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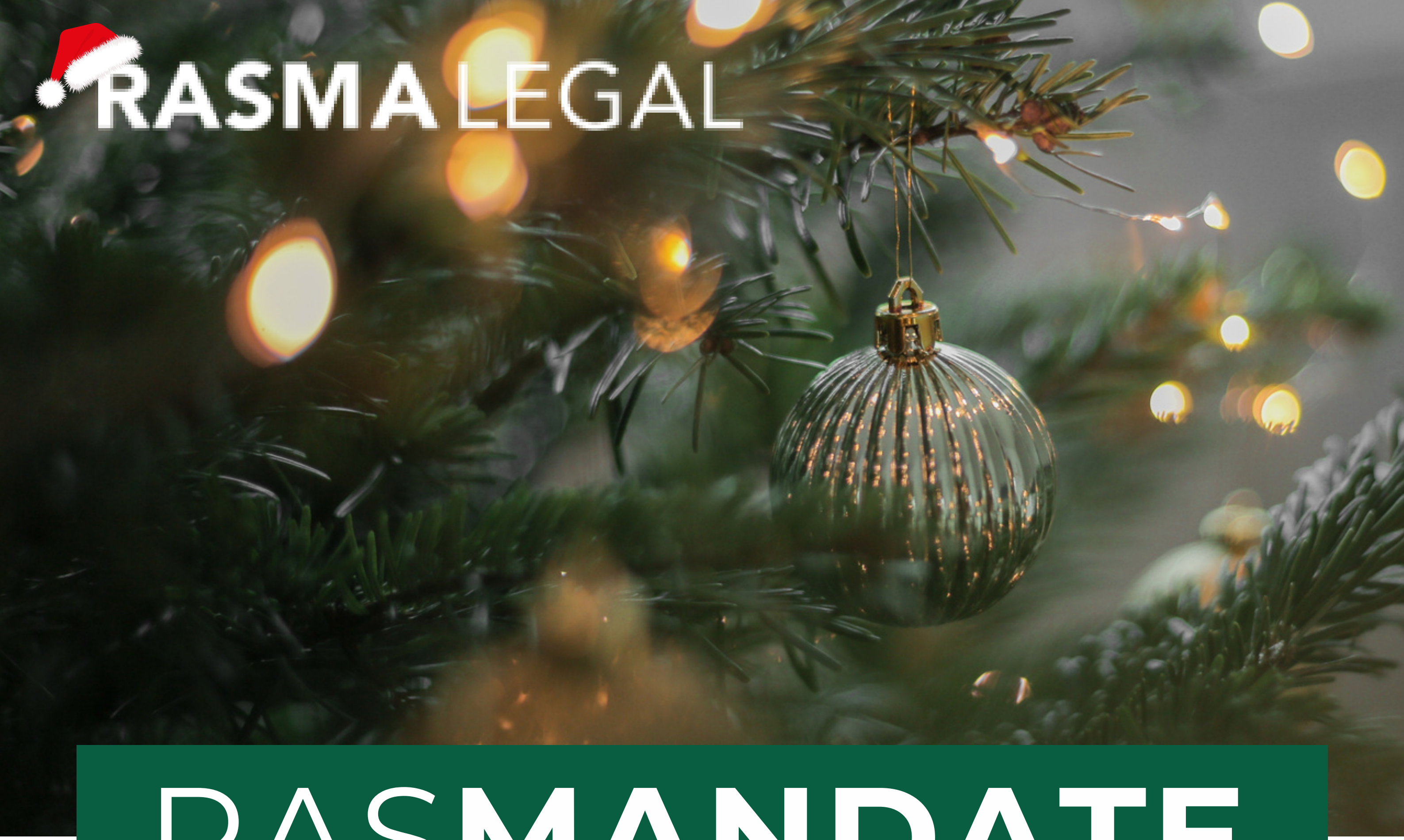

RASMANDATE

A MONTHLY COMPILATION OF ARTICLES AND LEGISLATIVE & REGULATORY UPDATES CURATED BY RASMA LEGAL

VOLUME I ISSUE 5

NOVEMBER-DECEMBER 2023

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COVER STORY

NEW KSA CIVIL TRANSACTIONS LAW

When does the new Civil Law in Saudi Arabia take effect, and how does it impact contracts?

How does this law differ from previous Sharia-based governance of contracts?

What fallback positions exist in cases where the Civil Law doesn't cover specific contract provisions?

