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Education in Focus

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Message from the editor

The sixth edition of our 'Education In Focus' newsletter continues our global focus, with articles covering the Middle East, China and Africa. This newsletter is designed to keep you up to date with current trends and insights from the global education sector. Our education practice spans our network of 46 offices, with a particular focus on international opportunities across the Middle East, China, Asia, India, Africa, UK and Australia.

A number of recent developments in China have seen an increase in queries on the opportunities for international schools in China, and we have set out our current understanding of these developments and their potential impact later on in this newsletter.

Since the last edition of our newsletter I have had a number of speaking slots in the UK and UAE, including: presenting on international opportunities at the Education Investor Global Hotspots Conference in July alongside my colleague Dawda Jawara who presented on opportunities in Africa; presenting on opportunities in the Middle East at the IPSEF conference in Dubai in September; presenting on international opportunities at the Education Investor Exporting Excellence Conference in London in October; hosting our fifth education roundtable in November, this time in London, focusing on the international K-12 sector; attended the Education Investor Awards Dinner and moderating a panel at the Informa EdEx Education Investment MENA Conference in Dubai focusing on optimal investment

structures for education deals. Stephen McKenna also presented at the Department for International Trade UK schools mission to China pre-briefing event at the end of November.

It continues to be a busy time for our education practice, with schools, university and investor mandates across our network of offices. Interestingly, we are seeing an increase in M&A activity in the Middle East K-12 sector, and we have been engaged on the acquisition or disposal of a number of schools in Qatar, UAE and the wider Middle East region.

I hope you find this edition of 'Education In Focus' a useful and informative resource. If you wish to discuss any of the topics covered inside or want to talk about the education sector generally, please do get in touch.

Ross Barfoot

Lead Partner, Global Education Group
D: +971 2 494 3598
E: ross.barfoot@clydeco.com

Market updates and insights

Sustainability and the environment in the UAE education sector

The Ministry of Climate Change, the Ministry of Education and the Environment Agency have announced a new climate change and sustainability programme to be implemented in schools across the UAE. This addition into school's curricula aims to teach students about the importance of climate change and the protection of the environment. We understand that such programmes will start next year in private and public schools across the UAE.

Tolerance in the UAE education system

The Ministry of Education has presented the Teachers' Charter of Tolerance in schools and higher education institutions. This Charter includes teachers and lecturers in UAE's National Programme for Tolerance initiative. The aim of the Charter is to encourage teachers and lecturers to instill, through academic curricula, the principles of tolerance, peaceful coexisting and openness to Arab students.

Reading during working hours in the UAE

The UAE government has approved the National Reading Law, which grants employees the right to be given time off work to read. This law aims to increase the UAE's knowledge-based industry. The law aims to encourage reading amongst pupils as well as respect for books. Certain provisions of the law encourage coffee shops to make reading material readily available to its customers. We understand that this law will remove fees and taxes for distributing, publishing and printing reading material.

Moral curriculum for UAE students

The Moral Accreditation Committee has put forward a curriculum to encourage students to be more creative, innovative and respectful to their peers. The curriculum will include sections on character and ethics, individual and community, civic education and cultural education. We understand that all schools will be expected to incorporate this into their existing curriculum from September 2017.

Considerable boost to the UAE Education Budget

The UAE government will continue its spending in the education sector for the year 2017. The education sector received a high allocation of Dh10.2 billion, just over 20 per cent of the total annual budget of Dh48.7 billion. These figures indicate the growing need for education services in the UAE. The increase in the UAE population is driving demand and increasing investments in both the public and private education sector.

Teachers dismissed from Abu Dhabi schools

In an unprecedented move the Abu Dhabi Education Council (ADEC) has dismissed over 340 teachers from state schools. We understand that the majority of the teachers were dismissed because of restructuring programmes that ADEC has put in place for state schools. However, ADEC has also confirmed that 74 teachers were banned because they failed to meet performance standards.

University students allowed part-time jobs in the UAE

The Ministry of Human Resources and Emiratization (MHRE) has recently issued a resolution enabling students to undertake paid work onshore provided that they obtain a part-time work permit from the MHRE.

With regards to free zones, university students enrolled in universities in Knowledge Village and International Academic City in Dubai will be permitted to hold part-time jobs in companies in nine free zone clusters, enabled through a new regulation announced by Dubai Creative Clusters Authority (DCCA). The order applies to half of the international branch campuses in the UAE and it enables more than 4,000 businesses to employ students part-time.



Brexit

Brexit continues to worry educational institutions in the UK because attracting foreign students to the UK has become more challenging. We understand that Brexit coupled with the restrictive requirements on work visas for international students is making the UK less attractive for international students.

Increased pressure on low-cost private schools in Africa

The Ugandan Government has closed all schools operated by Bridge International Academies in the country after ruling that they breached standards on education, hygiene, and employing unregistered teachers. Pressure on low-cost private schools is also increasing in Kenya as a direct result of this. Kenyan unions are criticising low-cost private schools on the basis that they do not hire licenced and trained teachers. These low-cost private schools have surged in popularity in third world countries and have won the financial backing of the British Government and the World Bank. It remains to be seen how the Kenyan Government will handle such friction in its education sector.

India is reforming its education sector

The National Democratic Alliance government is trying to internationalise India's education sector by paving the way for the Indian Institutes of Technology to hire foreign faculty without governmental approval. We understand that the visa regime for visiting academics will also be relaxed. This represents a significant step forwards to open up India's education sector.

