

Education in focus

July 2015

Message from the editor

This is the third edition of Clyde & Co's 'Education in focus' newsletter, a quarterly publication designed to keep you up-to-date with current trends and insights from the regional education sector.

We continue to be busy advising operators, investors and management teams on a wide range of matters across the early years, K-12, higher education and professional training sectors. Clyde & Co's dedicated education team consists of specialists from across the firm's full service offering and across all our regional offices. We have a real connection to the regional education sector and add real value to our clients wishing to do business here.

On 8 June we hosted our second education roundtable dinner at the Ritz-Carlton, Abu Dhabi. The event was an intimate affair with 21 attendees and provided an opportunity to discuss a number of challenges facing the K-12 sector in Abu Dhabi and how schools were adapting to these challenges. Attendees included operators and head teachers from schools in Abu Dhabi, as well as a number of investors and education professionals. The main themes discussed were regulatory developments, the recruitment and retention of teaching staff, use of supply teachers, delivery of effective Arabic language lessons and SEN provision. We plan to hold our next roundtable dinner in Doha after the summer.

Key members of our education team will be in London on 6 July to host a capability building event in conjunction with UKTI Education. This will focus on early years, K-12 and higher education operators, as well as training companies, looking to expand into the region. Details are included in this newsletter and we look forward to seeing many of you at the event.

Ross Barfoot

Head of MENA Education, Clyde & Co
 E: ross.barfoot@clydeco.com

In this issue we cover:

- Market updates and insight – Education news and insight from around the region
- Clyde & Co hosts second education roundtable dinner
- Vocational training in KSA
- A lesson in trade mark protection
- Legal and practical difficulties engaging supply teachers in the UAE and Qatar
- New Dubai fundraising law – What education institutions need to know
- In other news:
 - Clyde & Co launches 2015 Middle East Deal Study
 - Clyde & Co opens fully integrated office in Saudi Arabia
 - Clyde & Co to sponsor Education Investment MENA Conference
 - Clyde & Co co-hosting Capability-building seminar with UKTI in London



Market updates and insight

<p>Abu Dhabi Education Council (ADEC) launches new investment guide</p>	<p>ADEC has launched its new investment guide aimed at investors and operators of private schools in Abu Dhabi, providing a very useful overview of the process and requirements when establishing a new educational facility in Abu Dhabi.</p>
<p>Knowledge and Human Development Authority (KHDA) in Dubai approves school fee increases</p>	<p>KHDA has given approval to over 100 private schools in Dubai to increase fees for the upcoming 2015/2016 academic year. Depending on the ranking of the school, 'Acceptable', 'Good' or 'Outstanding', the increases range from 2.92% to 5.84%.</p>
<p>UAE School Transportation</p>	<p>In a further boost to school transportation standards in Abu Dhabi, the Abu Dhabi Quality and Conformity Council has launched a scheme to improve the quality in this area by implementing a certification regime for school bus drivers and supervisors to ensure adherence to best practice and applicable regulations in Abu Dhabi.</p> <p>This above follows closely the rollout by the Roads and Transport Authority in Dubai (RTA) of an improved school bus fleet, with plans to increase the fleet to 650 buses by 2024.</p>
<p>Qatar's Shura Council considering new Private Schools Law and Educational Services Law</p>	<p>The Shura Council (Qatar's elected and appointed legislative body) is currently discussing two educational laws following their approval by the Cabinet in December. The private school law allows for regulation of private schools by the Supreme Education Council (SEC) on matters including licencing and procedures, work and study systems, investigation and disciplinary accountability.</p> <p>The educational services law includes provisions on educational services including education or training services provided in areas of language, computer, secretarial, accounting and administration.</p>
<p>KHDA's parent/school contract becomes mandatory</p>	<p>KHDA's model parent/school contract is to become mandatory for all schools in Dubai for the next academic year. In 2013 the model contract was introduced to 58 schools as a pilot programme, extending to the emirate's 34 Indian and Pakistani schools earlier this year.</p>



Clyde & Co hosts second education roundtable dinner

Written by Ross Barfoot and Stephen McKenna

On 9 June 2015 Clyde & Co hosted its second UAE based education roundtable dinner, at the Ritz Carlton, Abu Dhabi. This roundtable dinner brought key stakeholders in the education sector together and follows our successful roundtable dinner held in Dubai on 11 February.

