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Middle East

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This article discusses significant international legal developments in Egypt, Iraq, Kuwait, Lebanon, Saudi Arabia, and the United Arab Emirates.

I. Egypt

In 2016, Egypt took steps to significantly alter its indirect tax regime. In July, the Egyptian government resolved to abandon the existing General Sales Tax (GST) and adopt a full-fledged Value Added Tax (VAT) system.¹ On August 29, 2016, the Egyptian legislature—the Egyptian People’s Assembly—passed the new Value Added Tax law (VAT Law), which was subsequently published in the Official Gazette and took effect on September 8, 2016.²

The new VAT Law replaced the current General Sales Tax Law, Law 11/1991 (GST Law).³ Thus, as of September 8, 2016, businesses are required to comply with the VAT Law, though some areas and provisions of this new law still need clarification by the Egyptian Tax Authorities.⁴

Such clarification will be provided in the form of executive VAT regulations. Pursuant to the VAT Law, the Egyptian Minister of Finance shall issue such executive VAT regulations within thirty days from the VAT Law becoming effective.⁵ Until then, the executive regulations issued with

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1. Dean Kern, *Egypt VAT law published in the Official Gazette and takes immediate effect*, PRICEWATERHOUSECOOPERS (Sept. 2016), <https://www.pwc.com/m1/en/tax/documents/pwc-newsalert-egypt-vat-law-sept2016.pdf>.

2. *Id.*

3. Law No. 11 of 1991 (General Sales Tax Law), *Al-Jarisa Al-Rasmiyya*, (Egypt).

4. Kern, *supra* note 1.

5. Samar Rahman, *Egypt to Issue Executive Regulations of VAT law*, EUROFAST, <http://eurofast.eu/global/egypt-to-issue-executive-regulations-of-vat-law/>.

respect to the GST Law will continue to apply to the extent they do not contradict the provisions of the VAT Law (Article IX, VAT Law).⁶

A. SCOPE OF THE NEW LAW AND VAT RATE

Prior to the VAT Law being introduced, GST was charged at a standard rate of 10%.⁷ Under the new law, VAT will initially be charged at a reduced standard rate of 13% for the fiscal year 2016–2017.⁸ Starting from the fiscal year 2017–2018, the standard VAT rate will be 14%.⁹ Certain machinery and equipment will, however, be subject to a reduced rate of 5% (Article 3(1)).¹⁰ No VAT will be charged on goods and services exported (Article 3(2)).¹¹

Furthermore, in an effort to ease the VAT Law's impact on low-income households, certain basic goods and services will be exempt from VAT.¹² These goods and services comprise certain basic foods such as tea, sugar, raw vegetables, dairy products, bread, and fruit, as well as medicines, electricity, health care services, and natural gas.¹³ In addition, banking transactions, insurance, and re-insurance—as well as education and training services—are exempt from VAT; as are goods produced and services rendered in free zones, provided they are not imported into the Egyptian mainland (Articles 6–7).¹⁴

Some goods and services will be subject to a supplementary indirect tax (Schedule Tax), either exclusively or in addition to VAT.¹⁵ These goods and services are defined in Schedule No. 1 to the VAT Law.¹⁶ The Schedule Tax will apply at different rates depending on the type of good or service.¹⁷ Goods and services that are subject to both VAT and Schedule Tax are, *inter alia*, soda, cars, communications services and certain electronics such as TVs, refrigerators, and air conditioning units.¹⁸ Goods and services that are

6. Law No. 11 of 1991 (General Sales Tax Law), *Al-Jarisa Al-Rasmiyya*, (Egypt).

7. Adam Victor, *VAT: A Brief History of Tax*, THE GUARDIAN (Dec. 2010), <https://www.theguardian.com/money/2010/dec/31/vat-brief-history-tax>.

8. Abeer Abou Zeid, *Egypt: Value Added Tax (VAT) Law*, YOUSSEY SALEH & PARTNERS (Aug. 15, 2016), <https://yousseysaleh.com/Investment-in-Egypt/egypt-value-added-tax-vat-law/>.

9. *Id.*

10. *Id.*

11. *Id.*

12. *Egypt issues VAT Law No. 67 of 2017*, ERNST & YOUNG (Sept. 8, 2016), [http://www.ey.com/Publication/vwLUAssets/Egypt_issues_VAT_Law_no._67_of_2016/\\$FILE/2016_G_02773-161Gbl_Indirect_Egypt%20issues%20VAT%20Law%20no.%2067%20of%202016.pdf](http://www.ey.com/Publication/vwLUAssets/Egypt_issues_VAT_Law_no._67_of_2016/$FILE/2016_G_02773-161Gbl_Indirect_Egypt%20issues%20VAT%20Law%20no.%2067%20of%202016.pdf).

13. *Id.*

14. *Id.*

15. Kern, *supra* note 1.

16. *Id.*

17. *Id.*

18. *Id.*

subject to Schedule Tax only include tobacco products, gasoline, transportation, and professional and consultation services.¹⁹

Furthermore, the VAT Law clarifies the tax treatment in a number of areas that were thus far unclear under the GST Law, such as sales by installments and consumed assets. This will reduce potential disputes between the tax payers and the Egyptian Tax Authority.

B. THRESHOLD FOR VAT REGISTRATION AND TRANSITIONAL PROVISIONS

Pursuant to Article 16(1) under the VAT Law, any business with a turnover of more than Egyptian Pound 500,000 is obligated to charge VAT.²⁰

Businesses that were registered under the GST Law will be automatically considered registered for VAT purposes, provided their annual turnover exceeds the new registration threshold of Egyptian Pound 500,000 per year.²¹ Businesses with a turnover of less than Egyptian Pound 500,000 per year are not required to register under the VAT Law.²² Should the latter's turnover rise above the threshold, they will have to apply to the Egyptian Tax Authority for VAT registration within thirty days from the date of their turnover surpassing the threshold.²³ Furthermore, any business with a turnover of less than Egyptian Pound 500,000 per year may voluntarily opt to charge VAT (to benefit from VAT return, for example).²⁴

Importers of taxable goods and services and manufacturers subject to the Schedule Tax who were registered under the GST Law will also be automatically considered as registered for VAT purposes, regardless of their turnover.²⁵ Where such enterprises were not registered under the GST Law, they are required to register with the Tax Authorities for VAT purposes within thirty days from the VAT Law entering into force.²⁶

Businesses registered for VAT purposes are entitled to deduct the GST previously incurred on their purchases in accordance with the specific conditions set out in the VAT Law. Agreements concluded before the VAT Law enters into force, but that will be executed partially or fully after the VAT Law comes into effect, shall be modified to reflect the changes introduced in the law. For instance, the contract value will have to be amended to comply with the new VAT rates.