Trump re-educating the industry?

The US education sector is expecting President-elect Trump's plans on the education sector. Many believe that Trump's stance in education will favour private institutions more than public ones. A number of comments made by Trump hint that he will remove federal government from student lending in higher education and direct students to commercial banks and include income-contingent repayment plans to student loans. However, like the majority of his policies, these remain to be confirmed.

Qatar Immigration Law Update

Qatar's new Immigration Law is expected to take effect on 17 December, despite the fact that the enabling legislation has not yet been issued. Despite material press coverage regarding how the law will be practically implemented, until such time as the law takes effect and/or the enabling legislation is issued we cannot comment or advise except to confirm a general understanding that there will be greater fluidity of movement for employees within the workplace and a right of appeal regarding exit. In addition there have been announcements regarding the introduction of e-government contracts which can be executed outside Qatar before employees start work and the appointment of a Labour Department Committee to which employment disputes can be submitted. We will provide further updates in due course.



The International K-12 Sector: Opportunities and Challenges

On 16 November Clyde & Co hosted its first UK based education roundtable over breakfast at the Duck & Waffle in London's Heron Tower. The breakfast brought together key stakeholders in the global K-12 sector, including the Department for International Trade, Parthenon EY, Cognition Education, Enso Impact and Education Investor.

The event was an intimate affair with 9 attendees taking part, moderated by Ross Barfoot, partner and head of Clyde & Co's global education practice, and overlooked breath-taking views of the City skyline from the 40th floor of Heron Tower.

The discussions covered the following topics:

Key challenges

The key challenges facing international school businesses were discussed, and the territories causing the most sleepless nights for operators and investors. These included:

Unexpected changes to regulations with little or no notice

This is a risk in almost every jurisdiction, with the recent developments in China cited as an example (we refer you to our article on these developments on page 6 of this newsletter). The imminent changes to China's Private Education Law were discussed, with a recognition that as well as a number of challenges due to be introduced, there was some good news as the law now explicitly allows 'for profit' private schools teaching pre-school and Grade 10 onwards (UK year 11 onwards), and for international schools enrolling purely foreign passport holders. The recent Shanghai Education Commission position was also discussed, with a potential impact on international curricula being taught.

China was high on everyone's list of territories currently causing sleepless nights. It was recognised that it was

currently too early to determine the full impact on recent developments on the China K-12 sector, but that it was evident that parents of domestic students were very keen to send their children to schools that would prepare them for study abroad, and it was suggested that those parents would do whatever was in their power to secure foreign passports for their children to allow this to happen.

The recent decision by the Government in Uganda to close a number of low cost affordable private schools was also discussed, with the viability of the affordable school model in Africa being questioned.

Expatriate vs domestic demand for school places

With a currently volatile expatriate market in most territories, there is an increasing realisation from operators that growth and sustainability will come from the local population, rather than expatriates. This is evident in China, where opportunities for international schools teaching expatriates is limited to only a number of cities (such as Shanghai and Beijing). Traditional expat markets like Abu Dhabi, Dubai and Qatar have seen an impact recently, with a definite flight to quality as expat numbers dip, and competition increases

Investors and local partners

In many territories, and for many school operators, a local partner is key to the success of the school. Finding the right partner has always been, and still remains, a challenge.



Teacher shortages

As the number of international schools around the world increases, the number of people qualifying as teachers continues to fall. Schools relying on qualified teachers with UK, Canadian, US or Australian qualifications are competing for resources from an ever increasing pool.

Opportunities in the sector

Opportunities in the sector were discussed, as well as new territories that were on operators and investors radars. This included an in-depth look at Africa, specifically Nigeria, Ghana and Kenya.

The obvious opportunities in many African countries were around affordable low-cost schools that provided quality education, given that the focus over the past decade has been on providing universal primary education. Challenges around balancing profitability and quality for schools made this a difficult segment to break into, given that at the scale required at the low-cost end meant that few school groups could grow to become significantly profitable. Those that did such as Bridge Academy faced serious delivery challenges when scaling up. The rising middle class in countries such as Kenya, Nigeria and Ghana were currently under supplied and this could present an opportunity for school groups.

The Middle East still presented opportunities, but with an increase in competition new entrants need to be prepared to compete on quality, price and differentiation. Again, domestic students, and mid-level fee schools aimed at the rising middle class all presented opportunities. Iran and Saudi were also discussed. Everybody recognised that there were huge potential for both markets, but currently they are difficult markets to enter.

Iran in particular is very exciting, with huge opportunities for international education institutions and businesses. US secondary sanctions are still making it difficult to move money in and out of the country, and there is some political risk flowing from US President-elect Trump's comments on the Iran deal.

The breakfast wrapped up with a general discussion on Trump and Brexit. The UK K-12 and higher education sectors had definitely been impacted by Brexit and the UK government stance on student visas, and this was leading to an increased interest in international expansion opportunities for UK institutions. On Trump, although a number of concerns were aired, the general consensus was that it was too early to tell what Trump's position on education would be, and what impact his other policies would have on the global education market.

For more information, please contact:



Ross Barfoot

Lead Partner, Global Education Group

D: +971 2 494 3598

E: ross.barfoot@clydeco.com

May you live in interesting times

Or so the ancient Chinese curse apparently goes. The China K-12 education sector has presented huge opportunities for investors and international operators and it is obvious why.