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COVER STORY

The Kingdom of Saudi Arabia (KSA) Civil Transactions Law (the "Civil Law") enacted on June 19, 2023, by Royal Decree M/191, has now been published in the official gazette. It will come into effect 180 days from the date of publication, around December 16, 2023 (the "Effective Date").

This new Civil Law marks a significant milestone for KSA as, prior to its enactment, contracts were governed by Islamic law (Shari'a) derived mainly from the principles of the Holy Qur'an and the Sunnah (prophetic teachings of the Prophet Muhammad). This codification will significantly influence contractual relationships in KSA, both nationally and internationally. It represents a seismic shift for KSA, aligning with its vision 2030, to attract major investment to the country.

Following the Effective Date, all provisions that contradict the Civil Law shall be abolished. Therefore, contracts signed after December 16, 2023 will be governed by this new legislation. In situations where the Civil Law does not address specific contract provisions or additional clarification is required, 41 defined Sharia maxims are the fallback position. These maxims include: in contracts certainty is not removed by doubt, customs are regarded as part of a contract, ignorance is not an excuse for non-compliance, freedom from liability is presumed, the rights of individuals are not removed by necessity and priority is given to intention and meaning, as opposed to text and formation.

The Civil Law has retroactive effect and therefore applies in almost all cases to contracts signed prior to December 16, 2023. However, there are two exceptions to the Civil Law's retroactive applicability, where (i) a contracting party can prove that such application would contradict an existing "statutory provision" or "judicial principle"; the onus will be on the party resisting the retroactive application of a provision of the Civil Law to prove it would contradict existing statutory provisions or judicial principles, or (ii) the limitation period in respect of a given right had begun to run prior to the Effective Date.

We outline key principles of the new Civil Law.

1- Binding force of contracts

According to the article 45 of the Civil Law, "a framework agreement shall refer to a contract whereby the contracting parties establish the basic terms of the contracts concluded by the parties in accordance with the provisions of this agreement. Such agreement shall form a part of the contracts concluded between them".

The Civil Law confirms the essential elements of a binding contract and recognizes that the contract constitutes the governing framework of the parties. It emphasizes that the contracting parties must fulfil the stipulations outlined in the contract. Nevertheless, it's crucial to note that the Civil Law incorporates mandatory exceptions.

2- Contract interpretation

The starting position in contract interpretation is that if the language of the contract is clear, then it is not permissible to deviate from it and the parties will therefore be bound by the terms.

However, in cases where there is room for interpretation, then the common will of the contracting parties must be considered. This is guided by the circumstances of the contract, the nature of the transaction, what is customary in dealings between the two contracting parties, their condition, and the trust and integrity that must exist between the contracting parties. Consequently, pre-contractual correspondence can be considered to find the common will of the parties in order to resolve ambiguity.

3- Good faith

The Civil Law also states that parties must execute their obligations in a manner that is consistent with the requirements of good faith.
The principle of good faith is set out in article 95 (1) of the KSA Civil Law, which states: “The contract shall be executed in accordance with its terms and in a manner consistent with the requirements of good faith”.

Moreover, article 41 introduces the obligation on parties to negotiate contracts in good faith.

“1- The negotiations of a contract may not place the negotiating parties under the obligation to conclude such contract. However, the party negotiating or terminating the negotiations in bad faith shall be liable for the damage incurred by the other party. This shall not include the loss of profits expected from the negotiated contract.

2- The lack of seriousness in negotiations, or knowingly withholding any substantial information that affects the contract shall constitute an act of bad faith”.

4- Compensation

The new Civil Law includes valuable provisions regarding the regulations of damages in case of default or delay by a party. This legislation enables parties to mutually agree and fix compensation in advance, stipulating this in the contract and also addresses liquidated damages as a form of remedy.

These liquidated damages may not fall due, or may be reduced if the creditor has not suffered a loss, or the agreed compensation was exaggerated or the original obligation was partially performed. KSA has adopted the position that gives the court or tribunal authority to reduce pre-agreed compensation provided certain criteria are met. The Civil Law explicitly designates this is a mandatory provision and therefore cannot be overridden by the contractual terms. The law sets out the test for the recovery of compensation and damages, and this must be the compensation that would normally have been foreseen at the time of the contract.

This legislation also recognizes the right to compensation for moral damage. Pursuant to article 138 of the law, moral damage includes sensory or psychological harm inflicted on a normal person as a result of prejudice to his/her body, freedom, honor, reputation, or social status. The right to compensation for moral damage shall not be transferred to others unless its value is determined by a statutory or conventional provision or judicial judgement.

