

The Middle East: Where The Investment And Trade Sun Rises

The Editor interviews *Isam Salah* and *Jawad I. Ali*, Partners, King & Spalding LLP.

Editor: Describe the nature of your practice.

Salah: We have a Middle East and Islamic finance and investment practice group that has attorneys in the U.S., Europe and the Middle East. Our Middle Eastern offices include Abu Dhabi, Dubai and an affiliated office in Riyadh. I'm the global practice group leader. Let me mention the core parts of our practice.

One is the representation of Gulf-based investment and financial institutions and family offices in their investment activity. That investment activity is basically exporting capital in the form of equity investment from the Middle East to the U.S., the UK, Europe, North Africa, the Arabian Gulf, Southeast Asia and China. That is where our practice got its start more than two decades ago. The other is representation of U.S. and European and other multinational investment firms that are seeking attractive investment opportunities throughout the Middle East, including Saudi Arabia, Kuwait, Bahrain, Qatar, the UAE, Oman, Iraq, Syria, Jordan and extending to Egypt, Libya and other North African countries.

Ali: I am managing partner of the firm's offices in the Middle East and global deputy head of its Middle East and Islamic finance and investment practice group. Since 2004 and 2005 and peaking in 2006, 2007 and 2008, there has been a flood of investment coming from the United States and Europe and increasingly from China, India and other Asian countries into the Middle East. The bulk of that investment is going into the Gulf Cooperation Council (GCC) countries and into all sectors, including energy, power and water, petrochemical, road and transportation, major infrastructure projects, hospitality, healthcare, and education.

Multinationals are making equity investments in the Middle East, which in many cases includes the transfer of technology and expertise. Earlier, the local partners of these multinationals were largely governmental entities. However, in the past three to four years, the private sector has been playing a bigger role. We have seen family offices and family conglomerates joint venturing with multinationals and bidding for projects in all sectors in the Middle East. In the past four years, we have been involved in numerous privatizations in Saudi Arabia where multinationals with technical or other needed expertise joint ventured with local private entities to bid for and win a specific business that is being sold off by a sovereign.

Editor: Do you counsel companies involved in Middle Eastern trade?

Ali: We do a lot of work with multinationals who are selling a product or franchising a service and want to set up distribution networks with sales agents, distributors or franchisees. Historically, multinational companies have entered the Middle Eastern market by appointing



Isam Salah



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a local entity to distribute their product or franchise their services. Many of those multinationals base their operations in the Gulf in places like Jabel Ali in Dubai into which they import and then re-export their products.

More recently and as a result of the accession by many of the Middle East countries to the WTO, WTO regulations have required these countries to lower their trade barriers and make their markets more accessible to foreign business and products. As to the WTO and international trade in general, our Geneva and Washington offices have great expertise in these areas and have advised our Middle Eastern clients on trade arrangements and trade laws affecting trade with EU countries, the United States and globally. Similarly, we have advised multinational companies on international trade matters in the Middle East.

Editor: What countries in the Middle East are particularly attractive to Western investors? What types of investments are you seeing there? What kinds of investors are involved?

Ali: If you follow the demography, the largest GCC country is Saudi Arabia. Just by virtue of its large population and its geographical size and wealth, it presents many opportunities. Saudi Arabia, having joined the WTO, has lowered the barriers on a number of industries. Major foreign direct investment in Saudi Arabia has occurred in such sectors as energy, petrochemical, healthcare, hospitality, education and real estate – just to name a few. Obviously energy still plays the dominant role.

The UAE has attracted a lot of investment. Many of our clients have come to Dubai and Abu Dhabi and set up operations to cover the Middle East, North Africa and South Asia. Abu Dhabi's various quasi-governmental companies have attracted a number of joint ventures with very high-profile multinationals. They have been particularly active in the energy, financial, manufacturing, industrial, aviation, real estate, and healthcare and hospitality sectors.

In Dubai and Abu Dhabi, major U.S.-based clinics and hospitals have joint ventured with local entities to provide the highest quality medical service.

A number of campuses of major U.S. and European universities and colleges have sprung up in Abu Dhabi, Dubai and Qatar that offer bachelor's and a range of graduate degrees.

The reason that this growth trend will continue is that both public sector and private sector investors throughout the Middle East want to bring businesses into their backyards that will provide the amenities and high-productivity manufacturing businesses that characterize the West.