China is the largest country in the world by population, with latest World Bank figures reporting a population of 1,371,220,000 as at the end of 2015. Roughly 13% of its population are of school age. Although traditionally school education has been provided free of charge and by the State, this changed back in the late 1980s as non-Chinese nationals, unable to access State education and with an increasing amount of disposable income, created an opportunity for private schools, and the increasing internationalisation of China's main economic hubs – Shanghai, Guangzhou and Beijing – saw an expatriate workforce keen to provide best in class private and international education to their children.

In 2016 we now see 555 international schools in China, second only to the UAE, and with a number of well-known UK school brands operating (including Dulwich College, Wellington College and Harrow). Current growth projections are predominantly built around an expectation that an increasing amount of Chinese nationals will want to, and be able to, send their children to private schools teaching both the Chinese compulsory education curriculum and international curricula.

For international school operators and investors looking to bring international school brands to China, there are two main opportunities in China:

1. **International Schools for children of foreign personnel (International Schools)** - these can be for profit, and can teach international curricula, but can only admit foreign passport holders. No Chinese nationals can attend. Foreign investors and operators can wholly own these types of schools.

The market for International Schools is mostly confined to opportunities in the main international hubs, like Shanghai. Stiff competition and enough current supply make opportunities challenging. Investors and operators shouldn't be put off, especially if the school concept has a particular USP or is targeting an otherwise under supplied price point or niche. But competition for admissions will be fierce.

There has also been an increasing "grey area" around admissions, with a number of International Schools pushing the boundaries on enrolment of Chinese nationals with foreign residency visas, encouraged by local education bureaus laissez-faire approach.

2. **Dual curriculum schools (Dual Curriculum Schools)** - these can admit both Chinese nationals and foreign passport holders, but have to operate two streams of education. One for Chinese nationals teaching the State curriculum from Grade 1 (UK year 2) to Grade 9 (UK year 10), and the other stream for (a) foreign passport holders and (b) for Chinese nationals in Kindergarten/nursery (including UK FS1 to Year 1) and then again from grade 10 (UK year 11) onwards. Foreign ownership is only permitted if it is in joint venture with a Chinese partner.

The biggest opportunities lie in tapping into the domestic demand for Dual Curriculum Schools. This also opens up other regions of China for possible school sites, as most of the large cities in China have very little (if none) expatriate families.

All very interesting. But as that old Chinese curse hints at, "interesting" should probably read "challenging" in this modern era, and the Chinese K-12 education sector has just become a bit more challenging for investors and school operators looking to tap into the domestic demand for quality international education. The recent developments that are potentially affecting these opportunities are:

1. Amendments to the Private Education Law 2013

First of all the good news. The amended law now confirms for the first time, that schools (and indeed any education institution) can be operated "for profit". Schools teaching non-compulsory education, i.e. pre-grade 1 and post-grade 10 can operate for profit. International Schools, which by their definition do not teach China's compulsory education can be for profit. For profit schools can determine their own tuition fees.

However, schools teaching China's compulsory education (Grades 1 to 9), i.e. Dual Curriculum Schools, must be not for profit.

Although we expect that this will have an impact on investor appetite for dual curriculum schools, there are a number of structuring options available which can potentially mitigate this. Private investors and owners of schools in Hong Kong and India (where schools must be established as charities) have had to deal with this requirement for a number of years, and lessons can be learned from their approach.

The amended law will come into effect on 1 September 2017, and will apply to existing and new schools. Existing schools therefore have 9 months to restructure themselves to become compliant.

The amended law confirms that schools operating as not for profit must have their tuition fees approved by the Government whereas for-profit schools are free to determine their tuition fees, without any supervision. The amended law also specifies that not for profit schools shall have the same preferential tax policies as State schools.

2. Shanghai Municipal Education Commission's position on international curricula.

We understand from recent press reports that the Shanghai Municipal Education Commission recently met with representatives of international and Dual Curriculum Schools in Shanghai, as well as district education bureaus to re-confirm its position on international curricula.

The education commission has not introduced any new rules or regulations, but rather reminded schools that they must comply with State laws and regulations and have told district education bureaus to heighten their oversight of international curricula being taught in Shanghai.

We understand that this could be as a result of a number of international schools and Dual Curriculum Schools flexing their entry requirements to allow more Chinese nationals to enrol.

The Education commission also stressed that State rules on national education, i.e. the teaching of Chinese history, constitution, law and morals should be followed, even in international schools. This is a requirement in other jurisdictions, such as the UAE, where Arabic language, Islamic Studies and soon moral education, are required to be taught in international schools.

There is also concern that this could see Dual Curriculum and International Schools restricted in what international subjects are taught.

At the time of publication it is too early to say what impact these developments will have on schools in China, although it is fair to say that the K-12 sector is going through a period of uncertainty and investors and school operators should be cautious when considering opportunities before the true extent of the impact is known. Clyde & Co's global education team is on hand to help steer operators and investors through this "interesting" time.

For more information, please contact:



Ross Barfoot
Lead Partner, Global Education Group
D: +971 2 494 3598
E: ross.barfoot@clydeco.com



Stephen McKenna
Legal Director, MENA
D: +971 2 494 3592
E: stephen.mckenna@clydeco.com



Michael Cripps
Partner, Shanghai
D: +86 21 6035 6129
E: michael.cripps@clydeco.com



Carrie Chen
Partner, Chongqing
D: +86 23 6300 7966
E: carrie.chen@clydeco.com

Child protection, discrimination and reporting obligations

In the past few months, the United Arab Emirates (UAE) has seen the introduction of a Federal Child Rights Law and the subsequent release by the Abu Dhabi Education Council (ADEC) of a new Child Protection Policy.