The court assesses moral damage suffered by the damaged; in that regard, the type and nature of the moral damage and the damaged shall be taken into account.

5- Statute of limitation

The general limitation period is ten years, but there are other shorter periods that will apply to certain specific cases as stipulated in the Civil Law.

6- Force majeure

Article 125 of the Civil Law provides for an exemption of liability in the event of a force majeure by stating that "The person shall not be liable if it is proven that the harm arose from a cause beyond his control, such as force majeure, the fault of a third party or the fault of the injured party, unless otherwise agreed".

The enactment of the new Civil Law signifies a positive regulatory change in KSA. The codification of essential legal risks not only enhances efficiency but also offers investors a sense of familiarity and increased confidence when entering business ventures in KSA. The embracing of contemporary business practices and the increasing transparency reflects KSA's commitment to be at the forefront of global business transactions. It's crucial for all parties to recognize the retroactive nature of this law. Entities are required to review and possibly redraft their existing contractual arrangements, more so if they have any potential issues that remain unresolved after the Effective Date.

LEGAL & REGULATORY UPDATES

VARA issues official communication regarding the Regulatory final deadline for VASPs

On the 17th of November 2023, Virtual Assets Regulatory Authority (VARA) issued an official communication regarding the Regulatory final deadline for VASPs, which was also set for the same date.

The purpose of this market notice is to inform all VA (Virtual Asset) industry stakeholders and consumers that the designated deadline for entities to engage in the regulatory licence application process has now lapsed.

Notably, VARA has reiterated a series of advisories since Q2-2023 as well as the requirement for entities operating within the VA domain to initiate procedural engagement with VARA. Moreover, VARA called on VASPs to proactively reach out and emphasized the mandatory licensing requirement in order to avoid enforcement actions as well as regulatory consequences.

Subsequently, on the 7th of November 2023, VARA extended its final deadline for VASPs to apply for registration or submit their licensing applications until the 17th of November 2023 – a deadline which has now lapsed.

To date, fines have been imposed on 18 VASPs with commercial licenses on the mainland, operating under the purview of the Department of Economy and Tourism (DET), due to their non-compliance with VARA's directives and regulatory guidance.

Further fines, enforcement actions and potential closure of unlicensed VASPs are anticipated should regulatory gaps persist unattended by the end of the year. Hence, entities seeking to continue to offer VA services in Dubai are urged to contact VARA expeditiously to mitigate the risk of further punitive measures.

LEGAL & REGULATORY UPDATES

VARA's enforcement actions are indispensable in addressing instances of non-compliance; as the integrity of the VA market relies on the responsible market conduct of each participant.

VARA's proactive approach establishes a robust foundation for sustained efficacy within the dynamic landscape of VAs, and fosters trust in VARA's unique regulatory regime. This, in turn, positions the industry in alignment with best-in-class international standards, and fortifies VARA's position in the global landscape.

THE CENTRAL BANK OF INDONESIA (BI) AND THE CENTRAL BANK OF THE UAE (CBUAE) BROADENED THEIR MEMORANDUM OF UNDERSTANDING (MOU) TO INCLUDE ISLAMIC FINANCE AND DIGITAL INNOVATION

The Central Bank of Indonesia (BI) and the Central Bank of The UAE (CBUAE) recently signed a Memorandum of Understanding (MOU) to strengthen their collaboration across various central banking realms, notably in Islamic finance. This agreement, signed by BI Governor Perry Warjiyo and CBUAE Governor Khaled Mohamed Balama, expands upon a prior pact from 2021, which primarily centered on payment systems and digital financial advancements. The main objectives of this MOU are to foster closer connections and facilitate the sharing of information in crucial areas such as monetary policies, macro-prudential regulation, financial stability, anti-money laundering measures, and combating terrorism financing. Additionally, it encompasses digital financial innovations and Islamic economic finance. This commitment stemmed from discussions between Indonesian President Joko Widodo and UAE President Sheikh Mohamed bin Zayed Al Nahyan during a meeting at COP 28 in Dubai.

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THOUGHT LEADERSHIP

Launch of the Ras Al Khaimah Digital Assets Oasis

The UAE is rapidly establishing itself as a central hub for cryptocurrency, blockchain and Web3 technologies, accompanied by simultaneous increases in investments within the expanding tech innovation sector. On October 19, 2023, a significant achievement was reached with the official launch of the Ras Al Khaimah Digital Assets Oasis (RAK DAO), marking the inception of a new era in digital evolution and Web3 collaboration within Ras Al Khaimah. In this area, businesses dealing with digital assets, including cryptocurrencies, can operate under fewer regulatory restrictions, offering benefits to both small and large enterprises. A significant recent advancement is the establishment of the RAK Digital Assets Oasis, the world's first common law and specialized free zone exclusively dedicated to companies involved in digital and virtual assets.