A broad mix of investors, operators (global, regional and local), consultants and head teachers considered a number of topical issues facing the K-12 education sector in Abu Dhabi. The agenda included:

- Regulatory developments
- Staffing issues such as recruitment and retention of staff and use of supply teachers
- Delivery of Arabic and Islamic studies programmes
- SEN provision

These topics were discussed in an open forum which produced a lively and engaging debate between all the stakeholders, moderated by Ross Barfoot, Partner and Head of Clyde & Co's Education practice. Key members of Clyde & Co's education team were also in attendance to contribute to the debate.

The discussion on the evening proved invaluable for those attending and was an opportunity to share experiences with others and compare approaches to common challenges. **Ross Barfoot** noted that "the evening highlights that Clyde & Co are thought leaders in the regional education sector and can add real value to our education clients".

Following on from the success of both the Abu Dhabi and Dubai education roundtable dinners, we look forward to hosting another roundtable event in Doha in the near future.

For more information, please contact:

Ross Barfoot

Partner, Clyde & Co
E: ross.barfoot@clydeco.com

Stephen McKenna

Senior Associate, Clyde & Co
E: stephen.mckenna@clydeco.com

Vocational training in KSA

Written by Rebecca Ford, Sara Khoja and Samantha Ellaby

The Saudi Arabian government is investing heavily in vocational and technical training and aims to create 100 technical colleges by 2020 under its reform program. From 2010 to 2014, government expenditure on technical and vocational training rose by 41.6% to USD 6.1 billion.

The government has set up the Technical & Vocational Training Corporation (TVTC) to concentrate on the development of vocational training in the Kingdom. The Colleges of Excellence have also been established to be the leading authority for applied training in the Kingdom. The key responsibilities of both organisations is to create a skilled labour force through collaborations with industries.

Colleges of Excellence has already collaborated with 12 global partners for setting up 27 such technical colleges, which will be managed by various international applied technical and educational institutions from the US, Canada, the UK, Germany, the Netherlands, Spain, Australia and New Zealand.

Such collaborations are an excellent opportunity for education providers who are looking to enter the market and have the potential to be extremely lucrative.

For example, in April 2014, it was reported that a number of UK education providers had won contracts worth roughly USD 1,341 million to provide 12 technical vocational colleges in the KSA. Once the colleges reach capacity, it is envisaged that they will train 24,000 students per year, including 14,000 women.

We have advised a number of educational institutions in connection with the collaborations. The terms of the collaboration agreement should be carefully considered, reviewed and negotiated to ensure that the educational institution is not subject to performance indicators and objectives which may in practice be difficult to meet.

Careful consideration will need to be given to staffing the new colleges. The Saudi government has put in place a number of helpful measures to assist with this issue. Ajeer enables the dependants of expatriate workers in the KSA to work in private schools, subject to certain conditions, without being sponsored by the school. This measure is very welcome and should significantly increase the

number of females entering the market. Ajeer also enables institutions and colleges to effectively borrow employees from other entities for a period of up to three months without being required to sponsor the employee.

Educational institutions entering the market will also need to keep in mind the increasing focus on Saudization. Targets or requirements to employ Saudi nationals will likely apply both under the terms of the commercial agreement with Government agencies and also under the general employment law provisions. Under the Nitaqat system, companies are assessed based on the number of Saudi nationals it employs and will suffer disadvantages (including being unable to benefit from the Ajeer system) if it fails to recruit the required number of local nationals assigned to its business by the Ministry of Labour. The more compliant the company, the easier it will be to obtain new work visas (Iqamas) for expatriates. Staffing educational institutions with the sufficient number of Saudi nationals can be challenging, particularly given the need for segregation between males and females and the low numbers of trained and available national female teachers.

For more information, please contact:

Rebecca Ford

Partner, Clyde & Co
E: rebecca.ford@clydeco.com

Sara Khoja

Partner, Clyde & Co
E: sara.khoja@clydeco.com

Samantha Ellaby

Associate, Clyde & Co
E: samantha.ellaby@clydeco.com

A lesson in trade mark protection

Written by Harriet Balloch and Nicole Giblin

Educational establishments work hard to build reputations as trusted and leading education providers within local communities and globally. Investing in trade mark protection can ensure that exclusive rights are secured in the name and logo of the educational establishment at a country level and internationally, by filing for protection on a country by country or regional basis.

1. Globalisation of education providers

As a result of an increased demand for top performing schools internationally, there has been a recent trend towards the globalisation of the educational sector. For example, a number of outstanding British and US schools and universities, have set up campuses in new markets, particularly in China and the Middle East.

As part of these arrangements, establishments usually enter into licensing agreements with local partners, authorising the use of the school's intellectual property rights, including the name and logo of the school, together with the curriculum, teaching materials and the school uniform. Some of these assets can be protected through IP rights, such as trade marks, copyright and registered design rights.