We have also seen a steady number of complaints, and prosecutions, being brought under the Anti Discrimination Law (introduced last year), the wide provisions of which could well extend, for example, to comments made between students and/or staff.

This article explores the key implications of these developments for schools in the UAE.

Federal Law No. 3 of 2016 (Child Rights Law)

The Child Rights Law is aimed at protecting the rights of children across the UAE.

The Child Rights Law contains a section on “Educational Rights” which includes an obligation on the State to prohibit all kinds of violence in educational institutions and to preserve the dignity of children.

The Child Rights Law also refers to the State’s obligation to develop specific and organised programs for reporting and filing complaints in order to ensure investigation of acts and irregularities violating educational rights “*in the manner specified by the Executive Regulations*”.

The Executive Regulations to the Child Rights Law have not (at the time of writing this article) been published.

As a Federal Law, the Child Rights Law applies across all of the Emirates. Whilst the extent of the reporting and complaint filing obligations is unclear (for schools outside of Abu Dhabi at least) pending receipt of the Executive Regulations, schools would be well advised to review their child protection policies in light of the apparent renewed focus on this issue.

ADEC Child Protection Policy

Abu Dhabi Education Council (ADEC) has released a Child Protection Policy which applies to all public and private schools in Abu Dhabi, the key provisions of which are summarised below.

• Publication of Child Protection Policy

Public schools must comply with ADEC’s Child Protection Policy whereas, for private schools, there is a positive

obligation to publish their own child protection policy which meets, and does not contradict, ADEC’s Child Protection Policy.

Private schools in Abu Dhabi should therefore review their existing child protection policies to ensure compliance with the new ADEC Child Protection Policy (particularly in relation to reporting obligations and requirements, explained below).

• Scope of protection

One of the stated purposes of ADEC’s Child Protection Policy is the protection of students whilst in a school’s care from “all acts and omissions constituting physical abuse, emotional abuse, sexual abuse and exploitation, neglect, and bullying”.

Behaviours in students which might indicate each of the above, are set out in the Child Protection Policy. Staff should be trained to identify such indicative behaviours and encouraged to raise any suspected issues with the Principal at an early stage.

• Role of school Principal

ADEC’s Child Protection Policy emphasises the importance of the school principal as “guardian” of all students whilst they are under the school’s care. Additionally, it states that the school principal is responsible for ensuring that child protection procedures are understood by all staff.

This serves as a further reminder of the importance of the role of, and potential liabilities of, the principal of a school. Principals will of course want to take proactive measures to ensure that all staff are aware of, and comply with, ADEC’s Child Protection Policy.

• Wide responsibility for the protection of students

A school’s responsibility for the protection of students includes travel to and from school using school transport and moving between, waiting for and taking part in all activities organised by the school inside and outside of the school premises.

Safety on school transport is of course a topical issue following a number of fairly high profile incidents, prompting an announcement prior to the start of the academic year of tighter safety measures on school buses.

- **Reporting obligation**

All school staff must report cases of suspected abuse or neglect directly to the Ministry of Interior Child Protection Centre within 24 hours using the reporting link available on ADEC's website.

This obligation extends beyond school staff to those who have regular or temporary contact with students or provide services to the school. Schools should consider how to effectively communicate this message to non-staff.

- **Suspension of duties**

Any staff member who is suspected of an offence involving student abuse and/or neglect must be suspended from duties pending the outcome of the investigation.

Such suspension should be with full pay and it should be made clear that no decision has been reached regarding the allegations.

When communicating the allegations to the relevant staff member, regard must also be had to the wide reaching defamation laws in the UAE which make it a criminal offence to publish a statement regarding another which is capable of subjecting that other to punishment or exposing him to public hatred or contempt (even where such a statement is true). Any correspondence in relation to allegations of this nature should therefore be very carefully drafted.

Consideration should be given to how the staff member's absence will be explained to other staff, students and parents to ensure that, assuming the charges are not upheld, the staff member is able to return to the school with minimal disruption.

Federal Law No. 3 of 1987, as amended (UAE Penal Code)

Schools in the UAE need to be aware of the potential criminal implications of comments made between students and/or staff.

Where comments made between students and/or staff are of a religious or sexual nature, this could potentially amount to a crime under the UAE Penal Code.



Students, parents and staff should be made aware of the types of conduct and/or comments which will be considered unacceptable by the school and/or in breach of UAE law and should be warned of the potentially very serious implications of committing such conduct / making such comments.

Schools must also be aware that, under the UAE Penal Code, there is a general duty to report criminal conduct to the police. This duty can sometimes be problematic for employers where, for a variety of reasons, they do not wish to involve the police.

Federal Law No. 2 of 2015 on Preventing Discrimination and Extremism (Anti-Discrimination Law)

The Anti-Discrimination Law is primarily aimed at preventing religious extremism. However, its terms are fairly widely drafted and include, for example, disparaging the “Divine Entity” or disrespecting any of the “the heavenly religions – Islam, Christianity and Judaism”.

There have been a number of reported cases of prosecutions under the Anti-Discrimination Law relating to comments made publically on social media. Students, parents and staff should be cautioned to carefully consider what they post on social media and should be warned of the potentially very consequences where inappropriate comments are made.

