" for the proper discharge of the arbitrators' function, thus falling within the limited exceptions contained in the Regulations. The Court of Appeal was of a view that the arbitrators' function under the arbitration clause was to determine the dispute between the parties in accordance with the principles of English law. The Court of Appeal held that membership of the Ismaili community was not a necessary requirement to enable the arbitrators to discharge their functions under the agreement of the kind before the Court of Appeal. Therefore, the limited exceptions to the Regulations could not be invoked.

Severance
The Court of Appeal formed the view that severance of part of the arbitration clause requiring that the arbitrators be members of the Ismaili community rendered such clause substantially different from that which the parties originally intended. Therefore, the arbitration clause could only stand, or fall, as a whole. On the basis that the stipulation requiring the arbitrators to be from the Ismaili community was void, the Court of Appeal concluded that the arbitration clause in the joint venture agreement was void in its entirety. Therefore, in practice, the parties will either need to agree to a new arbitration agreement or defer the dispute to the courts.

Considerations for Islamic Finance Transactions

Exception for "genuine occupational requirement"
The Court of Appeal suggested that the arbitration clause may have fallen within the applicable exceptions to the Regulations if it had empowered the tribunal to act *ex aequo et bono* (i.e., according to the principles of equity and fairness, without regard to any particular legal system). Therefore, an arbitration provision requiring an arbitrator to be a Muslim, for instance, might be upheld if it is possible to show that only a Muslim could be expected to apply the moral principles and understanding of justice and fairness that are generally recognized by Islam as applicable between Muslims. Such a case will be arguable, however, only if the arbitrator's function under the arbitration provision does not entail determining the dispute between the parties in accordance with the principles of English law but rather in accordance with Islamic *Shari'ah*.

Extension to discrimination on other grounds
The Regulations have retroactive effect. In addition, the United Kingdom has pre-existing legislation dealing with discrimination on the grounds of sex, sexual orientation, race and disability (which legislation has now been consolidated in the Equality Act 2010). Therefore, existing and future arbitration clauses should be carefully considered in light of the Court of Appeal case to determine whether they are likely to fall foul of existing anti-discrimination legislation. For instance, would a requirement for an arbitrator to have 15 years of experience in Islamic finance be void on the basis of potential age discrimination?

AAOIFI *Shari'ah* standards
The Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI) has recently approved a *Shari'ah* standard which states that it is preferable to have a Muslim arbitrator. Under necessity, one can appoint a non-Muslim. Whether Muslim or non-Muslim, arbitrators must judge and should not violate the principles and rules of Islamic *Shari'ah*. The conflict between the AAOIFI standard and the Court of Appeal's decision will need to be handled carefully when drafting an arbitration clause where the seat of the arbitration is in Great Britain (the Regulations only apply to employment carried out in Great Britain; therefore for the Regulations to apply the arbitrator would need to be carrying out its employment in Great Britain).

In short, in the context of commercial arbitration where the arbitration seat is in Great Britain, the parties should avoid making any stipulation on the composition of the tribunal relating to the religion or belief of the arbitrators. If it is necessary to appoint an arbitrator from a certain religious group, and the dispute is only to be determined in accordance with principles relating to such religious group, we recommend that the parties seek legal advice as to the precise wording of the arbitration provision to ensure that the wording does not fall foul of any anti-discrimination legislation. |

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Recent Dubai and Abu Dhabi Real Estate Legislation

The Emirates of Dubai and Abu Dhabi continue their respective attempts to bring clarity and transparency to real estate development and ownership. Both emirates have issued recent real estate regulations.

Dubai Strata Guidelines

In May of 2010, long awaited guidelines for regulation and administration of jointly owned properties (i.e., strata projects) in Dubai were published by the Government of Dubai Land Department and the Dubai Real Estate Regulatory Agency. These guidelines, effective as of 13 April 2010, include the following: (1) general regulations dealing with, among other things, required consumer protection disclosures by strata developers to unit purchasers; (2) directions for property declarations containing requirements for the content and registration of declarations; (3) directions providing for powers and administration of owners associations; and (4) directions relating to registration of surveyors and requirements for preparation of strata plans.

Consumer Protection Provisions

According to the Dubai strata guidelines, each developer of a strata project must, prior to signing a sales contract with the initial purchaser of a unit, provide the purchaser with a detailed disclosure statement containing information regarding the project and the unit as specified in the guidelines. The information in this statement is to include, among other things, descriptions of common areas, copies of proposed property declarations, schedules of finishes for both the unit and the common areas, proposed budgets for the owners association for its first two years, and the estimated handover date of the unit. In addition, if a purchaser from the developer or from another purchaser resells either an unfinished unit or an untitled unit in a finished project, that purchaser must also give its purchaser a completed copy of the disclosure statement the seller received when the seller acquired the unit. Failure of the developer or a required nondeveloper seller to furnish this disclosure statement will render the purchase contract void. The developer is also deemed to have warranted the information in the disclosure statement, and if within two years after the date of transfer of the unit from the developer any of the information is found to be materially inaccurate or incomplete, the developer will be liable to the ultimate purchaser for damages.

