



# Financial Services Focus

Law Update: Issue 375



# Managing Partner's Foreword



## Welcome to this month's Law Update

Welcome to this edition of Law Update, where we focus on the ever-evolving landscape of financial services regulation across the region. As the financial markets in the region continue to grow and diversify, this issue provides timely insights into the key regulatory developments shaping banking, investment, insolvency, and emerging technologies.

One of the most significant advancements this year is the introduction of the GCC Fund Passporting Regime. This new framework offers increased cross-border collaboration, making it easier for investors and fund managers to access regional markets. In our article, "GCC Fund Passporting," we take a deep dive into how this regime will streamline fund distribution and create fresh opportunities for the GCC's financial services sector.

Virtual assets remain a hot topic as they revolutionize the financial services industry. Our article "Virtual Assets Marketing" examines the emerging regulatory landscape for marketing digital assets in the GCC, exploring the legal and compliance challenges that businesses will need to navigate as this market continues to expand.

Bahrain is also making strides in improving market infrastructure, with the implementation of its new netting regime. This development, highlighted in “An Introduction to the Netting Regime in Bahrain,” strengthens protections for financial institutions and market participants, adding greater security to financial transactions.

In the UAE, the regulation of smart contracts is gaining momentum, and Kuwait is working on solidifying its legal framework around these digital agreements. Our article “Smart Contracts Regulation in Kuwait: Legal Framework and Risks” explores how businesses can manage the risks associated with this emerging technology while navigating the legal intricacies of smart contracts.

Saudi Arabia is continuing its journey of financial modernization, with significant changes in its bankruptcy laws and debt capital markets. “The Role of Insolvency Trustees in Tracing and Recovering Assets under the Saudi Bankruptcy Law” provides an overview of how the Kingdom is empowering insolvency trustees to recover assets efficiently, while “Transforming Saudi Arabia’s Debt Capital Market” looks at the regulatory reforms that are set to reshape the country’s debt market.

Qatar is also making significant regulatory strides in the financial services sector. Our article, “Tomorrow, to the Person Waiting for It, Is Near: The Quiet Revolution of Financial Services Regulation in Qatar,” takes a closer look at how the country is transforming its financial services industry, presenting new challenges and opportunities for businesses operating within the market.

In addition, we explore Bahrain’s evolving competition law landscape, as well as the growing international reach of the Abu Dhabi Global Market (ADGM), with insights on recent case law regarding cross-border insolvency in “The Growing International Reach of Abu Dhabi Global Market: Highlighting a Recent Case on Cross-Border Insolvency.”

As the regulatory environment in the GCC continues to evolve, staying ahead of these changes is essential for businesses operating in the region. This edition of Law Update is designed to provide the legal insights and strategic guidance needed to navigate these regulatory shifts and make the most of the opportunities that lie ahead.



**Jody Waugh**

Managing Partner



# An introduction to the netting regime in Bahrain

Financial Services Focus





## An introduction to the netting regime in Bahrain



**Natalia Kumar**

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Netting is recognised under Law No. 64 of 2006 promulgating the Central Bank of Bahrain (“**CBB**”) and Financial Institutions Law, as amended (“**CBB Law**”). Article 1 of the CBB Law defines a “**Market Contract**” *“as a contract concluded in accordance with the regulations of the CBB and Article 108(b) of this law.”* Resolution No. 44 of 2014 with respect to promulgating a regulation for close-out netting under a Market Contract (“**Netting Regulations**”) in turn defines a “Market Contract” as *“For the purposes of this Regulation only, the expression “Market Contract” as used in Article 1 and Article 108 of the Law shall be reference to “Qualified Financial Contract” as used in this Regulation.”*

A “**Qualified Financial Contract**” is defined as any financial agreement, contract or transaction, including any terms and conditions incorporated by reference in any such financial agreement, contract or transaction, pursuant to which payment or delivery obligations are due to be performed at a certain time or within a certain period of time and whether or not subject to any condition or contingency. Qualified Financial Contracts include (without limitation) a currency, cross-currency or interest rate swap; a basis swap; a spot, future, forward or other foreign exchange transaction; a commodity swap; a forward rate agreement; a currency or interest rate future; a currency or interest rate option; a derivative relating to bonds or other debt securities or to a bond or debt security index, such as a total return swap, index swap, forward, option or index option; a credit derivative,



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**Netting is recognised under Bahrain’s CBB Law and is enforceable under the Netting Regulations, overriding insolvency restrictions in certain cases.**

such as a credit default swap, credit default basket swap, total return swap or credit default option; a spot, future, forward or other securities or commodities transaction; a securities contract, including a margin loan and an agreement to buy, sell, borrow or lend securities, such as a securities repurchase or reverse repurchase agreement, a securities lending agreement or a securities buy/sell-back agreement, including any such contract or agreement relating to mortgage loans, interests in mortgage loans or mortgage-related securities; a commodities contract, including an agreement to buy, sell, borrow or lend commodities, such as a commodities repurchase or reverse repurchase agreement, a commodities lending agreement or a commodities buy/sell-back agreement; a credit or collateral arrangement; an agreement to clear or settle securities transactions or to act as a depository for securities; and any agreement, contract or transaction designated as such by the CBB under the Netting Regulations.



Netting is defined in the Netting Regulations as the occurrence of any or all of the following: (1) the termination, liquidation and/or acceleration of any payment or delivery obligations or entitlements under one or more Qualified Financial Contracts entered into under a netting agreement; (2) the calculation or estimation of a close-out value, market value, liquidation value or replacement value in respect of each obligation or entitlement or group of obligations or entitlements terminated, liquidated and/or accelerated under paragraph (1) of this definition; (3) the conversion of any values calculated or estimated under paragraph (2) of this definition into a single currency; or (4) the determination of the net balance of the values calculated under paragraph (2) of this paragraph, as converted under paragraph (3) of this paragraph, whether by operation of set-off or otherwise.

A netting agreement is defined in the Netting Regulations as (1) any agreement between two parties that provides for netting of present or future payment or delivery obligations or entitlements arising under or in connection with one or more Qualified Financial Contracts entered into under

the agreement by the parties to the agreement, (2) any Master Agreement between two parties that provides for netting of the amounts due under two or more master netting agreements; and (3) any collateral arrangement related to or forming part of one or more of the foregoing.

Pursuant to the CBB Law and the Netting Regulations, Qualified Financial Contracts should be enforceable in accordance with its terms except in certain limited circumstances. The provision of the CBB Law and the Netting Regulations will not be affected by any applicable law limiting or prohibiting the exercise of the rights of set-off, offset or netting of obligations or payments of any netted value between an insolvent and a non-insolvent party – thus overriding the position in Law No. 22 of 2018, as amended, promulgating the Restructuring and Insolvency Law as well as the insolvency provisions contained in the CBB Law.

*For further information,  
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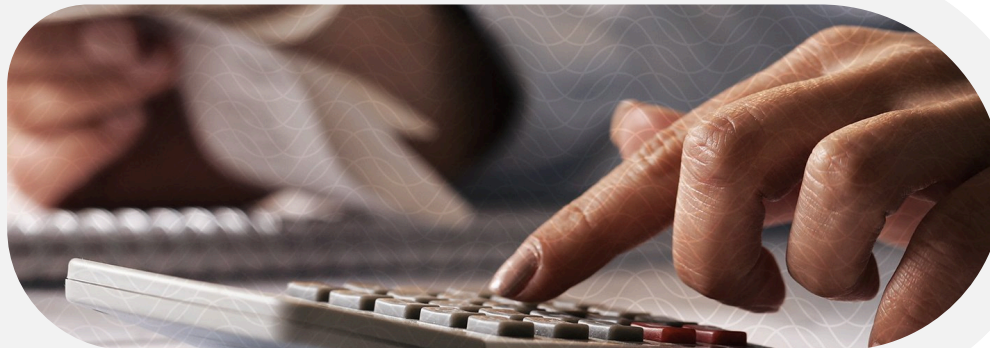


# The curious case of Qatar Court versus Ijarah Financing

Financial Services Focus



# The curious case of Qatar Court versus Ijarah Financing



## Background

Ijarah is a form of Sharia compliant financing used by an Islamic bank to finance the acquisition of an asset for its customer, and then lease that asset to the customer for use.

The Ijarah arrangement would typically comprise of various agreements between the Islamic bank and the customer including, amongst others:

- **One:** a lease contract whereby the Islamic bank leases an asset to its customer for a certain period of time and the customer agrees to pay fixed rental payments and variable rental payments that correspond to the repayment of the principal financing amount and the profit component of the financed amount. There is no “interest” or “ribah” charged under this structure as such payments are not allowed under the principles of Sharia.
- **Two:** a promise to donate whereby the Islamic bank undertakes to transfer the asset to the customer at the end of the lease period if all payments (i.e. the rent/instalments) are made by the customer in a timely manner.



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## Facts involved

In a case before the Court of Cassation, the facts were that a customer and a bank entered into an Ijarah facility, whereby:

1. the bank purchased two immovable properties from the customer and the sale was recorded with the Real Estate Registration Department in Qatar, meaning that the title to the immovable properties was transferred to the bank;
2. the bank leased the two immovable properties to the customer under a lease contract;
3. the customer was obligated to pay the bank rental payments (in instalments) which comprised of: (i) fixed rental payments; and (ii) variable rental payments; and
4. at the end of the lease period and upon payment by the customer of all amounts in relation to the Ijarah facility, the bank agreed to gift the two immovable properties back to the customer.



**A seller cannot sell a property and reserve the right to repurchase the same property. Such a contract would be considered void under the laws of Qatar.**

The issue arose when the customer defaulted in the payment of the agreed rental payments and consequently the bank attempted to sell the two immovable properties to third parties without obtaining a court order in order to recover the amounts that were due and payable under the lease contract.

The customer objected to the bank's approach and filed a civil action against the bank requiring it to transfer the title of the two immovable properties back to the customer. The customer argued that the agreements under (a) to (d) above were structured in a Sharia compliant manner but the Ijarah transaction in reality is a financing transaction and that the transfer of the two immovable properties to the Islamic bank was to secure the repayment obligation of the customer to the bank.

## Court of First Instance

The Court of First Instance in Qatar ruled in favour of the bank and dismissed the action by the customer who then filed an appeal before the Court of Appeal.

## Court of Appeal

The Court of Appeal dismissed the appeal and upheld the judgment by the Court of First Instance. The matter was brought before the Court of Cassation.

## Court of Cassation

The Court of Cassation overturned the Court of Appeal judgment and based its judgment on Article 474 of Law No. 22 of 2004 (the Civil Code) which states that:

“If the seller maintains the right to recover the sold thing, the contract shall be null.”

The Court of Cassation explained that Article 474 of the Civil Code prevents a seller to reserve the right to repurchase the property it has sold to the purchaser. Such a contract would be considered void under the laws of Qatar.

The Court of Cassation further stated that the right to repurchase the property does not necessarily have to be part of the same contract under which the property was sold. In relation to the issue of whether a property has been properly sold, the Court of Cassation held that it must consider the intention of the parties at the time that the contract was entered into and therefore the transaction as a whole must be considered even though the parties entered into separate contracts.

The fact that (i) the two immovable properties were sold by the customer to the bank; (ii) then subsequently leased by the bank to the customer and (iii) a promise to gift was issued by the bank to donate the two immovable properties to the customer in case all payments had been made under the lease contract, indicated to the Court of Cassation that the bank never intended to purchase the properties and the transfer of title was intended to be a mortgage over those two immovable properties to secure the repayment obligation of the customer. Therefore, the Court of Cassation concluded that transaction falls under the provision of Article 474 and hence the sale contract is null and void.

It is important to note that the Court of Cassation looked beyond the actual transaction documents and considered the transaction to be a financing transaction rather than an actual sale, purchase and leasing transaction. Accordingly, the Court of Cassation indicated that the bank was not a true owner of the two immovable properties and therefore should not be able to unilaterally sell those properties to third parties.

As a result, the Court of Cassation determined that the Court of Appeal had not properly decided the case and had misapplied the law. The Court of Cassation vacated the Court of Appeal's decision and referred the case back to the Court of Appeal for a fresh decision. An updated order (if any) of the Court of Appeal is not yet available as far as we are aware.

## Conclusion

This ruling constitutes a landmark judgment for Islamic banks in Qatar. Whilst it is given that Ijarah is a structure used to provide financing by Islamic bank to its customers on terms compliant with Sharia principles, however, in view of the decision of the Court of Cassation, there is a risk that a court in Qatar may consider an Ijarah transaction to be

void if it is not properly structured from a Qatar law perspective. Having said that, there is a degree of comfort that the courts in Qatar would look through the overall Ijarah structure and consider the transaction as a financing arrangement between the bank and the customer.

At Al Tamimi & Company, we have the expertise and vast experience to assist our clients to consider various Ijarah financing structuring options that are compliant with the legal and regulatory requirements in Qatar. If you have any questions or need assistance with structuring an Ijarah transaction, or generally Sharia compliant transactions, please reach out to our team in Qatar.

*For further information,  
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# Tomorrow, to the person waiting for it, is near: the quiet revolution of financial services regulation in Qatar

Financial Services Focus





# Tomorrow, to the person waiting for it, is near: the quiet revolution of financial services regulation in Qatar



Tomorrow, to the person waiting for it, is near: the quiet revolution of financial services regulation in Qatar.



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The MENA region, and the GCC in particular, has a growing reputation for the agility with which it is both recognising and regulating new developments in the financial services sector. Facing new products and services, challenging economic and political influences and a global move towards digitisation and artificial intelligence, regulators have been scrambling to keep pace with the rapidly-changing sector to ensure proper guard rails are in place to protect citizens whilst encouraging economic growth.



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And so it has been with financial services regulations in Qatar, where there has been a fundamental step-change in the regulatory environment over the last 24 months. A series of new or revised regulations have been published with the goal to make Qatar a better and more certain place to do business, whilst at the same time emphasising the objectives of the third phase of Qatar's National Development Strategy and the Qatar National Vision 2030.

## Key developments include:

### Digital Banking Regulations

In 2024, the Qatar Central Bank (QCB) introduced a comprehensive regulatory framework for digital banks, aiming to modernise the financial sector and enhance customer protection. The new regulations set clear guidelines for the establishment and operation of digital banks in Qatar. These banks must have a registered office in the country and adhere to strict data confidentiality and technology-related obligations. If they offer Islamic finance products, they must also comply with Sharia governance.

One of the key goals of the new regulations is to promote financial inclusion and encourage the innovative use of technology: digital banks are expected to develop products and services that cater to a broader segment of the population, including those who are currently underserved by traditional banks. Digital banks must implement robust measures to safeguard customer data and ensure the security of their transactions. The regulations also detail procedures for handling customer complaints, reporting requirements and penalties for non-compliance.

### Digital Insurer Regulations

Similar to the Digital Banking Regulations, the QCB introduced regulations for establishing digital insurers who wish to offer various insurance products and services through digital channels, including life and non-life insurance products. The aim of these regulations is to allow insurance companies, including traditional insurance companies to expand their reach and offer new and innovative products using modern technologies and platforms. The QCB emphasises on the use of secure and robust digital platforms capable of meeting the growing demand for technological advancement.

### AI Regulations

In September 2024 the QCB issued the Artificial Intelligence Guidelines. The guidelines emphasise the need for a well-defined AI strategy that aligns with the entity's overall risk appetite and internal policies. The board of directors and senior management are held accountable for the outcomes and decisions of AI systems, ensuring that these systems promote fair treatment, ethical standards and compliance with regulatory requirements.

The guidelines mandate a robust risk management framework to evaluate and manage risks associated with AI deployment. Entities must classify AI systems as high-risk if they have the potential to cause significant negative impacts, particularly in areas affecting consumer access to financial services, internal organisational decisions or processing sensitive personal information. Human oversight is crucial, with protocols in place to ensure that trained supervisors can monitor, interpret and intervene in the operation of high-risk AI systems. Fully autonomous AI systems, especially those classified as high-risk, require prior QCB approval and must have built-in safeguards to prevent unauthorised actions.

Entities must inform customers when they are interacting with AI systems and provide clear explanations of how AI decisions are made and their potential impact. Customers should have the option to opt-out of AI-driven services, and entities must offer mechanisms for customers to request reviews of AI decisions.



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**A series of new or revised regulations have been published with the goal to make Qatar a better and more certain place to do business, whilst at the same time emphasising the objectives of the third phase of Qatar’s National Development Strategy and the Qatar National Vision 2030.**

### **Digital Asset Regulations**

The Qatar Financial Centre (QFC) launched the Digital Asset Regulations 2024, which establish a framework for digital assets and tokenisation. The regulations establish a framework for the management and regulation of digital assets within the QFC. These regulations define the scope of application, including the criteria for permitted tokens, the transactions involving these tokens and the provision of token services.

The regulations specify the meaning of tokens, which are unique electronic data units that are cryptographically secured and represent real or personal property rights. Permitted tokens are those generated in accordance with the regulations and are not excluded tokens, such as cryptocurrencies or stablecoins used as a means of

payment. The ownership of a token confers ownership of the underlying asset it represents, and the transfer of a token involves transferring control over the power to transfer the token. The regulations also outline the conditions under which tokens can be cancelled, including when the underlying asset ceases to exist or by court order. It is noteworthy that trading in bitcoins and other cryptocurrencies, including stable coins still remain prohibited in Qatar and are specifically excluded from the scope of the Digital Assets Regulations.

The regulations categorise token services into several types, including validation, token generation, token custody services, operating a token exchange and token transfer services. Entities providing these services must be licensed by the Qatar Financial Centre Authority (and by

the QFCRA for services relating to investment tokens) and must ensure that no conflicts of interest arise from providing multiple services. Validation involves confirming ownership of a right and issuing a certificate of validation, while token generation involves creating tokens on behalf of the owner of the underlying asset. Token custody services include holding or controlling tokens on behalf of clients and operating a token exchange involves facilitating the buying and selling of tokens according to non-discretionary rules.

### **Central Bank Digital Currency (CBDC) Project**

The QCB has announced the launch of its CBDC project, and the development of the infrastructure of CBDCs. The project aims to achieve a set of primary objectives, utilising various technologies including AI and DLT to enhance liquidity and encourage participation in financial market facilities. The CBDC will be issued by the QCB and is initially expected to limit issuance to wholesale participants.



## Cloud Computing in the financial sector

In April 2024, the QCB issued guidelines for the use of cloud computing in the financial sector. These guidelines aim to protect financial data while promoting digitalisation and innovation. Financial institutions must adopt a secure, risk-based approach to cloud computing, ensuring information security and data protection.

## Data Handling and Protection Regulations

The QCB's Data Handling and Protection Regulation sets comprehensive guidelines for the secure use, storage, and processing of data by financial institutions. Key requirements include

the creation of a dedicated data governance unit, the appointment of a Data Privacy Officer, and the development of robust data governance policies. Financial institutions must also comply with the Qatar Personal Data Privacy Protection Law and other relevant laws, ensuring the protection of personal, sensitive, and financial information.

Qatar's new regulatory represents a significant step towards modernising the financial sector and ensuring it keeps abreast of its regional rivals. By promoting financial inclusion, encouraging innovation, and ensuring robust customer protection, these regulations aim to create a secure and dynamic environment for digital banking in Qatar.

*For further information, please contact [Matthew Heaton](#) and [Mohammad Mitha](#).*

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# Smart Contracts Regulation in Kuwait: Legal Framework and Risks

Financial Services Focus



# Smart Contracts Regulation in Kuwait



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Smart Contracts became an integral criterion of modern financial transactions, due to their efficiency, security, automation and immutability. Smart Contracts avoid and guard against the traditional risk of tampering, default and misrepresentation, as it depends mainly on blockchains, triggering self-execution. Nevertheless, they raise significant legal concerns in jurisdictions with developing digital regulations. In this article, we shall shed some light on the scope of applicability of Smart Contracts in Kuwait.

## Definition

Surprisingly, the term “Smart Contract” is not as contemporary as expected, it was first used in 1997, and in order to understand the term “Smart Contract”, we need first to address the definition of Contracts Subject to Condition Precedent and Blockchains.

A Contract Subject to Condition Precedent is a contract in which a party shall not have duty to perform, unless some condition is fulfilled “Promise Modifier”, and the Condition Precedent could be defined as the one that must occur before an absolute duty of immediate performance arises. Hence, if the Condition Precedent is not fulfilled, the party is deemed discharged from liability, as the conditional promise never matured.



A blockchain is a cryptographically secured ledger, which uses cryptographically secured technologies to ensure the security of the recording and validating of cryptocurrency transactions.

Blockchain is based on three dimensions, namely the function of blockchain, the structure of blockchain, and the accessibility of blockchain. It is worth mentioning that [Cryptocurrency](#) and [digital assets](#) are the most widely recognized applications of blockchain technology. However, many industries are exploring potential blockchain-based solutions, including [smart contract](#) applications.

Now, A smart contract is an agreement whose execution is automated. This automatic execution is often affected through a computer running code that has translated legal prose into an executable program. This program has control over the physical or digital objects needed to effect execution. For instance, a banking software that automatically transfers money if certain conditions are met<sup>6</sup>.