19. *Id.*

20. Abeer Abou Zeid, *supra* note 8.

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. Abeer Abou Zeid, *supra* note 8.

The new law grants businesses a three-month transitional period for reconciling their VAT position, during which the Egyptian Tax Authority will not levy fines for errors or omissions.²⁷

1. *Tax Return*

As under the old GST regime, the VAT and Schedule Tax return must be submitted on a monthly basis.²⁸ And, the deadline for submitting the return did not change (two months from the end of each tax period, except for the April return that should be submitted by June 15 (Article 4)).²⁹

2. *Reverse Charge*

How VAT is charged for services rendered in Egypt by a non-resident to a resident, or vice versa, depends on whether these services were acquired for private or business purposes. Where services are procured from abroad for private purposes, the recipient shall be liable to calculate and pay the tax due within thirty days from the date of sale.³⁰ Where services are acquired for business purposes, the recipient shall be treated as an importer and supplier of the service at the same time. This decision may lead to a neutral effect for the recipient as he will be able to deduct the VAT theoretically due on the service acquired.

a. *Input VAT Deduction*

Businesses registered in accordance with the VAT Law are entitled to deduct VAT incurred on goods and services acquired in relation to their taxable supplies. However, they are not entitled to deduct input VAT related to their exempt supplies or related to their supplies of goods and services subject to Schedule Tax.³¹

b. *VAT Refund*

The refund period has been reduced under the VAT Law.³² VAT shall be refunded within forty-five days from the date of submitting the documented refund request.³³ Under the GST law, the period for GST refunds was three months.³⁴

27. Kern, *supra* note 1.

28. Abeer Abou Zeid, *supra* note 8.

29. *Id.*

30. *Id.*

31. Kern, *supra* note 1.

32. *Id.*

33. *Id.*

34. *Id.*

II. Iraq

In October 2016, the Iraqi legislature issued a new Iraqi Labor Law, Law 37/2015 (New Law),³⁵ which replaced the old Iraqi Labor Law, Law 71/1987 (Old Law)³⁶ in its entirety and entered into force on February 7, 2016. The New Law seeks to align Iraqi employment legislation with the standards of the International Labor Organization (ILO). Although the New Law—as the Old Law—was drafted as a piece of federal legislation applying to the whole of Iraq, it remains to be seen whether it will be applied in the Kurdish region in Iraq. In fact, a regional labor law for the Kurdish region has been under review by the Kurdish parliament for some time now.

Most notably, the New Law introduced an end-of-service gratuity similar to that existing in other Middle Eastern jurisdictions, provisions of collective labor rights including the right to strike (which was banned in 1987 by the Old Law), and improved protection against discrimination in the workplace.

A. REGIONAL EMPLOYMENT OFFICES

The New Law provides for the establishment of regional employment offices. The prime objective of these offices is to promote employment and assist unemployed persons in finding employment (Articles 18-19, New Law).³⁷ To this end, the New Law requires employers to notify the competent regional employment office of any open position in their business within ten days (Article 21).³⁸ Non-compliance with these regulations may be sanctioned by fines of no less than Iraqi Dinar 100,000 (USD 86.23) and not more than Iraqi Dinar 500,000 (USD 431.14) and/or imprisonment for a term of between three and six months (Article 24).³⁹

B. EMPLOYMENT OF FOREIGNERS

The New Law contains few changes relating to the employment of foreign employees. Unlike the Old Law, the New Law explicitly provides that foreigners may not be employed prior to or without procuring the relevant work permits (Articles 30-31);⁴⁰ the same was true under the previous labor law regime, but was not explicit. The only true amendment introduced by the New Law concerning the employment of foreigners is the obligation of the employer to cover all costs for the repatriation of its foreign workers upon termination of their employment (Article 32(1)).⁴¹

35. Labor Law of 2015 (Iraq) [hereinafter “New Law”].

36. Labor Law No. 71 of 1987 (Iraq).

37. New Law, art. 18-19.

38. *Id.* art. 21.

39. *Id.* art. 24.

40. *Id.* art. 30-31.

41. *Id.* art. 32(1).

1. *Probation Period*

Under the New Law, an employee may be employed for a probation period. Such probation period may not exceed three months and may not be renewed (Article 37(2)).⁴²

2. *End-of-Service Gratuity*

Furthermore, the New Law introduced a statutory severance pay similar to the end-of-service gratuity existing in other Middle Eastern jurisdictions. Pursuant to Article 45 of the New Law, the employer shall pay an employee an end-of-service gratuity equal to two weeks pay for each year of service, unless the employee was terminated for cause or during the probation period.⁴³ Unlike similar provisions in other Middle East jurisdictions, the end-of-service gratuity pursuant to Article 45 is not limited by a cap.⁴⁴

3. *Protection of Female Workers*

Another innovation of the New Law includes provisions protecting female employees. Key provisions govern treatment of pregnant women and working mothers (Articles 85 *et seq.*).⁴⁵ Moreover, the New Law explicitly prohibits both physical and verbal sexual harassment in the workplace.⁴⁶

4. *Collective Worker Rights*

Among the most relevant change introduced by the New Law is the expansion of collective worker rights. The Old Law did not contain provisions governing the formation of unions and the right of employees to organize themselves in such organizations. However, certain collective worker rights were implicitly granted by the Old Law. For instance, specific articles of the Old Law referred to collective employment agreements and compelled employers to observe these agreements (*see, e.g.*, Article 37, Old Law).⁴⁷ Furthermore, the Old Law regulated the resolution of collective labor disputes (Articles 130 *et seq.*).⁴⁸ Such disputes could, however, only be resolved by involving either the competent ministry or the courts.

