

## GCC E-alert

### Contents

1. United Arab Emirates (UAE)
2. Bahrain
3. Oman
4. Qatar

### UNITED ARAB EMIRATES (UAE)

The United Arab Emirates (the **UAE**) issued Federal Law No. 18 of 2017 which amends certain provisions of the UAE Commercial Companies Law (Federal Law No. 2 of 2015) (the **CCL**).

The new law came into force on 28 October 2017.

Under the CCL, all onshore (outside of the Free Zones) UAE limited liability companies are required to have at least 51 per cent of their shares owned by a UAE National. The new Law gives the UAE Government power to relax this requirement with respect to certain companies and sectors.

It remains to be seen which sectors will be impacted by the new Law. This is a significant development which may increase the levels of foreign investment in the UAE. This development is in line with the UAE's goal to attract more foreign investment in the UAE and the Gulf region.

Furthermore, it is likely to result in the restructuring of existing investments in the relevant sectors. At this time, it is not known when a resolution will be issued to determine which companies and sectors will be affected by the new Law but we will keep you informed of any development as they occur.

### BAHRAIN

Bahrain issued key amendments to the Law No. 28 of 2002 concerning E-Transactions (the **E-Transactions Law**) which should facilitate a wider adoption of such transactions.

#### Electronic Records

The E-Transactions Law previously recognised only so-called "customary documents" i.e. documents executed between private entities as possible forms of electronic records. The new amendments to the E-Transactions Law now include both customary documents and official documents, i.e. those issued by a public officer under the appropriate circumstances.

This key change will allow all Government e-communications to be recognised as valid forms of electronic records and therefore should facilitate the wider use of electronic transactions in Bahrain.

#### Government E-Transactions

In the past, Government entities could not transact electronically unless the relevant Minister issued a resolution allowing such transactions.

In practice, only a handful of Government entities actually issued such resolutions since 2002 when the E-Transactions Law was first issued.

The latest amendments remove this restriction and will allow all Government entities to transact electronically in accordance with the E-Transactions Law.

#### Information and eGovernment Authority (IGA)

The Information and eGovernment Authority (IGA) will replace the Ministry of Industry and Commerce as the Governmental entity authorised to establish the list of accredited certification service providers, issue resolutions to implement the E-Transactions Law and generally, oversee the implementation of the Law.

#### Admissibility of Evidence

Another interesting development consistent with the change described above is that electronic records of official documents will be admissible as evidence in civil and commercial disputes. This used to be limited only to so-called "customary documents".

For example, in a case of alleged fraud a judge will be able to verify immediately if an official electronic record is valid or not.

## OMAN

Oman has promulgated the Law of Trademarks for the GCC States (the **Oman Trademark Law**) and implemented the GCC Trade Mark Law with effect from 31 July 2017. As a result, Oman becomes the fourth country of the Gulf Cooperation Council (the **GCC**) to adopt the GCC Trade Mark Law after Kuwait, Bahrain and Saudi Arabia. The remaining two GCC member states, the UAE and Qatar, have not yet adopted the GCC Trademark Law.

The GCC Trade Mark Law was drafted on the basis that a single set of provisions would apply in all GCC states. This would result in a unified position across all GCC states on matters such as the registrability of trademarks, the registration process and the enforcement of trademark rights.

However, the GCC Trademark Law does not provide for a single registration or enforcement system. Therefore, each GCC state will continue to maintain its own Trademarks Office which will continue to receive applications and register trademarks on a national basis. In order to register a trademark in all six GCC states, it will still be necessary to file six separate national trademark applications.

With each of the six GCC states continuing to operate both its own Trademarks Office and independent Courts and enforcement authorities, it is inevitable that the GCC Trademark Law will be subject to different interpretations.

Accordingly, in order to ensure that the GCC Trademark Law consistently functions on a unified basis across all GCC states, there will need to be some form of central Court or other entity which is tasked with maintaining a consistent interpretation of the Law.

Article 50 of the Oman Trademark Law provides that the GCC Committee of Commercial Cooperation has the power to interpret the Law and its Implementing Regulations. No Implementing Regulations have been published yet. Therefore, it remains to be seen how this will work in practice.