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Smart Contracts are recognized  
in Kuwait, as precedent  
conditioned one, in which the  
severability doctrine is  
applicable.**

### **Smart Contracts in Kuwait Regulations**

State of Kuwait does not have a specific legal framework governing Smart Contracts, therefore the legality and enforcement of Smart Contracts shall be analysed by virtue of the existing laws governing Contracts and Electronic Transactions in general, namely the Kuwaiti Civil Code No. 67 of 1980 and Law No. 20 of 2014 concerning Electronic Transactions. As per the Kuwaiti Civil Code, in order for a contract to be concluded, binding its parties, the following conditions must be fulfilled: a) Offer; b) Acceptance, c) Capacity; and d) Lawful Subject Matter. For the Smart Contract Purposes, as opposed to Ordinary Contracts, the issue of enforceability and conclusion shall be limited to the first conditions, namely Offer and Acceptance.

The Kuwaiti applicable laws did not specify a certain form of offer and Acceptance, in order for Mutual Consent to be fulfilled<sup>11</sup>. Moreover, the Civil Code organized and recognized the Condition Precedent in Contracts. Furthermore, the law sets forth expressly that Electronic Signatures are deemed effective and legally binding, unless stated otherwise, for instance Real Estate Ownership Contracts. The concept of contracting through electronic automated systems generally is recognized in Kuwait, provided that:

1. The contractual record may be kept in such form as created, sent or received or in any other form whereby the accuracy of the data contained therein at the time of such creation, sending or receipt can be easily verified;
2. The data contained in the document or record can be kept and stored, so that it may be retrieved at any time;
3. The data contained therein identifies the person that creates or receives it and confirms the date and time of sending or receiving;
4. To be kept in the form of an electronic document or record in accordance with such

terms and conditions as determined by the competent authority that regulates such activity;

5. Without prejudice to the provisions of any other law that expressly provides to keep a document or record, data or information in a certain electronic form or to follow certain procedures, or to keep it through a certain electronic medium; and
6. Without prejudice to any additional requirements resolved by the governmental agencies to keep electronic records within their jurisdiction area.

Thus, no legal grounds might hinder the enforceability of Smart Contracts in Kuwait, and the general rule of Party Autonomy shall prevail<sup>18</sup>. Nevertheless, there are no legal precedents -yet- addressing the Smart Contracts issue, which gives rise to broad discretion of the court to decide the validity and enforceability of the same.

## Risks

As stated supra, the Kuwaiti Supreme Court does not have any precedents regarding Smart Contracts, therefore there is a risk regarding the court discretion in deciding whether the Smart Contracts falls within the scope of §8 and 11 of Law No. 20 of 2014 concerning Electronic Transactions applicability, which are addressing -precisely-

automated electronic systems as well as automatic operation. If Smart Contracts are not deemed within the aforementioned scope, they shall not be recognized and admitted by the Kuwaiti Courts, which would lead the parties to resort to the general rule of Unjust Enrichment, in order to reclaim the amounts already collected by the Smart Contract Operation System.





## Solutions

Until and unless the Kuwaiti Legislators draft a new bill governing Smart Contracts precisely, the parties to a Smart Contract governed by Kuwaiti Laws and subject to Kuwaiti Courts jurisdictions shall set forth and incorporate the following elements:

1. Stating expressly that it is deemed a Precedent-Conditioned-Contract, automatically operated through automated electronic systems;
2. Stating expressly that the obligations(s) of performance shall not arise, unless and until the condition(s) precedent are fulfilled in a consequent manner;
3. Stating expressly that in case of failure to fulfil the condition(s) precedent, there shall be no absolute duty of performance, consequently no party is at breach, and hence any amounts paid shall be redistributed again to the Creditors through blockchain or based on unjust enrichment;
4. Stating expressly that in case the condition(s) precedent is fulfilled, the duty of performance is deemed absolute and the obliged party

failed to perform, then the aforementioned party is deemed in breach, which entails restitution and/or damages, if any;

5. Ensuring that the statutory conditions of electronic contracting -stating supra- are fulfilled;
6. Ensuring that the statutory conditions of contracting -stated supra- are fulfilled; and
7. Ensuring that the Subject Matter of the Smart Contract is conformity with Kuwaiti Public Policy.

## Conclusion

Smart Contracts are likely enforceable and recognizable as per the applicable regulations in Kuwait, despite the lack of legal precedents supporting the same. Nevertheless, there are several aspects to incorporate into the Smart Contract, in order to avoid unpredictability in the court's interpretation and enforcement of the same.


*For further information,  
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# The Role of Insolvency Trustees in Tracing and Recovering Assets under the Saudi Bankruptcy Law

Financial Services Focus





# The Role of Insolvency Trustees in Tracing and Recovering Assets under the Saudi Bankruptcy Law



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Insolvency trustees play a pivotal role in managing and supervising insolvency procedures under the Saudi Bankruptcy Law. Appointed by the court, the trustee is responsible for identifying and tracing the debtor's assets, regardless of their current possession, whether the proceedings involve financial restructuring or liquidation. Trustees must take all necessary measures and exert every effort to recover these assets—whether they were deliberately concealed by the debtor, neglected, or left uncollected due to a failure to initiate the required legal actions. In this article, I will shed light on this trustee's role, following an overview of the legal framework governing insolvency in Saudi Arabia.

## **Legal and Regulatory Framework**

[Saudi Bankruptcy law](#), issued by Royal Decree M/50 of 2018, comprises 231 articles that establish a comprehensive framework for Bankruptcy procedures aligned with international best practices. The law provides for various procedures, such as preventive settlement, financial restructuring, and liquidation, and outlines the responsibilities of courts, trustees, and the Bankruptcy Commission ("[EISAR](#)"). The Executive Regulations further detail the law's provisions, including the rules governing insolvency procedures.

In response to globalization and the complexity of cross-border transactions, Saudi Arabia has also adopted international insolvency rules. In December 2022, rules based on the UNCITRAL Model Law on Cross-Border Insolvency were approved. These rules facilitate cooperation between Saudi and foreign courts in international insolvency cases and enable foreign trustees to obtain rights equivalent to those of local trustees when tracing assets within Saudi Arabia.

For more details on cross-border rules read my article: [New in Saudi Arabia: The rules of cross-border bankruptcy](#)

## Legal Methods for Tracing Assets

Trustees utilize several legal and technical methods to uncover any assets that the debtor may have attempted to hide from creditors:

- **Financial Records Analysis and Transaction Audits:** Trustees conduct a detailed review of the debtor's accounting books and bank statements. Through forensic financial audits, they can identify suspicious transfers or asset reassignments made before or during

insolvency proceedings. For example, an analysis might reveal significant transfers to related-party accounts shortly before the declaration of insolvency, indicating a potential attempt to hide funds.

- **Tracing Banking Transactions and Digital Assets:** With the authority granted by the law, trustees may request bank statements and monitor the movement of funds. Unusual transfers to unfamiliar accounts or offshore havens may signal the concealment of financial assets. This method also extends to nontraditional assets such as investment portfolios and cryptocurrencies, with coordination from relevant regulatory bodies.
- **Cooperation with Competent Authorities:** Trustees work closely with regulatory bodies such as the Saudi Central Bank (SAMA) to obtain critical information. The law empowers the Public Prosecution to investigate insolvency-related crimes, including embezzlement and asset concealment. Trustees can refer to evidence of criminal conduct to initiate investigations and secure immediate freezing of suspicious funds. SAMA also assists by directing banks to cooperate and

provide necessary account data.

- **Requesting Information from the Debtor and Related Parties:** The Bankruptcy Law obliges the debtor to fully disclose assets and cooperate with the trustee. Failure to provide accurate or complete information constitutes a serious violation. Trustees are thus empowered to request any documents or information necessary to uncover the truth. If the debtor refuses to cooperate or withholds documentation, the court may issue orders compelling disclosure or allow trustees to access premises to gather evidence.

## Asset Recovery Procedures

Once hidden assets are identified, the next phase is to recover them and return them to the insolvency estate for equitable distribution among creditors. The Saudi Bankruptcy Law provides several legal mechanisms to achieve asset recovery:

- **Claw-Back of Suspicious Transactions:** If it is found that the debtor engaged in transactions aimed at concealing assets or harming creditors—such as selling a valuable asset to a



relative at a significantly undervalued price or transferring property without adequate compensation—the trustee may petition the court to nullify these transactions. The law explicitly invalidates any transaction conducted on insolvency assets after the trustee's appointment. The court's authority also extends to reversing fraudulent transactions conducted prior to insolvency if they harmed creditors' interests. According to Article 210, any interested party may file an objection before the court against any transaction executed by the debtor within the twelve months preceding the initiation of insolvency proceedings with an unrelated party, or within twenty-four months preceding the proceedings with a related party.

- **This includes:** partial transfer of any asset, right, or provided guarantee.
- Entering into a transaction without adequate compensation or at a price below fair value.
- Settling debts before their due dates or on inequitable terms.
- Providing guarantees for debts before such debts are established.
- Discharging the debtor, in part or in full, for an outstanding debt.

- **Judicial Orders for Seizure and**

**Delivery:** Trustees may request court orders to seize hidden assets, whether in the form of bank accounts or tangible property. For instance, if a property registered in another person's name is discovered as an attempt to camouflage its true ownership, the court may issue an order to freeze and re-register it under the insolvency estate. Similarly, banks can be ordered to transfer concealed cash into accounts managed by the trustee.

- **Cross-Border Coordination:** In cases where assets are located outside Saudi Arabia, trustees can leverage cross-border insolvency rules. Once the Saudi insolvency proceedings are recognized internationally, the trustee may initiate legal actions in the foreign jurisdiction to recover assets. This may include appointing local legal agents to file lawsuits or enforce judgments in favor of the insolvency estate. Conversely, a foreign trustee seeking to recover assets within Saudi Arabia can coordinate with a local trustee after the Saudi courts recognize the foreign proceeding.
- **Compensation for Affected Creditors:** When direct recovery of an asset is not possible—for

instance, if the asset has been consumed or damaged—the court may award monetary compensation equivalent to the lost asset's value, thus placing creditors in the position they would have been if the asset had not been hidden.

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**Insolvency trustees are vital in protecting creditor rights by using forensic audits, claw-back provisions, and Article 210 to trace and recover assets that debtors attempt to conceal.**

### **Penalties and Legal Sanctions**

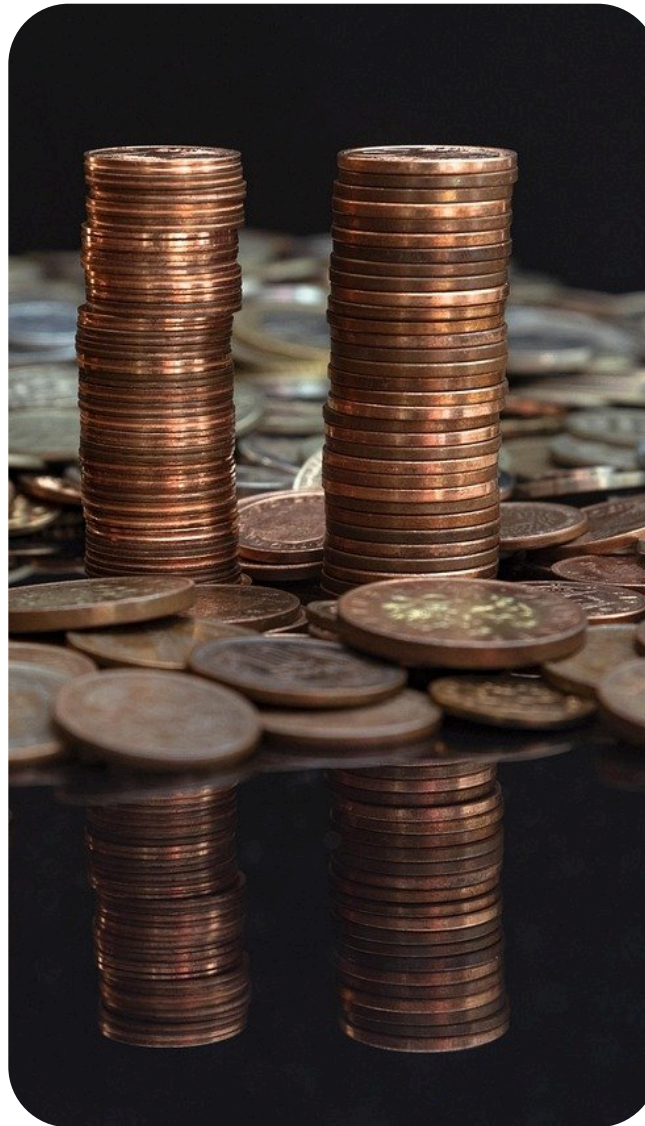
The Saudi Bankruptcy Law imposes penalties to deter debtors from concealing assets or engaging in fraudulent practices that harm creditors. The law details various insolvency-related offenses and their corresponding sanctions:

- **Crimes of Concealing Assets and Manipulation:** Concealing debtor or insolvency estate assets is expressly criminalized, along with embezzlement, tampering with accounting records, maintaining fictitious

accounts, and submitting false information to the court or trustee.

- **Imprisonment and Financial Fines:** Any person found guilty of offenses under Articles 200, 201 and 202 may face up to five years of imprisonment or fines up to five million riyals, or both. These strict penalties underscore the legislature's commitment to preventing fraudulent insolvency practices.
- **Additional Sanctions:** Beyond imprisonment and fines, the court may impose supplementary measures, such as barring the offender from holding managerial positions or board memberships in any company for up to five years, or prohibiting administrative ownership rights.

For more details on Bankruptcy crimes read my article: [What do you know about bankruptcy crimes in Saudi law?](#)



## Conclusion

Trustees serve as a cornerstone for achieving financial justice and ensuring that non-compliant debtors do not evade responsibility. With the powers granted to them, trustees can trace every concealed asset and restore it to the insolvency estate, thereby protecting creditors' rights and strengthening confidence in the legal and economic systems.

*For further information,  
please contact [Mohammed Negm](#).*

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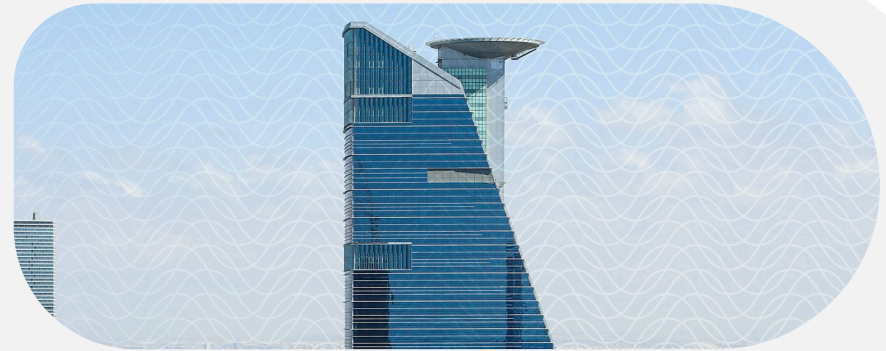
# Transforming Saudi Arabia's Debt Capital Market: An Insight into the CMA's Key Regulatory Reforms

Financial Services Focus





# Transforming Saudi Arabia's Debt Capital Market: An Insight into the CMA's Key Regulatory Reforms



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In a move aimed at propelling the debt capital market in the Kingdom of Saudi Arabia (“KSA”) to new heights, the Capital Market Authority (the “CMA”) has amended the Rules on the Offer of Securities and Continuing Obligations (“ROSCO”). These amendments, coupled with changes to the Saudi Exchange’s (Tadawul) (the “Exchange”) listing rules (the “Listing Rules”) and the recent changes made to the Companies Law have simplified the issuance of bonds and Sukuk by joint stock companies, simple joint stock companies, and limited liability companies.

By reducing the regulatory burden on issuers, empowering key institutions, enhancing the efficiency of carrying out public and private offerings, and strengthening investor protection, the CMA is sending a clear signal of its commitment to fostering a vibrant and accessible debt capital market in KSA. This article will focus on the key changes to the rules surrounding the issue of debt instruments under ROSCO and the Listing Rules, as well as explore its potential impact on issuers, investors, and the broader Saudi economy.

# “

## **The recent amendments to the ROSCO and the Listing Rules introduced by the CMA reflect a significant step forward in the development and diversification of the Saudi financial market.**

### **Exempt Offers**

The ROSCO has introduced a new exempt offer category specifically for debt instruments issued by the Kingdom's development funds and banks, as well as its sovereign funds (which have a public legal personality in accordance with statutory provisions).<sup>1</sup> This exemption allows these entities to offer debt securities without the typical regulatory requirements set out in ROSCO, subject to certain conditions. These conditions include the preparation of an offering document, disclosure of financial statements and annual reports, and adherence to specific timelines for submission of documents and deposit of securities with the Securities Depository Centre Company (Edaa) (the “Depository Centre”). Notably, these entities are also granted flexibility regarding listing on the Exchange. To compliment this, the Listing Rules have also been amended to permit the Kingdom's development funds, banks, and sovereign funds from listing on

the Exchange without being offered to the public.<sup>2</sup> It should be noted that if such entities opt not to list, they may be exempt from certain disclosure requirements under ROSCO, however, such offering will be restricted only to qualified and institutional investors.

These strategic amendments aim to enhance the accessibility of the Saudi debt market for key public sector entities and promote the use of debt instruments as a viable and efficient form of financing.

### **Private Placement of Debt Instruments**

Previously, all offerors of debt instruments by way of private placement were required to notify the CMA at least 10 days prior to the proposed date of the offer (along with submission of the relevant documents and forms). Under the amended Article 10(a)(2), this period is now waived where the offeror

is established in KSA, or offering is by a special purposes entity (“SPE”) in which a Saudi company is the sponsor. While a notification is still required to be made to the CMA in accordance with ROSCO prior to the offering, issuers can now initiate the offering process once such notice is issued – providing a more flexible timeline that caters to issuers’ needs.

Lastly, to ensure greater investor protection, there is now an express obligation on Capital Market Institutions (“CMI”) to ensure that the offeror of debt instruments fulfils all relevant conditions necessary to undertake the private offering and that all requisite information and documentation are submitted to the CMA under ROSCO.

### **Public Offers of Debt Instruments**

One of the most notable changes to ROSCO is the insertion of a dedicated chapter which specifically captures the conditions and requirements for a public offer of debt instruments, including those offered by way of private placement for the purpose of direct listing on the Exchange. This separation provides greater clarity to issuers looking to list their debt instruments on the Exchange.



Below are some key aspects for companies and issuers to consider under the amended ROSCO:

### **Enhancing Advisors' Obligations**

The amended ROSCO prescribe further obligations on financial and legal advisors to the issuer. For example, financial advisors now have a responsibility to, among other things, ensure that the directors of the issuer understand their responsibilities and have established adequate procedures, controls, and systems that enable the issuer to comply with the Capital Market Law, the Implementing Regulations, and the Exchange Rules (collectively, the "Relevant Laws").<sup>5</sup> Similarly, legal advisors must ensure that (in conjunction with the financial advisor) there is no material non-compliance by the issuer under the Relevant Laws, including requirements related to the content of the prospectus.

Further, there is a new requirement under Article 39 for the issuer to appoint a CMI to represent the holders of the debt instruments. Such representative will have an obligation to carry out its work with due care and skill – taking into consideration the holder's interests and rights, in accordance with the rules of its profession.

### **Publication of the Prospectus**

Currently, all issuers are required to publish the prospectus and ensure it is made publicly available at least 14 days prior to the start of the offering. However, the amended ROSCO now provides for a shorter period of 5 days prior to the start of offering for issuers who already have securities listed on the Exchange.

### **Supporting Documents**

The CMA have substantially reduced the number of supporting documents, (including various letters and forms) to be submitted alongside the application for registration and offer of debt instruments to the public, which serve to ease the regulatory burden on issuers including SMEs who are seeking entry into the Saudi bond market.

### **Continuing Obligations**

Under Article 65(35) of ROSCO, issuers are now obligated to immediately disclose to the CMA and the public any breach of the terms and conditions of the debt instruments, regardless of whether or not it qualifies as a material development under Article 64. This new obligation highlights the CMA's intent on ensuring that, despite providing a

regulatory easement on issuers, the interests of investors remain protected.

### **Foreign Offers of Convertible Debt Instruments**

To encourage growth and domestic investment in the Saudi market, issuers with shares listed on the Exchange who wish to offer convertible debt instruments outside KSA must now ensure that such shares into which convertible debts instruments may be converted do not exceed 15% of the issuer's total number of shares.

### **Amendments to Listing Rules and Depository Centre Rules**

The Listing Rules have also been amended to reduce the minimum issuance size for sukuk and bonds. Previously, for an issuer to list debt instruments on the exchange, the expected aggregate value of all debt instruments to be listed (or in the case of a debt issuance programme, each separate tranche) needed to be at least SAR 100 million; SAR 50 million if the issuer has existing securities listed on the Exchange.<sup>11</sup> In a move to further encourage the issuance of sukuk and debt instruments among a

broader range of issuers, this number has substantially reduced to SAR 5 million, irrespective of whether the issuer has existing securities listed on the Exchange.