Under the New Law, the right to strike was reintroduced. This right was stricken in 1987 with the implementation of the Old Law. Since the New Law was enacted, workers may resort to peaceful strikes where a collective labor dispute cannot be resolved through the dispute resolution procedure provided for by the New Law (Article 162, New Law).⁴⁹

42. *Id.* art. 37(2).

43. *Id.* art. 45.

44. *Id.*

45. *Id.* art. 85.

46. *Id.*

47. *Id.* art. 37.

48. *Id.* art. 130.

49. *Id.* art. 162.

In addition, the New Law now explicitly recognizes the right of workers to form and organize themselves in unions (Article 146)⁵⁰ and the union's role in negotiating collective employment agreements (Articles 148 *et seq.*)⁵¹

III. Kuwait

The Kuwait legal landscape continued to develop in 2015 and 2016, and a number of new laws were promulgated. In addition to the legislative developments, 2016 was also marked by major transactions and projects, both on the government side and in the private sector.

A. MAJOR PROJECTS AND TRANSACTIONS

In April 2016, Kuwait National Petroleum Company (KNPC), one of the major oil companies in the country, obtained banking facilities from local and regional conventional and Islamic banks to finance the clean fuel project undertaken by KNPC in the amount of USD 11.35 billion.⁵² The project is scheduled for completion in mid-2018. This is the first and largest successful financing in Kuwaiti Dinars (KD) for public companies in the oil sector in Kuwait.

In order to finance the deficit in the budget due to the low oil prices, the Kuwaiti government (similar to other countries in the region) issued KD 1.3 billion in bonds, beginning in April 2016.⁵³ It is also contemplated that beginning in 2017, the government will be issuing international bonds worth USD 10 billion for the same purpose.

In addition to other projects in the pipeline (such as the new airport, the development of Boubyan Island and Silk City, and other infrastructure projects), the government resorted to the PPP Law⁵⁴ and IWPP Law⁵⁵ through its PPP arm (the Kuwait Authority for Partnership Projects) to tender several infrastructure projects. The projects cover various sectors,

50. *Id.* art. 146.

51. *Id.* art. 148.

52. *NBK Capital Advised KNPC on KWD 1.2BN Loan Facility to Fund the Construction of the Clean Fuels Project*, NBK CAPITAL PRESS RELEASE (Apr. 28, 2016), <https://nbkcapital.com/2016/nbk-capital-advised-knpc-kwd1-2bn-loan-for-clean-fuels-project/>; Reuters, *Kuwait's KNPC in Talks for \$6.4b in Loans for Clean Fuel Project*, THE JORDAN TIMES (May 29, 2016), <http://www.jordantimes.com/news/business/kuwaits-knpc-talks-64b-loans-clean-fuel-project>; Daniel Marsden, *Financing of Kuwait National Petroleum Company Clean Fuels Project*, FINANCE MONTHLY (Feb. 14 2017), <https://www.finance-monthly.com/2016/10/financing-of-kuwait-national-petroleum-company-clean-fuels-project/>.

53. *Kuwait's KNPC in Talks for \$6.4b in Loans for Clean Fuel Project*, *supra* note 52.

54. See Law No. 116 of 2014, *Kuwait Al Yom* No. 1197 of Aug. 17, 2014, at 9.

55. See Law No. 39 of 2010 (as amended), *Kuwait Al Yom* No. 981 of June 27, 2010.

including power,⁵⁶ water and wastewater management,⁵⁷ and solid waste management.⁵⁸

The private sector was also busy with several bonds and *Sukuk* issuances by Kuwaiti and regional conventional and Islamic banks under the Capital Markets Authority's newly issued bylaws⁵⁹ in order to comply with the Basel III capital adequacy requirements. In addition, Kuwait's largest ever M&A transaction conducted under the Capital Markets Law was completed by the acquisition of UAE's Adeptio AD Investments SPC Ltd of 67% of the share capital of Kuwait Food Company KSCP (Americana), triggering a mandatory takeover offer for the remaining 33% of the share capital of Americana.⁶⁰

B. LEGAL DEVELOPMENTS

Numerous laws were promulgated by the Kuwaiti legislature in 2016. However, the analysis below focuses on the new laws which are of particular interest to investors.

1. *Agency Law No. 13 of 2016*⁶¹

Until recently, commercial agencies and distributorships agreements were governed by Law No. 36 of 1964⁶² and Articles 271-286 of the Commercial Law.⁶³

Certain amendments were introduced to the agency legal framework through the new Agency Law No. 13 of 2016, which among other provisions repealed Law No. 36 of 1964 while maintaining the provisions of the Commercial Law (particularly those that provide agents and exclusive distributors with statutory compensation in the event of termination or non-renewal of the agreement).⁶⁴

The most important change introduced by Law No. 13 is the requirement for all agents and distributors to register the agreement at the Commercial

56. *Power: Az-Zour North IWPP (Phase II), AlKhairan IWPP (Phase I) and Al Abdaliya Integrated Solar Combined Cycle Project*, KUWAIT AUTHORITY FOR PARTNERSHIP PROJECT, <http://www.ptb.gov.kw/en/Power>.

57. *Umm Al Hayman Waste Water Project*, KUWAIT AUTHORITY FOR PARTNERSHIP PROJECT, <http://www.ptb.gov.kw/en/water-and-Wastewater-Management>.

58. *Kabd Municipal Solid Waste Treatment Project*, KUWAIT AUTHORITY FOR PARTNERSHIP PROJECT, <http://www.ptb.gov.kw/en/Solid-Waste-Management>.

