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Jordan: Travel Agents Call For Amending Transport Legislation



By Khetam Malkawi / The Jordan Times

AMMAN - Travel agents have recently called on the government to modify the tourism transport bylaw to allow them to operate their own vehicles instead of depending on transport companies.

According to the bylaw, the license to operate tourism transport is only granted to companies that own a minimum of 50 vehicles with a registered capital not less than JD5 million.

The demand comes ahead of the peak tourism season, which starts in October and coincides with the Hajj season for the second consecutive year, leading to a shortage in the number of vehicles needed for inbound and outbound tourism.

“The only solution to prevent this recurrent problem is to allow travel agents to run their own tourist vehicles,” Amjad Maslmani, Deputy Director of the Jordan Society of Tourism and Travel Agents, told The Jordan Times, adding this is

the norm in most countries. “The number of tourists is increasing and we do not want to be limited by the availability of the vehicles,” he noted.

Mohammad Samih, Chairman of the Jordan Inbound Tour Operators Association, agreed.

“We face the same problem every year during the Hajj season, and amending the regulations will provide us with a permanent solution,” he said.

Members of the Tourist Transportation Association said they do not oppose amending the bylaw, but with certain conditions.

They said if the bylaw is amended, new investments and licenses should be suspended for seven years.

“It is unfair to amend the law now, as some companies that started operating recently will not be able to

recoup their capital,” Malik Haddad, Manager of a tourist transport company told The Jordan Times.

Meanwhile Issa Gammou, Secretary General of the Ministry of Tourism, said no discussions have taken place in this regard, but “we formed a committee to follow up on the crisis that might arise due to the shortage of vehicles during the peak season”.

An operations room will be set up in the Ministry where representatives from tourist transport companies will follow up with travel agencies that face a problem in finding buses for tourists, Gammou told The Jordan Times over the phone.

Currently, eight companies affiliated with the association own 620 vehicles of different sizes and approximately 40 percent of them will be used to transport pilgrims in the Hajj season, according to the Transport Tourism Association.

Rwanda: Intellectual Property to Help Attract Foreign Direct Investment

By Alex Ngarambe

KIGALI — As the Ministry of Trade and Industry (MINICOM) moves to reinforce the concept of Intellectual Property (IP) in Rwanda, it is optimistic that IP will win investors' confidence hence attracting Foreign Direct Investment (FDI).

Kaliza Karuretwa, the Director General at MINICOM is confident that once the sensitization campaign is fully implemented, FDIs will increase as well as the general local business environment.

Karuretwa said: "As a government, we have put in place a new, modern IP law as well as a policy that will encourage institutions to commercialize the results of their research."

Karuretwa, who is also in charge of investment climate and IP at the Ministry, made a statement on September 8, 2010 at Kigali Institute of Science and Technology (KITS) during a two-day seminar on the awareness program on the role of patents, and the patent cooperation treaty in promoting technology transfer in developing countries.

She added that the IP concept encourages universities, research institutions and industries to create a link among them to transfer knowledge.

The MINICOM official also noted that institutions are not commercializing their research findings while this is one of the biggest sources of funds for such institutions in other countries.

Rwanda was allotted the lowest ranking by the World Bank in terms of countries using technology to improve business. The country still faces significant challenges like raising awareness about the importance of the IP concept, innovation as well as technology transfer.



TAGSB and KAS Organize Jordan's New Draft Competition Law Workshop

AMMAN - Talal Abu-Ghazaleh Graduate School of Business (TAGSB) and Konrad - Adenauer - Stiftung (KAS) Amman have recently held «Jordan's New Draft Competition Law: Achievement Made, Improvement Required» workshop at Talal Abu-Ghazaleh Business Forum (TAG-Forum).

The workshop inaugurated by HE Minister of Industry and Trade Eng. Amer Al-Hadidi witnessed the participation of attorneys from Germany, United Arab Emirates, Jordan and Lebanon.

In his keynote speech, Al-Hadidi stated that the Ministry has implemented a number of policies and programs aiming at enhancing the competitiveness of the economic sectors in the country in order to create a healthy economic environment that attracts national and foreign investments.

"The Jordanian Government has adopted a clear strategy for development in all sectors according to a set of goals and targets, and all economic indicators show that we have achieved a huge part of our future vision despite the global financial crisis. Our Gross Domestic Product (GDP) continued to grow reaching 7.8% in 2009; unemployment decreased to 12.4% and investment significantly increased to reach JD1.8 billion of which 39% are foreign investments," he said.