In addition, the Depository Centre Rules issued by the Securities Depository Centre have introduced a new type of special account – an “Omnibus Account”. This account, to be opened through a “Custody Member”<sup>12</sup> on behalf of an independent CMI, shall be used for the purposes of depositing non-convertible debt instruments for its end beneficiaries (the “End Beneficiaries”). The Custody Member will have certain obligations including, among others, maintaining a segregated record for each End Beneficiary in the Omnibus Account and the publication of monthly ownership reports to the Depository Centre.

## Conclusion

The recent amendments to the ROSCO and the Listing Rules introduced by the CMA reflect a significant step forward in the development and diversification of the Saudi financial market. By reducing the regulatory burden on the issuer, the CMA has created a more conducive environment for both public and private sector entities to access the debt capital market. Additionally, through enhancing and clarifying the obligations of the issuer and its advisors, the new ROSCO ensures that investors' interests remain sufficiently protected. As such, this regulatory reform, in conjunction with the recent changes to the Companies Law serve to demonstrate the Kingdom's responsiveness and adaptability to the changing needs and demands of companies.

*For further information,  
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[Ambreen Bidiwala](#) and [Amelito Mutuc II](#).*

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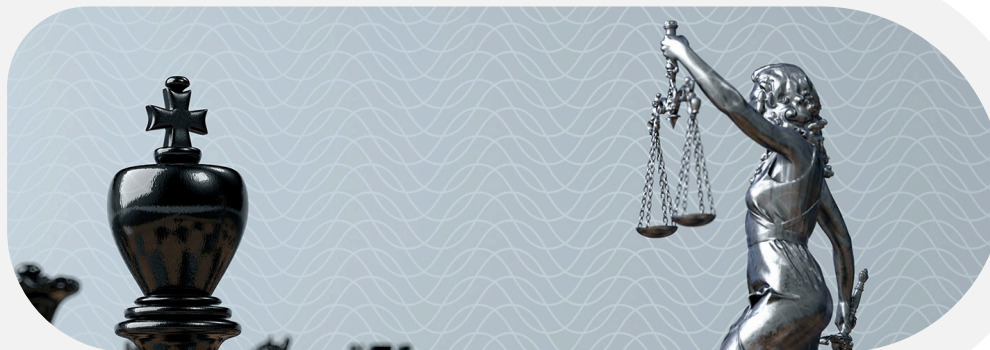
# Recap on Bahrain's Competition Law

Financial Services Focus





# Recap on Bahrain's Competition Law



**Disclaimer:** This Article expresses the opinions of the author and should not be viewed as a substitute for tailored legal advice



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## Introduction and Applicability

In 2018, the Kingdom of Bahrain enacted Law No. 31 of 2018 concerning the Promotion and Protection of Competition ("Competition Law"), which aims to foster a balanced marketplace, promoting accessibility for new market entrants while safeguarding the interests of consumers. The Competition Law broadly covers market concentration, anti-competitive practices and abuse of dominant position scenarios. Whilst the Competition Law envisages establishing of a standalone authority ("Competition Authority") to oversee competition related matters, till date, the Consumer Protection Directorate ("CPD") of the Ministry of Industry & Commerce continues to perform these functions.

The Competition Law applies to all entities (whether incorporated in Bahrain or not) with respect to their economic activities in Bahrain. The key determining factor with reference to its applicability is whether the business activities would have any affect on the competition in Bahrain.

However, the law specifically exempts the following from its application: (a) arrangements approved by international agreements applicable in Bahrain; (b) projects owned or controlled by the Government; and (c) arrangement necessary for use, exploitation, transfer, assignment or license of intellectual property rights, provided these arrangements do not unreasonably hinder competition.

## Market Concentration

The Competition Law in general was enacted to prohibit economic concentrations by addressing and regulating “economic concentrations” in Bahrain, defined broadly as a change of control as a result of the following situations:

- The merger of two or more previously independent undertakings (in whole or in parts).
- The acquisition by one or more undertakings, providing direct or indirect control, over the whole or parts of one or more other undertakings.
- The creation of a joint venture.

More specifically Article 11 of the Competition Law mandates that prior approval of the Competition Authority is sought and obtained for economic concentrations which come within the scope of transactions requiring approval. However, the Competition Law does not specify any thresholds regarding what would result in a ‘economic concentration’ to which this requirement applies. Instead, it anticipates the issuance of a decision to establish these thresholds, which has yet to be issued. Based on our experience and discussions with the CPD, it is useful to note that the authority would most likely take inspiration from the thresholds which are in place for abuse of dominant position (discussed below). It is however worth noting that these thresholds are for guidance purposes only and strictly speaking not applicable to market concentration transaction.

## Anti-Competitive Arrangements

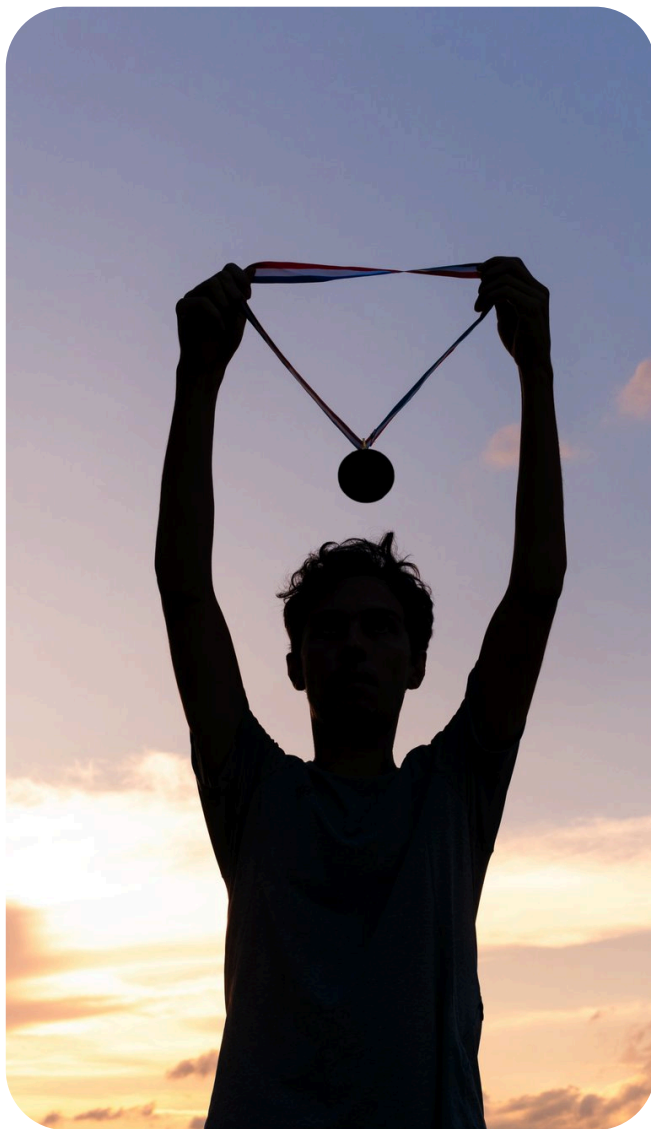
The Competition Law further prohibits arrangements with the effect of hindering competition in Bahrain. These arrangements include those such as limiting or controlling production, development or investment, sources of supply, knowingly spreading false information



**The Competition Law defines dominant position as a scenario where an entity (either solely or with other entities) is able to control or influence the relevant product market.**

about products and prices, affecting competitors by way of fabricating sudden abundance of products, refusal to purchase, sell or supply from an entity or fixing selling prices. Any such arrangement which falls under the prohibition will be null and void under the Competition Law.

The Competition Authority has the power to grant exemptions in certain circumstances, such as where the arrangement would improve production or distribution of products, allows consumers to also benefit, or on grounds of public policy. It is at the same time important to note that these exemptions are not available as of right and would remain subject to the authority's discretion.



## **Dominant Position**

The Competition Law defines dominant position as a scenario where an entity (either solely or with other entities) is able to control or influence the relevant product market. There is a presumption in favour of having dominant position where an entity has a market share in excess of 40% in the relevant product market and where there is more than one (1) entity, a market share in excess of 60% would constitute as holding a dominant position.

Any entity which has a dominant position is prohibited from abusing the dominant position, which includes actions such as imposing selling or purchase prices or any other conditions, limiting production to the detriment of consumers, applying different conditions with respect to prices, quality or other terms in agreements entered into with parties of similar standing.

The gap in the legislation is the absence of detailed provisions regarding the determination of dominant dominance. The Competition Law does not clearly define the parameters, criteria, or methodologies for assessing market dominance, nor does it specify who is responsible for making such determinations.

This lack of guidance creates uncertainty for businesses seeking to understand their compliance obligations and evaluate their market position.

The issue of dominant position remains untested in practice, raising concerns about how the Competition Law will be applied in scenarios involving potential anti-competitive behaviour or abuse of dominance. Without a clear framework, enforcement and interpretation may be inconsistent, potentially undermining the objectives of the Competition Law to ensure fair competition and protect market integrity. Addressing this legislative gap will be critical to fostering a transparent and predictable competitive environment in Bahrain.

## **Non-Compliance**

The Competition Law also provides with certain consequences in case an entity is in non-compliance with the provisions of the law. The punishment provided include imprisonment of up-to one (1) year, and a fine of up-to Bahraini Dinars fifty thousand, depending on the specific nature of the violation, which would depend on the specific factual matrix.



## Conclusion

While the Competition Law provides a comprehensive framework addressing various aspects of antitrust regulations, it remains relatively untested due to its recent introduction and the lack of guiding decisions. Consequently, ambiguities persist in its interpretation and application, leading to uncertainty among entities seeking to ensure compliance.

It is advisable to engage with the CPD to clarify their position on any specific transactions. This is typically facilitated through informal discussions conducted by legal counsel on a no-name basis. In certain situations, particularly for entities operating in regulated sectors such as financial institutions, the entities themselves may engage directly with the CPD.

These discussions are instrumental in understanding how the authorities interpret and apply the Competition Law and the specific approaches they may adopt in practice. They provide valuable insights into how the authorities addresses unclear provisions and guides entities on the appropriate course of action to ensure

compliance. This collaborative approach helps navigate uncertainties and fosters a clearer understanding of the Competition Law's practical implementation.

*For further information,  
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# Bahrain implements the GCC Funds Passporting Regime

Financial Services Focus





# Bahrain implements the GCC Funds Passporting Regime



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On 1 January 2025, the Central Bank of Bahrain (“CBB”) (the sole regulator of the financial services sector in Bahrain) implemented the ‘Cross-border Registration Regulation for Investment Funds’ (“Funds Passporting Regime”) pursuant to the ‘Regulatory Framework for the Cross-Border Registration of Financial Products between the Regulatory Authorities Regulating GCC Capital Markets (“Regulatory Framework”)’ that was issued in November 2022.

The Regulatory Framework aims to establish a coordinated regulatory approach among the GCC member states on passporting of financial products and serves as the legal basis for the individual passporting regulations issued under the Regulatory Framework for each type of financial product. The Funds Passporting Regime is the agreed upon standards and conditions for the registration and promotion of investment funds across the Gulf Cooperation Council (“GCC”) member states. The Funds Passporting Regime aims to ensure that investment funds adhere to high standards of transparency and governance.

The Regulatory Framework defines ‘passporting’ as ‘the process of registering a financial product in the financial products registry of both the registering regulatory authority and the host regulatory authority.’



## “ **On 1 January 2025, the Central Bank of Bahrain (“CBB”) (the sole regulator of the financial services sector in Bahrain) implemented the ‘Cross-border Registration Regulation for Investment Funds’ (“Funds Passporting Regime”).**

The Funds Passporting Regime applies to the passported fund, the fund manager, the placement agent and related parties.

The fund manager is responsible for submitting the application for passporting the fund with the registered regulatory authority and is required to comply with the following:

1. Completing and submitting the prescribed form specified by the registered regulatory authority;
2. Ensuring that the fund and the fund document meets the requirements set out in the Funds Passporting Regime;
3. Providing a copy of the fund document or its equivalent including a disclaimer regarding the liability of the regulatory authorities as stipulated in the Funds Passporting Regime;

4. Specifying the region(s) of the hosting regulatory authority jurisdiction where the fund promotion is targeted and identifying the agents who shall be responsible for promoting the fund therein;
5. If the fund to be passported is a public fund, a copy of the fund document data summary shall be provided in Arabic;
6. Providing any other data or documents required by the registered regulatory authority; and
7. Proof of payment of the registration fees (if applicable).

The registered regulatory authority is required to provide a decision within ten (10) working days from the date of the submission being deemed complete (in form and substance). If the application is accepted, the registered regulatory authority shall

send a notification of the application submitted by the fund manager to the hosting regulatory authority within ten (10) business days of its acceptance. The hosting authority shall decide on the application for registering the fund in its register within a period not exceeding ten (10) business days from the date of receiving the notification from the registered regulatory authority. The hosting regulatory authority may extend this period by an additional similar duration for further review. The hosting regulatory authority shall notify the registered regulatory authority of its decision to approve or reject the fund passporting application. The registered regulatory authority shall notify the fund manager of the hosting regulatory authority decision regarding the application. In the case of approval by the hosting regulatory authority, the notification shall include the effective date of such approval. The registered regulatory authority and the hosting regulatory authority shall publish the details of the passporting fund in their respective registers on the effective date of the approval. The published data in the register of the registered regulatory authority shall include the identification of the hosting regulatory authorities concerning the fund.



The placement agent shall promote the passported fund in the jurisdiction of the hosting regulatory authority specified in the notification issued to the fund manager. The placement agent is also required to adhere to the duties and responsibilities assigned to them by the hosting regulatory authority in accordance with the laws and regulations in force within its jurisdiction.

The Funds Passporting Regime requires the registered regulatory authority and the hosting regulatory authority to establish a passporting register. The register shall record key information of the funds that have been approved for passporting including the:

1. name of the registered regulatory authority and the name of the hosting regulatory authority/authorities;
2. name of the fund, its headquarters, and its address;
3. type of the fund, whether it is a private fund or a public fund;
4. name of the fund manager, its headquarters, and its address;
5. name of the agent or agents (if multiple); and

6. date of the fund passporting, starting from the effective date of the approval for registration.

The fund manager is required to appoint a custodian for the fund on a permanent basis. The fees for passported funds promoted in any of the GCC states or exemptions therefrom, shall be determined in accordance with the regulations set by each GCC member state.

There are certain circumstances where the registered regulatory authority may remove the fund from the passporting register. This includes:

1. failure of the fund manager to comply with the laws and regulations in force with the registered regulatory authority;
2. upon a written request from the fund manager; or
3. when the liquidation proceedings of the passporting fund commences.

The hosting regulatory authority may de-list the fund from the passporting register if it violates the applicable laws and regulations. When such de-listing occurs, the authority that performed

the de-listing shall immediately notify the other regulatory authorities of the de-listing, stating the reasons for the action. The hosting regulatory authority shall de-list the fund from its passporting fund register within ten (10) business days from the date of receiving the notification from the registered regulatory authority. Upon receiving the notification from the hosting regulatory authority, the registered regulatory authority shall update the details of the hosting regulatory authorities in the passporting fund register within ten (10) working days from the date of receiving the notification. The placement agent shall immediately cease promoting the fund in the jurisdiction of the hosting regulatory authority upon the de-listing of the fund from the passporting fund register with the hosting regulatory authority. This de-listing shall not affect the rights and obligations of investors in funds that were promoted prior to the date of removal, including the provision of administrative services to investors. In the event of any disputes between the fund manager or the placement agent and the fund unit holders, these disputes shall be resolved in accordance with the fund document and the laws and regulations in force with either

the registered regulatory authority or the hosting regulatory authority, as applicable.

The Funds Passporting Regime is a landmark initiative that reinforces economic integration and fosters a stable, transparent investment landscape in the region. By simplifying fund promotion and enhancing governance, it creates new opportunities for investors and businesses alike. It is hoped that the implementation of the regulations will accelerate economic integration among GCC member states and enhance the region's position as a global investment hub.

*For further information,  
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# The Growing International Reach of Abu Dhabi Global Market (ADGM): Highlighting a Recent Case on Cross Border Insolvency

Financial Services Focus



# The Growing International Reach of Abu Dhabi Global Market (ADGM): Highlighting a Recent Case on Cross Border Insolvency



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The rapid growth of Abu Dhabi Global Market (“ADGM”) and the development of its legal framework will lead to new and novel situations. A recent decision of ADGM’s Court of Appeal<sup>1</sup> is an example of how courts are interpreting ADGM’s laws to allow for a flexible administration of insolvency processes. This has important compliance implications for directors and senior officers, with a link to the ADGM.

## **Brief Background on the Case**

The case, which is still ongoing, derives from the major ADGM insolvency situation of NMC Healthcare (“NMC”).

As the insolvency progressed, the administrators of NMC gained ADGM recognition for their UK appointments (given that NMC’s global businesses were extensive across the UAE and the wider Middle East), while the other two NMC-affiliated companies (including NMC Healthcare Limited (“NMCH”) after its migration and continuance from an onshore UAE domicile into the ADGM) were put into administration by orders of the ADGM courts.



**“**  
**Several jurisdictions, both by way of international agreements, such as the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross-Border Insolvency (1997) or through internal procedures, grant their courts powers to take certain actions that extend beyond their borders.**

In the course of proceedings, all three administrators sought the court's intervention under Section 256 of the ADGM Insolvency Regulations 2022 ("Insolvency Regulations"), which is based, in part, on English law, to issue orders to produce various documents and compel actions from certain persons (including, among others, NMCH's financial auditors in the region, Ernst & Young Middle East), but more specifically, at least with respect to certain allegations of misconduct, individual directors of NMCH (at the time of the allegations).

The responding parties presumed that the ADGM courts should apply Section 256 of the Insolvency Regulations within the interpretative approach of its UK equivalent, Section 236 of the UK Insolvency Act 1986, which, by English common law precedent,

considerably limits the extra-territorial application of English courts making orders to persons outside those courts' territorial jurisdiction. The UK Insolvency Act 1986 is also the law that ADGM's insolvency regime is in large part, based upon.

In essence, the responding parties argued that the application of the Insolvency Regulations was incorrect in this instance, given that NMCH had not yet migrated (or 'continued') into the ADGM at the time of the alleged misconduct under review (within the ordinary context of the ongoing insolvency proceedings). Furthermore, the respondents also argued that the Insolvency Regulations were not even in force at the time of the alleged misconduct under review. These positions suggested that NMCH, in its pre-ADGM domicile stage and prior to the entry into force of

the then current Insolvency Regulations had essentially been outside the purview of ADGM's jurisdiction and, as such, NMCH's particulars could not be examined for matters which would have required compliance with a legal regime that was not yet even in force in a jurisdiction they were not domiciled in. Similar arguments were made in respect to the other persons and entities who were not domiciled within ADGM before or after NMCH's continuance into ADGM.

With respect to the request for an order of the production of documents, ADGM's Court of First Instance decided in favour of the Applicants through a sequence of legal reasoning based on ADGM's statutory framework. Unconvinced with the Court of First Instance's decision on this procedural matter, the respondents filed an appeal with the ADGM Court of Appeal. On 30 December 2024, ADGM's three-justice Court of Appeal issued its judgment, upholding the findings of ADGM's lower Court of First Instance on the procedural matter.



In doing so, the Court of Appeal essentially confirmed that ADGM's legal reach in specific matters and certain instances, particularly involving wrongful and fraudulent actions with a bearing on how to assess what forms an 'insolvent estate'. The outcome of the case extends beyond the ADGM's primary 'offshore' territorial coverage, not only into the mainland of the UAE jurisdictions, but globally. In effect, it also confirmed that the ADGM can, if necessary, retrospectively examine the upstream pedigree of events that may relate to assessing what constitutes an insolvent estate, even beyond the historical dates by which any connection to the ADGM were first triggered.



## Why the Judgment Matters

The extra-territorial reach of insolvency laws is by no means a new or unique phenomenon. Several jurisdictions, both by way of international agreements, such as the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross-Border Insolvency (1997) or through internal procedures, grant their courts powers to take certain actions that extend beyond their borders. In parallel, the ability to “look back” (in time) ex ante at actions, omissions and events that may have adversely affected an insolvent entity and its estate (prior to insolvency), is a standard instrument of courts that preside over insolvencies, especially with respect to allegations of misconduct.

The most important practical implication is the international reach of director's actions and decision making in the context of a business that has operations located internationally.

As ADGM pushes ahead with its plan to become the “capital of capital”, this case represents and highlights the possibility of businesses, directors and senior officers around the world with a nexus

to the ADGM being subject to an ADGM court order. Companies that have a global footprint with a presence in the ADGM should take note. Senior officers and directors should ensure at all times they have an understanding of their duties as key decision makers in their company within the ADGM's legal framework.