59. See CMA Decision No. 72 of 2015, *Kuwait Al Yom* No. 1261 of Nov. 10, 2015.

60. *ASAR- Al Ruwayeh & Partners Act as Kuwait legal Counsel to Adeptio in Kuwait's Largest Ever M&A Transaction Under the Capital Markets Law* (Oct. 30, 2016), https://www.zawya.com/mena/en/story/ASAR_Al_Ruwayeh_Partners_acts_as_Kuwait_legal_counsel_to_Adeptio_in_Kuwait's_largest_ever_MA_transaction_under_the_Capital_Markets_Law-ZAWYA_20161030075653/.

61. See Law No. 13 of 2016, *Kuwait Al Yom* No. 1279 of Mar. 13, 2016, at 2.

62. See Law No. 36 of 1964 of July 15, 1964, *Kuwait Al Yom* No. 486.

63. See Decree Law No. 68 of 1980 of Jan. 19, 1981, *Kuwait Al Yom* No. 1338.

64. See Law No. 13 of 2016, art. 9.

Agencies Register with the Ministry of Commerce and Industry (MOCI) in order for the agreement to be enforceable and effective (even between the parties) in Kuwait, and for the agent or distributor to benefit from the commercial agency regime, which was not the case under the old law.⁶⁵

Unlike the previous legal framework, under the new law foreign principals should—in principle—now be able to appoint more than one agent or distributor, although this new position is not totally clear given the confusion created by Article 9 of the New Law.⁶⁶ Article 9 permits the substitution of the agent if the previous agency relationship was terminated by mutual consent of both parties, or if such relationship was terminated or cancelled pursuant to a final judgment.⁶⁷ It is unclear whether these provisions apply only to exclusive agency and distributorships, or if they extend to all type of agreements. If the latter, the appointment of more than one agent would be impossible in practice. Interested parties hope that the executive regulations will provide clarity on this issue.

Another major change introduced by the new law is that it opened the door for local traders to import products and goods to Kuwait, notwithstanding the existence of an exclusive agent for the same products and goods in Kuwait. While this provision clearly demonstrates the will of the legislature to open the market and increase competition, which should benefit consumers, it remains to be seen how the law will be implemented moving forward.

2. *Tenders Law No. 49 of 2016*

The current government procurement regime dates back to 1964. In order to modernize the legal framework in line with the best practices internationally, fill the gaps existing under the previous regime, and attract foreign investors, the Kuwaiti legislature promulgated the new Public Tenders Law (Tenders Law).⁶⁸

Article 2 of the Tenders Law prohibits ministries and government instrumentalities from importing items or commissioning contractors to carry out works except through a public tender through the Central Tenders Committee.⁶⁹ However, the Tenders Law exempts certain governmental bodies from its scope of application, such as military contracts, the Central Bank of Kuwait contracts, and certain contracts and projects to be procured by the State-owned oil companies.⁷⁰

One of the major developments introduced by the Tenders Law is the exemption of foreign contractors from the general requirement of doing business in Kuwait; that general requirement is the appointment of an agent

65. *See id.*

66. *See id.*

67. *See id.*

68. *See* Law No.49 of 2016, *Kuwait Al Yom* No. 1299 of July 31, 2016.

69. *See id.*, art. 2.

70. *See id.*

through whom the foreign contractor would be able to carry out its activities in Kuwait or the establishment of a company in Kuwait with one or more Kuwaiti partners who would own 51% of the share capital of the company.⁷¹ Indeed, under the previous regime, foreign companies bidding on projects with the government were required to have a Kuwaiti agent registered at the Commercial Agencies Register at the MOCI. Pursuant to the new Tenders Law, foreign companies may now enter into contracts with the government and execute the work or supply the goods and products directly in Kuwait without the need to appoint an agent or even establish a company in Kuwait. There is no doubt that this development will be welcomed and will attract more foreign investors to the Kuwaiti market, as it should facilitate their entry and avoid the lengthy procedures linked to the registration of the agent or the incorporation of the company in Kuwait.

3. *Electronic Media Law No. 8 of 2016*⁷²

Kuwaiti legislators continued to modernize the legal framework in Kuwait in the media and information technology sector and promulgated Law No. 8 of 2016 concerning “Electronic Media.”⁷³

Pursuant to Article 6 of the Electronic Media Law, any entity that intends to establish or operate a website or electronic information facility must obtain a license from the Ministry of Information (MOI).⁷⁴ The validity of such license, if granted, is for ten years and may be renewed upon the request of the licensee subject to the MOI’s approval.⁷⁵

Article 5 of the Electronic Media Law provides that it will apply to electronic sites and electronic information media of electronic publication houses, electronic news agencies, news services, websites, and audio-video satellite channels, among others.⁷⁶ However, the license may only be granted to Kuwaiti nationals and Kuwaiti companies provided that such companies are 100% Kuwaiti owned.⁷⁷

Of particular importance are certain restrictions as to the content of the websites. According to the Electronic Media Law, websites subject to the law cannot publish, broadcast, rebroadcast, or quote any content that contains any material prohibited by the Press Law No. 3 of 2006 and Article 11 of the Audio Visual Media Law No. 61 of 2007.⁷⁸

In summary, under these laws, criticism of God, the Holy Quran, the Prophet, the Companions of the Prophet, the wives or family members of

71. Abdul Aziz Al-Yaqout, *Door to Total Foreign Ownership in Companies Opened in Kuwait*, KUWAIT TIMES (Mar. 2013), <http://news.kuwaittimes.net/door-total-foreign-ownership-companies-opened-kuwait/>.

72. See Law No. 8 of 2016, *Kuwait Al Yom* No. 1274 of Feb. 7, 2016.

73. See *id.*

74. See *id.*, art. 6.

75. *Id.*

76. *Id.* art. 5.

77. *Id.*

78. See Law No. 3 of 2006, *Kuwait Al Yom*; see also Law No. 61 of 2007, *Kuwait Al Yom*.

Prophet Mohamed, or the Emir of Kuwait by way of insinuation, libel, sarcasm, or defamation is prohibited.⁷⁹

In addition to the laws referred to above, a new law regarding copyright was issued to follow the global trend of granting utmost protection to these rights and to conform to the international treaties to which Kuwait is a party.⁸⁰ This new law repealed Law No. 64 of 1999 regarding intellectual property rights.⁸¹

As of late 2016, the Kuwait Municipality announced that the municipality is taking the necessary measures and decisions to turn Kuwait into a financial center. According to officials, certain financial center zones will be established, within which foreign investors would be permitted to operate and fully own companies and branches. Investors establishing in these zones will also benefit from certain other incentives, including tax and customs exemptions.