Whilst the majority of reported cases appear to relate to comments made publically, there have also been examples of prosecutions for comments made in a private forum. For example, a Syrian doctor was jailed for 7 years and fined AED 500,000 for insulting God and Islam whilst arguing with the owner of the medical clinic for which he worked. Prosecutions could therefore conceivably be made in relation to negative comments of a religious nature between students or staff, for example.

The Anti-Discrimination Law provides for joint liability for representatives, managers or agents of a corporate body if any of their employees commit an offence under the Anti-Discrimination Law in the name and on behalf of the corporate entity. It is therefore particularly important that schools have in place robust anti-discrimination policies which clearly set out the standards of behaviour expected of staff and that staff are regularly trained on such policies. In the event of a dispute, this should assist in demonstrating

that any discriminatory comments made by staff were not “in the name and on behalf of” the school.

However, under the Anti-Discrimination Law, persons may be discharged from penalties under the law where they report a crime before it is otherwise detected. This, together with the duty to report under the UAE Penal Code, means that staff need to be encouraged to report such matters to the Principal/HR as soon as possible so that appropriate action (which may include reporting the matter to the police) can be taken.

Actions for Schools

In light of the apparent renewed focus on child protection issues in the UAE, and wide scope of the provisions under the Penal Code and Anti-Discrimination Law, all schools would be well advised to take the following actions:

- Review their current Child Protection Policy in light of Child Rights Law or, for those in Abu Dhabi, the ADEC Child Protection Policy. For schools in Abu Dhabi, the reporting obligations and procedures should be clearly stressed.
- Ensure that a regular training programme is in place so that all staff, and those providing services to the school, are made fully aware of the provisions of the school’s child protection policy.
- Put in place a policy to warn students (and their parents) and staff of cultural and legal requirements in the UAE and the potential implications of making comments which offend the UAE or religion, for example, on social media or otherwise.

For more information, please contact:



Rebecca Ford
Partner

D: +971 4 384 4653
E: rebecca.ford@clydeco.com



Samantha Ellaby
Senior Associate

D: +971 4 384 4871
E: samantha.ellaby@clydeco.com



Qatar legal update reminder

Further to our article in the fourth edition of Education in focus, we remind our readers that the deadline for compliance with Law No. (23) of 2015 the New Private Schools Law (the New Private Schools Law) is approaching.

When the New Private Schools Law was approved in November 2015, the Minister granted a 12 month grace period for schools to comply with the provisions of the law. This grace period will expire in November 2016, unless it is extended by the Minister.

We also remind our readers of the key provisions of Law No. (18) of 2015 the Educational Services Law (the Educational Services Law).

The New Private Schools Law

The New Private Schools Law regulates all privately run schools in the State.

We note some of the key points of the New Private Schools Law below:

- There are 36 Articles of the New Private Schools Law, divided into 7 Chapters as follows: Definitions and General Provisions, Licencing and Approval Procedures, Conditions for Ownership and Management, Buildings and Facilities Requirements, School and Study System, Investigations and Discipline and General Closing Provisions.
- The New Private Schools Law has introduced a series of penalties for private schools found to be operating without the proper licences and approvals from the Education Regulator, including imprisonment and/or fines up to QAR 100,000.
- Schools cannot operate without a licence or make any changes to their existing licence without the pre-approval of the Education Regulator.
- Any materials, tools and/or curriculum that does not meet the standards of the Education Regulator may be withdrawn or ordered to be changed.
- Schools are prohibited from receiving funding or donations without approval from the Education Regulator and face fines for violation of this rule.
- In parallel with the coming into force of the New Private Schools Law, the director of the Private Schools Office in the Education Regulator has appointed a private financial company to review requests for school fee increases; all fee increases will now need to be initially reviewed by this company before being considered by the Private Schools Office and the Education Regulator.

The Educational Services Law

The Educational Services Law governs any individual or entity which provides education services and/or training in the fields of languages, computing, secretarial, accounting and/or business administration in a centre.

The Educational Services Law came into effect following its publication in the Official Gazette in November 2015. Existing educational centres were granted a six month grace period to comply with the Educational Services Law.

We note some key points of the Educational Services Law below:

- Educational centres must now have a specific licence to operate.
 - Educational centres cannot advertise/announce that they are opening or accept any students until their licence application has been approved.
 - Applications for a licence will be determined by the Competent Authority within 60 days, if an applicant is unsuccessful they may appeal to the Minister within 30 days of the decision. The Minister will determine appeals within 30 days.
 - Educational centres should have separate premises in which they operate; the licence will be issued for that premises.
 - Licences cannot be assigned to third parties unless a prior approval from the Competent Authority is obtained.
 - Educational centres should create and maintain a database of staff employed at the centre, details of the services provided by the centre and any other details required by the Competent Authority.
- A bank guarantee must be provided, which may be called fully or partially if a violation occurs; the law is silent as to the value of such guarantee which will be confirmed by a Ministerial decree.
 - Penalties for violation of the law include imprisonment of up to 6 months and/or a penalty of QAR100,000 and/or cancellation or suspension of the licence.
 - Educational centres subject to an investigation under the law may be closed for a maximum period of sixty days while the investigation takes place.

Note: Qatari laws (save for those issued by the Qatar Financial Centre to regulate internal business) are issued in Arabic and there are no official translations, therefore for the purposes of drafting this article we have used our own translations and interpreted the same in the context of Qatari regulations and current market practice.