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# Regulatory Framework for Offering Structured Products in the UAE: Recent Updates

Financial Services Focus





# Regulatory Framework for Offering Structured Products in the UAE: Recent Updates



**Sarah El Serafy**

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Banking & Finance

The regulatory landscape for offering structured products in the UAE has undergone significant changes in the recent years. This article provides an overview of the regulatory framework governing structured products in the UAE, highlighting the roles of the Securities and Commodities Authority (SCA) and the Central Bank, and explaining the recent updates to the 'No Objection Certificate' (NOC) requirements for Licensed Financial Institutions (LFIs).

## **Regulatory Framework**

### **Securities and Commodities Authority (SCA)**

SCA has a broad jurisdiction over the regulation of financial products, investments, and services in the UAE. The SCA Rulebook, effective since May 2021, outlines the licensing and regulatory requirements for entities offering financial products in the UAE including financial institutions licenced by the Central Bank.

### **Central Bank**

The Central Bank regulates the compliance of offering of structured products by LFIs through various notices and guidelines as follows:



- **Notice 3803/2009:** This notice requires banks to submit a written request to the Central Bank for approval before selling structured products to customers (retail customers (including high net worth individuals)).
- **2023 Guideline on New/Updated Financial Product and/or Service:** This guideline mandates that Central Bank licenced LFIs obtain a NOC from the Central Bank before launching structured products, particularly for retail clients. It also outlines the requirements for internal governance, risk assessment, and consumer protection.



**The 2024 Notice outlines several general requirements for LFIs, including the requirement to have robust internal governance, compliance review, risk disclosures, risk profiling every 24 months, restrictions on leveraging, specific rating if a foreign issuer is involved.**

## **Recent Updates: Notice No. 5170.2024 (“2024 Notice”)**

The Central Bank's Notice No. 5170.2024, issued on October 18, 2024, introduces updates to the regulatory framework for structured products. The key changes are as follows:

### **Exemption from NOC for Previously Approved Products**

LFIs that have previously obtained a NOC for products listed in the approved list issued by the Central Bank with the 2024 Notice (the “List”) are now exempt from seeking new approvals, provided they comply with the 2024 Notice requirements. This change addresses concerns previously raised by banks regarding the impracticality of obtaining a NOC for each offering. Banks that have previously obtained a “No Objection” for products listed in the List are exempt from seeking new approvals, provided they comply with the 2024 Notice requirements. However, a “No Objection” is still required for unlisted products and for non-active Licensed Financial Institutions (LFIs) before marketing or launching structured products.

### **General Requirements**

The 2024 Notice outlines several general requirements for LFIs, including the requirement to have robust internal governance, compliance review, risk disclosures, risk profiling every 24 months, restrictions on leveraging, specific rating if a foreign issuer is involved.

### **Specific Requirements for Shari'ah Compliant Products**

LFIs offering Shari'ah compliant structured products must ensure compliance with the Higher Shari'ah Authority's guidelines and obtain approval from their Internal Shari'ah Supervision Committee (ISSC). The ISSC approval must be disclosed to clients.

### **Target customers**

While the 2024 Notice from the Central Bank does not explicitly specify the target customers of LFI for the purpose of the notice, previous notices from the Central Bank regarding structured products have primarily focused on retail clients. From our reading of the 2024 Notice, several requirements and references indicate that the notice is particularly relevant to retail clients.



For example, the 2024 Notice references compliance with the Central Bank 2020 Consumer Protection Regulation and Standards, which applies to natural clients and sole proprietorships (sole traders). There are also requirements which are applicable to high net worth individuals under the 2024 Notice.

## Conclusion

The Central Bank's and SCA's interpretations of structured products and their regulatory frameworks complement each other, with the Central Bank focusing on consumer protection for retail clients and the SCA providing a comprehensive licensing and exemption

framework for all client segments. The 2024 Notice's requirements align with the Central Bank's emphasis on protecting retail clients, while LFIs must also consider the SCA's regulations when promoting structured products.

*For further information,  
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# Navigating Netting Law – Legal Insights from Across MENA

Financial Services Focus





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Netting is the primary way of reducing risk in financial market contracts, enhancing stability and deepening liquidity. However, the legal framework and enforceability of netting arrangements vary across different jurisdictions, especially in the Middle East and North Africa (“**MENA**”) region, where there are diverse legal systems and regulatory regimes. In this article, we provide an overview of the netting regulations and practices in nine MENA jurisdictions: KSA, UAE, Bahrain, Qatar, Oman, Kuwait, Jordan, Egypt and Iraq. We highlight the key features, challenges, and implications of netting agreements in each country, and offer some practical guidance and insights for market participants.



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## Kingdom of Saudi Arabia Introduction

The Saudi Central Bank (“**SAMA**”) has issued a new regulation titled “*Close-out Netting and related Financial Collateral Regulation*” (the “**KSA Netting Regulations**”) The KSA Netting Regulations, effective from the 17<sup>th</sup> of February 2025, establishes a comprehensive framework for the enforceability of netting agreements and related financial collateral arrangements, particularly in the context of bankruptcy proceedings. SAMA has issued the KSA Netting Regulations pursuant to Article 214 of the KSA Bankruptcy Law determining the contracts and transactions that are exempted from the provisions of the KSA Bankruptcy Law especially the restrictions on set-off.

In addition, the Capital Market Authority (“**CMA**”) has recently published the “Draft Regulatory Framework for Close-Out Netting for Capital Market Institutions” inviting market participants’ feedback on the draft framework by 26 March 2026.

## Scope of Application

The KSA Netting Regulations applies to netting agreements and related financial collateral arrangements connected with one or more Qualified Financial Contracts (“**QFCs**”). These contracts must involve at least one party under SAMA's supervision.

## Key Definitions

The KSA Netting Regulations define some key terms, including:

- **Netting:** Broadly includes – of any present or future payment or delivery obligations or entitlements or determination of close out value and the net amount under or in connection with one or more Qualified Financial Contracts.
- **Netting Agreement:** Broadly, this is an agreement that provides for the netting of payment or delivery obligations arising from one or more Qualified Financial Contracts.
- **Collateral Arrangements:** Collateral arrangements including, over cash, securities, commodities, letters of credit or other movable security created under the Movable Assets Security Law.

- **Qualified Financial Contract (“QFC”):** This definition includes a wide range of financial agreements such as a broad range of derivatives contracts, securities and commodities contracts (including repo and lending contracts), Shari’ah compliant contracts which is economically similar to these contracts and any agreement, contract or transaction designated as a QFC by SAMA under the Netting Regulation, as detailed in Annex (1) of the KSA Netting Regulations.
- **Multi-Branch Netting:** Multi-branch netting is covered where one party is not based in KSA and has entered into a QFC through its branch or agency in KSA.

## Objectives of the Regulation

The primary objective is to ensure the enforceability of netting agreements and related financial collateral arrangements both outside and within bankruptcy proceedings.

## Key Provisions

The KSA Netting Regulations provide for:

### Enforceability Provisions

- **Qualified Financial Contracts:** QFCs are enforceable and valid according to their terms, regardless of any changes in circumstances post-agreement. Specifically, netting agreements incorporated in the QFCs are valid even once procedures under the KSA Bankruptcy Law (e.g., protective settlement, restructuring, liquidation) have commenced.
- **Financial Collateral Arrangements:** Where collateral arrangements are put in place to secure the obligations of under a QFC, such arrangements including security over cash, securities or other movables are enforceable even upon the commencement of procedures under the KSA Bankruptcy Law.
- **Multibranch Netting Agreements:** These agreements are enforceable against a Bankrupt Local Branch, with specific limitations on the liabilities and rights of both the Non-Bankrupt Party and the Foreign Multibranch Party.

### General Provisions

- **Enforceability Against Bankrupt Parties:** Netting agreements are enforceable against bankrupt parties and their guarantors or collateral providers, without being stayed or limited by bankruptcy proceedings.
- **Systemically Important Financial Institutions:** However, this will not affect SAMA and CMA's authority under the Law of Systemically Important Financial Institutions, to stay the right to terminate, liquidate or accelerate any present or future payment or delivery obligations in connection with Qualified Finance Contracts to which the netting agreement applies.
- **Limitation on Payment Obligations:** After the initiation of bankruptcy proceedings, the obligation is to pay a net amount as determined by the netting agreement.
- **Protection Against Bankruptcy Laws:** The KSA Netting Regulations ensure that the provisions of a netting agreement are not affected by bankruptcy laws that limit set-off or netting rights.

## Conclusion

The new regulations by SAMA provide a robust legal framework for the enforceability of netting agreements and financial collateral arrangements, offering greater certainty and protection for parties involved in QFCs. Entities under SAMA's supervision should review their existing agreements and ensure compliance with the new regulation to benefit from its provisions.





## United Arab Emirates

Within the UAE, there are three jurisdictions with distinct regimes governing netting: the UAE mainland, where Federal laws apply; and the Dubai International Financial Centre (“**DIFC**”) and Abu Dhabi Global Market (“**ADGM**”), which each have standalone legislation and netting frameworks that are generally netting-friendly.

### UAE Mainland

#### Netting in the UAE Mainland

As of 2 January 2025, a Federal Law No 31 of 2024 regarding Netting (the “**UAE Netting Law**”) came into effect, repealing the old netting law, Federal Decree Law No. 10 of 2018 (the “**old netting law**”). While the old netting law marked the regulation of netting for the first time in the UAE mainland, the UAE Netting Law now reflects the latest market developments and best practices, as well as addressing some of the concerns and queries that arose under the old netting law.

## Qualified Financial Contracts

Article (5) of the UAE Netting Law provides the contracts, transactions or procedures that constitute Qualified Financial Contracts (“**QFCs**”), which are similar to those under the old netting law, including but not limited to: (i) all types of swaps in relation to currencies, interest rate, basis rate and commodities; (ii) foreign exchange, securities or commodities transactions; (iii) cap, collar or floor transaction; (iv) forward rate agreements; (v) currency or interest rate future/option; (vi) different kind of derivatives such as credit, energy, bandwidth, freight, emissions, economic statistics, property index derivatives; (vii) securities contract, commodities related to contract, collateral arrangements; (viii) agreements to clear or settle securities transactions; and (ix) any derivative such as swap forward, option, contract for differences. The UAE Netting Law has expanded the scope of QFCs that can be netted to include new asset classes in line with market trends, including derivatives linked to digital assets, carbon credits, and sukuk-linked products.

Pursuant to the Netting Law, the Central Bank of the UAE now has the authority to designate (or revoke the designation of) any financial agreement, contract or transaction as a QFC in coordination with the Securities and Commodities Authority and other relevant regulators.

## Netting Definition and Mechanisms

Netting is defined in the UAE Netting Law as the occurrence of any or all of the following: (a) the termination, liquidation, or acceleration of payments or obligations under a QFC, (b) the calculation and conversion of close-out or termination values into a single currency, (c) the determination and payment of the net balance of these values, and (d) the obligation of one of the parties to the netting agreement to pay, or continue payment of, the net balance as a result of entering into a transaction under which the net balance becomes due for payment directly or as part of the consideration for a specific asset or as a provision to pay damages related to the failure to implement that transaction.

## Netting Agreements

An agreement is considered a netting agreement under the UAE Netting Law if: (a) it provides for the netting of current or future payments or obligations arising from QFCs between the parties, (b) it is a master agreement for the netting of amounts due under other netting agreements, (c) if it relates to collateral arrangements that are part of or apply to such agreements. A netting agreement also includes any agreement that is compliant with Islamic Shari'ah and has the same purposes as the above agreements, as well as any agreement that covers contracts or transactions that fall within the definition of QFCs.

## Enforceability of Netting Agreement and QFCs

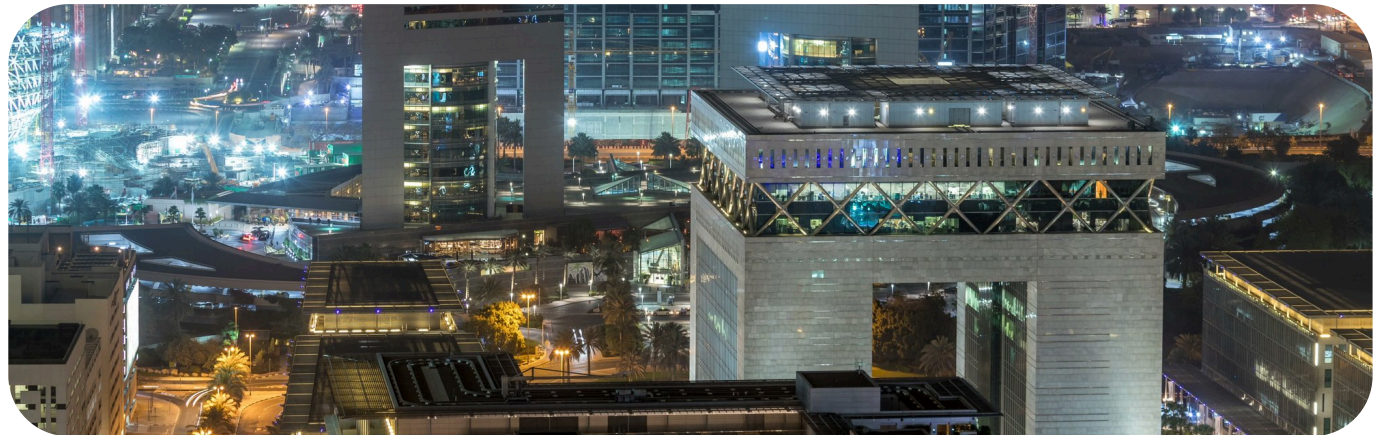
The UAE Netting Law generally provides that a netting agreement and QFC should be enforceable in accordance with its terms, including against an insolvent party, a guarantor, or a third-party security provider, even if such security provider becomes insolvent, superseding the provisions of Federal Decree Law No. (51) of 2023 Promulgating the Financial Reorganization and Bankruptcy Law.

The UAE Netting Law also provides protection for QFCs against prohibitions on aleatory contracts (*Gharar*) under any UAE law (which was formerly limited to the prohibition under Federal Law No. 5 of 1985 in the old netting law), including those related to gambling, betting, or lotteries. Under the UAE Netting Law, parties to a netting agreement are also prevented from claiming that a QFC is non-Shari'a compliant if they have confirmed Shari'a compliance at the outset of the contract, which provides clarification to a noteworthy ambiguity under the old netting law. While the UAE Netting Law is an important and positive development for the UAE derivatives market, it ultimately remains untested in the UAE courts.

## Noteworthy Changes to the old netting law

In addition to the updated range of QFCs and increased protections against challenge under the UAE Netting Law, the UAE Netting Law also provides additional benefits, including (but not limited to):

- confirming that title transfer collateral arrangements relating to netting agreements should not be recharacterised as security interest arrangements, resolving a critical uncertainty under old netting law;
- clarifying the applicability of the UAE Netting Law to parties such as supranational organisations, regional development



institutions, and political units or sub-departments affiliated with local or central governments; and

- offering severability of provisions under a netting agreement relating to contracts, agreements or transactions other than QFCs, which allow such agreement to still be deemed a netting agreement only with respect to those contracts that fall within the definition of a QFC.

## **DIFC (Dubai International Financial Centre)**

### **Netting in the DIFC**

Netting is recognised in the DIFC pursuant to DIFC Law No. 2 of 2014 (“**DIFC Netting Law**”).

Article 3 of the DIFC Netting Law defines a netting agreement as (a) any agreement between two parties that provides for netting of present or future payment or delivery obligations or entitlements or obligations, or entitlements to make, receive or require payments or deliveries, arising under or in connection with one or more qualified financial instruments entered into under the agreement by the parties to the agreement, (b) any master agreement between two parties that provides for netting of the amounts due

under two or more master netting agreements; and (c) any collateral arrangement related to or forming part of one or more of the foregoing.

### **Qualified Financial Instruments**

Qualified financial instruments (“**QFIs**”) are defined in the DIFC Netting Law “as any financial agreement, contract or transaction pursuant to which payments or obligations are to be performed, or titles to certain commodities or assets are to be transferred, for consideration at certain agreed time or within a certain period of time whether or not subject to any condition or contingency, or pursuant to which obligations to make payments or deliveries or title transfer over commodities or assets are to be entered into or incurred.

The DIFC Netting Law provides a non-exhaustive list of QFIs that derive value from underlying assets or commodities including, but not limited to, any asset such as currency, equity, index, interest rate, bond or debt security index, property index, and other forms of derivative products. QFIs also cover (without limitation) spot, future, forward or other securities or commodities transaction, commodities contract (i.e.

commodities repurchase, or reverse repurchase agreement, a commodities lending agreement or commodities buy/sell back agreement), collateral agreement and/or and Shari'a compliant contracts or undertakings that have a similar economic effect to any of the above.

The DIFC Netting Law also gives the Dubai Financial Services Authority the power to designate or revoke any agreement, contract or transaction as a QFI by written and published notice.

### **Financial Collateral Arrangements**

Separate to the DIFC Netting Law, Part 8 of DIFC Law No. 4 of 2024 (the “**DIFC Law of Security**”) regulates the creation, effectiveness, priority and enforcement of security rights in financial collateral, which are defined as money credited to a bank account, financial property held in an account with an account provider, or a receivable arising from close-out netting arrangements. Part 8 (Financial Collateral Arrangements) of the DIFC Law of Security provides for two types of financial collateral arrangements: title transfer collateral arrangements (which take effect in accordance with their terms) and security financial collateral



arrangements (which can be made effective against third parties by way of control as opposed to registration). The Law of Security allows a secured creditor to exercise a right of use in respect of the financial collateral and to enforce the security right by collecting, disposing of or appropriating the financial collateral upon the occurrence of an enforcement event, without any formal act or court intervention.

### **Netting Definition and Mechanisms**

Netting is defined under the DIFC Netting Law as (a) the termination, liquidation and/or acceleration of any payment or delivery obligations or entitlements under one or more QFIs entered into under a netting agreement; (b) the calculation or estimation of a close-out value, market value, liquidation value or replacement value in respect of each obligation or entitlement or group of obligations or entitlements terminated, liquidated and/or accelerated under paragraph (a) of this definition; (c) the conversion of any values calculated or estimated under paragraph (b) of this definition into a single currency; (d) the determination of the net balance of the values calculated under paragraph (b) of

this paragraph, as converted under paragraph (c) of this paragraph, whether by operation of set-off or otherwise; or (e) entry by the parties into a transaction pursuant to or by virtue of which such a net balance becomes payable directly or as part of the consideration for an asset or the provision for the payment of damages relating to any non-performance of any such transaction.

### **Enforceability of Netting Agreement and QFIs**

The DIFC Netting Law provides that a netting agreement and a QFI would be enforceable in accordance with its terms, notwithstanding the appointment of a liquidator or an action of a liquidator, any provision of law relating to bankruptcy, liquidation, reorganisation or other similar insolvency related actions. The powers of liquidators are limited under the DIFC Netting Law, to preserve the obligations of the insolvent party under a netting agreement. Notwithstanding this, a liquidator of an insolvent party can seek to avoid or render ineffective any transaction where there was an intention to hinder, delay or defraud any person to which the insolvent person was indebted or became

indebted. The DIFC Netting Law confirms that a QFI will not be deemed void or unenforceable by reason of being, or having the characteristics of, a wager, lottery, gambling or gaming contract.

### **ADGM (Abu Dhabi Global Market) Netting in the ADGM**

While the ADGM does not have a standalone netting legislation, netting is recognised in the ADGM and governed under the provisions of the ADGM Insolvency Regulations 2022 (“**ADGM Insolvency Regulations**”). Part 7 (Financial Markets And Netting) of the ADGM Insolvency Regulations applies to any qualified financial contract, netting agreement or collateral arrangement (including any title transfer collateral arrangement) which is governed by ADGM law or which is entered into by a person incorporated or registered in the ADGM or organised under a ADGM law, irrespective of the date on which such qualified financial contract, netting agreement or collateral arrangement was entered into.

## Qualified Financial Contracts under the ADGM Insolvency Regulations

Qualified Financial Contracts (“**QFCs**”) are defined in the ADGM Insolvency Regulations as any financial agreement, contract or transaction, including any terms and conditions incorporated by reference in any such financial agreement, contract or transaction, pursuant to which payment or delivery obligations are due to be performed at a certain time or within a certain time period and whether or not subject to any contingency. The scope of QFCs under the ADGM Insolvency Regulations is identical to the QFIs under the DIFC Netting Law, whereby the Board of Directors of the ADGM, by published notice, retains the power to designate any agreement, contract or transaction a QFC.

## Netting Agreements

Under the ADGM Insolvency Regulations, a netting agreement is defined as (a) any agreement between two parties that provides for netting of present or future payment or delivery obligations or entitlements arising under or in connection with one or more qualified financial contracts or other contracts or transactions

entered into under the agreement, or to which the agreement applies, by the parties to the agreement, (b) any master agreement between two parties that provides for netting of the amounts due under two or more master netting agreements, (c) any other agreement between two or more parties which incorporates netting and (d) collateral arrangement related to or forming part of one or more of the foregoing.