Required Property Declarations

The guidelines also require that the application to the Dubai Land Department for registration of the first sale of a unit in a strata project be accompanied by a property declaration and application for registration of an owners association. The declaration must contain specific information enumerated in the guidelines, including a common areas site plan. With respect to strata projects that have been constructed and occupied as of the effective date of the guidelines (and other projects deemed existing projects by the Land Department), the developer must file a declaration within six months after the effective date of the guidelines. This deadline of 13 October 2010 has passed, and according to numerous news sources in the UAE, many developers still have not complied. After the expiration of the deadline, any three unit owners of a project may jointly serve notice on the developer requiring filing of a declaration. If the developer fails to take substantive steps to submit a declaration within thirty days of the notice, the representative owners may submit a declaration in respect of the project and recover the costs of doing so from the owners association, which in turn may recover the costs from the developer.

“After the effective date of the guidelines, the developer may no longer seek to shift responsibility for these costs to an owners association or to purchasers.”

Clarification of Financial Obligations of Developers

Under the guidelines (but subject to contract provisions in place as of the effective date of the guidelines), the developer of a project is responsible for all costs associated with a project prior to its registration as a strata project. After the effective date of the guidelines, the developer may no longer seek to shift responsibility for these costs to an owners association or to purchasers. Any contract provision to the contrary is void. The guidelines also specify that the developer must pay the fees for connecting utilities to the project and may not claim reimbursement of those amounts from purchasers or the owners association. In addition, the developer must bear all costs associated with the rectification of defects in the project and must

ensure that those costs are not passed to the owners association. If a developer has collected service charges from purchasers of a project, then within three months of forming an owners association for the project, the developer must cause an audit to be performed of all monies received and expended to verify that the monies have been properly expended and must pay any remaining funds over to the owners association.

Financial Requirements for Owners Associations

Detailed requirements regarding the functions and administration of owners associations are included in the guidelines, including the requirement for annual budgets and establishment of reserve funds for expenditures of a capital or nonrecurrent nature. In addition, any supply agreement for the provision of goods and services (including utility services) entered into by an owners association may not have a term exceeding three years and must be entered into with an entity licensed in the Emirate of Dubai.

Abu Dhabi Property Ownership Regulations

On 25 November 2010, the Crown Prince of Abu Dhabi, Mohamed bin Zayed Al Nahyan, Chairman of the Executive Council, issued Resolution 64 of 2010 concerning Property Ownership Regulations. In large part, Resolution 64 is a reconfirmation of the current Abu Dhabi legislation governing ownership rights within the Emirate of Abu Dhabi but also provides needed clarification of some of those rights. Highlights of Resolution 64 include the following:

- The right to ownership of property (including land) in Abu Dhabi is limited to UAE nationals and entities owned wholly by them, except in "Investment Areas." Investment Areas are special areas defined by resolution of the Executive Council. Within Investment Areas, GCC citizens and entities wholly owned by them may also own property.
- Non-UAE nationals and entities wholly owned by them may own floors and apartments (without the land) located in Investment Areas. The Abu Dhabi Real Estate Register is required to register such ownership and may issue certificates and title deeds evidencing the ownership.
- Non-UAE nationals (both persons and entities), regardless of residency, have the right to own within Investment Areas certain specified lease rights, including usufruct rights for up to 99 years.

- All disposal of property rights, both within and outside of Investment Areas, are to be registered by the Abu Dhabi Real Estate Register, including mortgages and direct contracts with owners and banks and other financing providers. In addition, procedures for the registration of mortgages are set forth.
- Contracts between parties, both within and outside of Investment Areas, can determine the terms, conditions and periods of property rights if not in contradiction with Resolution 64 and other applicable legislation.

Finally, Resolution 64 confirms that future a resolution by the Chairman of the Department of Municipal Affairs will be issued governing common ownership property (i.e., strata projects) and the formation and management of owners associations. Strata regulations for Abu Dhabi have been anticipated for some time. We will continue to wait with eager anticipation. |

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Dubai Office Relocation to DIFC

The Dubai office of King & Spalding celebrated its fourth anniversary by moving into the Dubai International Financial Centre. The firm has been licensed by the DIFC since its opening but formally took space in the Currency House Tower of the DIFC in June of this year.

Opened in September 2004, the DIFC is the world's fastest growing international financial center. It primarily serves the region between Western Europe and East Asia. A world-class stock exchange, NASDAQ Dubai (formerly known as the Dubai International Financial Exchange or DIFX), opened in the DIFC in September 2005.

King & Spalding's Dubai office address is:
Currency House Tower
Level 24
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P.O. Box 506547
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New Offices in Geneva and Singapore

With new offices in Europe and Asia, the firm expands its capabilities to serve clients' international trade, international arbitration and energy industry needs.

As part of the firm's long-term strategy to invest in select high-value practices where it is already strong, King & Spalding opened new offices in Geneva and Singapore this year. The firm now has 16 offices worldwide.