For more information, please contact:



Lee Keane
Partner
D: +974 4496 7315
E: lee.keane@clydeco.com



Emma Higham
Legal Director
D: +974 4496 7419
E: emma.higha@clydeco.com

Education Technology in Africa

Educational technologies have the potential to expand the educational horizons of millions and the benefits of improving and having an efficient education system are clear.

According to UNESCO's Education for All Global Monitoring Report one third of young people in sub-Saharan Africa fail to complete primary school and lack skills for work. Many students who do complete school leave illiterate. This is contrary to the common assumption that it takes four or five years of schooling for children to use reading, writing and calculation with ease. It is accepted that class sizes and teacher-student interactions have a direct effect on the quality of education that a student receives. Sub-Saharan African countries have an average pupil/teacher ratio of 42:1 and it is expected that by 2030 there will be three and a half times as many young people in sub-Saharan Africa as there were in 1980. To achieve the goal of universal primary education it is anticipated that more than 2 million teachers will need to be trained and recruited. These statistics show that sub-Saharan African education systems are in need of improvement and that there is an obvious capacity gap. Education technologies can alleviate teacher demands as they have the potential to reach out to a wide audience, away from the traditional classroom environment. For example, by using video streaming or screen-sharing technologies, content can be tailored remotely and delivery can be centralised.

This article seeks to demonstrate how Education Technology can help to plug the gap in relation to these educational deficiencies in Sub-Saharan African countries and highlights the opportunities and challenges that emerging educational technology companies wishing to penetrate the African market face.

What is Educational Technology?

Education technology (or ed-tech) encompasses advanced educational theory with hardware and software innovation. Modern examples of ed-tech make use of internet and mobile data connections and include video streaming services, screen-sharing programmes and other cloud and data content sharing platforms.

In the developed world, a variety of ed-tech is used to ensure education systems are efficient and to ensure educational content is delivered in an effective and cohesive manner. It may come as no surprise that

modern ed-tech is not widely used in developing nations, especially in Sub-Saharan Africa.

Flexibility

Some ed-tech provide flexibility as to when and where particular sessions are viewed and offer learners the ability to pause, rewind and to review content at their own pace, something which a classroom environment cannot always offer. Virtual classroom environments provide those students who may require further guidance with a platform to raise their queries, without the need for face-to-face interaction.

Using similar concepts, ed-tech can assist with teacher training. By harmonising teacher training programmes, ed-tech can help in raising the standards of teaching to ensure that education is delivered at the appropriate level, in line with a coordinated curriculum.

Resources

Hardcopy resources, which are heavily relied on in education systems throughout the world, are often out of date. In sub-Saharan Africa hardcopy resources are expensive as they are often printed and imported from European countries, and are therefore in scarce supply. Ed-tech can reduce the need for reliance on hardcopy resources as they have the benefit of being able to provide up-to-date materials in a digital format

Opportunities

The internet and related technologies have reached developing countries at a much faster rate than previous technological innovations and much faster than was previously expected. Africa now has an internet penetration rate of 28.6% and sub-Saharan Africa has a mobile phone penetration rate of 73%.

In recognition of this, we have seen a number of ed-tech start-up companies that have sought to utilise this growing mobile and internet technology. For instance, Eneza Education offers courses and quizzes almost exclusively by text messages and the One University Network have developed Android and web-based apps

where students can access learning material using relatively low-cost smart phones.

Such initiatives have been implemented in the current infrastructural environment and without the need for significant investment in equipment, hardware or infrastructure.

Protecting your technology

Some of the most popular ed-tech solutions come in the form of cloud applications, which can be adopted for a low cost and with minimum technical infrastructure. Where ed-tech vendors have spent time and money developing an app it is vital that they take steps to protect the intellectual property (IP) rights in the app. This will help prevent others from using these IP rights to create 'copycat' versions. It will also determine the scope of the licence to use the app which users are granted.

As a piece of software, an app will incorporate a number of different IP rights, including in its interface, layout and design. Copyright, for example, will arise automatically on the creation of the software for the app. Copyright will subsist in a number of different components of the app; the source code (the programming language used to write the app), the object code (the machine-readable language used by a computer to operate the software), as well as in the graphics, fonts, text and music. Copyright does not require its author to take any formal steps to benefit from the protection afforded by the law. Registration of a copyrighted work can be of assistance in order to bring a claim against an infringing third party. Infringing copyright is likely to be a breach of the law which entitles the app vendor to raise proceedings to recover damages. However, in some countries it may also give rise to criminal sanctions.

Trade marks, by contrast, are registered rights meaning that formal steps must be taken in order to benefit from the potential protection available under the law. Before adopting any trade marks (including slogans, logos or names) for your app, it is prudent to carry out searches to ensure that the relevant mark is free to use and you will not infringe any third party rights in adopting it. This helps avoid the risk of having to rebrand your app after it is released due to an infringement complaint.

Where the app is likely to be made available in a number of different countries, it is worthwhile for the vendor to adopt a brand protection strategy to secure trade mark protection in the key markets in which the app will or may in future be made available. This will assist the vendor to enforce his/ her trade mark rights against any infringers in those countries.

Displaying a registered trade mark sign, ®, where a trade mark has been registered may also deter potential copycat versions of an app. It should be noted, however, that displaying this symbol where the app trade mark is not registered may be a criminal offence in some countries. The vendor can however adopt the symbol ™ for any unregistered trade marks and the symbol © to demonstrate that he / she has copyright in the work.