Editor: Saudi Arabia has been proactive in setting up specialized cities to attract business. Has that proven to be successful?

Ali: This project is still underway. The idea has been well received. The Saudi leadership, including the King, have realized that that is something they need to do to create jobs for the Kingdom's growing population and to attract people from its main cities. In 10 to 15 years, those cities will not be able to absorb the population growth.

Editor: What is the role of business and professional women in the UAE?

Ali: Women are present at all levels of management in Dubai and Abu Dhabi businesses. There are equal treatment and antidiscrimination laws on the books in the UAE – and they are taken seriously and enforced. Women's status in the workplace in the UAE does not differ from that which they have in the U.S. or EU. I would say that they are not in any worse or better position in the UAE as compared to the West.

Editor: Has the use of Sharia law been a problem in enforcing contracts and other business transactions?

Salah: We are experts in how Sharia law principles apply to modern investments and transactions. Whether Sharia law is applicable or not applicable to your transaction really depends on the type of transaction, where it's being undertaken and ultimately on the preferences of our clients.

We have often received requests that, in addition to a governing law provision, we also expressly make the contract subject to Sharia law. We have typically counseled against that because it will confuse matters. If you try to subject transactions to Sharia law, it's difficult to determine what Sharia law is. It's not codified law as you have in the UK or the U.S., so when we're talking about transactions outside the region, our advice is not to seek to make them subject to Sharia law because it's likely to be unenforceable.

The objective is to structure transactions to be both in compliance with Sharia principles as well as to be enforceable under the law that will be applied by a court or arbitrator.

Editor: What forums and venues are preferred for resolving disputes? Is arbitration an important alternative?

Ali: The courts in the Middle East are not the first choice whether it's investment or financing transactions. The usual thing to do is to subject the contract to a law that you believe would be enforced in the jurisdiction and to opt for arbitration (whether international or regional). If you are dealing with either a sovereign or a quasi-sovereign body and they do not want to subject themselves to arbitration, you try to structure the transaction in a manner that affords your client a predictable result. Part of the reason that the Dubai International Financial Centre (DIFC) was set up was to create a court

system that will be the go-to court system in the Middle East or at least in the GCC countries. This objective has not as yet been achieved, but I believe it will eventually be realized. International arbitration involving international centers in Paris, London, Singapore and Washington DC are still the number one choices in mega-projects and transactions.

Editor: Do you assist clients in doing due diligence in connection with M&A transactions involving businesses in the Middle East?

Ali: We have a very large M&A practice in the Middle East and have conducted due diligence in all GCC countries and the majority of countries in the MENA region. A large number of our lawyers are bilingual and Western trained so that gives us an advantage. We are also very experienced in the local laws and regulations of the region and have a number of lawyers who have ten-plus years of experience in GCC countries. We have not encountered any corruption issues in our transactions because our clients deal with reputable businesses, and we tend to do a lot of know-your-counterparty due diligence on their behalf before they engage with these counterparties. Where a client is contemplating a transaction that may involve any of the countries in the Middle East that are subject to sanctions like Iran, Sudan or Syria, we call upon our international trade colleagues who are based in our Washington DC and Geneva offices and counsel the client on the transaction and the relevant sanctions. We provide transactional and regulatory support to our clients and will not shy away from counseling them on very delicate issues which they may find themselves facing as a result of new sanctions imposed on a jurisdiction in which they happen to operate in the Middle East.

Editor: How optimistic are you about the Middle East and its future taking into consideration whatever the outcome may be of the current turmoil; do you see this area as having great potential?

Salah: The Middle East will continue to have great potential from the standpoint of U.S. investors and multinationals. There are so many needs that need to be met both in developing infrastructure and satisfying the aspirations of a growing population.

Ali: The next decade in the Middle East will be very interesting politically and economically. The Arab Spring may cause the rise of a number of new markets in the Middle East. Just think of all the underdeveloped sectors in many of the countries that are now going through political change in the Middle East. Once the dust settles, these countries will be the new emerging markets in the Middle East. Furthermore, even the more established Middle East countries will have to modernize and expand to meet the demands of their growing population. The opportunities in the Middle East in the next ten years are going to dwarf those of the past. This offers great opportunities for U.S. and other multinational companies and investors.