Al-Hadidi noted that Jordan's competition law is in conformity with the international competition legislations adding that the Ministry has carried out several procedures to enhance and protect competition in the Kingdom one of which is the launch of the Competition Directorate.

"The Directorate has played a vital role in safeguarding competition regulations in the country. And through organizing awareness programs, workshops and conferences the Ministry has been able to send a message to all that we are on the right track," he said.

According to the Minister, the third national competition conference will be held during the third quarter of this year (2010) with the participation of local, regional and international experts.

In his opening remarks on behalf of the Chairman and CEO of Talal Abu-Ghazaleh Organization (TAG-Org) Mr. Talal Abu-Ghazaleh, Mr. Mustafa Naserddin, Executive



Director of International Affairs, pointed out that the private and public sectors have a huge responsibility in spreading awareness regarding these laws.

"I believe that this unique partnership is a result of the rapid changes in the global economy and we have the sense of these changes thus we are working accordingly," Mr. Naserddin stressed.

From his part, the Resident Representative of KAS Amman office Dr. Martin Beck said: "The joint workshop is the result of a long cooperation between the two organizations on improving the Jordanian Competition Law. The recently drafted Competition Law has been deeply influenced by the input of the two parties' working group."

"The drafted Competition Law that will be assessed in the workshop is of utmost importance for the modernization process of Jordan for two main reasons. Firstly, it shall help Jordan meet international standards, and its economy shall be perceived as modern. Secondly, the new drafted Law shall improve the life of all Jordanians; it shall increase fair competition between producers in Jordan by curtailing monopolies and oligopolies. Moreover, the new Law is good for consumers because they ultimately will benefit from competition by paying fair prices when they purchase products on the market." Mr. Beck explained.

During the one-day venue, various presentations were delivered covering various topics such as Practical Needs for Amending Competition Law; The Jordanian Experience in Comparison with other Countries in the Arab Region and the Draft Competition Law.

Turkey: Counterfeit Products Exhibition

ANKARA- Turkish Patent Institute and German International Legal Cooperation Association have recently organized “Counterfeit Products and Caricature Exhibition” Workshop at Antares Shopping Mall. The aim of this exhibition is to emphasize the dangers of counterfeit products, and hence combat the counterfeit goods.

Counterfeit products, which currently exist in the Turkish Market, along with their respective genuine ones were displayed in the exhibition. This display aims at raising the consumers’ awareness of the hazards of counterfeit products. In a successful attempt to realize this goal, many caricatures drawn by Anatolian Cartoonists Association were also displayed. It is worth mentioning that these counterfeit products are exhibited in Ankara for the third time ever, and that shampoos, toothpastes, toys and kitchenware represent the most common fake products.

It is evident that the counterfeit industry gradually expands. Counterfeit products constitute an amount of 200 billion dollars of the international trade. This amount is higher than the gross national product of 150 countries in the world. According to the statistical data, one out of each CD, 40 out of 100 books and 58 out of 100 computer programs are counterfeit in Turkey. Each year, a loss of 700 million liras occurs due to counterfeit trademarks in Turkey.

The workshop witnessed the participation of Talal abu- Ghazaleh Legal Turkey (TAGLegal Turkey) and Abu-Ghazaleh Intellectual Property Turkey (AGIP Turkey); namely, Ms. Ozlem Ozgur Arslan, Executive Director of Turkey Office, Ms. Sibel Kaya; Trademark at AGIP Turkey, Ms. Anil Uysal, assistant at TAGLegal Turkey, and Ms. Binnaz Basaran, Intellectual Property at TAGLegal Turkey. The participation of TAGLegal and AGIP Turkey are with a view to supporting the efforts of Turkish Patent Institute in combating counterfeit, and raising the awareness of the public about the dangers of the counterfeit products.

Ms. Arslan commented “counterfeiting and piracy are major threat to the Turkish economy. They take sales from legitimate businesses and put jobs in danger. Fake goods often pose a real threat to the people buying them. We have experienced various kinds of cosmetics, cigarettes with dangerous levels. The real key to abort this threat is the public. People must refuse to buy anything they suspect is not genuine and report the seller to their trading standards or police.”