Given that the right to use the name and logo of a school will be core to any licensing deal, it is key to ensure that adequate trade mark protection is secured in advance of entering into licensing agreements. As part of this protection strategy, it is important to consider whether local language variations, such as Arabic or Mandarin versions of the mark, need to be protected.

2. Why secure trade mark protection?

Registering a trade mark gives the owner the exclusive right to that trade mark, in relation to the goods and services listed on the certificate, in the country of registration.

Accordingly, a trade mark registration can prevent competing schools, nurseries or universities from using the same or a similar trade mark.

By way of example, if a nursery has established an outstanding reputation, a third party setting up a new nursery may seek to use a trade mark which is the same or very similar to the first nursery's brand, in an attempt to confuse prospective parents and students into thinking that the new campus is associated with the first nursery. Trade mark registrations can be used to prevent third parties from seeking to trade off the reputation of successful educational brands, without permission.

Trade mark protection also enables establishments to develop their brands, by attracting investors or generating alternative revenue streams, through licensing arrangements in new markets.

3. Trade mark searches

Before applying for and/or using a trade mark, it is important to ensure that there are no conflicting prior brands being used or registered in the countries of interest.

Trade mark clearance searches should be undertaken prior to the launch of a new brand and before expanding that brand into other markets. Conducting searches can quickly reveal whether the relevant trade mark is free to use or whether use of the mark will infringe the prior rights of a third party.

Given that significant time and money is invested in branding exercises, undertaking clearance searches early can avoid unnecessary costs being incurred in connection with a forced re-brand.

4. The application process

Assuming the results of searches are clear, applications can be filed to protect the trade mark in the countries of interest. Before filing the applications, it is necessary to decide which goods and services should be protected in relation to the trade mark.

All goods and services are categorised into 45 “classes”. Educational establishments usually look to secure protection in the following core classes:

- Class 41 which covers education and training services
- Class 16 which covers teaching materials and books

Universities and other higher educational establishments may also wish to protect their trade marks in relation to Class 42, which covers research and development services.

Any establishments which are considering opening campuses in new markets should secure protection for their trade marks before entering into discussions with potential local partners. Adopting this approach will ensure that they are in a position to licence the use of the school’s trade mark in that country.

For more information, please contact:

Harriet Balloch

Legal Director, Clyde & Co
E: harriet.balloch@clydeco.com



Legal and practical difficulties with engaging supply teachers in the UAE and Qatar

Written by Rebecca Ford, Sara Khoja and Samantha Ellaby

Schools in other jurisdictions rely heavily on the services of supply teachers to cover periods of leave. This article summarises the legal and practical difficulties with engaging supply teachers in the UAE and Qatar together with some suggestions for dealing with those difficulties.

Generally speaking, in order to lawfully work in the region, all non-GCC nationals must have a valid residence visa and work permit authorising them to do so. This poses considerable issues for schools which may need to cover teaching absence at short notice and need to have the flexibility to engage individuals to do so on a short term and *ad hoc* basis.

We are aware that some schools engage the services of expatriates who are sponsored by their spouses for residency visa purposes on an *ad hoc* basis to cover periods of leave. In our experience, such individuals are not generally sponsored or employed by the school, are often paid in cash and do not receive the usual statutory benefits such as payment for annual leave or sick leave.

Such an approach is not strictly lawful under the immigration rules in the UAE and Qatar. A residence visa sponsored by a family member does not authorise that individual to work. In order to lawfully work for a school, an individual must have a work permit sponsored by the school. As part of this sponsorship, the school will need to enter into an employment contract with the individual and will assume the usual employment obligations and responsibilities (including to pay annual leave, sick leave, end of service gratuity and any other statutory benefits).

A work permit sponsored by a particular school only permits the individual to work for that school. This means that, unlike in some jurisdictions, an individual cannot lawfully provide supply services to a number of different schools on an *ad hoc* basis.

In Saudi, the government has addressed this issue to a certain extent with the introduction of the Ajeer system which, subject to certain conditions, enables the dependents of expatriate workers to work in private schools without having their sponsorship transferred to and/or being employed by the school and enables institutes and colleges to obtain Temporary Work Notices to enable personnel of one entity to provide services to another.

Until such measures are introduced in the UAE and Qatar schools will need to consider other options for covering leave and robustly manage periods of absence to reduce the need to rely on supply teachers.