IV. Lebanon

A. THE PSEUDO CONSTITUTIONAL CRISIS IN LEBANON

On May 25, 2014, Michael Suleiman's presidential term expired, and Prime Minister Tamam Salam's government assumed presidential powers, thus bringing Lebanon's presidency into a vacuum.⁸² The main objective of Salam's government was to elect a president. On its face, it appears that the failure to elect a president was due to different constitutional interpretations, or that the election is strictly a Lebanese affair when, in fact, there are many foreign parties who play an active and major role (through their local proxies) in the election of a president. For almost 29 months, these proxies failed to exercise their constitutional duties to elect a president for convenience reasons and due to external regional events like the raging war in neighboring Syria, making the presidential election in Lebanon difficult to attain.⁸³ Finally, on October 31, 2016, after a political settlement was reached with the blessing of the foreign actors, an election was held and Michel Aoun was elected as the 13th president of the Republic.

Although Article 49 of the Constitution states the President of the Republic shall be elected by secret ballot and by a two-thirds (2/3) majority of the Chamber of Deputies, after a first ballot, an absolute majority shall be sufficient.⁸⁴ However, political parties conveniently disagreed on how the election should have taken place, as if this were the first time the presidential

79. See *id.*

80. See Law No. 22 of 2016, *Kuwait Al Yom* No. 1293 of June 19, 2016, at 3.

81. See *id.*

82. Mario Abou Zeid, *Lebanon Enters Dangerous Power Vacuum*, AL JAZEERA (May 30, 2014), <http://www.aljazeera.com/indepth/opinion/2014/05/lebanon-president-hezbollah-201453011253570784.html>.

83. *One Year On, Still No President for Lebanon*, THE TIMES OF ISRAEL (May 23, 2015), <http://www.timesofisrael.com/one-year-on-still-no-president-for-lebanon/>.

84. CONSTITUTION, art. 49 (1926) (Lebanon) [hereinafter "Lebanese Constitution"].

election process under the Constitution had been practiced. As a result, sessions to elect a president were called about forty-four times with no results.⁸⁵

Article 73 of the Constitution states, “One month at least and two months at most before the expiration of the term of office of the President, the Chamber shall be convened by its President to elect the new President.”⁸⁶ Despite the clear constitutional mandate, parliamentarians proudly exhibited their failure to elect a president after each session. Certain parliamentarians used to receive instructions from the Syrian regime on whom to vote for or elect as the president (normally a pro-Syrian president).⁸⁷ Today, the Syrian regime has problems of its own, and the Lebanese parliamentarians are at a loss.⁸⁸

Although the office of the president remains mostly ceremonial, it helps maintain the balance of sectarian power in Lebanon, in addition to the president’s role as a key force in stabilizing the government.⁸⁹

According to the unwritten national agreement, the president should be a Maronite Christian, the Prime Minister a Sunni, and the speaker of the house a Shiite.⁹⁰ During the presidential vacuum, the Lebanese Christians were at a loss because they were not represented in the then-current troika.⁹¹

V. Saudi Arabia⁹²

The Justice Against Sponsors of Terrorism Act (JASTA) was enacted to allow American citizens to bring civil cases against persons, organizations, and foreign nations that have in some way aided in terrorism against the United States.⁹³ JASTA proclaims that

85. *Lebanon Parliament Failed Again and for the 44th Time to Elect a President*, YA LIBNAN (Sept. 8, 2016), <http://yalibnan.com/2016/09/08/lebanon-parliament-failed-again-and-for-the-44th-time-to-elect-a-president/>.

86. Lebanese Constitution, *supra* note 84, at art. 73.

87. Michael Young, *Lebanon’s Crisis and Electoral Politics*, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE (Aug. 26, 2008), <http://carnegieendowment.org/sada/21566>.

88. See, e.g., *Why is There No President in Lebanon?*, QUORA (Mar. 31, 2016), <https://www.quora.com/Why-is-there-no-president-in-Lebanon>.

89. Martin Armstrong, *A Choice Between Warlords: Lebanon Can’t Elect a New President*, VICE NEWS (May 8, 2014), <https://news.vice.com/article/a-choice-between-warlords-lebanon-cant-elect-a-new-president>.

90. Lebanon: Presidential Election and the Conflicting Constitutional Interpretations, LIBRARY OF CONGRESS, <http://www.loc.gov/law/help/lebanon-election.php>.

91. Zeid, *supra* note 82.

92. Updates on liberalizations on foreign investment in Saudi Arabia’s capital markets and wholesale and retail trade sectors were published elsewhere in coordination with the International Investment and Development Committee and the International Mergers and Acquisitions and Joint Venture Committee, respectively. Updates on Saudi Arabia’s labor and employment law regime were published in coordination with the International Employment Law Committee.

93. Justice Against Sponsors of Terrorism Act, Pub. L. No. 114-222, § 2(b), 114 Stat. 2040 (2016).

“[p]ersons, entities, or countries that knowingly or recklessly contribute material support or resources, directly or indirectly, to persons or organizations that pose a significant risk of committing acts of terrorism that threaten the security of nations of the United States or the national security, foreign policy, or economy of the United States”⁹⁴ should expect to be held liable and brought to court for these actions.⁹⁵ This Act is meant to provide persons and groups who have been harmed from terrorists’ acts in the United States a form of justice by allowing them to bring civil claims for their injuries.⁹⁶