AGIP and TAGLegal Turkey Office Attend the 3rd Intellectual Property and Competition Law Symposium



ISTANBUL - Abu-Ghazaleh Intellectual Property (AGIP) and Talal Abu-Ghazaleh Legal (TAGLegal) Turkey Office attended the 3rd Intellectual Property and Competition Law Symposium held in Istanbul on October 22, 2010 and organized by Istanbul Commerce University.

The attendees from Turkey Office are: Ms. Ozlem Ozgur Arslan (Executive Director), Ms. Hatice Toksoy (AGIP – Trademark & Patent Attorney), Ms. Sibel Kaya (AGIP – Trademark Attorney), Mr. Anil Uysal (TAGLegal – Assistant) and Ms. Binnaz Basaran (TAGLegal – IP Lawyer).

The Symposium was very educational. Several announcements related to Intellectual Property and Competition Law as well as the analysis of the Supreme Court and Competition Board's decisions were presented. One of the important subjects of this event was comparison of the Copyright and Competition Laws between Turkey and Azerbaijan was

Pursuant to the Turkish Copyright Law, any kind of intellectual and artistic creation - scientific, literary, musical, fine art or cinematographic- carrying the characteristics of its author, is subject to copyright protection. The Turkish Copyright Act also provides protection for computer software and databases.

Recently, intellectual property rights in Turkey have significantly improved. In 2001, Turkey's Copyright Law modernized the legal regime as well as the legislation. In 2004, it introduced strict anti-piracy measures.

Ms. Arslan said such informative events of comparing the legislations of different countries are essential to increase the public awareness and to help professionals broaden their understanding and methods of approach.

Copyright registration offers greater protection than is otherwise available, puts the public on notice of the owner's copyright and greatly deters infringement. AGIP and TAGLegal provide a broad range of copyright services, including but not limited to, registration, prosecution and enforcement.

PARTICULARISM OF INTERNATIONAL CONTRACTS IN SAUDI COMMERCIAL LAW

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Religious rules in Saudi Arabia have a significant effect on business law. Saudi Arabia, unlike other Gulf countries⁽¹⁾, has always been ruled by a homogeneous religious corpus juris. This is due to the fact that, by the end of the Ottoman Empire, Saudi Arabia has not been administered by French Mandate or British Protectorate. Until a recent era; Saudi jurists were clerics but the Saudi legal scene is currently witnessing the entrance of jurists who have completed their legal studies abroad⁽²⁾. By and large, it is always easy to notice in Saudi Arabia to which extent «Law and Religion... belong to the same set of rules⁽³⁾».

However, the Saudi Business Law has recently become developing and more complex. Apart from the deep social and economic restructuring, the exploitation of oil resources has changed the economic and social features of Saudi Arabia and led to variety of sources of the law and juridical bodies.

An international commercial agreement under the Saudi law illustrates various particularities linked to its negotiation, its religious particularities, its content and its effects before Saudi judiciary system

I. Negotiation:

Whilst negotiating an agreement, a Saudi businessperson expects to be well listened to by the other negotiating parties. With regard to an agreement between a foreign entity and a Saudi medium-sized entity, the Saudi entity expects, aside from the financial benefits, to be provided with the know-how⁽⁴⁾ of the foreign entity.

With consideration of its multiple sources⁽⁵⁾, the absence of a general theory of contracts⁽⁶⁾, the inexistence of a unified civil code⁽⁷⁾, and its accelerated evolution, the Saudi law forces each foreign investor to seek, whilst negotiating a deal with a Saudi partner, a water-tight agreement⁽⁸⁾.

(1) Bahrain, United Arab Emirates, Kuwait, Oman and Qatar whereby under the British Protectorate that ruled for a century and half, there has been a dual judicial system: General courts applying Islamic law over nationals, and mixt courts applying Indian codes (based on Equity and Common Law) over litigations concerned foreigners.

(2) Namely in the US and UK universities.

(3) Fustel de Coulanges, «Cité antique», Paris, p.218.

(4) Saudi Arabia, even if it is one of the most influent countries in OPOEP, still needs a foreign expertise to achieve the industrialization of its economy. Cf., Fath El Rahman Abdalla El sheikh, « The legal regime of foreign private investment in Sudan and Saudi Arabia”, Cambridge University Press, second edition, 2003, p. 21.