The Geneva office, which opened in June, expands the firm's leading international trade practice and focuses on World Trade Organization (WTO) counseling and negotiations, WTO dispute settlement proceedings, strategic international trade and investment counseling, and trade remedy proceedings.

Prominent Geneva-based international trade lawyer Daniel Crosby joined the firm from Budin & Partners to help establish the office. He is joined in Geneva by Washington, D.C.-based partner Stephen Orava, who splits his time between the two offices.

“As home to the WTO, Geneva is a key focal point for international trade, as well as a regional hub for multinational business operations and a global financial center.”

said Orava. “This office provides us with additional capabilities to serve our clients in WTO matters and compete at the highest levels of global trade practices through synergies with our U.S. offices and our offices in London, Frankfurt, Paris, Dubai, Riyadh and Abu Dhabi.”

The Singapore office, which opened in September, serves as a hub for the firm’s work in the energy industry in the Asia-Pacific region and expands the firm’s award-winning international arbitration practice.

“Singapore’s establishment as a key international arbitration center, coupled with a steady increase in energy and infrastructure investment throughout the region, makes it a compelling location for the continued expansion of our energy and arbitration practices—two of the firm’s particular strengths,” said Chairman Robert Hays.

As part of the Singapore office opening, the firm hired international arbitration partner John Savage, the former vice chair of international arbitration and head of the Asia disputes practice at Shearman & Sterling. Philip Weems manages the new office and also serves as co-head of King & Spalding’s global energy practice. Weems served as managing partner of King & Spalding’s Dubai, Riyadh and Abu Dhabi offices from 2007 until earlier this year. Joining Savage and Weems in Singapore from King & Spalding’s Houston office is partner Dan Rogers, an international transactions lawyer with extensive experience on major projects in Asia. |

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King & Spalding’s Singapore office address is:
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endnotes

Recent Events

Americas Workshop, sponsored by the Institute for Transnational Arbitration and the Colombian Chamber of Commerce
15 October 2010
Bogota, Colombia
Program Co-Chair: James Castello, "Confronting Ethical Issues in International Arbitration"

Roundtable: "Middle East Update: Investing in Saudi Arabia and the United Arab Emirates"
9-10 November 2010
Atlanta, GA and Washington, D.C.
Presenters: Nabil A. Issa and Benjamin Newland

Roundtable "Miteigentumsloesung"
15 November 2010
FAZ Institut Frankfurt am Main
Presenters: Mario Leissner, Dr. Sven Wortberg, Alexandra Weis, Markus Krismanek (King & Spalding LLP); Roland Döhn (SEB Investment GmbH)

Arbitrator Symposium on Advanced Case Management Issues, sponsored by the International Center for Dispute Resolution.
16 November 2010
Paris, France
Co-Leader / Faculty: James Castello

18th Annual Croatian Arbitration and Conciliation Days
2-3 December 2010
Zagreb, Croatia
Presenter: James Castello

Upcoming Events

Middle East Policy Council Capital Hill Conference
20 January 2011
Gold Room, Rayburn House Office Building, Washington, DC
Presenter: James Stull, "Doing Business in and with Today's Middle East: Challenges and Opportunities"

TISCO Conference
21 January 2011
The Netherlands
Presenter: Mike Rainey, "Islamic Finance: Development of A New Market & The Way Forward"

Practice Building Seminar, sponsored by the Swiss Arbitration Association and the German Institute for Arbitration
21-23 January 2011
Badenweiler, Germany
Session Co-Moderator: James Castello

About our Middle East Practice

With more than 20 lawyers in the Middle East, King & Spalding is one of the region's largest and fastest-growing U.S. firms, offering extensive experience in Islamic finance, construction, energy, real estate, private equity and international arbitration in the Middle East, North Africa and Asia. The firm has long been considered a leader in Islamic finance, having pioneered many of the *Shari'ah*-compliant financial products that exist today. Our energy practice is known worldwide for its oil and gas work, particularly in the area of liquefied natural gas, and also has a strong base in electric power, petrochemicals and renewable energy. Our corporate lawyers have advised on some of the most complex and high-profile private equity investments and M&A transactions in the MENA region and are recognized in *Chambers Global* and *The Legal 500*. In the 2009 edition of the *Chambers Global* guide, King & Spalding was consistently ranked among the top law firms practicing in the Middle East.

About King & Spalding

King & Spalding is an international law firm with more than 800 lawyers in Abu Dhabi, Atlanta, Austin, Charlotte, Dubai, Frankfurt, Geneva, Houston, London, New York, Paris, Riyadh (affiliated office), San Francisco, Silicon Valley, Singapore and Washington, D.C. The firm represents half of the Fortune 100 and, according to a *Corporate Counsel* survey in August 2009, ranks fifth in its total number of representations of those companies.

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King & Spalding was selected as the best law firm (UK) of 2010 by *Islamic Business & Finance* in the magazine's fifth annual awards competition.

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