This initiative, established earlier in the year under RAK Law No. 2 of 2023 and overseen by RAK's Department of the Future, is recognized as "the world's leading inaugural purpose-built free zone catering to next-generation innovators". RAK DAO is structured to attract both domestic and international investments, entrepreneurs, and businesses specializing in unregulated virtual asset activities, covering Metaverse, Blockchain, Gaming, NFTs, DApps, AI, and Web3.

This recently established free zone presents a diverse set of benefits, which include:

- Full foreign ownership
- Complete repatriation of profits and capital

The free zone provides a range of services to nurture any business growth, including access to top-tier advisors and service providers, cutting-edge infrastructure, and a network of like-minded companies and entrepreneurs.

A noteworthy advantage of RAK Digital Assets Oasis is its strong emphasis on regulatory compliance. The free zone is dedicated to upholding the highest compliance standards and has developed a comprehensive regulatory framework to ensure that businesses operating within it fully comply with both local and international regulations. This commitment not only ensures that the business operates within legal boundaries but also contributes to building trust with your customers and stakeholders.

Currently, the UAE aims to take a leading role in fostering these emerging technologies and driving innovation in the digital landscape. To support Web3 and blockchain companies, they have established the new free zone; RAK DAO. With strategic initiative, along with the UAE's strategic location, exceptional infrastructure, and a favorable business environment, RAK Digital Assets Oasis solidifies Ras Al Khaimah's status as a premier hub for innovation. Furthermore, it emerges as an optimal choice for companies seeking to venture into the digital asset and cryptocurrency market.

THOUGHT LEADERSHIP

Foundation Structure in the UAE: The Preferred Option for Asset Management

Amidst the evolving landscape of estate and asset dynamics in the United Arab Emirates (UAE), the establishment of foundations has emerged as a highly successful and preferred avenue. Recognized as a civil law system concept, foundations are gaining popularity among wealthy individuals, families, and businesses, whether they are local residents or expatriates.

Since their introduction to the UAE in 2017, foundations are becoming the preferred choice for managing assets and their distribution due to the various benefits they offer. They have evolved into an indispensable component of the country's wealth management framework, currently spanning three of the UAE's prominent free zones: Dubai International Financial Centre (DIFC), Abu Dhabi Global Market (ADGM), and Ras Al Khaimah International Corporate Centre (RAKICC).

This article will begin by providing a comprehensive overview of the foundation regime in the UAE. It aims to describe the advantages of establishing a foundation, including a discussion on its composition. Lastly, the article will highlight the key distinctions in the process of setting up a foundation within ADGM, DIFC, and RAK ICC jurisdictions.

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Overview of the Foundation

First, a foundation stands as an independent legal entity, established through the founder's unilateral declaration of will. Operating autonomously, it possesses a distinct legal personality separate from the founder, which will be further discussed below. This legal autonomy shields assets from external claims, including bankruptcies and creditors.

The foundation's administration is carried out by council members, chosen by the founder of the foundation itself. The role of these members is to oversee property management and execute the foundation's objectives.

Guided by a foundation council, assets selected by the founder adhere to the foundation's Charter and By-laws, dedicated to benefiting specific beneficiaries or supporting particular causes.

Distinct from a trust which lacks a legal personality and does not conduct transactions in its own name, a foundation doesn't require a fixed or specified limited period for its establishment. Unlike a company as well, it does not issue shares. Therefore, there are no shareholders in the foundation; only council members and beneficiaries as outlined below. Furthermore, in contrast to a trust's triangular relationship between settlor, trustee, and beneficiaries, both trust and foundation aim to safeguard wealth and ensure the continuity of legacy for future generations.

THOUGHT LEADERSHIP

Additionally, a foundation serves multiple purposes, including management and preservation of private wealth, planning for succession, strategic tax planning, charitable institutions, safeguarding assets, structuring corporate entities, and protection against creditors.

All the aforementioned aspects are specified in the foundation's constitution, comprising both its Charter, which establishes the foundation, and the By-Laws, which elaborate on the internal governance framework of the foundation and any additional power granted to the founder and members of the council.