(5) Decrees promulgated by the council of ministers and religious principles based on Wahhabism doctrine.

(6) S.E. Rayner, « The theory of contracts in Islamic Law », Graham & Trotman, 1991, p. 86.

(7) The most notable in this respect is the « Medjellé » (« The Revue ») : a glossary of legal-religious rules, assembled during the Ottoman era and dealing with commercial and civil issues.

(8) Norman Anderson, p. vii, « Legal development in Arabia », W.M. Ballanty, Graham & Trotman Limited, 1980.

To avoid disagreement on the basic mechanisms and terms of an international commercial agreement under negotiation, the legal representatives of the contracting parties shall attempt to agree upon a firm definition of the basic concepts of the agreement. For complex transactions, it is of the interest of the foreign party to be accompanied by an Arab legal consultant duly initiated to Islamic law concepts. It is recommended to draft both versions of the same agreement in Arabic and the language of the foreign contracting party, with a clear indication to which version predominates.

When a foreign contracting party seeks a joint-venture with a local partner, negotiating and drafting a letter of intent is a must; each foreign investment needs an initial license from the Saudi regulating authorities such as Saudi Arabia General Investment Authority (SAGIA)⁽⁹⁾, the purpose of the letter of intent is to frame the rights and obligations of each party. SAGIA realizes a strict control over the identity of the foreign investors and their local partners, the source of the invested capital and the scoped business activity. For the cases whereby, for undisclosed reasons, SAGIA might refuse granting the license, a properly drafted letter of intent shall efficiently exempt the parties from being liable and shall accurately lead them back to the situation ante.

Despite the fact that international commercial agreements joins parties from various jurisdictions and legal cultures, the Saudi contracting parties almost always prefer short-term agreements regardless of the complexity of these agreements. The same applies for the Saudi public employees when an official registration of such an agreement is required. To simplify the task of its staff, the Saudi Ministry of Commerce has elaborated a set of samples of commercial agreements⁽¹⁰⁾ that is simple and brief. This set of samples also enables the contracting parties to bypass any potential bureaucracy. Yet, the content of these samples are not sufficient. Therefore, a short-term agreement would be a source of concerns for a foreign party that keen to frame and predict any sort of legal, logistical, technical and /or financial loopholes

II. Religious Particularities:

a. Preamble:

It is a religious and moral rule commonly followed in Saudi Arabia to refer to the holly will in the contract's

preamble and in the section pertained to force majeure, due to which the consent of the parties has been acquired and due to which damaging events could be avoided. Also, a foreign contracting party must include both of Hegira and Gregorian calendars; and the parties must fix which calendar predominates in case of conflict. A completely "secular" agreement is not well seen by the Saudi partner

In brief, the contracting parties should consider the religious terminology and concepts in their acts especially when the agreement is deemed to be notarized as Saudi notary public is basically keen to preserve the enforceability of religious rules.

b. Religious Prohibiting Rules:

The variety of the religious prohibiting rules shows the extent of impact that religious law still have over the regulation of Saudi business law.

A foreign investor is duly allowed to own the real estate plots that s/he needs for his business location and his personal lodging. The first prohibiting rule is impeding any non-Muslim person to have personal and/or commercial properties in Mecca Holy City⁽¹¹⁾.

Being the most Holly City in Islam, the access is limited to Muslims worshipping and performing the pilgrimage. Therefore, making business and providing services to pilgrimages is reserved to Saudis.

The second prohibiting rule is selling a Saudi vessel to non-Muslims. However, if the nationality of the vessel shall be changed, it may be sold⁽¹²⁾. This rule is justified by the religious formula which indicates that the Saudi Flag might not be necessarily respected by a non-Muslim owner.

The third prohibiting rule is appointing a non-Muslim arbitrator, even in case of international arbitration.

c. Limitation Affecting the Unity of the Juridical System:

Islam disapproves all contracts based on usury and payment of interests. An asset cannot produce an added value by itself: work, accompanied by the risk, legitimates the income. Accordingly, loan agreements with interest are illegitimate and hence the core of banking activities (as admitted and practiced in occidental countries)⁽¹³⁾ is rejected.

(9) Saudi Arabia General Investment Authority, administered by the «Foreign Investment Act », promulgated by the Royal Decree n. M/ 1 en 2000. The reason behind setting-up this public body is to unify all public authorities dealing with foreign investors in same premises.