Practical suggestions for mitigating the difficulties

Covering staff

- Employ staff on a permanent basis specifically to cover periods of absence. To reduce costs, such staff could be paid a nominal basic wage and an uplift per lesson covered. However, there would of course be a cost associated with obtaining a visa for such an individual and the individual would have the usual employment rights, including the right to annual leave and an end of service gratuity payment

Sickness absence

- Have a sickness absence policy which clearly informs employees of the sickness absence reporting requirements



- Closely monitor sickness absence and, if there are any patterns, for example repeated sicknesses immediately following a weekend, discuss this with the employee so that they are aware that the school is alert to the issue
- Require employees to attend a return to work interview after all occasions of absence, however short, to discuss the reason for their absence
- Contractually require employees to submit a medical note for all cases of sickness absence, however short, or for periods of, say, more than 1 day

Maternity leave

- Under the relevant labour laws, there is no requirement for employees to commence maternity leave within a certain period of the expected date of childbirth or to notify the employer within a particular period of their intended return date. In the UAE, for example, an employee may, towards the end of the 45 day statutory maternity leave period, provide a medical report which states that they are unable to work for a further 100 days. This poses difficulties for schools when arranging suitable cover

- To mitigate this issue, schools could implement a maternity policy which stresses the importance of classes being covered and the need for the school to have as much notice as possible of the intended return date
- Encourage open dialogue between the school and the teacher throughout period of maternity leave
- Schools could also take steps to incentivise employees to return to work on the intended work date by, for example, offering a return to work bonus if they do so

For more information, please contact:

Rebecca Ford

Partner, Clyde & Co
E: rebecca.ford@clydeco.com

Sara Khoja

Partner, Clyde & Co
E: sara.khoja@clydeco.com

Samantha Ellaby

Associate, Clyde & Co
E: samantha.ellaby@clydeco.com

New Dubai fundraising law – What education institutions need to know

Written by Ross Barfoot and Sinead Boden

A new Decree has been issued in Dubai regulating fundraising in the Emirate of Dubai (Dubai Decree No. 9 of 2015). In summary, the law states that approval must be sought from the Dubai Islamic Affairs and Charitable Activities Department (IACAD) before any fundraising activity is carried out. Fundraising, the authorisation of fundraising or the announcement of fundraising are prohibited unless there is prior approval from IACAD.

The new law applies to all “Donations” collected in whatever way and for whatever purpose anywhere in Dubai. “Donations” are defined as any “Property” voluntarily given by the donor as beneficence, kindness, assistance or charity. The term “Property” is translated as being anything with a material or monetary value. The new law would therefore cover monetary donations and the donation of goods in kind, which has also been confirmed to us by IACAD.

There are a few exemptions to this approval requirement, which cover government collections, or those connected with the Ruler of Dubai or the Federal Supreme Council. However, most individuals and organisations wanting to do any charitable fundraising activities in Dubai will come under the new law, including schools and institutions which in the past have taken advantage of the exemption under the Federal Law (Federal Law No. 2 of 2008 governing Public Welfare Associations).

IACAD has said that they do not want to stop charitable fundraising; instead they are trying to ensure that fundraising is carried out in a way that is regulated and that can be audited. There is no fee for the application and IACAD has confirmed that it should only take a few days to get a decision.

There are fairly steep penalties for violation of the law and fundraising without the necessary approvals. Penalties include:

- A fine of between AED 5,000 – 100,000; and/or
- Imprisonment of one month to one year

These penalties might not always be imposed in the event of violation. Instead, in the event of breach of the law, an amicable settlement may be reached with IACAD (in their discretion) for one or more of the following actions:

- Written warning of the violation and undertaking not to repeat the infringement
- Repayment of twice the amount of donated funds
- Closure of the premises where the funds were raised for up to one year

Public or private fundraising?

Prior to the new law in Dubai any individual or association wishing to hold a public fundraising event or collection would have needed to seek permission from IACAD to hold the event. IACAD would then ask that donations and collections be made through one of the registered Dubai Charitable Associations or Foundations, such as the Red Crescent or Dar Al Ber Society. Prior to the new law, such permission was not thought to be needed for private donations or private fundraising events or activities.



Under the new law, the definition of ‘Donation’ seems to be broad enough to capture public and private fundraising and donations. In an interview with Dr Hamad Al Shaibani, Director-General of IACAD, he stated that private donations, such as parents to the school where their children attend or within a private home, do not need approval, as long as there are no public calls to donate money.

Despite this interview with the Director-General of IACAD, there is no such exemption in the new law covering private fundraising activity. Therefore, it is advisable to be cautious and to carry out any fundraising collections in conjunction with a registered IACAD Charitable Association, such as the Red Crescent or Dar Al Ber Society, or apply for approval for specific fundraising events in Dubai.