Benefits of establishing a foundation and its composition

As previously mentioned, the foundation is established by the founder, who could be either a natural person or a legal entity. Ordinarily, upon the establishment of the foundation, the said founder loses any rights towards the foundation or its property, unless it is stated otherwise in the By-Laws.

The foundation must have a council, comprised of at least two (2) members that administrates the affairs of the foundation in accordance with the foundation's Charter and By-Laws. The founder may be appointed as a member of the council.

A crucial point to highlight is that the appointment process is only completed when the designated members explicitly declare and confirm their consent to the relevant authority. For instance, the DIFC mandates an official document from each member, confirming their agreement to the appointment.

In addition, a guardian, either an individual or a legal entity shall be appointed by the founder. The guardian's role is to oversee the council and take necessary measures to ensure that the council fulfills its functions in a proper manner. However, the appointment of the guardian is not always mandatory. According to DIFC Foundations Law N° 3 of 2018, if a foundation has a charitable object or a specified non-charitable object, the foundation must have a guardian in relation to that object. The founder is not eligible to serve as the guardian, and the appointment of a person as a member of a council is void and will have no effect if that person is also a guardian of the foundation. Powers may be reserved to the guardian in the By-Laws to approve or reject actions taken by the council.

In contribution to the objectives of the foundation, the founder determines the beneficiaries, also called “qualified recipients”, that have no right to or interest in the property of the foundation other than a right to payment of amounts which arises by virtue of the terms of the By-Laws.

On the other hand, there are several advantages when it comes to establishing a foundation:

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1. Separate legal entity as previously stated. However, it is restricted from engaging in any business activities beyond fulfilling its designated purpose.

2. Wealth fortress and protection from personal liabilities and external claims from third parties attempting to extort monetary benefits or settlements from the founder and its family.

3. Continuity: Notably, foundations in the UAE extend beyond the founder's lifetime, perpetuating their impact indefinitely.

4. The qualified recipients remain confidential, enabling a more discreet management of the founder's family wealth.

5. The qualified recipients may be individuals, corporate entities, a further foundation or remain unspecified at the time of establishment.

6. Foundations originating from abroad can be transferred to the regulatory frameworks of ADGM, DIFC, or RAK ICC.

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Key differences between ADGM, DIFC and RAK ICC when setting up the Foundation

As previously stated, individuals have the flexibility to establish a foundation within one (1) of the following free zones in the UAE: DIFC, ADGM, and RAK ICC.

1. Setting up in DIFC

The framework for Foundation Regime in DIFC is regulated by Foundation Law N° 3 of 2018. This legislation comprehensively defines various aspects of foundations, spanning from their inherent nature to the details of their establishment and administration of the foundation. Notably, the DIFC regime stands as the exclusive platform allowing a corporation's transformation into a foundation, a process facilitated through the DIFC portal.

In fact, when submitting a foundation application via the DIFC portal, a series of queries related to its internal management and any existing company formation are addressed. In accordance with the provisions set forth in the Foundation Law, a private company, as governed by the DIFC Companies Law No. 5 of 2018, may seek a certificate of continuance under this legislation, contingent upon unanimous shareholder approval, as stated in article 66 of the aforementioned law.

Distinguishing itself, the DIFC Foundation holds the unique capability of having either a charitable or non-charitable object. Interestingly, while DIFC Foundations are permitted to be exclusively philanthropic, ADGM does not share this allowance. In instances where a foundation is established for charitable purposes, a guardian is mandated, as also stipulated in article 23 of DIFC Foundation Law N° 3 of 2018.

In terms of dispute resolution, the DIFC system incorporates arbitration as a primary alternative. Notably, a DIFC Foundation is gifted with the authority to issue depository certificates (commonly known as securities), which signify the value of the assets held and the contributor's corresponding entitlement.

Last but not least, when it comes to financial considerations, the DIFC Foundation Law explicitly outlines the fees associated with the registration and annual renewal of foundations. Until this day, the application for the Registration of Foundation and its Annual Renewal Fee amounts to USD 200. Furthermore, the notification processes to relevant authorities vary depending on the nature of the notification.

2. ADGM Foundation Framework

Foundations in ADGM are governed by Foundation Law 2017, that has been subject to amendments ever since. ADGM, being the first free zone to tackle the foundation regime, guarantees the confidentiality of council members' identities, unlike the DIFC where this information is publicly accessible upon payment of an access fee. ADGM ensures the privacy of council members unless specifically requested by the Registrar.

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Distinctively, the ADGM Foundation regime stands out by not imposing an annual duty for the continuous filing or auditing of accounts. While other regimes require the maintenance of account records, ADGM Foundation is exempted from filing these records annually unless explicitly requested.