The motivation behind the enactment of JASTA was to give the September 11, 2001 terrorist attack victims’ families the ability to sue Saudi Arabia; however, the Act’s scope is not limited to this specific case.⁹⁷ There has been long term suspicions that the Saudi government provided support for the September 11th hijackers, especially because fifteen of the nineteen hijackers were from Saudi Arabia.⁹⁸ These suspicions have continually been denied by the Saudi government.⁹⁹ Even though these families may be able to bring a case against Saudi Arabia, it is uncertain if they would actually be able to enforce a judgment in their favor by, for example, attaching the assets of Saudi Arabia in the United States.¹⁰⁰ Further, the final version of JASTA does not allow for a federal court to require foreign nations to hand over assets to fulfill any judgments against them.¹⁰¹

Another concern surrounding JASTA is whether other countries will in turn take a similar measure to the Act against the United States and try to bring suit against the United States government for its actions abroad.¹⁰² Although some see the bill as mostly symbolic, the question remains whether the symbolism is worth the potential consequences on foreign relations.¹⁰³ Former President Barack Obama stated that other countries could use JASTA as justification to bring suit against the United States government, diplomats, and the military, which would in turn harm the structured sovereign immunity standards currently in place and create more global security risks for nations acting on foreign soil.¹⁰⁴ Supporters of JASTA argue that international legal principles followed by the United States

94. *Id.* at § 2(a)(6).

95. *Id.*

96. *Id.* at § 2(a)(7).

97. Zachary Laub, *What the 9/11 Lawsuits Bill Will Do*, COUNCIL ON FOREIGN RELATIONS (Sept. 28, 2016), <http://www.cfr.org/united-states/911-lawsuits-bill-do/p38350>.

98. Patricia Zengerle & Roberta Rampton, *Obama Vetoes Sept. 11 Saudi Bill, Sets Up Showdown with Congress*, REUTERS (Sept. 23, 2016, 6:44 PM), <http://www.reuters.com/article/us-usa-sept-idUSKCN11T237>.

99. *Id.*

100. Laub, *supra* note 97.

101. *Id.*

102. *Id.*

103. *Id.*

104. *Veto Message from the President – S.2040*, THE WHITE HOUSE (Sept. 23, 2016), <https://www.whitehouse.gov/the-press-office/2016/09/23/veto-message-president-s2040>.

already have many exceptions, and this new Act would just add to the current exceptions and hold foreign governments accountable for providing support to terrorists.¹⁰⁵

JASTA was a point of controversy between Congress and President Obama. On September 23, 2016, President Obama vetoed JASTA, claiming that it went against fundamental U.S. interests.¹⁰⁶ Five days later, Congress voted to override President Obama's veto of JASTA, which was the only override thus far during his presidency.¹⁰⁷ The vote in the Senate was 97 to 1 and the vote in the House of Representatives was 348 to 77.¹⁰⁸ Overall, it will take time to see the full implications from the enactment of JASTA.

VI. United Arab Emirates

A. UNITED ARAB EMIRATES ENACTS NEW NATIONAL SPACE SECTOR POLICY

On September 4, 2016, the United Arab Emirates (UAE) Council of Ministers approved the National Space Sector Policy.¹⁰⁹ This policy was implemented to allow the UAE to enter the space race with a goal of reaching Mars and becoming a leader in space sciences by the State's 50th anniversary of its foundation in 2021.¹¹⁰

The formation of the UAE Space Agency in 2014 was the official start to developing the nation's sustainable space sector, and is the first national space agency in the region.¹¹¹ According to the Vice President and Ruler of Dubai, Sheikh Mohammad bin Rashid, the UAE is recognized as a space industry leader in the Middle East, as it has invested over 20 billion Dirham (approximately \$272,260,740 USD) and it operates six satellites in orbit.¹¹²

105. Julie Hirschfeld Davis, *Obama Vetoes 9/11 Bill, but Congressional Override is Expected*, N.Y. TIMES (Sept. 23, 2016), https://www.nytimes.com/2016/09/24/us/politics/obama-veto-saudi-arabia-9-11.html?hp&action=click&pgtype=homepage&clickSource=story-heading&module=first-column-region®ion=top-news&WT.nav=top-news&_r=1.

106. *Id.*

107. Karoun Demirjian & Juliet Eilperin, *Congress Overrides Obama's Veto of 9/11 Bill*, WASH. POST (Sept. 28, 2016), <https://www.washingtonpost.com/news/powerpost/wp/2016/09/27/senate-poised-to-vote-to-override-obamas-veto-of-911-bill/>.

108. *Id.*

109. UAE SPACE AGENCY, *UAE Space Agency Announces Details of National Space Sector Policy* (Sept. 7, 2016), <http://www.space.gov.ae/uae-space-agency-announces-details-national-space-sector-policy>.

110. *Id.*; Dr. Eng. Mohamed Al Ahbabi, Director General, UAE Space Agency, Aerospace Innovation & Suborbital Operations Keynote Address at 2nd ICAO/UNOOSA Symposium (Mar. 15, 2016), <http://www.icao.int/Meetings/SPACE2016/Presentations/1e%20-%20M.%20AlAhbabi%20-%20Welcome%20Remarks%20-%20UAE%20Space%20Agency.pdf>.

111. UAE SPACE AGENCY, *supra* note 109.

112. Thamer Al Subaihi, *National Space Policy Adopted by UAE Cabinet*, THE NATIONAL (Sept. 4, 2016), <http://www.thenational.ae/uae/science/national-space-policy-adopted-by-uae-cabinet; Al Ahbabi, supra note 110>.

Additionally, the 2020 launch of “The Hope” mission to Mars is the first Arab and Islamic mission to another planet.¹¹³

The National Space Sector Policy furthered a primary objective of the UAE Space Agency to regulate the space sector through new legislation regarding national security, international cooperation, and collaboration, and economic issues in both governmental and commercial activities within outer space.¹¹⁴ On an international level, the UAE had already signed three United Nations Treaties related to space, including the Outer Space Treaty,¹¹⁵ the Liability Convention,¹¹⁶ and Registration Convention.¹¹⁷ The National Space Sector Policy called for a continuation of adherence to international laws, which further portrays its interest in being recognized as a beneficial actor in the international space community and in helping to advance space technologies.¹¹⁸ This policy is also aimed at strengthening the relationships between the government and private local actors to further increase national safety measures and disaster relief efforts.¹¹⁹ Overall, the approval of the UAE’s space policy is seen as fundamental in the nation’s agenda for the coming years.¹²⁰

B. AMENDMENTS TO THE UAE LABOR LAW REGIME

In late 2015, the United Arab Emirates’ (UAE) Federal Ministry of Labor (now Federal Ministry of Human Resources and Emiratisation) (Ministry) issued three decrees amending certain provisions of the UAE Federal Labor Law, Federal Law 8/1980 (UAE Labor Law): Ministerial Decrees 764/2015,¹²¹ 765/2015,¹²² and 766/2015.¹²³ All three decrees came into effect in

113. Caline Malek, *UAE’s Mars Space Mission Has a New Name: Hope*, THE NATIONAL (May 6, 2015), <http://www.thenational.ae/uae/uaes-mars-space-mission-has-a-new-name-hope>.