### Expanded Notion of Trademark

The definition of Trademark expressly includes some forms of non-traditional trademarks, such as colour, mixture of colours, sounds and smells. (art. 1)

### Right to Register and Claiming Priority

The persons having the right to register their trademarks in the GCC states is expanded beyond persons who are GCC Nationals and include foreigners residing in any of the GCC countries and who are licensed to engaged in any activities relating to trade, industry, crafts or services as well as foreigners belonging to, or residing in, a foreign country that is a signatory to a multilateral treaty to which one of the GCC member states is a party. (art. 4)

### Treatment of Well-known Trademarks

The protection given to well-known trademarks is improved by the Oman Trademark Law by a prohibition against registering marks which constitute a "reproduction, imitation, or translation of a well-known trademark or a part thereof" in relation to identical/similar products and/or services. The Law also prohibits the registration of such marks in relation to dissimilar goods and/or services where the use of the mark would indicate a connection between those goods and/or services and the well-known mark, and would be likely to damage the interests of the well-known mark owner. (art. 2(13) and (14))

The Omani Trademark Law further provides that the duration of any registration or use of the mark, the number of countries where it has been registered or recognised as a well-known mark, the value associated with the trademark and the extent to which such value helps promote the goods and/or services to which it applies shall also be considered. (art. 3)

Therefore, it appears that owners of well-known marks will have increased scope to argue that their marks meet the required criteria based on the broader range of evidence which may be used to demonstrate this status. It will be interesting to see whether the Implementing Regulations will include any further guidance to assess whether a mark is well-known and therefore afforded additional protection under the Law.

This document is delivered for informative purposes only.

It does not constitute a reference for agreements and/or commitments of any nature.

For any further clarification or research please contact:

**Renato Giallombardo**  
Tel. +39 06 478751  
rgiallombardo@gop.it

**Riccardo Sensi**  
Tel. +971 2 815 3333  
rsensi@gop.it

**Elise S. Paul-Hus**  
Tel. +39 06 478751  
epaulhus@gop.it

## Partial Cancellation of Trademarks

A trademark owner may voluntarily cancel its registration for all or part of the goods or services in relation to which it is registered. (art. 22). However, a cancellation action which is brought by a third party either on the basis that a mark has been unlawfully registered (art. 21) or on the basis of non-use for five consecutive years (art.23) can only be made in relation to the full registration.

## Exclusive Right

The Oman Trade Mark Law expressly states that “the owner of the registered trademark has the exclusive right to exploit the mark, and to prevent third parties, not licensed by him, from using the registered mark, or any identical or similar mark” if such use leads to confusion of the public.

Importantly, the Law also provides that confusion of the public will be presumed when a mark identical to a registered trademark is used in relation to identical goods or services. This removes the need for a trade mark owner to establish confusion where an identical or similar mark is being used in relation to identical products or services. In these circumstances, the burden of proof will be on the defendant to show that its use of the mark does not cause confusion which is likely to be difficult. (art. 16).

## QATAR

Qatar adopted Law No 7 of 2017 on allowing Gulf companies in GCC countries to open branches in Qatar (the **Law on Qatar branches**).

Following the adoption of the Law on Qatar Branches, GCC companies are allowed to open branches in Qatar, and such branches will be treated like Qatari companies in accordance with the legislation in force.

In order to open branches in Qatar, the GCC companies are required to:

1. be registered with the Commercial Register in one of the GCC countries for a period of not less than three years;
2. be engaged in an activity that is within the economic activities allowed for GCC Nationals to practice in Qatar;
3. be wholly-owned by GCC Nationals; and
4. have a GCC National appointed to manage the branch.

It is interesting to note that the Minister of Economy and Commerce has discretion to reduce the three year period and may exempt GCC companies from having as a manager a GCC National based on the proposal of the relevant administrative unit of the Ministry of Economy and Commerce.

Rome

Milan

Bologna

Padua

Turin

Abu Dhabi

Brussels

Hong Kong

London

New York

gop.it

January 2018

3

### INFORMATION PURSUANT TO ARTICLE 13 OF LEGISLATIVE DECREE NO. 196/2003 (Data Protection Code)

The law firm Gianni, Origoni, Grippo, Cappelli and Partners (hereafter “the Firm”) only processes personal data that is freely provided during the course of professional relations or meetings, events, workshops, etc., which are also processed for informative/divulgate purposes. This newsletter is sent exclusively to those subjects who have expressed an interest in receiving information about the Firm’s activities. If it has been sent to you by mistake, or should you have decided that you are no longer interested in receiving the above information, you may request that no further information be sent to you by sending an email to: [relazioniesterne@gop.it](mailto:relazioniesterne@gop.it). The personal data processor is the Firm Gianni, Origoni, Grippo, Cappelli & Partners, whose administrative headquarters are located in Rome, at Via delle Quattro Fontane 20.