It's noteworthy that establishing an ADGM Foundation for purely philanthropic or benevolent purposes requires a more customized structuring. Unlike certain regimes, philanthropy alone may not suffice as a foundation's primary objective in ADGM, necessitating additional considerations in the foundation's design and mission.

A notable distinction worth highlighting is the rapidity of the establishment of a foundation in ADGM, where it might take up to maximum five (5) working days to set the foundation up once requested documents are submitted. In contrast, DIFC follows a more delicate process, where an initial approval has to be granted first upon the submission of the application via the online portal prior to the submission of other documents including but not limited to the registered agent, data protection compliance and management details. Therefore, ADGM foundations are fast and simple to apply for!

In terms of fees, the cost for both registration and annual renewal in the year 2022 is USD 200. This financial requirement is specified under the ADGM Foundation regime, demonstrating a transparent framework for individuals considering foundation establishment within the ADGM jurisdiction.

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3. RAK ICC FOUNDATION

Both ADGM and DIFC adhere to English Common Law, whereas RAK ICC adopts the British Virgin Island model. Notably, RAK ICC distinguishes itself by not maintaining a publicly accessible database of foundation information. The confidentiality of foundation details is safeguarded by UAE privacy regulations, and disclosure only occurs when compelled by competent authorities.

A distinctive requirement in RAKICC is the mandatory appointment of a registered agent, in contrast to DIFC and ADGM where this is an optional provision. This underscores the varied regulatory frameworks across the jurisdictions.

Lastly, the fees associated with RAK ICC in 2022 include a registration cost of AED 750 and an annual renewal fee of AED 750, approximately equivalent to USD 200. These costs serve as key components in understanding the economic aspects of establishing and maintaining a foundation within the RAK ICC jurisdiction.

The Qatar Central Bank (QCB) is now accepting applications to license and regulate loan-based crowdfunding service providers, aligning with Qatar's financial sector strategy and fintech development. The bank is dedicated to nurturing financial sector growth and fostering fintech innovation. Approval for licenses will be ongoing until February 3, 2024.

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Loan-based crowdfunding services enable borrowers, especially small and medium enterprises without access to traditional financial services, to connect with various investors for short-term funding. This helps them overcome obstacles in expanding their projects and securing necessary funds for development.

This service offers a significant opportunity for investors to diversify their investments and support small and medium enterprises.

AUTHORED BY

Nour Audi, an accomplished Associate at Rasma Legal, brings immense experience to the team, specializing in various legal domains. With a strong background in civil litigation and dispute resolution, Nour has demonstrated her prowess in navigating complex legal challenges. Her extensive expertise includes areas such as banking and finance law, corporate and commercial law, family law, and contract drafting and review. Additionally, Nour is well-versed in handling diverse legal matters encompassing employment law, criminal law, tax law, corporate governance, risks and compliance, business and government affairs, as well as fintech and technology. Nour's comprehensive understanding of these multifaceted legal domains enables her to provide valuable insights and strategic guidance to clients, ensuring effective resolution of their legal issues and fostering their success in a dynamic business environment. She holds an LLB and an LL.M in Commercial Law from the Lebanese University-Faculty of Law & Political Science. She was enrolled with the Beirut Bar Association in 2016.

FEDERAL DECREE-LAW NO. 31/2023 CONCERNING TRUST

The article will focus on Trust in the UAE, highlighting that the regulations outlined in this Decree-Law do not pertain to Financial Free Zones. These zones operate under distinctive legislation that regulates the creation of trusts.

Commencing with a broad introduction, a Trust is a legal arrangement wherein an individual, also known as the Founder, transfers their assets to a Trustee (Founder). The Trustee is entrusted with the ownership and management of these assets (Trustee), aligning with the interests of designated beneficiaries (Beneficiaries), that must be clearly identified and are entitled to receive the benefits stipulated by the trust (Trust). When a Founder transfers property to the Trustee, they surrender legal ownership rights while retaining a degree of control. This feature is crucial as it serves to protect these assets from potential claims.

Typically governed by a trust deed, the legal document outlines the Trust's terms, duration, list of Beneficiaries, powers granted to the Trustee, and other pertinent details. The Trustee assumes the responsibility of asset ownership and management as specified in the trust deed and may receive compensation for their services.

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For additional oversight, the Founder holds the authority to appoint a Protector who supervises the Trustee's actions (Protector). The Founder can outline the Protector's powers, some of which are given below:

1. authorize them to assess the Trustee's performance,

2. demand the fulfillment of duties,

3. file a lawsuit if the Trustee neglects their responsibilities and obligations.