## Collateral Arrangements

The provisions of the ADGM Insolvency Regulations also deal with the creation, enforcement and priority of collateral arrangements. A collateral arrangement under the ADGM Insolvency Regulations may be a title transfer collateral arrangement, which transfers ownership of the collateral (which may include cash, securities, guarantees, credit claims or any asset commonly used as collateral in the ADGM) to the collateral-taker until the relevant obligations are discharged, or a security interest, which grants the collateral-taker a right to take possession or control of the collateral or to sell or appropriate it in case of default. Such collateral arrangements are effective and enforceable in accordance with their terms, without any formal act or registration, unless otherwise agreed by the parties.

## Netting Definition and Mechanisms

Netting, as defined under the ADGM Insolvency Regulations, means the occurrence of any or all of the following (a) the termination, liquidation and/or acceleration of any payment or delivery obligations or entitlements under one or more QFCs entered into under a netting agreement; (b)

the calculation or estimation of a close-out value, market value, liquidation value or replacement value in respect of each obligation or entitlement or group of obligations or entitlements terminated, liquidated and/or accelerated under paragraph (a) of this definition; (c) the conversion of any values calculated or estimated under paragraph (b) of this definition into a single currency; (d) the determination of the net balance of the values calculated under paragraph (b) of this paragraph, as converted under paragraph (c) of this paragraph, whether by operation of set-off or otherwise; or (e) entry by the parties into a transaction pursuant to or by virtue of which such a net balance becomes payable directly or as part of the consideration for an asset or the provision for the payment of damages relating to any non-performance of any such transaction.

### Enforceability of QFCs

The ADGM Insolvency Regulations provides, amongst other things, that a netting agreement and QFC will be enforceable in accordance with its terms, including against an insolvent party, and, where applicable, against a guarantor or other person providing security for a party

(including a guarantor or other person that is insolvent) and will not be stayed, avoided or otherwise limited by relevant insolvency proceedings (including the appointment of an office-holder such as a receiver, administrator or liquidator). Similar to the DIFC, the ADGM Insolvency Regulations also provide that a QFC shall not be and shall be deemed never to have been void or unenforceable by reason of the laws of the ADGM relating to games, gaming, gambling, wagering or lotteries.

## Bahrain

### Netting in Bahrain

Netting is recognised under Law No. 64 of 2006 promulgating the Central Bank of Bahrain (“**CBB**”) and Financial Institutions Law, as amended (“**CBB Law**”). Article 1 of the CBB Law defines a “*Market Contract*” *“as a contract concluded in accordance with the regulations of the CBB and Article 108(b) of this law.”* Resolution No. 44 of 2014 with respect to promulgating a regulation for close-out netting under a Market Contract (“**Bahrain Netting Regulations**”) in turn defines a “*Market Contract*” as *“For the purposes of this Regulation only, the expression “Market*

*Contract” as used in Article 1 and Article 108 of the Law shall be reference to “Qualified Financial Contract” as used in this Regulation.”*

### Qualified Financial Contracts under the CBB Law

A Qualified Financial Contract (“**QFC**”) is defined as any financial agreement, contract or transaction, including any terms and conditions incorporated by reference in any such financial agreement, contract or transaction, pursuant to which payment or





delivery obligations are due to be performed at a certain time or within a certain time period and whether or not subject to any contingency.

QFC include (without limitation) various swaps such as currency, cross-currency, interest rate, and basis swaps; spot, future, forward, or other foreign exchange and securities or commodities transactions; commodity swaps; forward rate agreements; currency or interest rate futures and options; derivatives related to bonds, debt securities, or bond/debt security index's (e.g., total return swaps, index swaps, forwards, options, or index options); credit derivatives such as credit default swaps, credit default basket swaps, total return swaps, and credit default options; securities contracts, including margin loans, agreements to buy, sell, borrow, or lend securities (e.g., securities repurchase/reverse repurchase agreements, securities lending, and buy/sell-back agreements), including those agreements relating to mortgage loans or mortgage-related securities; commodities contracts, including agreements to buy, sell, borrow, or lend commodities (e.g., commodities repurchase/reverse repurchase agreements, commodities lending, and buy/sell-back

agreements); credit or collateral arrangements; agreements to clear or settle securities transactions or act as a depository for securities; and any other agreements, contracts, or transactions designated as such by the CBB under the Bahrain Netting Regulations.

### **Netting Definition and Mechanisms**

Netting is defined in the Bahrain Netting Regulations as the occurrence of any or all of the following: (1) the termination, liquidation and/or acceleration of any payment or delivery obligations or entitlements under one or more QFC's entered into under a netting agreement; (2) the calculation or estimation of a close-out value, market value, liquidation value or replacement value in respect of each obligation or entitlement or group of obligations or entitlements terminated, liquidated and/or accelerated under paragraph (1) of this definition; (3) the conversion of any values calculated or estimated under paragraph (2) of this definition into a single currency; or (4) the determination of the net balance of the values calculated under paragraph (2) of this paragraph, as converted under paragraph (3) of this paragraph, whether by operation of set-off or otherwise.

### **Netting Agreements**

A netting agreement is defined in the Bahrain Netting Regulations as (1) any agreement between two parties that provides for netting of present or future payment or delivery obligations or entitlements arising under or in connection with one or more QFC's entered into under the agreement by the parties to the agreement, (2) any master agreement between two parties that provides for netting of the amounts due under two or more master netting agreements; and (3) any collateral arrangement related to or forming part of one or more of the foregoing.

### **Enforceability of QFCs**

Pursuant to the CBB Law and the Bahrain Netting Regulations, QFC's should be enforceable in accordance with its terms except in certain limited circumstances. The provision of the CBB Law and the Bahrain Netting Regulations will not be affected by any applicable law limiting or prohibiting the exercise of the rights of set-off, offset or netting of obligations or payments of any netted value between an insolvent and a non-insolvent party – thus overriding the position in Law No. 22 of 2018, as amended, promulgating the

Restructuring and Insolvency Law as well as the insolvency provisions contained in the CBB Law.



## **Qatar**

### **Netting in the State of Qatar and Qatar Financial Centre (QFC)**

There are two separate jurisdictions in the State of Qatar, (i) the Qatar Financial Centre (“**QFC**”) and, (ii) Qatar itself (that is, outside of the QFC) (“**Qatar**”). While QFC is a netting friendly jurisdiction, there is currently no law in Qatar that specifically deals with netting of derivatives transactions, and therefore reliance is placed on the concept of set-off as discussed below.

Since there is no formal netting law in Qatar that allows for close-out netting, reliance is typically placed on the set-off provisions under Law No. 22 of 2004 (the “**Qatar Civil Code**”).

### **Contractual Set-Off in Qatar**

Contractual set-off is permitted prior to the initiation of bankruptcy proceedings in Qatar, as outlined in Articles 390 to 397 of the Qatar Civil Code. Under these provisions, matured funds may be set off if they are undisputed, even if the settlement location of the debts differs or the currency of the obligations is not the same. However, there are exceptions to this rule for set-off prior to bankruptcy proceedings. Set-off will not be allowed if a court order has frozen the bank account from which the funds are to be set off.

Additionally, set-off is prohibited if one of the debts arises from acquiring an asset without the owner's consent, or if the debt pertains to an asset placed in custody for a specific purpose or provided on loan. Set-off will also not be permitted if one of the debts involves a right that is not subject to attachment, or if the debt involves alimony payments.

### **Set-Off and Insolvency under the Commercial Code**

The main issue arises where the Qatar counterparty is facing insolvency. Insolvency and bankruptcy provisions are set out in Law No. 27 of 2006 (the “**Qatar Commercial Code**”).

After the adjudication of bankruptcy, Article 632 of the Qatar Commercial Code restricts the ability of a creditor to use set-off as a remedy unless there is a link or interconnection between the payment obligation of the bankrupt entity and the funds of the debtor which are creditor's possession. What constitutes interconnection between obligations is not defined under the Qatar Commercial Code. However, examples indicate the obligations arising from the same subject matter or economically linked transactions. Each transaction would have to be assessed on a case-by-case basis as there is no case law in Qatar that deals with this issue, and because the insolvency regime in Qatar remains largely untested.

## QFC: Netting Regulations and Enforceability

The QFC has issued Netting Regulations in 2017 (the “**QFC Netting Regulations**”) which deals with the enforceability of certain types of financial contracts and the ability of financial institutions apply close-out netting provisions and to terminate, liquidate and/or accelerate any payment or delivery obligations or entitlements between two contracting parties, particularly in insolvency.

## Qualified Financial Instruments (QFI) under QFC Law

The QFC Netting Regulations apply to any QFI, including but not limited to netting agreements and collateral arrangements, that are governed by QFC Law or entered by a person incorporated, registered, or organised under QFC Law. As specified in Article 9 of the QFC Netting Regulations, QFI is defined as a financial instrument or transaction under which payment or delivery obligations are to be performed, or title to commodities or assets is to be transferred. Additionally, it includes obligations to incur payments or deliveries, or to transfer title to commodities or assets. A detailed list of

instruments, agreements, or transactions considered QFI is provided in Article 9(2) of the QFC Netting Regulations.

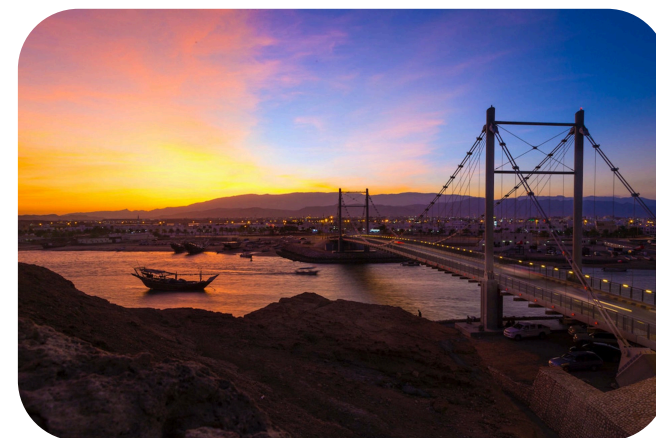
## Enforceability of Netting Agreements and Collateral Arrangements

Netting agreements and QFI are enforceable in accordance with their terms, both pre and post insolvency of a counterparty. Additionally, collateral arrangements related to or forming part of an agreement are considered as a netting agreement and QFI. Such agreements will be enforceable against the insolvent party and (where applicable) the collateral provider, all in accordance with the terms agreed in the netting agreement and/or the collateral agreement.

## Restrictions on Liquidators in QFC

The QFC Netting Regulations also place certain restrictions and limitations on the liquidator’s powers of the insolvent entity in the QFC. The liquidator will not be able to repudiate contracts or transactions in a manner that would prevent the creditor or secured party from exercising close out netting provisions or from liquidating a

relevant collateral under a netting agreement. The QFC Netting Regulations do, in uncertain terms, require a netting agreement’s enforcement in accordance with its terms.



## Oman

### Netting and Contractual Set-Off

Oman currently has no sperate netting law, and Oman Law does not specifically refer to “*netting*” either. Netting, however, closely resembles the principle of set-off, and the concept of set-off is recognised under the Royal Decree 29 of 2013 (the “**Oman Civil Code**”). Set-off is defined under Article 247 of the Oman Civil Code as the satisfaction of a debt owed to the creditor by a



debt owed thereby to their debtor. Set-off may either be compulsory, voluntary, or judicial. Compulsory set-off occurs by law and requires that the parties are debtor and creditor to each other, the debts are identical in type, description, maturity, strength, and weakness, and the set-off does not harm the rights of others. Voluntary set off is done by agreement where the conditions for compulsory set-off are not met, and judicial set-off is carried out by a court ruling.

### Set-Off and Insolvency

Under Article 112 of Royal Decree 53 of 2019 (the “**Oman Bankruptcy Law**”), no set-off can take place between the bankrupt debtor’s rights and obligations after an adjudication of bankruptcy is issued, unless such rights are correlated. Under the Oman Bankruptcy Law, such correlation shall be deemed to be in place if the rights and obligations arise out of one reason or are covered by a current account to which the debtor is a party. It is important to note that entities licensed by the Central Bank of Oman (e.g. banks and financial institutions) under the Royal Decree 2 of 2025 (the “**Oman Banking Law**”) as well insurance companies licensed under Royal Decree 12 of 1979

(the “**Oman Insurance Companies Law**”) are not subject to the provisions of the Oman Bankruptcy Law, whose insolvency and winding up is dealt with separately in accordance with their respective laws. It is also important to note that the Oman Bankruptcy Law is relatively new and remains mostly untested.

### Kuwait

Kuwait currently has no separate netting law. However, as “netting” closely resembles the principle of set-off and the concept of set-off is recognised under Kuwait Law, parties rely on set off to get a similar result

### Set off prior to commencement of bankruptcy procedures

Set-off prior to bankruptcy proceedings is covered under Articles 425-432 of Kuwait Law 67 of 1980 promulgating the civil code. Under these provisions, matured funds may be set off if they are undisputed, even if the settlement location of the debts differs or the currency of the obligations is not the same. However, there are exceptions to this rule for set-off prior to bankruptcy proceedings.

Additionally, set-off is prohibited if one of the debts arises from acquiring an asset without the owner's consent, or if the debt pertains to an asset placed in custody for a specific purpose or provided on loan. Set-off will also not be permitted if one of the debts involves a right that is not subject to attachment, or if the debt involves alimony payments or the set off is to the detriment of the rights of third parties.



## Set off after bankruptcy has set in

While set off is recognised widely under Kuwait Law, in the context of insolvency, there are restrictions on the use of set-off. Article 238 of Kuwait Law No. 71 of 2020 promulgating the bankruptcy law (the “**Kuwait Bankruptcy Law**”) states that once bankruptcy procedures have commenced, set off is not permissible unless the same is made based upon the implementation of the preventive settlement proposal or the restructuring plan or based upon the decision of the bankruptcy judge.

Accordingly, the applicability and effect of the set-off regime is uncertain given the Kuwait Bankruptcy Law is still new and there is no precedent related to its interpretation and implementation. However, transactions can be structured in various ways to order to mitigate certain risks relating to the limitations of close-out netting in a bankruptcy scenario.

## Jordan

### Netting and Set-Off in Jordans

Netting arrangements are not specifically regulated or recognised under Jordanian laws and regulations. Rather, the most analogous provisions to netting, are those found under the Jordanian Civil Code pertaining to set-off, and it is expected that a Jordanian court may take a similar approach in dealing with netting.



## Types of Set-Off

The Jordanian Civil Code recognises three types of set-off: compulsory set-off, which occurs by operation of law; voluntary or contractual set-off, which is made by agreement between the parties; and judicial set-off, which is implemented pursuant to a court decision.

In order to affect a compulsory set-off, each party must be a creditor and debtor to the other, and the two debts must be analogous in kind, description, maturity, security, force, and weakness. Further, said set-off should not prejudice the rights of others. Whereas, contractual set-off may generally be affected where one of the conditions of compulsory set-off are not satisfied.

## Set-Off in Insolvency: Legal Limitations and Conditions

Under the laws of Jordan, contractual set-off is permitted prior to the counterparty becoming insolvent. However, following insolvency, set-off is not permitted unless the conditions for compulsory set-off are met, i.e. each party is a creditor and debtor to the other, and the two debts are analogous in kind, description, maturity,

security, force, and weakness, and provided that said set-off is not prejudicial to the rights of others.

## Recognition of Netting Arrangements Post-Insolvency

Thereby, the recognition of netting arrangements post-insolvency, would depend on whether the court viewed each confirmation (and the payment obligations under it) as part of the same dealing, or as a separate and distinct contract.



## Egypt

### Netting of Payments in Egypt: Legal Landscape and Practical Considerations

In Egypt, the legal framework surrounding netting is nuanced and requires careful navigation to ensure enforceability and compliance with local laws.

### Legal Framework and Recognition of Netting

In Egypt, there is no specific legislation that directly addresses netting. Instead, netting is treated similarly to "set-off" under Egyptian law. The Egyptian Accounting Standard No. 25, issued by the Investment Ministerial Decree No. 111 of 2015, acknowledges the concept of a "Master Netting Agreement". This standard defines a Master Netting Agreement as an arrangement where parties enter into multiple financial transactions and subsequently perform a single net settlement for all transactions covered by the agreement in the event of a breach or termination.

Law No. 131 of 1948 (the "**Egyptian Civil Code**") provides the general principles governing set-off. Under these provisions, a debtor can offset

mutual debts with a creditor, even if the causes of the debts differ, provided that the debts are monetary or fungible, due, undisputed, and legally actionable. This principle applies broadly to all types of counterparties, including financial institutions, corporates, and public law entities.

### Bankruptcy Considerations

The enforceability of netting provisions becomes particularly complex in the context of bankruptcy. Law No. 11 of 2018 (the "**Egyptian Bankruptcy Law**") reintroduces the concept of a "*suspect period*," which begins on the judicially declared date of default and extends to the date of the bankruptcy declaration. This period can be up to two years prior to the declaration of bankruptcy.

During the suspect period, transactions between a bankrupt entity and its creditors may be deemed void if they involve the payment of a debt not yet due, the gift of property, or the provision of security for an existing debt. The bankruptcy judge has the discretion to nullify contracts entered into during this period if the other party was aware of the entity's insolvency and the transaction is detrimental to the creditors.



After the issuance of a bankruptcy order, the provisions of the ISDA Master Agreement that allow the non-defaulting party to terminate all transactions may be at risk of being disallowed. The Egyptian Bankruptcy Law stipulates that netting of the bankrupt's rights and debts is permissible only if a "*link*" exists between them, such as arising from the same reason or being part of a current account. While transactions under a single ISDA Master Agreement might meet these criteria, the final determination rests with the court.

### Egyptian Banking Law Exclusions

It should be noted that the Egyptian Banking Law excludes the application of the provisions of the Egyptian Bankruptcy Law on banks registered with the Central Bank of Egypt. Instead, the provisions of Chapter 12 of the Egyptian Banking Law apply to financially distressed banks. This chapter provides a distinct framework for handling the financial distress of banks, which may offer different protections and procedures compared to the general bankruptcy provisions.

In conclusion, while netting of payments is recognised under Egyptian law through the principles of set-off, the lack of specific netting legislation and the complexities introduced by bankruptcy laws necessitate careful structuring and legal consultation. Market participants should remain vigilant and proactive in ensuring their transactions are compliant and enforceable within the Egyptian legal framework.



## Iraq

Netting is a recognised concept in Iraq under Banking Law No. 94 for 2004 (the "**Iraq Banking Law**") as it defines netting under Article 83.4.b of Iraq Banking Law as the consolidation of multiple claims and obligations from transfer orders between participants in a settlement system into a single net claim or obligation. This allows offsetting amounts to leave only one outstanding obligation or claim. However, recognition of netting arrangements only applies in the context of an insolvent bank, licensed by the Central Bank of Iraq ("**CBI**").

### Enforceability of Netting Agreements Against Insolvent Banks

The Iraq Banking Law states that nothing in this law or any decision made under it, other than what is stipulated in Article 88, prevents or prohibits the netting of obligations between an insolvent bank and its counterparties under the law. Accordingly, the Iraq Banking Law determines the rights and obligations between an insolvent bank and its counterparties by applying the termination and netting provisions in "valid financial contracts" between the two parties or after it is registered as a claim for the counterparty.

Valid Financial Contracts include, but are not limited to:

- interest rate or currency swap agreements;
- basis swap agreements;
- spot or forward or future or other agreements regarding foreign currency agreements specifying cap or floor transactions;
- commodity swap agreements;
- forward rate agreements;
- repurchase or reverse repurchase agreements;
- spot or forward or future or other commodity sale agreements;
- agreements for the sale, purchase, borrowing, or lending of securities, or for the settlement of securities transactions, or acting as a securities depository; and
- any derivatives, options, master agreement, or guarantee of obligations under or related to the aforementioned agreements.

Noting that the CBI has the discretion to determine transactions and agreements as “valid financial contracts”, in this context, by regulation.

The Iraq Banking Law recognises claims against an insolvent bank if; (i) the claims raised prior to the issuance of an insolvency order by the Financial Court; or (ii) the claims are registered with the judicial guardian over the insolvent bank by writing and within sixty (60) days of the issuance of the insolvency decision per a request by the debtors from the financial court upon satisfying the documentation requirements. Noting that there is minimal precedence in terms of how an Iraqi court would recognise netting arrangements (including as whether each Confirmation forms part of the same transaction or not), in a formal insolvency proceeding.

## Conclusion

In the last few years, netting regulations have evolved significantly in the MENA region to reflect global best practice, and most jurisdictions are now netting-friendly or taking concrete steps to become a positive netting jurisdiction. Netting regulations continue to evolve, which signals the region’s commitment to remaining an attractive location for global investors.