In our upcoming newsletters we intend to explore further the legal issues concerning apps and other cloud based education technologies from the perspective of vendors and end users, including ownership of the technology developed and considerations around privacy.

Challenges faced by education technology companies

There are a number of challenges which ed-tech companies and entrepreneurs, seeking to penetrate the ed-tech sphere in emerging markets should be aware of.

Consideration should also be given as to whether the technology is affordable and whether the demographic profile of the potential market has the technological literacy. Further, prestigious universities, schools and other institutes have tried and tested educational methods and any new technology needs to ensure it has the credentials to ensure student confidence.

There are differing policies and practices in place across each of the countries in Africa which vary in line with the developing legislative environment. This means that implementation in each jurisdiction needs to be tailored to avoid active pushback from government authorities. Having said this, sub-Saharan governments allocate around 18.4% of their government expenditure on education, and any investment that improves the efficiency of educational systems, are likely to be gratefully received.

For more information, please contact:



Ross Barfoot
Lead Partner, Global Education Group
D: +971 2 494 3598
E: ross.barfoot@clydeco.com



Dawda Jawara
Legal Director
D: +971 4 384 4144
E: dawda.jawara@clydeco.com



Jennifer Agnew
Senior Associate
D: +971 4 384 4261
E: jennifer.agnew@clydeco.com



Kellie Blyth
Senior Associate
D: +971 4 384 4291
E: kellie.blyth@clydeco.com

Implementation of GCC Trade Mark Law in Saudi Arabia

Educational institutions often include geographical locations within their names (normally in the form of “University of X”, “X College” etc). As such, difficulties are frequently experienced by educational institutions when trying to secure trade mark protection for such names as the trade mark laws in many jurisdictions prohibit the registration of geographical locations per se. In practice, this means that it is common for institutions either to be refused protection for such marks (unless they contain other sufficiently distinguishing or distinctive features) or to be asked to disclaim any rights in the portion of the mark which comprises the name of a geographical location.

That said, if an educational institution is able to successfully demonstrate that it has acquired a sufficient degree of fame in its mark, then it may be able to overcome these obstacles and secure the broadest and most robust protection available for its mark. The main issue with this is that the criteria for determining whether a trade mark meets the threshold for being considered well-known is usually highly ambiguous in most countries in the Middle East region. Therefore, it can be very difficult, even for world renowned institutions, to overcome these hurdles.

However, the recent implementation of the GCC Trade Mark Law in Saudi Arabia (in September 2016) could mean that the scope for obtaining protection for such marks in the Kingdom may be about to be significantly increased. This is because the GCC Trade Mark Law goes further than the old Saudi Trade Mark Law (which is silent on this point) by setting out the criteria for determining whether a mark is well-known stating that “the duration and extent of any registrations or use of the mark, the number of countries where it has been registered or recognised as a well-known mark, the value associated with the mark and the extent to which such value helps promote the goods and/or services to which it applies” shall be considered.

This clarity on the requirements for demonstrating that a mark is well-known means that, moving forward, it should become simpler for educational institutions which do meet the threshold to demonstrate this. Accordingly, the chances of securing protection for such marks in Saudi Arabia is also likely to increase significantly.

For more information, please contact:



Saba Al Sultani
Senior Associate
D: +971 4 384 4564
E: saba.alsultani@clydeco.com

Qatar leads the way with new standalone data protection law

The Qatari government has passed a law requiring a minimum level of protection for personal data within the State of Qatar. It is the first GCC member state to issue a generally applicable data protection law.

Law No. 13 of 2016 Concerning Personal Data Protection (the Data Protection Law) was issued on 3 November 2016. It will come into full effect in six months' time (unless this period is extended).

The Data Protection Law will help build consumer trust in Qatar in the online environment and may encourage consumers to engage with innovative technologies in confidence that their data will be protected. It comes at a time when the rapid pace of technological change means that more personal data than ever before is being processed electronically, including due to the advance of big data and the internet of things.

Some of the highlights from the new law for organisations operating in the education sector should be aware of are as follows:

- **The vast majority of personal data processing activities are likely to be caught:** the new law will apply in most instances where personal data is handled. Article 2 provides that the requirements shall apply where personal data (being data which identifies an individual or which can be used in combination with other data to identify an individual) is electronically processed, or obtained, gathered or extracted in preparation for electronic processing, or when a combination of electronic and traditional processing is used.
- **Promotion of responsible information handling practices:** it introduces minimum standards and overarching principles with which organisations must comply when handling personal data, including that staff must be provided with appropriate training on the subject of privacy and that measures must be taken to protect personal data from loss, damage, unauthorised modification or unauthorised disclosure.
- **Additional safeguards for children's data:** the law creates a class of personal data known as 'special personal data', which warrants a greater degree of protection. This category of data includes data relating to children, which may only be processed with the prior permission of the relevant unit of the Ministry of Transport

and Communications (MOTC). In addition, specific obligations will apply to the owners and operators of websites which are directed at children. For example, consent of a child's parent or guardian must be obtained before any personal data may be processed.

- **Data breach notification obligations:** Any company who suffers a data security breach which would cause 'gross harm' to the individuals concerned must notify both as the regulator, the MOTC as regulator and the affected individuals. Based on the language used, it is likely that any breach in which children's data was compromised would trigger the data breach notification requirements in the law;

High financial penalties will be imposed for breach of certain provisions of the Data Protection Law. For example, a fine of up to QR1 million may be levied for a failure to notify the MOTC or an individual affected in the event of a data breach referred to above. A fine of up to QR5 million may be levied for a failure to secure approval from the MOTC before processing special personal data.