The legal framework also places limitations on the Protector, aiming to ensure the smooth implementation of the Trust and to affirm their integrity in fulfilling their role. It explicitly prohibits actions such as placing themselves in positions that create conflicts with their duties and obligations.

In addition to overseeing asset management, the Trustee is responsible for disbursing income to the beneficiaries of the Trust, adhering to the specific instructions laid out by the Founder in the Trust Deed.

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In the ongoing exploration of the legal aspects of trusts, it is emphasized that a trust attains legal status upon its initial registration. It enjoys financial and administrative independence, holds the right to litigate, and is represented by the Trustee. Crucially, the Trust Founder, Trustee, as well as their heirs or successors, are not deemed owners of the Trust. This principle remains intact in situations involving death, bankruptcy, or liquidation procedures pertaining to any of these individuals. This implies a degree of independence between the Trust and its Founder or Trustee. This independence can be advantageous for both the Trust and those overseeing it. This autonomy functions as a protective measure for the assets of each party involved. Moreover, it serves as a mechanism to safeguard an individual's wealth by establishing a clear separation between assets and personal ownership.

Moving forward, we will conduct a more comprehensive examination of the laws governing trusts, delving into each of its facets in greater detail. The establishment of a trust involves adhering to specific rules and regulations. As the Trust Founder intends to transfer these assets through the Trust, they should also be capable of disposal and devoid of any inalienable rights held by a third party. Additionally, the assets must be clearly identified or identifiable. The law outlines specific conditions for the presentation of the trust deed and specifies the required information it must contain, failure to adhere to these conditions poses the risk of invalidation.

The law comprehensively addresses the roles and responsibilities of each party involved in the Trust, commencing with the Trust Founder. Despite the Founder's transfer of assets to the Trust, he retains certain crucial and paramount powers. These powers, explicitly articulated in the Trust deed, grant the Founder the utmost authority and precedence over all other parties within the Trust. Notably, these prerogatives encompass the ability to terminate or partially revoke the trust, as well as the authority to appoint or dismiss the Trustee, Protector, or any other individual endowed with specified powers in accordance with legal provisions. These provisions underscore the Founder's enduring rights and control over the assets, reaffirming their significance even after the transfer.

The criteria for appointing a trustee are structured to ensure that the individual chosen possesses an exemplary reputation and has not been previously convicted of a felony or misdemeanor involving moral turpitude or dishonesty, unless successfully rehabilitated. This requirement is substantiated by the submission of a Police Clearance Certificate or its equivalent from the Competent Authorities in the UAE (United Arab Emirates).

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In the case of a legal person, the Trustee must be a licensed professional in accordance with the relevant cabinet decisions of each Emirate. The meticulous scrutiny and assurance of the Trustee's character play a pivotal role in ensuring that the entrusted assets are in capable hands, especially the Trustee shall have all the powers and authorities in respect of the Trust Assets. The legal framework emphasizes the selection of an individual who is trustworthy and law-abiding to minimize the risk of appointing someone unsuitable for a position of authority over the assets.

The legislation also addresses various aspects pertaining to the Trustee, encompassing procedures for resignation, release from position, or suspension of the Trustee, as well as the dismissal of the Trustee and the expiration of their powers. Additionally, it delineates the consequences and implications arising from the cessation of the Trustee's powers. The Trustee holds both powers and obligations inherent to their position within the Trust, outlining a set of responsibilities that they are obligated to fulfill.

Furthermore, the Trustee is required to maintain both paper and electronic accounting books and records, subject to audit by an independent auditor appointed for the Trust. These responsibilities underscore the importance of transparency in the Trustee's actions. It is imperative for the Trustee to demonstrate absolute compliance with relevant laws.

The liability of the Trustee is specifically delineated under defined circumstances, such as accountability for any loss of Trust Assets resulting from breaches of the Trust Deed, intentional errors, or gross negligence. The inclusion of the liability clause reinforces the Trust vested in the Trustee, underscoring the understanding that they will be held accountable for specified actions. The extensive provisions in the law regarding the Trustee are elucidated by the pivotal role they play as the manager of the assets.