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# Registration and Enforcement of Security over IP Rights in Onshore UAE

Intellectual Property / UAE







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# Registration and Enforcement of Security over IP Rights in Onshore UAE

The legal framework for the registration and enforcement of security interests over intellectual property (“IP”) rights in onshore UAE is covered by a combination of different federal laws. This is designed to facilitate the use of IP asset as collateral, thereby encouraging and enhancing the ability of businesses to secure financing. This article provides a brief overview of the registration and enforcement processes for security interest over IP assets in onshore UAE, drawing on the relevant provisions from the UAE's legal statutes.

## Legal Framework for IP Rights in the UAE

The UAE's legal framework for IP rights is governed by several key pieces of legislation, including the Federal Decree-Law no. (36) of 2021 (“Trademark Law”), the Federal Law No (11) of 2021 (“Industrial Property Rights Law”), and the Federal Decree-Law no. (38) of 2021 (“Copyright Law”) (together, the “UAE IP Laws”). These laws collectively cover the protection, registration, transfer, and enforcement of trademarks, patents, industrial designs, copyrights, and other related rights. Careful attention needs to be given to these laws, particularly regarding the practicalities involved with the change of ownership of these registered IP rights when enforcing such security interest.

## Registration of Security Interest over IP Rights

In order to enforce security over IP rights, the parties must first ensure they comply with the general requirements for creating a security interest. The security interest must be appropriately documented with valid underlying obligations under a security agreement containing a clear and specific description of the secured asset, the nature of the security interest and the consent of the owner of the asset. It then needs to be recorded at the appropriate register depending on the IP right. This ensures that the security interest is “perfected”, and therefore, effective against third parties.

For IP rights that are registered with the Ministry of Economy (“MOE”) (i.e. potentially trademarks, patents, designs and copyright), the security interest must be registered with the MOE.

Once the application is accepted, the MOE will publish the details of the security interest in the relevant IP Register and the MOE's Bulletin, thereby making the information accessible to the public and notice to third parties.

For other types of IP rights / intangibles i.e. those that are not registered with the MOE, such as know-how, data lists, trade secrets, unregistered trademarks and copyright etc., the Federal Law no. (4) of 2020 on Securing the Rights in Movables ("Movables Law") states the security interest must be registered with the Emirates Integrated Registries Company ("EIRC") on their Emirates Movable Collateral Registry. This is an online register that provides lenders with the ability to register their interest over assets used as a collateral. Third parties can then search the online register to find out if there are any parties that have registered interest over a specific asset.

One point of consideration is that the Movable Law is still relatively new, and so in practice, registering security over unregistered IP rights in the UAE may not be extensive yet – uncertainties regarding valuation, identification and enforcement are issues that should require legal advice.

Careful consideration must also be given to the nuances and challenges that come with maintaining the secured IP rights such as the need to periodically renew the protection of some IP rights such as registered trademarks and/or

the need to ensure proper safeguards are in place to protect the IP rights against third party infringers as well as the validity of such IP rights. These can typically be addressed by including appropriate IP provisions in the security



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**By allowing IP assets to be used as collateral, the UAE facilitates greater access to financing for businesses, thereby promoting innovation and economic growth within the country.**

### **Enforcement of Security Interests over IP Rights**

The enforcement of security interests over IP rights in onshore UAE is primarily governed by the Movable Law. This law outlines the procedures and mechanisms for enforcing security interests, including those over IP rights, and emphasizes the role of the judiciary in overseeing and facilitating the enforcement process. There are different laws applicable to taking and enforcing security over IP in freezone areas such as the DIFC and the ADGM – please reach out for a separate discussion.

#### **Methods of Enforcement:**

There are a couple of methods for enforcing security interests against third parties:

- **Registration in the Register:** As mentioned above, the security interest must be registered in the relevant register to be enforceable against third parties.
- **Possession or Control:** The security interest can also be enforced by taking possession or control of the IP asset.

#### **Priority of Security Interests:**

The priority of security interests is normally determined by the date and time of registration. The first registered security interest has priority over subsequent interests. The law also provides for the automatic extension of the security interest to the proceeds and returns of the IP right i.e. any income or benefit derived from the IP asset.

#### **Enforcement Procedures:**

The enforcement procedures for security interest over IP rights include:

- **Notification:** The secured party must notify the debtor and any other interested parties of their intention to enforce the security interest.
- **Possession and Sale:** The secured party can take possession of the IP right and sell it to satisfy the secured obligation.
- **Court Orders:** The secured party can also seek a court order to enforce the security interest via judicial enforcement.

#### **Judicial Enforcement:**

In cases where the debtor defaults on the secured obligation, the secured party can seek judicial enforcement of the security interest. The process involves:

- **Filing a claim:** The secured party can file a claim in the competent court, seeking enforcement of the security interest. The court's involvement is crucial in legitimizing the enforcement actions and providing a legal basis for subsequent steps.



- **Court Orders:** The court can issue orders for the seizure of the IP right, allowing the secured party to take control of the asset. This step is essential to prevent the debtor from disposing of or encumbering the asset further. If the sale of the IP asset is necessary to satisfy the secured obligation, the court can issue orders for the sale of the IP asset to satisfy the secured obligation. These orders specify the terms and conditions of the sale, ensuring that it is conducted in a commercially reasonable manner. The court may also appoint a receiver to manage the sale process.
- **Distribution of Proceeds:** The proceeds from the sale of the IP asset are distributed according to the priority of the security interests.

If a dispute arises during the enforcement process, court orders provide a mechanism for resolving these disputes. The Court can issue orders which serve as a means of resolving disputes that may arise between the secured party, the debtor, and other creditors.

It is important to note that as enforcement procedures lead to a transfer of ownership of IP rights, consideration must also be given to the obligations set out in the IP Laws which may affect the ability of the secured party to effectively dispose of the IP asset in the event of a default. This could impact the timeframe and lead to extra administrative costs. For example, the assignment/transfer of the IP right as well as the publication of such assignment/transfer in the official journal will need to occur in order to ensure that the assignment/transfer is enforceable against third parties. These are processes that can lead to inherent delays when proceeding with enforcement of the security interest over IP rights that may not exist with other types of asset classes, and so legal advice should be sought over.

In conclusion, the UAE's legal framework for the registration and enforcement of security interests over IP rights is comprehensive. By allowing IP assets to be used as collateral, the UAE facilitates greater access to financing for businesses, thereby promoting innovation and economic growth within the country. The registration process

ensures that security interests are properly recorded and enforceable against third parties, while the enforcement procedures provide secured parties with effective remedies in the event of default. As the UAE continues to develop its IP regime, these provisions will play a crucial role in supporting the country's vision of becoming a global hub for innovation and creativity.

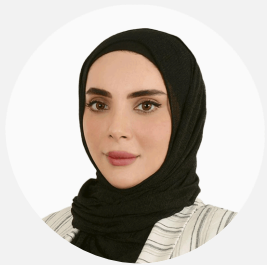
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# Bahrain's Approach to Cross-Border Disputes and Recognition of Foreign Judgments

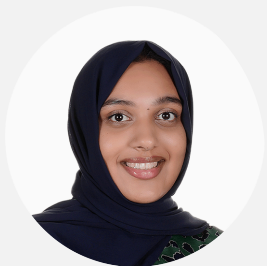
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# Bahrain's Approach to Cross-Border Disputes and Recognition of Foreign Judgments

As a global hub for trade and investment, Bahrain has established a robust legal framework for resolving cross-border disputes and ensuring the effective recognition and enforcement of foreign judgments and arbitral awards within its jurisdiction. Bahrain recognises the importance of cross-border legal cooperation and has signed various international treaties to facilitate such enforcement. As a signatory to several key international treaties, Bahrain has aligned its legal framework with global standards. Bahrain's approach to resolving cross-border disputes integrates both domestic legal principles and international conventions. This article provides a comprehensive analysis of Bahrain's approach to enforcing foreign judgments, examining the relevant treaties, legislation, procedural considerations, and factors that may influence the enforcement process.

## **Bilateral and Multilateral Treaties**

Bahrain is a signatory to several important treaties that govern the reciprocal recognition and enforcement of foreign judgments. For example, Bahrain is a signatory party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) (the "New York Convention") which is crucial in ensuring the global recognition and enforceability of arbitral awards, fostering international trade and investment by providing a reliable mechanism for resolving cross-border disputes. Another key treaty is the Hague Convention for the Pacific Settlement of International Disputes (1907) which facilitates the enforcement of judgments related to international disputes, ensuring that foreign judgments are given due consideration in Bahrain. Other key treaties include the Convention on the Settlement of Investment Disputes between States and Nationals of other States (1965) and the Gulf Cooperation Council Convention for the Execution of Judgments, Delegations, and Judicial Notifications (1995). These treaties establish the foundational principles for the enforcement of foreign judgments in Bahrain. However, if there is no treaty establishing reciprocal recognition between Bahrain and the foreign country, the recognition of foreign judgments is governed by the Bahrain Civil and Commercial Procedures Act 1971 ("CCPA").



In such cases, an application can be made to the High Civil Court to request the recognition of the foreign judgment. This effectively initiates a new legal action, and the court may reassess the issues if the defendant raises a defence.

#### Domestic Legislation – Arbitral Awards and Foreign Judgments

Where there is a treaty establishing reciprocal recognition, the Bahraini courts will follow terms and procedures outlined in the relevant treaty, ensuring that foreign judgments and arbitral awards are given due recognition and enforcement in Bahrain, provided they meet the necessary legal requirements as set forth by the domestic legislation as well. This framework governs the recognition and enforcement of both foreign judgments and arbitral awards, offering clarity and consistency in cases involving international legal matters.

#### **a) Foreign Judgments**

When a foreign judgment needs to be recognised in Bahrain, the Bahrain courts will base their assessment on Article 16 of Decree Law No. 22 of

2021 promulgating Implementation Law in Civil and Commercial Matters (the “Execution Law”), which provides that the following must be satisfied in order for a foreign judgment to be recognised under Bahrain law:

1. The foreign court must have had jurisdiction over the case based on international jurisdictional rules;
2. The litigants must have been properly summoned and represented;
3. The judgment must be final under the law of the foreign court; and
4. The judgment must not contradict any prior Bahraini judgment and must not violate public policy or morality in Bahrain.

#### **b) Arbitral Awards**

In addition to the above, international commercial arbitral awards are recognised and enforced in Bahrain, given the ratification to the New York Convention. Arbitral awards are assessed in Bahrain based on principles pursuant to Decree No. 9 of 2015 promulgating the Arbitration Law (the “Arbitration Law”). Arbitration Law fully adopts the Model Law of the United

Nations Commission on International Trade Law (the “UNCITRAL Model Law”). Article 34 of the UNCITRAL Model Law stipulates the following grounds for the court to consider when determining whether an arbitral award should be set aside:

1. One party lacked the capacity to enter into the arbitration agreement;
2. Due process was not followed, such as improper notice or inability to present its case;
3. The award addresses issues outside the scope of the arbitration agreement;
4. The arbitral tribunal was improperly formed; or
5. The subject matter is not allowed for arbitration under Bahraini law or the award goes against public policy.

## “ **Bahrain has developed a strong legal framework for the recognition and enforcement of foreign judgments, reinforced by its participation in various international treaties.**

### **Recognition and Enforcement in Bahrain**

Prior to proceeding with enforcement in Bahrain, a foreign judgment or arbitral award must first be recognised by this court. The process of enforcing foreign judgments and arbitral awards begins with the High Civil Court. The application for recognition of foreign judgments or arbitral awards is submitted to the High Civil Court, which evaluates whether the foreign decision meets the criteria established under Bahraini law, such as the Execution Law or the Arbitration Law (as described above). If the court finds that the foreign judgment or award satisfies these legal requirements, it will grant recognition, thereby allowing for enforcement.

Once recognised, the Court of Execution is responsible for the actual enforcement of the judgment or award, mirroring the procedures it follows for domestic decisions. The High Civil

Court assesses foreign judgments under Article 16 of the Execution Law, while foreign arbitral awards are examined according to the specific grounds outlined in the Arbitration Law.

Following recognition, appeals can be filed against foreign judgments or arbitral awards before the enforcement process begins. Once any appeals have been resolved and the recognition process is complete, the enforcement process proceeds with the Court of Execution. This ensures that foreign judgments and arbitral awards are enforceable within the Bahraini legal system. Furthermore, Bahraini law does not prescribe a fixed limitation period for enforcement; however, a general statute of limitations of 15 years applies. This applies to both foreign judgments and arbitral awards, ensuring enforcement within a reasonable period from the date of the judgment or award.

It is also important to note that the enforcement of foreign judgments in Bahrain is subject to the broad principles of public policy. This can impact the enforceability of certain foreign judgments, particularly those that involve moral or religious issues. If a foreign judgment contradicts public policy in Bahrain, it may not be recognised or enforced, even where it satisfies all other legal requirements.

### **Defences Against Enforcement**

A defendant may raise specific defences against the enforcement of a foreign judgment, but generally, they cannot contest the merits of the judgment itself. Under articles 22 and 23 of the Execution Law, the role of the Execution Court is to enforce the foreign judgment, without reopening or re-evaluating the underlying legal issues or facts of the case. This means that the Execution Court will not review the original court's decision on liability or whether the scope of the award was correct or fair.

If any part of a foreign judgment appears to be practically unenforceable, the Execution Court Judge must not offer an opinion on how to resolve the issue. Instead, the judge is required to seek

clarification in writing from the trial judge who issued the original judgment. This ensures that any uncertainties regarding the judgment are addressed before proceeding with enforcement. In general, when a foreign judgment comes from a country with which Bahrain has a reciprocal enforcement agreement, Bahraini courts will not reconsider the merits of the judgment. This means that as long as the judgment is final, it was issued according to the laws of the country where it originated, the defendant was properly notified of the proceedings, and the judgment does not violate Bahraini public policy, the court will enforce the foreign judgment as issued by the arbitral tribunal. The court's role in this situation is to ensure the enforcement process moves forward, without delving into the details of the original case.

However, in cases where the foreign judgment comes from a country that does not have a reciprocal enforcement agreement with Bahrain, the situation changes. In such cases, the defendant has the right to challenge the merits of the judgment itself. This means that the defendant can present arguments related to the substance of the case, such as questioning the fairness of the

judgment or the appropriateness of the ruling. The Bahraini court will then consider these defences before deciding whether to grant recognition, as per the CCPA, and proceed with enforcement.

## Conclusion

Bahrain has developed a strong legal framework for the recognition and enforcement of foreign judgments, reinforced by its participation in various international treaties. While the enforcement process is typically straightforward, it is essential for parties seeking to enforce foreign judgments to be mindful of the jurisdictional requirements, public policy considerations, and procedural obligations. The country's judicial system remains adaptable, reflecting Bahrain's commitment to maintaining an efficient, internationally recognised legal environment for resolving cross-border disputes.

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# A perspective into Iraqi Construction Contracts

Corporate Commercial / Iraq





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# A perspective into Iraqi Construction Contracts

Largely driven by increasing demand Iraq has been experiencing a construction boon in the past few years. This Article aims to give a brief overview of the Iraqi construction industry and highlight some key local considerations. This Article will cover both the public and the private sectors.

## Construction Contracts in the Public Sector

The Iraqi government is one the biggest spenders when it comes to the construction industry and its projects are mostly infrastructure typically, oil and gas, transport, and other infrastructure projects. Most government contracts are awarded on the basis of public tendering under Regulation No 2 of 2014 on implementing government contracts which includes the following methods of contracting that are relevant to construction contracts:

- **Public tendering**, this approach is implemented by announcing a public invitation to all who like to participate, and offers are accepted from any parties that meet the conditions for participation. In addition, the financial allocations mentioned in the federal budget implementation instructions are taken into account when adopting this approach.
- **Limited Tendering**, this method is used when the goods or services, consulting or contracting of tender subject is available from limited entities as required by the designs and conditions prepared by the government contracting party. Tenders are also announced publicly but they follow slightly different procedures determined in Regulation no 2 of 2014.
- **Public Tendering with technical qualification**, with this method of contracting technical and commercial bids are submitted separately.
- **Two Step Tendering**, phase I is a public invitation for technical preliminary designs. A technical committee studies initial bids and phase II is a direct invitation of bidders whose preliminary offers were accepted to provide their commercial bids to the amended tender documents (amended by the committee) reflecting the initial preliminary technical offers.

This tendering method is used when the government contracting parties cannot fully prepare the tender documents because of complexity and highly technical nature of the project.

- **Direct Invitation**, this is implemented by direct invitation to at least three parties where one or more of the following justifications is present,
  1. If the contract requires confidentiality in contracting and implementation procedures
  2. there are security reasons requiring use of this method,
  3. Emergencies and natural disasters,
  4. Providing of medicines and medical equipment and supplies for life-saving,
  5. Non participation in public tenders as advertised for the second time, or if the received bids did not meet the conditions and specifications for the second time,
  6. Specialized contracts whose regulations are issued by the department of public governmental contracts, in coordination with the competent sector committee in Council of Ministers,
  7. Large strategic projects that require foreign

expertise, which are determined by the competent sector committee in Council of Ministers, in coordination with the Ministry of Planning and executed by reputable international companies with an experience in the relevant specialty for a period not less than five (5) years and not less than three (3) similar projects.

The Ministry of Planning is the primary regulator of the construction industry, and it handles classification of local construction companies, backlisting, and issues veracious guides and the standard documents that are used in government contracts. The standard contract documents prepared and issued by the Ministry of Planning are seen as mandatory by other government contracting parties and they rarely accept to negotiate when it comes to awarding government contracts. The standard contract documents prepared by the Ministry of Planning are similar to the standard terms of the International Federation of Consulting Engineers (FIDIC) in some party, however, Iraqi Ministry of Planning took liberty and made amended in a number of places.

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**In Iraq the construction industry in the public sector, regulated by the Ministry of planning, is largely focused on infrastructure typically, oil and gas, transport, and other infrastructure projects while the private sector, regulated by the various investment commissions and the Ministry of Construction and Housing.**

The challenges faced by contractors when it comes to government contracts often revolve around payment. The most common problems can broadly fall into two categories. The first category is where the government has difficulty in paying on time causing delays and the second category tends to arise where the government agrees to contract conditions that are different from the standard documents prepared by the Ministry of Planning but still insists on implementing the standard documents and guidance provided by the Ministry.



## Construction Contracts in the Private Sector

The private sector construction industry is primarily focused on housing and other commercial development. Large projects can obtain an investment license offering various tax benefits and allowing non-Iraqi investors to own the residential units provided this is specifically for resale to the public. In some projects the government also provides the land for relatively low prices as determined in the investment regulations. The government has also recently agreed to the compensation for the land that it may contribute to residential projects to be paid in kind in the form of housing units instead of cash in some contracts. Institutional financing is not common in the residential sector in Iraq, instead housing development is generally financed by a prepayment structure with some instalments paid before completion and the remaining instalments to be paid after delivery of the housing units. The building regulations in for residential and commercial buildings are issued by the Ministry of Construction and Housing. Overall, there is more flexibility in the private sector with regards to contractual arrangements

compared to government contracts because the government is only involved as the regulator rather than a contracting party (typically the Employer in government contracts).

## Conclusion

In Iraq the construction industry in the public sector, regulated by the Ministry of planning, is largely focused on infrastructure typically, oil and gas, transport, and other infrastructure projects while the private sector, regulated by the various investment commissions and the Ministry of Construction and Housing. The contracting rules in the private sector are flexible while they are more rigid in the public sector due to the need for increased oversight over government procurement and financing from the federal budget. Tax breaks are available in the private sector for large projects; however, contractors are expected to invest a certain amount of capital both on statutory grounds and because institutional financing is limited in the private sector.

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# New Rules, Same Robustness - Singapore International Arbitration Centre's Latest Rules

Dispute Resolution / SIAC







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## New Rules, Same Robustness - Singapore International Arbitration Centre's Latest Rules

The Singapore International Arbitration Centre ("SIAC") has introduced the latest and seventh edition of its arbitration rules ("SIAC Rules 2025") which, unless agreed by the parties, apply to all arbitrations commenced on or after 1 January 2025.

We provide a commentary on the prominent provisions of the SIAC Rules 2025 and practical implications for parties facing an arbitration under the SIAC Rules 2025.

### New Emergency Arbitrator Procedure

In addition to codifying the arbitral tribunal's powers to make a final and binding preliminary determination of any issue, the SIAC has also refined its emergency interim relief provisions. The parties are now allowed under the SIAC Rules 2025 to seek protective preliminary orders from an Emergency Arbitrator, without notification to the other party as ex parte orders. Closer to the region, this is similar to the Dubai International Arbitration Centre ("DIAC") Rules 2022, which allow for the submission of an emergency interim relief concurrently with the filing of a request for arbitration without sending a copy of the application to all other parties if it reasonably believes that such notice may jeopardise the efficacy of the application for emergency interim relief.

The SIAC has also introduced enhancements to the Emergency Arbitrator provisions. An application for an Emergency Arbitrator can now be filed prior to the filing of the Notice of Arbitration, while the previous rules of 2016 ("SIAC Rules 2016") allowed Emergency Arbitrator applications to be filed only in concurrence with or following the filing of the Notice of Arbitration. This is a key change from other arbitral rules such as DIAC Rules 2022.