(10) International contracts of distribution, franchise, commercial agencies...

(11) Prohibition embodied in the «Regime of real estate properties owned and exploited by foreigners», promulgated by the Decree of Counsel of Ministers n. 89, in 2000.

(12) Prohibition embodied in section 150 of the Commercial Courts Rules, promulgated by the Royal Decree n. M/2 in 1969.

(13) With reference to the famous latin and islamic rule «Accessorium sequitur principale», most of Saudi notary public refuse to notarize pledge agreements related to loans associated with interests.

The same rule applies for the insurance agreement, based on a payment periodically advanced by somebody seeking the avoidance of an uncertain risk. Founded on uncertainty and speculation, the validity of the insurance agreement is also rejected.

However, it was unconceivable to develop the economy of a country possessing the largest oil reserves in the globe without seeking legal alternatives. The apparition of Saudi Arabian Turgot and Bentham was out of hand⁽¹⁴⁾ It was also out of question to refer litigations related to banking and insurance transactions to religious courts as the logical awards would be re-qualifying, and then declaring as void, the said transactions. “Laws being sacred, nobody could remove. But it would be always possible to make new laws...⁽¹⁵⁾” .

The exits consisted of establishing, under the auspices of the Ministry of Finance, committees with exceptional jurisdiction to rule over litigations related to banking and insurance industries. The judges hereto appointed are ex-professionals who enjoy notable experience in these eras of business.

III. Particularism of Content:

a. Market Access Agreements:

Although Saudi Arabia adheres to the WTO, the Saudi Commercial Law still contains some total and limited restrictions over doing business in Saudi market.

To avoid the total restrictions⁽¹⁶⁾, foreign entities attempt to have an indirect access to the market by setting-up corporate vehicles with business activities different from those disclosed in their bylaws. They also frequently resort to, as a nominee technique, to “Dormant local partners”. Contractual and corporate arrangements are sometimes elaborated in attempt to allow foreigners to have market access without passing by SAGIA. To fight such frauds, Saudi Arabia has issued the anti-concealment act which punishes both of local and foreign partners.

b. Transnational Employment Agreement:

A specific aspect should be considered with care by a foreign candidate negotiating an employment agreement with an entity established in Saudi Arabia. As per the

Saudization policy forcing companies to hire at least 25-30% of their needed manpower with Saudi nationality, any entity that fails to comply with this specific requirement is prohibited/restricted to hire foreign employees.

The foreign candidate must, in addition to getting a written employment offer, verify whether his potential employer has fulfilled his obligations regarding the Saudization policy and is consequently entitled to hire foreigners. In case the Saudi employer’s entity is not in compliance with the Saudization requirements and, consequently, prohibited to hire foreign employees, the candidate shall be in serious problem when he resigns from his current position and applies for the Saudi visa in his mother land.

IV. International Commercial Contracts and Judicial System:

The concept of “precedent” is inexistent in Saudi judicial system. Saudi courts refuse to assemble and publish the former and final awards. The argument is to guarantee the creativity of judges and to avoid coerce them with previous judgments. However, considered from the view of a given legal consultant drafting an international commercial agreement, this lack of publication makes the drafting task complicated, namely when it is about prospecting the validity and enforceability of a given contractual clause before Saudi courts.

Moreover, even in a case a foreign contracting party has insisted to insert a competence clause appointing a foreign court and this latter has duly issued its award, the exequatur of this award in Saudi Arabia requires an elemental review of the whole litigation by the Saudi judge. Parties shall consequently repeat the pleadings. This deep control aims to preserve the enforceability of the Saudi public policies.

Regarding the international arbitration, it is not easy to notice the distinction between domestic and transnational arbitration by relying upon the internal rules. The concept of “foreign arbitral award” is not considered in the domestic rules of arbitration, but the ratification of New York convention has provided the Saudi system of arbitration with the proper framing rules.

(14) Anne-Robert-Jacques Turgot, « Analysis of loans with interests », 1769 ; Jeremy Bentham, « Defense of usury », 1787.

(15) Choucri Cardahi, “The concept of international private law in Islam. Legal and historical study», Hague Revue (« Recueil des Cours »), 1937, p.506, spec. p. 595.

(16) SAGIA has issued a list of activities strictly prohibited to foreigners.

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