It is crucial to note that, the Trust is considered properly established in accordance with legal provisions upon the approval of the Trust Deed and the fulfillment of the Initial Registration procedures by the competent authority. A register shall be instituted through the decision of the Competent Authority in each Emirate, and it will be maintained by the respective Competent Authority in that Emirate. Completion of registration procedures, as outlined in the law, is imperative for the valid and legitimate establishment of a Trust. Beyond the initial registration, all transactions involving the Trust Assets conducted in the name of the Trust must be recorded in the official records of these assets, adhering to the applicable federal or local legislation in force in the UAE.

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Shifting focus, the law explicitly outlines that, among various circumstances, if the court concludes that the Trust was instituted through forgery, coercion, error, fraud, or deception, or if it was founded on inaccurate information in violation of the Trust Deed and the regulations specified in this Decree-Law, or if it is substantiated that the Trust's purpose is for the Trust Founder to evade settling debts, taxes, or any other financial obligations, the Trust will be considered invalid. The law goes on to elaborate on the situations triggering the termination of the Trust and delineates the repercussions of such conclusion. Finally, the law strongly emphasis the importance of confidentiality within the trust framework. This is evident in the provision allowing the Trust Deed to outline conditions and controls for the access of Beneficiaries or the Protector to specific details, including information about the distribution of trust benefits and the criteria for Trustee decision-making. Moreover, disclosure of data from the Register is restricted, with exceptions outlined by the law, and any disclosure must comply with a court order, aligning with Trust Deed provisions. In conclusion, establishing a trust in the UAE offers numerous and significant advantages. It provides a strategic avenue for individuals to plan the distribution of their assets, ensuring a structured estate plan. Trusts also enable continuous and uninterrupted asset management, reducing the likelihood of disputes by explicitly defining terms of distribution. This guarantees a seamless transition of ownership across generations, facilitating efficient and continuous transfer of assets. For foreigners, trusts offer a secure succession planning method through appointed trustees, ensuring professional and administrative management, protection, and distribution of assets according to predefined terms.

At Rasma, we've supported numerous clients in establishing trusts. If you're interested in learning more, don't hesitate to contact us at info@rasmalegal.com for a friendly discussion.

AUTHORED BY

Yara Abou Zaki is a skilled law graduate with a Master's degree in General and Comparative Law from the Lebanese University. With over a year of legal experience, she excels in litigation, civil law, corporate and commercial law, and criminal law. Yara is a versatile legal professional who has prepared court filings, drafted legal documents, negotiated contracts, and conducted legal research. She is a quick learner and is meticulous with her work. She is Fluent in Arabic, French, and English, extending her proficiency to assisting clients in Arabic, French, and English, and handling documents in these languages as well.

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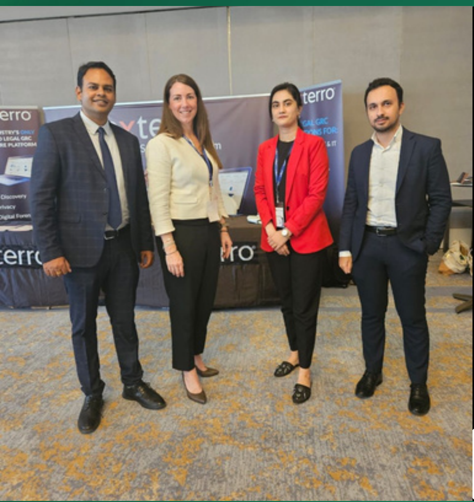
ROUNDUP

WHAT KEPT US BUSY AT RASMA LEGAL



Rasma Legal's team attended the **Global Legal ConfEx,** where we engaged with luminaries of the legal landscape discussing the complexities of multi-jurisdictional litigation.

From distinguishing multi-jurisdictional litigation from ordinary cases to evaluating cross-border disputes' advantages and disadvantages, every session was a treasure trove of knowledge.

Rasma Legal was nominated as finalists for the esteemed THE LAW MEA AWARDS 2023 across the following distinguished categories:

- **Rising Firm of the Year**
- **Healthiest Work Environment Award**
- **Diversity and Inclusion Awards**
- **Rising Star- Stephanie Naaman and Asma Shah**

Rasma Legal wishes all a Merry Christmas and a Happy New Year!

As we draw the curtains of this year, we take a moment to appreciate the journey. It's been a year filled with grace, marked by accolades, successful deals, and more. We express heartfelt gratitude to our clients and our exceptional team for contributing to this remarkable year.

As we conclude this chapter, we eagerly anticipate the year ahead. In 2024, we aim to bring renewed vigor, fostering collaborative efforts, exploring new avenues, and reaching greater heights together. We're excited to embark on groundbreaking ventures and expand our horizons together!

Wishing everyone a Merry Christmas and a Happy New Year!