This will have a direct impact on schools, colleges and universities in Dubai wishing to hold non-uniform days, table top sales or bake sales where the proceeds are to go to charity. Under the new law specific applications will need to be made to the IACAD and a registered IACAD Charitable Association will need to be brought in to administer the event and collect the donations.

The penalties for violation have certainly increased, with a larger fine that can be imposed, possible imprisonment and the closure of premises where the fundraising activities took place. Sometimes in Dubai you hear the phrase “seek forgiveness not permission”. In the circumstances of the new law and with the possible new penalties that can be imposed, we recommend a cautious approach and to seek prior approval for any fundraising activities.

For more information, please contact the authors:

Ross Barfoot

Partner, Clyde & Co

E: ross.barfoot@clydeco.com

Sinead Boden

MENA Community Investment Manager

E: sinead.boden@clydeco.com



Other news

Clyde & Co launches 2015 Middle East Deal Study

Clyde & Co is pleased to announce the release of its 2015 Middle East Deal Study. The report observes trends and developments in the mergers and acquisitions (M&A) and joint ventures (JV) market by analysing data from 75 corporate transactions on which the firm worked during 2014. The report, which is the only one of its kind in the region, provides an opportunity to benchmark and identify shifts in market trends since the inaugural deal study conducted two years ago and offers a unique insight into what businesses might expect from doing deals in the Middle East, as well as an indication of “market practice”.

The 2015 Deal Study identifies the top performing sectors in the region over the last two years. Across both M&A and joint venture transactions infrastructure was a leading sector. The GCC countries in particular appear to drive the growth in infrastructure transactions with increased levels of public investment. We see this trend continuing along with growth in related sectors, such as education and healthcare, which are required to satisfy growing populations across the region. However, whilst education generates a lot of interest amongst investors, the number of quality investment opportunities coming through in the region is still relatively low, which is reflected in our findings.

To receive a copy of the study, please email layan.halet@clydeco.com

Clyde & Co opens fully integrated office in Saudi Arabia

Clyde & Co has further formalised its existing offering in Riyadh with the opening of its fully integrated office. The newly-formed structure will be headed by Abdulaziz Al-Bosaily whose law office has been closely associated with Clyde & Co for more than six years. Ben Cowling, a specialist construction partner of Clyde & Co who has been resident in KSA since 2012, will continue to be based in Riyadh and assist with the management of the office. Please see <http://www.clydeco.com/firm/news/view/clyde-co-opens-fully-integrated-office-in-saudi-arabia> for further information.



Education Investment MENA Conference

Clyde & Co is pleased to be taking part in the Education Investment MENA 2015 conference taking place on 15 – 18 November 2015 at the Ritz Carlton Hotel, DIFC, Dubai. This is the fourth year in a row that Clyde & Co will sponsor the event and present a session, having been involved since the first conference back in 2011.

Education Investment MENA is the definitive forum focusing on the business of education in MENA. Hosting leading ministries, regulators, educators, investors and advisers, the annual meeting point of the private education community provides expansion, innovation and partnership opportunities for education businesses in Early Years, K-12, Higher, Vocational and Skills sectors.

Clyde & Co will be presenting at the conference and also chairing a session.

We are pleased to be able to extend a 15% discount on delegate places to our clients. Please go to www.educationinvestment.com and simply quote the discount code **AZ3084SX** when you register.

Clyde & Co to co-host Capability-building seminar with UKTI in London

On 6 July 2015, Clyde & Co will co-host a half-day capability-building seminar in conjunction with UKTI in London, focused around opportunities in the Gulf.

The session will feature speakers from Clyde & Co, UKTI, The Parthenon Group, EC Harris and UK Export Finance, covering a wide range of topics on the education sector in the Gulf. To register your interest in the seminar, please contact ukti-education@ukti.gsi.gov.uk

**Further advice should be taken
before relying on the contents
of this Newsletter.**

Clyde & Co* accepts no liability for loss occasioned to any person acting or refraining from acting as a result of material contained in this document. The content of this document does not constitute legal advice and should not be relied upon as such. Advice should be taken about your specific circumstances. No part of this summary may be used, reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, reading or otherwise without the prior permission of Clyde & Co.

*Clyde & Co LLP, Clyde & Co Technical Services JSC and Clyde & Co LLP Lawyers & Legal Consultants

Clyde & Co LLP is a limited liability partnership registered in England and Wales. Authorised and regulated by the Solicitors Regulation Authority.

© Clyde & Co LLP 2015

Clyde & Co LLP

www.clydeco.com