114. UAE SPACE AGENCY, *supra* note 109.

115. Treaty On Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, Jan. 27, 1967, 610 U.N.T.S. 205.

116. Convention on International Liability for Damage Caused by Space Objects, Mar. 29, 1972, 961 U.N.T.S. 187.

117. Convention on Registration of Objects Launched into Outer Space, Jan. 14, 1975, 1023 U.N.T.S. 15.

118. *Space Agency Announces Details of Space Policy*, GULF NEWS (Sept. 7, 2016), <http://gulfnnews.com/news/uae/government/space-agency-announces-details-of-space-policy-1.1892752>.

119. *UAE Adopts National Space Policy*, EMIRATES 24/7 (Sept. 5, 2016), <http://www.emirates247.com/news/uae-adopts-national-space-policy-2016-09-05-1.640206>.

120. *Id.*

121. Ministerial Decree No. 764 on Ministry of Labour-Approved Standard Employment Contracts (2015), *available at* [http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/101785/122814/F2100407659/Ministerial%20Decree%20\(764\)%20on%20Standard%20Employment%20.pdf](http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/101785/122814/F2100407659/Ministerial%20Decree%20(764)%20on%20Standard%20Employment%20.pdf).

122. Ministerial Decree No. 765 on Rules and Conditions for the Termination of Employment Relations (2015), *available at* [http://ilo.org/dyn/natlex/docs/ELECTRONIC/101784/122812/F568540522/Ministerial%20Decree%20\(765\)%20of%202015%20on%20the%20terminati.pdf](http://ilo.org/dyn/natlex/docs/ELECTRONIC/101784/122812/F568540522/Ministerial%20Decree%20(765)%20of%202015%20on%20the%20terminati.pdf).

123. Ministerial Decree No. 766 on Rules and Conditions for Granting a Permit to a Worker for Employment by a New Employer (2015), *available at* <http://ilo.org/dyn/natlex/docs/>

January 2016. They introduced a compulsory standard employment agreement (Ministerial Decree No. 764), amended the provisions of the UAE Labor Law concerning termination of employment (Ministerial Decree No. 765), and introduced new conditions for obtaining new work permits (Ministerial Decree No. 766).

Furthermore, the Ministry amended some provisions of the Wage Protection System (WPS) when it passed Ministerial Decree No. 739 in the fall of 2016.¹²⁴ In particular, the new decree introduced increased penalties for non-compliance with the provisions of the WPS regulations.

1. *Standard Employment Contract*

Ministerial Decree No. 764 introduced a standard employment agreement.¹²⁵ Upon the decree entering into force on January 1, 2016,¹²⁶ this standard employment agreement is to be used for all new employment contracts concluded.¹²⁷ Furthermore, no UAE work permits for a foreign employee will be issued unless an employment contract executed by the employee and based on the standard employment agreement is provided to the Ministry.¹²⁸

Employment contracts that were concluded prior to January 1, 2016, however, do not have to be reissued based on the standard employment agreement. Still, where such a contract is renewed, such renewal has to be based on the standard employment agreement.¹²⁹

The provisions of the standard employment agreement may not be amended without the approval of the Ministry and the employee. Furthermore, only amendments that benefit the employee may be made.¹³⁰ Thus, the standard employment agreement represents the minimum standard to be afforded to all persons employed in the UAE.

Whether a side agreement that comprises amendments to the standard employment agreement will hold up under judicial review is thus far uncertain. Arguably such a side agreement could be regarded as void. This would be in line with a strict reading of Articles 4 and 5 of Ministerial

ELECTRONIC/101783/122810/F695573065/Ministerial%20Decree%20(766)%20of%202015%20on%20Rules%20and%20Con.pdf.

124. *UAE Ministerial Decree No. 739 of 2016 Introduces New Penalties for Late and Non-Payment of Wages Under the Wages Protection System*, THOMSON REUTERS ZAWYA (Oct. 27, 2016), https://www.zawya.com/mena/en/story/UAE_Ministerial_Decree_No_739_of_2016_introduces_new_penalties_for_late_and_nonpayment_of_wages_under_the_Wages_Protection_System-ZAWYA20161027092446/.

125. Ministerial Decree No. 764 on Ministry of Labour-Approved Standard Employment Contracts, *supra* note 121.

126. *Id.* art. 6.

127. *Id.* art. 1.

128. *Id.*

129. *Id.* art. 3.

130. *Id.* art. 4-5.

Decree No. 764, which prescribe a precise precedence of the standard employment agreement.

Still, UAE courts may choose to uphold those provisions of a side agreement that are more beneficial to the employee than those of the standard employment agreement. Such a decision could be based on Article 7 of the Labor Law, which provides that an employment agreement may not deviate from the provisions set by the Labor Law, unless such deviation is to the benefit of the employee. This interpretation could be reconciled with the provisions of Ministerial Decree No. 764, since these provisions aim to further secure a minimum standard of employee rights. Still, under a strict literal interpretation of Article 4 of Ministerial Decree No. 764, any contractual provision that deviates from the standard employment agreement—whether beneficial to the employee or not—should be considered void, unless it was approved by the Ministry and the employee.