In the SIAC Rules 2025, the parties' window to challenge the appointment of the Emergency Arbitrator has also been reduced to 24 hours from receipt of the notice of appointment, or from the date that the circumstances giving rise to the challenge become known or should have reasonably been known to that party.



In contrast, the SIAC Rules 2016 stipulate that any challenge to the appointment of the Emergency Arbitrator was to be made within two days from the Registrar's communication of the appointment of the Emergency Arbitrator and the circumstances disclosed.

While, the preliminary order application requirements under the SIAC Rules 2016 were limited to the nature, and reasons for the relief, in addition to proof of notification to all other parties, in the SIAC Rules 2025, there is now a more formalised and longer list of requirements which mainly accommodates the possibility of making such an application before the Notice of Arbitration, and even requires the disclosure of third-party funding.

If the application for the appointment of Emergency Arbitrator is accepted by the president of the SIAC Court ("President"), in the SIAC Rules 2025, the appointment of the Emergency Arbitrator is to take place within 24 hours from the later date of: (a) the date of receipt of the application by the Registrar; or (b) the date of receipt of payment of the Emergency Arbitrator filing fee and deposits.

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**Unlike the International Chamber of Commerce (“ICC”) Arbitration Rules and the DIAC Rules, the SIAC Rules 2025 have introduced an express prohibition on any party or its representative to engage in “any ex parte communications relating to the arbitration with any prospective arbitrator, including any candidate for appointment as a party-nominated arbitrator”**

The timing of when the Emergency Arbitrator's order or award is to be issued has not changed between the SIAC Rules 2016 and the SIAC Rules 2025; it is still to be issued within 14 days from the date of the Emergency Arbitrator's appointment, unless the time is extended by the Registrar.

The applicant is required to promptly transmit any preliminary order by the Emergency Arbitrator once made to any counterparties within 12 hours of the order, failing which the protective preliminary order shall expire 3 days after the date on which it was issued.

### **New Streamlined Procedure for Disputes under SGD 1 Million**

The SIAC has also introduced a new provision known as the streamlined procedure where the value of the dispute (i.e., the aggregate of any claim, counterclaim, cross-claim or set-off) does not exceed SGD 1 million (or approximately USD 740,000). The streamlined procedure, distinct from the expedited procedure which continued from the SIAC Rules 2016, applies now where the amount in dispute exceeds the equivalent amount of SGD 1 million (or approximately USD 740,000) but does not exceed the equivalent amount of SGD 10 million (or approximately USD 7,400,000), an increase from the previous SGD 6 million (or approximately USD 4,44,600) threshold in the SIAC Rules 2016.

Should the parties intend to depart from the streamlined procedure, if the dispute value is under SGD 1 million (or approximately USD 740,000), this should either be done in writing by mutual agreement<sup>14</sup> or challenged by one of the parties after the constitution of the arbitral tribunal by applying to the President for their nonapplication.

There are streamlined timeframes for certain stages and avenues of the arbitration process as follows:

- **Appointment and challenge of the sole arbitrator:** The default position is that all streamlined procedure entails the appointment of a sole arbitrator, which the parties should jointly agree to within 3 days from the date of the notification of the streamlined procedure to the parties. Alternatively, at a party's request at any time or after this timeframe expires, the President will appoint the sole arbitrator "as soon as practicable". It is notable that the SIAC Rules 2025, do not provide a timeframe for the sole arbitrator's appointment by the President.

Additionally, a party who wishes to challenge the appointment of an arbitrator is required to do so within a short span of 3 days from the date of receipt of the notice of appointment, or from the date any grounds for a challenge become known or "should have reasonably been known to that party."

- **Conduct of the Streamlined Proceedings:** The arbitral tribunal is to hold an initial case management conference within 5 days from the date of the constitution of the arbitral tribunal. Notably, the arbitral tribunal may set a time limit for the parties to file any interlocutory applications without leave from the arbitral tribunal. The proceedings will be with written submissions and accompanying documentary evidence, with the exclusion of a production process, fact or expert witness evidence, or hearing unless the arbitral tribunal decides otherwise.
- **Timeline for Award:** The timeline for the issuance of awards in the streamlined procedure can be extendable. While the SIAC Rules 2025 stipulate that the final award is to be issued within 3 months from the date of the constitution of the arbitral tribunal, it is

qualified by "unless the Registrar extends the time for making such final award".

## Expedited Procedure

As mentioned above, the expedited procedure will apply where the amount in dispute exceeds SGD 1 million (or approximately USD 740,000) but not USD 10 million (or approximately USD 7,400,000). In addition, expedited procedure can also apply where although the dispute value does not exceed the equivalent amount of SGD 1 million (or approximately USD 740,000), the President has determined that the streamlined procedure shall not apply to the arbitration or where the circumstances of the case warrant the application of the expedited procedure.

The expedited procedure provides a slightly different approach to the streamlined procedure with the following features:

- Similar to the streamlined procedure, a sole arbitrator is appointed by default, unless the President decides otherwise.
- Disputes are decided based on written submissions and accompanying documentary

evidence. However, unlike the streamlined procedure, a party, can request a hearing. Furthermore, document production and witness evidence are part of the procedure, with the arbitral tribunal having the option to apply limitations and restrictions to them and to the written submissions.

Most importantly, the expedited procedure offers a longer timeline for the issuance of an award within 6 months from the date of the constitution of the arbitral tribunal, unless the Registrar's scrutiny extends this time.

## **Enhanced Powers to the President and the Registrar**

The SIAC Rules 2025 have expanded the powers of the Registrar by allowing the Registrar to accept and order any procedural applications.

Furthermore, the Registrar now has the power to conduct administrative conferences at its own discretion with the parties to discuss procedural or administrative directions, prior to the constitution of the arbitral tribunal. The SIAC Rules 2025, however, do not provide any guidance on the type of procedural and administrative directions the Registrar may issue prior to the constitution of the

arbitral tribunal. Rules 43.1 and 11 suggest that the Registrar may also "suspend an arbitration in accordance with such terms as the parties have agreed or as otherwise provided in these [r]ules", prior to the constitution of the arbitral tribunal.

The SIAC Rules 2025 have also introduced changes to the President's powers including the following:

- "If under the terms of an appointment procedure agreed by the parties, there is a substantial risk of unequal treatment that may risk affecting the validity or enforceability of the award", the President may, "take any necessary measure to constitute an independent and impartial Tribunal." This may include revoking the appointment of any arbitrator.
- The President is now empowered to explicitly refuse to appoint any arbitrator nominated by the parties, the co-arbitrators or a third person.
- Unlike the previous set of rules, under the SIAC Rules 2025, the removal of an arbitrator is a decision made by the SIAC Court instead of the President, although the President may be involved in the process.

## **Ex Parte Communications with the Arbitral Tribunal**

Unlike the International Chamber of Commerce ("ICC") Arbitration Rules and the DIAC Rules, the SIAC Rules 2025 have introduced an express prohibition on any party or its representative to engage in "any ex parte communications relating to the arbitration with any prospective arbitrator, including any candidate for appointment as a party-nominated arbitrator". To assist with gauging a prospective party-nominated arbitrator's availability and ability to be appointed as arbitrator, certain exceptions are carved out of this prohibition, including:

- general nature of the dispute and of the anticipated proceedings;
- qualifications, availability or independence; and
- the suitability of any candidate for presiding arbitrator, where it is agreed for the parties or party-nominated arbitrators to participate in the nomination of the presiding arbitrator.



## Third-Party Funding Arrangements

Like the ICC, the DIAC and various other arbitral institutions' rules, the SIAC now requires the disclosure of the existence of third-party funding arrangements, and the identity and contact details of the third-party funder. Any such agreement can be taken into account in apportioning costs of the arbitration. Furthermore, following the constitution of the arbitral tribunal, a party may not enter into a third-party funding agreement which may give rise to a conflict of interest with any member of the arbitral tribunal.

## Other Notable Changes

Other distinct features of the SIAC Rules 2025 include the following:

- Allowing the Registrar to refer a jurisdiction issue to the SIAC Court of Arbitration for a prima facie determination prior to the constitution of an arbitral tribunal, where a respondent is not participating in proceedings, or if a party objects to the existence, validity or applicability of an arbitration agreement.
- A provision for the appointment of an

independent member to committees of the SIAC Court of Arbitration that are considering challenges to arbitrators, where the challenged arbitrator is a member of the SIAC Court of Arbitration or SIAC Board.

- With an added emphasis on information security, the arbitral tribunal will now have the power to take appropriate measures, including issuing an order or award for sanctions, damages or costs, if a party does not take necessary steps to comply with the information security measures agreed by the parties or directed by an arbitral tribunal.
- Pursuant to the SIAC Rules 2025, the default position requires the President to appoint a sole arbitrator or presiding arbitrator of a different nationality to the parties where the parties are of different nationalities unless the President determines it appropriate otherwise.

## Concluding Remarks

The procedural revisions in the SIAC Rules 2025 bring about enhanced improvement that pushes for more efficiency, promise more fairness and help to support the enforcement of the awards.

The added provisions are contemporaneously streamlined and aligned with the expectations of the arbitration community considering the extensive public consultations. The offering of new procedures should provide more expeditious proceedings while bringing time and cost savings to the parties.

*For further information,  
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# 2024 Corruption Perception Index: Middle Eastern Governments' Push For Transparency

White-Collar Crime & Investigations /  
Middle East





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## 2024 Corruption Perception Index: Middle Eastern Governments' Push For Transparency

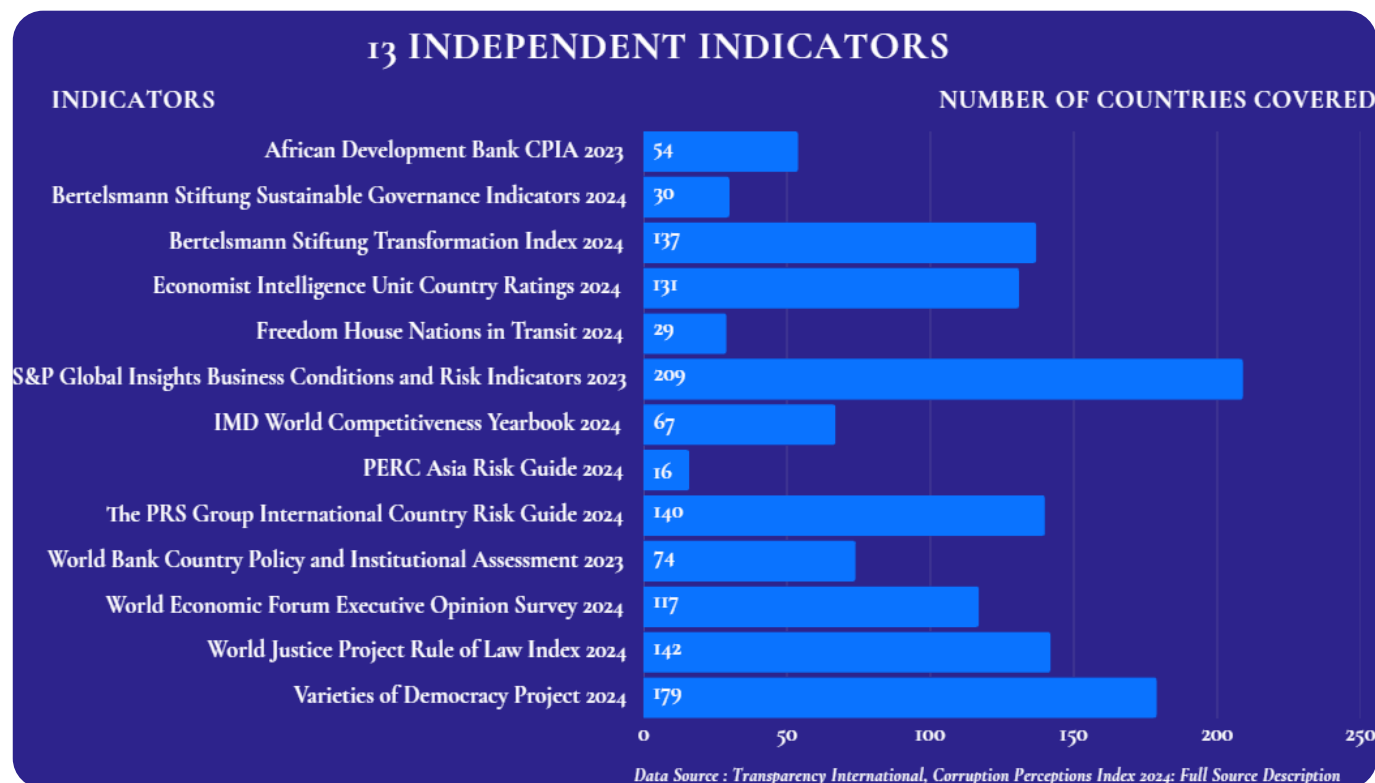
On 11 February 2025, Transparency International, the global watchdog on anti-corruption, released its annual Corruption Perception Index (CPI). The CPI measures perceived levels of public sector corruption according to experts and businesspeople and is widely regarded as an important indicator for foreign direct investment decisions. While the CPI provides a broad market risk assessment and a comparative framework for governance integrity, its methodology has faced criticism, including in the Middle East and North Africa (MENA) region. Whilst Transparency International has also published on the same day its CPI Calculation Criteria, highlighting that each country's score is based on at least three of 13 independent data sources, the use of proxy indicators may not fully capture local realities, and the reliance on amalgamated data leads to gaps or misalignment with our regional dynamics.

Additionally, the CPI does not offer an interactive tool for companies to assess their operational readiness or gain deeper insights into specific business conditions within these markets. The 2024 CPI report placed a spotlight on governments' responses to corruption, highlighting both progress and challenges, with a special focus on corruption impact on climate action and sustainability initiatives.

### **Bridging the Indicators Disconnect**

The chart on the next page illustrates the coverage of the 13 independent indicators used to calculate the 2024 CPI. Upon closer analysis, we note that certain gaps exist in the representation of the MENA region. For example, the Sustainable Governance Indicators (SGI) focus exclusively on 30 OECD and EU member states, leaving MENA countries unrepresented. Similarly, Freedom House's Nations in Transit 2024 limits its scope to 29 nations in Central Europe and the Newly Independent States, while the Political and Economic Risk Consultancy (PERC) 2024 report concentrates on the Asia-Pacific region.





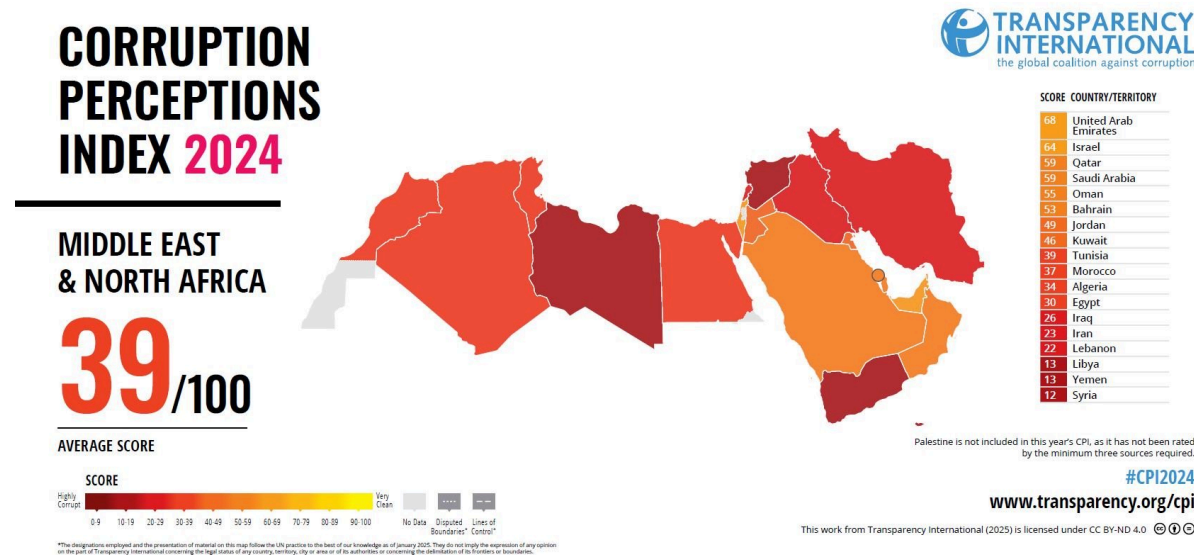
The World Bank's Country Policy and Institutional Assessment (CPIA) 2023 covers only 74 countries, and the Rule of Law Index 2024 excludes several key MENA countries such as Qatar, Saudi Arabia, Oman, and Bahrain, despite assessing 142 countries overall. Although the African Development Bank's CPIA expanded from 37 to

54 African countries, much of the broader of the MENA region remains outside its scope. These gaps present certain limitations in how governance, democracy, and corruption are analysed in the MENA context. Without comprehensive representation, global assessments may overlook important local

dynamics and the significant strides made by national authorities in combating corruption. This, in turn, may lead to an incomplete understanding of governance realities in these countries.

For stakeholders and investors, recognizing these nuances is crucial for making well-informed decisions regarding market entry and risk assessment. A more inclusive approach to data collection or preferably a robust tool to assess corruption across all MENA countries with the access to relevant information, which varies from one country to another for various reasons, and measuring the anti-corruption efforts, would help ensure a fuller picture of the regional governance landscape, capturing its challenges and success.

## Progress Driven by Local Authorities Investigation and Enforcement Efforts



Be that as it may, this year's CPI still showcased promising trends for the Middle East indicating significant progress, with several improving their CPI scores. Saudi Arabia and Qatar climbed to 38<sup>th</sup> place with scores of 59/100, reflecting the impact of targeted enforcement and investigative efforts by local authorities. Jordan made notable gains, improving by 3 points, to a score of 49/100, reaching 59<sup>th</sup> place, a testament to its growing momentum in combatting corruption compared to previous years.

The United Arab Emirates (UAE) rose from 26<sup>th</sup> to 23<sup>rd</sup> place, achieving a score of 68/100, while Bahrain demonstrated sustained improvement, increasing by 17 points since 2017 to reach 53/100. Similarly, Kuwait recorded a 7-point rise, attaining a score of 46/100. These advancements underscore the unwavering commitment of these nations to strengthening their anti-corruption frameworks and governance structures.

## Digitalisation and E-Governance : Key Drivers of Progress

Gulf states are adopting e-governance and digitalisation to streamline public administration, reduce human discretion and curb corruption. E-procurement systems have played a pivotal role in minimising bribery and ensuring greater transparency in budget allocations. The digitalization of public services has also empowered citizens with better access to government data, fostering new layers of accountability. The UAE's Digital Strategy 2025 aims to embed digitalization across all government sectors while promoting inclusivity and accessibility. Saudi Arabia, through Vision 2030 and its National Transformation Programme, is similarly advancing digital governance initiatives to boost efficiency and enhance public trust. However, increased reliance on digital systems also presents new challenges in cybersecurity and data protection which government must navigate carefully. Globally, Denmark retains its top position for the seventh consecutive year, followed closely by Finland, both continuing to set the benchmark. Progress has been made in 32 countries, yet 47 have regressed, including the United States of America, which saw a -4 dip to land at 65/100 in its score from the year 2023.

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**Gulf states are adopting e-governance and digitalisation to streamline public administration, reduce human discretion and curb corruption. E-procurement systems have played a pivotal role in minimising bribery and ensuring greater transparency in budget allocations."**

#### **Navigating A Renewed Landscape: What Businesses Must Know**

The 2024 CPI underscores that corruption remains a persistent threat, undermining global efforts to address major challenges. In markets where corruption levels have declined, businesses are expected to reap tangible benefits, including increased investments, economic growth, and improved resource allocation. Transparent and predictable environments attract both domestic and international investors, enabling businesses to innovate, and expand with confidence.

In the Middle East, the local authorities are maximising their anti-corruption efforts. For instance, Saudi Arabia's National Anti-Corruption Authority (Nazaha) arrested around 1,708 individuals, including government officials, in 2024 alone for offences ranging from bribery, abuse of power to money laundering. Qatar, on its part, enacted the Judicial Enforcement Law No. 4 of 2024, aiming to speed up legal processes and safeguard commercial and financial activities and leading numerous investigations/cases against perpetrators including public officials.

#### **The Road Ahead : Collective Responsibility in Enhancing Integrity**

Corruption is a complex and multifaceted issue, with varying indicators across jurisdictions. Common assessment tools are difficult to apply uniformly in the MENA region due to differences in governance systems. However, anti-corruption progress is increasingly seen as essential for attracting Foreign Direct Investment (FDI), with market integrity now a key driver of reform. As a result, businesses operating in the Middle East need to be cognizant of all relevant anti-corruption regulations and have the necessary

safeguards and policies in place. Local authorities are increasingly determined to enforce anti-corruption measures, regardless of external developments, such as the recent U.S. Executive Order pausing enforcement of the Foreign Corrupt Practices Act (FCPA) related to bribery and corruption cases. Let's remind ourselves that whilst the ongoing efforts in the Middle East are already yielding measurable results, with rising foreign direct investment, the establishment of corporate headquarters in prime locations, and an influx of ultra-high-net-worth individuals (UHNWIs), the fight against corruption is far from over. Continuous improvement is necessary to sustain progress, enhance transparency, and secure long term growth.