2. *Termination of Employment*

Ministerial Decree No. 765 amended certain provisions of the Labor Law concerning the termination of employment with effect as of January 1, 2016.¹³¹

Prior to Ministerial Decree No. 765, a contract concluded for a fixed term could not be terminated prior to the expiration of its term except for cause (Articles 115, 120-121, Labor Law). Pursuant to the amendments introduced by Ministerial Decree No. 765, a fixed term employment contract concluded for a term of no more than two years may now be terminated prior to the expiration of its term for convenience, provided that the party terminating the agreement observes the contractual notice period, which shall be at least one month but no more than three months.¹³² Where the relevant employment contract was concluded prior to Ministerial Decree No. 765 entering into force and does not provide for such notice period, the notice period shall be three months.¹³³ Upon termination, both parties shall honor the employment agreement until the end of the notice period—payment of salary in lieu of notice is not permitted.¹³⁴ Furthermore, the party terminating the employment contract shall compensate the other party in the amount agreed upon, which shall not exceed three months' basic wages (excluding any additional benefits such as housing allowances, transportation allowances, and bonuses).¹³⁵ Where the amount of compensation is not determined in the employment contract, it shall be three months' basic wages.¹³⁶ Should a party infringe upon the

131. Ministerial Decree No. 765 on Rules and Conditions for the Termination of Employment Relations, *supra* note 122.

132. *Id.* art. 1.

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

aforementioned conditions, all damages or losses sustained due to or in connection with the termination shall be borne by that party.¹³⁷

Under the Labor Law, an employment contract concluded for an unlimited term may be terminated for convenience by either party by giving written notice. Prior to Ministerial Decree No. 765, the Labor Law did not comprise a statutory maximum notice period. As of January 1, 2016, such notice period may not exceed three months.¹³⁸ Ministerial Decree No. 765, however, does not state how this amendment will affect prior employment agreements providing for longer notice periods.

Moreover, the decree introduced provisions regulating when an employment agreement is deemed *de facto* terminated under the Labor Law. Such *de facto* termination shall occur if:

1. It is established that the employer has substantially failed to meet its contractual obligations.
2. The employee filed a complaint against his/her employer and an inspection has established that the employer's business has been inactive for a period exceeding two months.
3. The employee obtained a final court ruling stating that the employee is entitled to two months' pay or indemnification for wrongful termination.¹³⁹

Ministerial Decree No. 766 introduced a number of new conditions for obtaining work permits for employees previously employed by a different UAE employer. Pursuant to Article 1 of Ministerial Decree No. 766, a new work permit for an employee already employed in the UAE by a different employer may only be granted if the existing employment agreement:

- was concluded for a fixed term and was not renewed upon its term expiring;
- was concluded for a fixed term and was terminated after its term was renewed and in compliance with the statutory and contractual requirements for termination;
- was concluded for an unlimited term and terminated in accordance with the relevant statutory and contractual provision;
- was terminated by the employer or by mutual agreement, provided that the employee was employed for at least six months. This minimum period does not apply where the relevant employee is a higher qualified employee; or
- was terminated due to the employer violating contractual or statutory regulations.¹⁴⁰

137. Ministerial Decree No. 765 on Rules and Conditions for the Termination of Employment Relations, *supra* note 122, at art. 1.

138. *Id.*

139. *Id.* art. 2.

140. Ministerial Decree No. 766 on Rules and Conditions for Granting a Permit to a Worker for Employment by a New Employer, *supra* note 123.

3. *Amendments of the UAE Wage Protection System*

In October 2016, the Ministry issued Ministerial Decree No. 739, which amended the regulations governing the UAE WPS.¹⁴¹ In particular, the new amendments extended the scope of sanctions the Ministry may impose on employers who fail to comply with the WPS regulations. Sanctions may include, *inter alia*, restrictions on the number of visas and work permits the employer may procure, loss of specific classification, and fines.

The WPS is an electronic wages transfer system overseen by the Ministry. It was installed in the UAE by Ministerial Decree No. 788 on Protection of Wages, and serves to protect employee rights. In particular, it aims to ensure wages are paid in full and on time. Subscription to the WPS is obligatory for all employers in the UAE. Under the WPS, employers pay employees' wages via payroll services offered by authorized banks rather than directly to the employee.

Prior to the issuance of Ministerial Decree No. 739, employers failing to subscribe to and make salary payments through the WPS could be penalized (pursuant to Article 8 of Ministerial Decree No. 788) with temporary restrictions on the procurement of work permits. Under the new decree, the Ministry may refuse dealing with any employer who did not subscribe to the WPS.¹⁴² Thus, non-compliant employers will not be able to procure any work permits or access any other services offered by the Ministry until they subscribe to the WPS.

Pursuant to Ministerial Decree No. 739, a payment shall be deemed late where an employee's salary is not paid within ten days of the due date.¹⁴³ Sanctions for late or non-payments will depend on the period of delay, the size of the employer's enterprise, and whether the employer is a repeat offender. When payment is delayed for at least ten days, the Ministry will issue a warning notice.¹⁴⁴ In case the payment is delayed for at least 16 days, the Ministry can suspend issuing work permits for the employer (Permit Suspension).¹⁴⁵ This Permit Suspension shall be lifted immediately after the outstanding wages are paid, provided that the employer is a first time offender. Should payment be delayed for at least one month, the Ministry may initiate legal proceedings against the employer, extend the Permit Suspension to all establishments of the employer (*i.e.* other companies owned by the employer), refuse registration of new establishments of the employer, and pull bank guarantees provided by the employer.¹⁴⁶ Furthermore, should the employer employ more than 100 persons within the UAE, the Permits Suspension will remain in place for at least two

141. *UAE Ministerial Decree No. 739 of 2016 Introduces New Penalties for Late and Non-Payment of Wages Under the Wages Protection System*, *supra* note 124.

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.*

months after payment of outstanding wages.¹⁴⁷ If payment is delay for at least 60 days, the Ministry may impose fines in addition to the measures previously taken.¹⁴⁸

147. *UAE Ministerial Decree No. 739 of 2016 Introduces New Penalties for Late and Non-Payment of Wages Under the Wages Protection System*, *supra* note 124.

148. *Id.*