*For further information,  
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# The UAE's Legal Framework for LPG Trading and Regulation

Energy and Resources / UAE





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## The UAE's Legal Framework for LPG Trading and Regulation

Liquefied petroleum gas ("LPG") is a fuel gas composed of a flammable mixture of hydrocarbon gases, primarily including propane, propylene, butylene, isobutane, and n-butane. LPG is produced by refining petroleum or "wet" natural gas and is predominantly derived from fossil fuel sources, either as a byproduct of petroleum refining or through extraction from petroleum or natural gas streams as they are processed.

LPG offers several benefits, such as high calorific value, low emissions, and ease of transportation and storage, making it a versatile, clean-burning fuel widely used in the United Arab Emirates ("UAE") across domestic, industrial, and commercial sectors. The UAE is a leading global producer and consumer of LPG, and the industry plays a crucial role in the country's energy sector, supporting its sustainability and economic diversification goals. Due to its clean and efficient characteristics, LPG is a favourable alternative to other fossil fuels.

However, the safe use, storage, and distribution of LPG pose challenges due to the inherent risks, such as fire hazards and environmental impacts. The UAE has developed a comprehensive legal and regulatory framework to govern the trading, storage, and distribution of LPG. This framework aims to ensure safety, sustainability, and competitiveness in the market, while addressing the potential risks associated with the use of this vital energy resource.

This article provides a high-level overview of the legal and regulatory framework governing LPG in the UAE, focusing on the federal framework and emirate-level regulations. It outlines the legal obligations, licensing requirements, technical standards, and potential penalties for non-compliance within the LPG sector.

### The Federal Legal Framework for LPG

The primary legal framework for LPG regulation in the UAE is Federal Law No. 14 of 2017 on Trading Petroleum Products (the "2017 Trading Law"). This law governs the trading of all petroleum products, including LPG, and establishes the foundation for ensuring the safety,



environmental protection, and competitiveness of the UAE's petroleum products market. It applies across the entire UAE, encompassing mainland areas, free zones, special development zones, and investment zones, unless otherwise exempted by Cabinet decision.

The 2017 Trading Law defines "trading" as including the introduction, sale, storage, transportation, marketing, distribution, and offering for sale of petroleum products. These products include hydrocarbon gases such as LPG, which consists of propane, butane, and other gaseous hydrocarbons.

In addition to regulating LPG trading, the 2017 Trading Law grants each emirate the authority to determine the specific petroleum products that may be traded within its jurisdiction. The law aims to ensure the protection of the national economy, safeguard public health and safety, and protect the environment by regulating the activities of traders and preventing any practices that could harm the UAE's interests.

The Cabinet Resolution No. 35 of 2019 Concerning the Executive Regulations of Federal Law No. 14 of 2017 on Petroleum Products Trading (the "2019 Executive Regulations") serves as the secondary legislation that supplements the 2017 Trading Law. It provides specific guidelines on the implementation of the 2017 Trading Law, such as establishing registers for licensed traders, detailing the responsibilities of these traders, and outlining penalties for non-compliance.

The 2019 Executive Regulations mandate the formation of a petroleum products trading regulatory committee in each emirate, responsible for overseeing trading activities. The regulations also grant the competent authority in each emirate the right to reconcile with violators before referring cases to the courts. Traders who breach the provisions of the 2017 Trading Law may appeal any decisions, actions, or measures, though reconciliation decisions are final and binding.

Further clarity on the unified regulatory processes governing petroleum product trading, including LPG, is provided by Ministerial Decision No. 61 of 2020 on the Unified Regulatory Procedures for

Trading in Petroleum (the "2020 Ministerial Resolution"). This resolution standardises regulatory procedures across all emirates, ensuring a consistent approach to licensing, environmental compliance, and safety standards.

The 2017 Trading Law, the 2019 Executive Regulations, and the 2020 Ministerial Resolution collectively form the core of the UAE's regulatory framework for LPG trading. These laws govern licensing, registration, technical safety, environmental standards, and penalties for violations in the LPG sector.

## Licences and Approvals in the LPG Sector

### Key Licences Required for LPG Trading

To operate within the LPG sector in the UAE, companies are required to obtain several key licences and permits. The specific licences required may differ slightly between emirates, but the overarching regulatory requirements remain consistent across the country. Key licences include:

- **Trading Permit:** Issued by the competent authority in each emirate, this permit



authorises the holder to engage in the trading of LPG.

- **Trading Licence:** This licence is required for any company involved in economic activities related to LPG trading.
- **Transportation Licence:** Entities transporting LPG between emirates must obtain a special permit authorising the safe transport of LPG in compliance with regulatory standards.
- **Storage and Handling Permit:** A permit is required for the storage or handling of LPG, ensuring that facilities meet safety and environmental requirements.

### Conditions and Procedures for Obtaining Licences

The procedures for obtaining these licences and permits typically involve meeting a range of technical, safety, and environmental standards.

These conditions include:

- **Nationality and Legal Status Requirements:** Companies applying for an LPG trading licence must be UAE citizens or UAE-based legal entities with at least 51% UAE ownership.
- **Facility, Equipment, and Certification**

**Requirements:** LPG facilities must meet stringent technical and engineering standards, including compliance with health, safety, and environmental regulations.

- **Environmental, Security, Health, and Safety Requirements:** Applicants must adhere to standards set by the Ministry of Industry and Technology ("MoIAT"), the Ministry of Energy and Infrastructure, and the Ministry of Climate Change and Environment. These standards ensure that the handling and distribution of LPG comply with UAE environmental protection laws.
- **Application Process:** Businesses must submit their applications to the competent authority in their respective emirate, along with the necessary documentation and fees. A committee, established under the 2019 Executive Regulations, reviews the applications, conducts inspections of the facilities, and ultimately determines whether the licence is granted.

### LPG-Specific Legal Requirements Safety Standards and Environmental Obligations

LPG companies in the UAE are required to comply with a comprehensive set of safety standards, environmental obligations, and technical regulations. Among the key legal provisions governing LPG safety and environmental compliance are:

- **Federal Law No. 24 of 1999 on Environmental Protection and Development:** This law mandates strict adherence to environmental protection measures, especially in the handling, storage, and transportation of hazardous materials such as LPG. The law is instrumental in regulating emissions, waste disposal, and environmental sustainability in the LPG sector.
- **MoIAT Technical Regulations:** These regulations set detailed requirements for the design, performance, testing, and marking of LPG cylinders and other equipment. Compliance with these regulations is mandatory, and failure to meet these standards can result in significant penalties.
- **Cabinet Resolution No. 11 of 2011 on Approving an**

Emirati Regulation on the Application of UAE Standards and Mandatory Requirements for Liquefied Petroleum Gas Cylinders and Accessories: This resolution outlines the technical standards that LPG cylinders and accessories must meet to be sold or used in the UAE. It mandates the use of high-quality materials, protection against corrosion, and the ability to withstand local environmental conditions.

Additionally, under the 2020 Ministerial Resolution, specific requirements for LPG traders include:

- **Manufacture:** Companies must secure various certificates from the Directorate General of Civil Defence and environmental authorities, ensuring safety and compliance.
- **Importing:** Traders must obtain compliance certificates and trading authorisations from relevant authorities.
- **Storage and Transport:** Companies need certificates of no objection for safety, environmental, and transport standards from the Directorate General of Civil Defence and other relevant bodies.



**The UAE is a leading global producer and consumer of LPG, and the industry plays a crucial role in the country's energy sector, supporting its sustainability and economic diversification goals. Due to its clean and efficient characteristics, LPG is a favourable alternative to other fossil fuels.**

#### **Penalties for Non-Compliance**

Non-compliance with the UAE's LPG regulations can result in severe penalties, including:

- **Fines and Imprisonment:** Violations of the 2017 Trading Law or the 2019 Executive Regulations may result in fines ranging from AED 100,000 to AED 500,000, with imprisonment of up to one year for serious infractions. Repeat offenders face harsher penalties.
- **Confiscation of Goods and Equipment:** Regulatory authorities have the power to confiscate non-compliant LPG products, vehicles, and equipment.
- **Reconciliation and Appeals:** In some cases, violators can settle penalties by paying fines prior to court referral. However, the 2019 Executive Regulations limit the right to appeal reconciliation decisions.

#### **Technical Regulations for LPG**

LPG products in the UAE must comply with a wide range of technical standards designed to ensure product safety, quality, and environmental sustainability. These standards are defined in several key pieces of legislation.

The Cabinet Resolution No. 11 of 2011 on the Mandatory Requirements of Liquefied Petroleum Gas Cylinders and Accessories ("Cabinet Resolution No. 11 of 2011") sets out the technical specifications for LPG cylinders and accessories. It mandates that all gas cylinders sold in the UAE must meet stringent standards for safety, durability, and quality. Cylinders must undergo rigorous testing to ensure they can withstand high pressure, temperature fluctuations, and other environmental factors prevalent in the UAE.

Key requirements under this resolution include:

- **Valve Protection:** Cylinders must have robust mechanisms to protect valves from damage.
- **Durability:** LPG cylinders must be made from materials that are resistant to corrosion and wear, ensuring longevity and safety.
- **Marking and Labelling:** Each cylinder must be clearly marked with information on the manufacturer, country of origin, capacity, gas type, test pressure, and other essential safety information.

Federal Decree by Law No. 20 of 2020 Concerning Specifications and Standards (the “2020 SS Law”) imposes further obligations on manufacturers and suppliers of LPG products to comply with UAE standards. This law gives MoIAT the authority to prepare, review, and amend standard specifications in coordination with other government bodies. MoIAT is also responsible for enforcing technical standards and issuing certificates of conformity.

Under the 2020 SS Law, LPG cylinders and accessories must be inspected and re-certified every five years for steel and aluminium cylinders and every seven years for composite cylinders. Non-compliant products may be confiscated, and violators may face substantial penalties, including fines, imprisonment, or the revocation of trading licences.



## Emirate-Level Regulatory Frameworks

The legal framework for LPG trading and regulation is supplemented by emirate-specific rules and regulatory bodies that enforce the federal framework. Below is an overview of the regulatory systems in key emirates.

### Abu Dhabi

In Abu Dhabi, the Abu Dhabi Department of Energy (“ADDoE”) is the competent authority designated to oversee LPG trading. While Abu Dhabi’s regulatory system is still evolving, the Abu Dhabi Law No. 5 of 2023 Regulating the Trade of Petroleum Substances in the Emirate of Abu Dhabi has formally designated the ADDoE as the competent authority. A petroleum products trading regulatory committee has also been established under the 2019 Executive Regulations.

Abu Dhabi is currently developing a comprehensive technical permitting system for the storage, transportation, and sale of LPG. This system is expected to become fully operational by 2025. Until then, businesses must work closely with the ADDoE to obtain the necessary permits and licences.



On 31 August 2023, the Gas Safety Committee, formed by ADDoE, issued three key circulars to enhance LPG safety:

- Prohibition on Non-National LPG Supply: Only LPG from UAE national petroleum companies can be sold, with penalties for violations, including fines and business closures.
- Retail Sale of Gas Cylinders: Retail outlets are banned from selling gas cylinders, with fines starting at AED 3,000.
- Central Gas Systems: Buildings must switch to central LPG systems, with mandatory maintenance contracts and a compliance deadline by the end of 2023.

## **Dubai**

Dubai has one of the most advanced LPG regulatory systems in the UAE. The Dubai Supreme Council of Energy (“DSCoE”) is the sole authority for issuing and renewing trading permits, requiring full compliance with all relevant approvals from Dubai’s government entities under Directive No. 3 of 2021 on the Regulation of LPG Trading. This directive mandates high safety and environmental standards, particularly in the areas

of transportation, storage, and distribution of LPG. Only DSCoE-approved LPG cylinders filled at authorised factories are permitted for distribution. Joint inspections with other government bodies are conducted to ensure compliance. Through Resolution No. 1 of 2022, enforcement has been strengthened, leading to penalties for non-compliant traders and promoting public safety.

The DSCoE works closely with other governmental bodies to ensure compliance with technical standards, and it regularly conducts joint inspection campaigns to enforce regulations. Dubai’s regulatory framework for LPG is highly structured and incorporates a wide range of health, safety, and environmental standards.

## **Sharjah**

In Sharjah, the Sharjah Economic Development Department acts as the de facto competent authority. While the emirate has not fully implemented the 2017 Trading Law, LPG trading activities are currently restricted to state-owned participants, noting that existing private traders operate under renewable licences, but no new licences are being issued at this time.

## **Fujairah**

The Fujairah Oil Industry Zone Authority is the competent authority overseeing LPG regulation in Fujairah. Although the emirate’s regulatory framework is still in its early stages, FOIZA has begun to issue licences to larger corporations, with plans to expand these efforts to smaller companies in the near future. FOIZA has also established a publicly accessible register of LPG traders, ensuring greater transparency in the regulatory process.

## **Other Emirates**

In Ajman, Ras Al Khaimah, and Umm Al Quwain, LPG regulation is largely ad-hoc, with no comprehensive local legal instruments supplementing the 2017 Trading Law. Ajman’s Petroleum and Metals Department and Ras Al Khaimah’s Petroleum Authority act as the competent authorities in their respective emirates, while Umm Al Quwain relies on its Department of Economic Development to manage LPG trading activities. In all three emirates, regulations are implemented reactively, with licences issued on a case-by-case basis.



## Final Remarks

The legal and regulatory landscape for LPG in the UAE is robust and evolving, shaped by both federal laws and emirate-specific regulations. Federal laws like the 2017 Trading Law and the 2020 Ministerial Resolution provide a solid foundation for governing the LPG sector, ensuring safety, environmental protection, and market competitiveness. However, the extent and enforcement of these regulations vary across the emirates, with Abu Dhabi and Dubai leading in terms of structured and stringent oversight.

For LPG traders, the regulatory environment requires strict compliance with safety, environmental, and technical standards alongside a multi-layered licensing process. The penalties for non-compliance are significant, underscoring the UAE's commitment to maintaining a safe and sustainable LPG market. Meanwhile, consumers benefit from these high standards, which ensure safer products and services while aligning with the UAE's broader environmental and sustainability goals.

As the legal framework continues to develop, particularly with Abu Dhabi's initiatives and Dubai's established regulatory system, the sector is moving toward greater consistency and structure. This ongoing evolution promises to foster a more transparent, competitive, and safe environment for both industry stakeholders and consumers alike.

*For further information,  
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# **Recent Federal Supreme Court judgment - Establishing a high bar for proving medical negligence**

Dispute Resolution / UAE







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## Recent Federal Supreme Court judgment - Establishing a high bar for proving medical negligence

In a recent medical negligence case, the Federal Supreme Court issued a ruling in Appeals no. 479, 592, 597 of 2024 which highlighted the importance of adhering to medical standards and underscored the legal responsibilities of healthcare providers. The court held that in cases involving multiple accused parties and to establish a conviction in medical malpractice, the court must establish a clear and direct causal link between the medical professionals' actions and the harm caused.

This new ruling marks a significant development in the court's approach to allocating liability in cases of negligence with multiple accused parties and highlights the legal standards required to establish medical malpractice. The judgment raises the standard of judicial oversight and legal analysis. It is a judgment that will prove particularly important to medical practitioners, as well as lawyers specialising in negligence cases more generally.

### Background

The question of shared liability for multiple parties in negligent acts is governed by Article 291 of the Civil Transactions Law Federal Law No. (5) of 1985, which provides that when there are multiple parties to a negligent act, each one of those parties is liable for their share in the act and the judge may at his discretion, choose to either assign liability equally between the parties, or assign liability jointly and severally.

The allocation of liability will be determined based on the facts of the case and the evidence provided, the decision is still at the discretion of the judge regardless of the identified share of each of the parties.

### Facts of the Case

A doctor, who was party to the original case, erroneously administered an iron infusion to the pregnant wife of the applicant based on an incorrect diagnosis which led to the death of the woman's foetus. The Supreme Medical Liability Committee concluded that the supervising doctors committed serious medical errors, including:

- 1- Failure to diagnose or delayed diagnosis.
- 2- Unjustified delay in treatment.
- 3- Lack of informed consent regarding treatment risks.
- 4- Poor medical documentation.
- 5- Gross ignorance of standard medical practices.

On appeal, the Court found the doctors (the defendants) involved in this case criminally liable for manslaughter pursuant to Federal Decree-Law No. 4 of 2016. This law limits criminal liability to serious medical errors as determined by the Medical Committee. The Court found the defendants guilty of medical malpractice and sentenced them to pay the "blood money" (compensation) to the family of the deceased foetus. In addition to the blood money of AED 200,000, the Court also fined each of the accused AED 10,000. The court also rejected the defendant's request to summon additional medical experts for questioning, stating that the existing report was sufficient for determining the facts of the case.

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**This new ruling marks a significant development in the court's approach to allocating liability in cases of negligence with multiple accused parties and highlights the legal standards required to establish medical malpractice.**

Three of the accused doctors appealed further to the Federal Supreme Court, which disagreed with the primary court's judgment, stating that the judgment is flawed as it failed to clearly define gross medical negligence, did not sufficiently explain how the defendants are liable, and relied solely on a medical committee's report without proper legal analysis. It also did not establish the specific negligence of each defendant or their role in the foetus's death, making it incomplete in determining criminal liability under the law. The Court overturned the previous judgment and remanded the case back to the appellate court for retrial before a different panel.

### **Judgment**

The Federal Supreme Court did not deny the appellant's culpability and involvement in the death of the foetus. Its first point of disagreement with the previous Courts decision was their failure to properly define gross medical negligence in relation to each of the accused. Under Article 5 of Cabinet Resolution No. 40 of 2019 concerning the Executive Regulations of Federal Decree-Law No. 40 of 2016 concerning Medical Liability, gross medical malpractice will only occur if it leads to the death of a person or a foetus and satisfies any one of the criteria set out in the provision. The Federal Supreme Court was not satisfied that the Court had sufficiently explained how each of the defendants satisfied this legal threshold of gross medical negligence, nor did the Court provide any explanation as to what a competent doctor in the same position would have done. This lack of reasoning was found to be legally deficient.

The second point raised by the Federal Supreme Court, was that the lower courts failed to properly identify the legal culpability of each of the accused. In its view, the Court of Appeal was obligated to identify exactly how directly responsible each of the accused were in causing the death of the foetus, using this analysis to determine the financial liability to be paid by each of the accused. In particular, the Federal Supreme Court was not satisfied that the primary Courts had properly taken into consideration the question of whether this initial negligent act by the doctor was so significant of an operating cause for the death of the foetus, that it would in turn subsume the subsequent and related negligent acts by the other accused doctors. It was not enough for the Courts to prove that the accused were negligently liable; they had to prove how their negligence was a direct cause of the death, and whether certain accused individuals' negligence liability was so gross and pervasive that it overshadowed the liability of the co-accused.

The Federal Supreme Court also criticized the lower courts' reliance on the Supreme Medical Liability Committee report without independent

judicial scrutiny, stating that while expert opinions are valuable, the Courts must ultimately conduct their own judicial investigations and independent analysis of the information.

## Conclusion

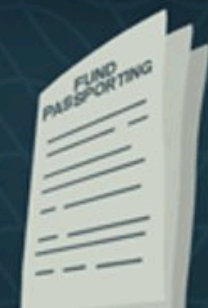
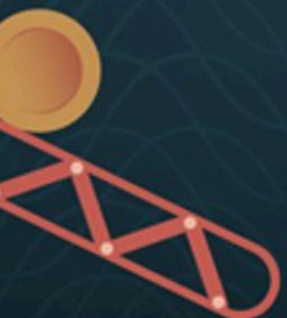
In conclusion, the Federal Supreme Court's ruling in this case highlights a more rigorous standard to be followed in determining liability in medical negligence cases involving multiple accused parties. The judgment balances the need to protect patients from medical negligence with the necessity of safeguarding medical professionals from unwarranted legal action. The Court emphasized the necessity of defining and determining whether gross medical negligence was committed and ensuring that each accused individual's liability is independently assessed rather than relying solely on expert reports. It reinforced the principle that courts must establish a direct causal link between each defendant's negligence and the harm caused, particularly when multiple parties are involved and when their involvement is a result of an individual accused's actions.

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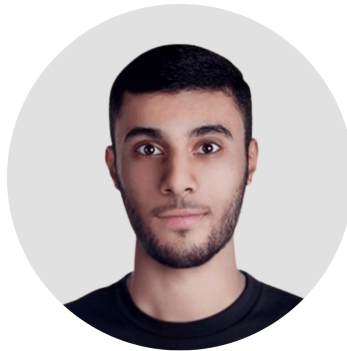
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