The level of fines is undoubtedly designed to drive compliance and to deter irresponsible personal data handling practices. It also highlights how seriously the Qatari government is taking the protection of an individual's right to privacy.

The concepts and requirements of the Data Protection Law will be clarified in further ministerial decisions. However, early indications are that the Data Protection Law is may transform the regulatory landscape for privacy in Qatar.

For more information, please contact:



Joycia Young
Partner
D: +971 4 384 4589
E: joycia.young@clydeco.com



Kellie Blyth
Senior Associate
D: +971 4 384 4291
E: kellie.blyth@clydeco.com

Fundraising for schools – how to navigate the requirements in the UAE

A recently reported case in Dubai whereby an individual was arrested and imprisoned for fundraising for charitable donations without having approval to do so will have set alarm bells ringing with people concerned that their charitable activities will have to stop.

Whilst the new fundraising law in Dubai appears to be here to stay, this does not mean that fundraising in the UAE is impossible. With the right approach, schools and educational institutions can maintain their fundraising activities, although a more careful approach will be needed than in the past.

Fundraising approval – not as daunting as it seems!

The Dubai Fundraising Law regulates fundraising in the Emirate of Dubai (Dubai Decree No. 9 of 2015) and with penalties including a fine and imprisonment, fundraising without obtaining the required prior approval is not recommended.

The Dubai Fundraising Law requires that prior approval must be sought from the Dubai Islamic Affairs and Charitable Activities Department (IACAD) before any fundraising activity is carried out in Dubai. Fundraising, the authorisation of fundraising or the announcement of fundraising are prohibited unless there is prior approval from IACAD. The law covers fundraising for both monetary donations and the donation of goods in kind.

This may seem out of reach for most schools and educational institutions in Dubai, however, writing from experience, the fundraising approval process is not as daunting as it might seem. Yes there are difficulties. The organiser of the event will be required to work with and collect the funds through a Dubai registered charity. However, this process can be navigated, approval can be received and your fundraising event can go ahead.

We recommend developing a relationship with the officials at IACAD and the collecting charity - so that they understand your event and what you are trying to raise money for. Be flexible in what you are trying to achieve and give yourself plenty of time to obtain the necessary approvals.

Posting on social media – be careful!

There is a simple message which emerges from recent events - do not post fundraising requests on social media asking for donations if you do not have fundraising approval in place. Whether the offending individual is charged under the Dubai Fundraising Law or the UAE Cyber Crimes Law (which prohibits any person from creating or running an electronic site to raise donations without obtaining a license from the competent authority), the penalties are similar: fines and possible imprisonment. For most of us, this is simply not worth the risk.

Possible ways of charitable giving and receiving!

There are other ways that you can maintain your charitable giving and receiving and fundraising activities. The Dubai Fundraising Law regulates the activity of fundraising; under this law there is no prohibition on the gifting or receiving of private donations. Sponsorship agreements, private charitable donations and corporate donations are not prohibited under the fundraising laws. However, be aware that even private fundraising activities are still likely to require approval under the Dubai Fundraising Law. If there is any fundraising activity, such as asking people to make donations or arranging the collection of donations or holding fundraising events, such activities would need IACAD approval.

Similarly, working with a charity that is registered and has fundraising approval is a good way for corporate donations and fundraising activities to continue. In effect the collection of donations could come under the umbrella of an existing fundraising approval. For example, fundraising for Gulf For Good or Dubai Cares could be a way of arranging fundraising. Donations of goods to the Royati Society or the Red Crescent could be another way of fundraising for donations from your employees or students. For this, some due diligence should be carried out to make sure that the approvals are in place for the collections or campaigns before contributing. If satisfied that your partner organisation has the relevant approvals, fundraising can be carried out – and you can post away on social media to your heart's content!

Dubai schools – should an exemption be sought?

There are few exemptions under the Dubai law and 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).

It remains to be seen whether special exemptions under the Dubai Fundraising Law (permitted at the discretion of the Director General of IACAD) will be given for particular groups, such as schools in Dubai, or whether blanket approval can be obtained from IACAD that will cover an extended period of fundraising activities for particular approved causes.

Schools in other Emirates

The Federal Law governing Public Welfare Associations continues to apply in Emirates outside of Dubai. In summary, this Law states that only registered Public Welfare Associations, with a Licence to do so, may collect charitable donations. There is an exemption for schools and other youth and sports clubs – the law is expressly stated as not applying to these groups.

This has been practically applied so that schools fundraising for their own purposes did not need approval to do so. Arguably, this still applies in Abu Dhabi and other Emirates outside of Dubai. However this is a possible risky approach in the current climate. Fundraising is not permitted under the Federal Law, instead it is not expressly prohibited in the same way as under the Dubai Law - there is a subtle difference. There is a risk that the authorities in other Emirates may withdraw their tolerance for schools own fundraising activities.

Charitable giving – can continue!

Notwithstanding the new requirements that have been introduced in Dubai, it is possible to continue with charitable donations and philanthropic activities; however care should be taken before holding any public fundraising events and before conducting any publicity around such activities, whether it is on social media or other formats, without having the approvals in place. Provided a careful approach is adopted, schools and educational institutions can maintain their fundraising activities and charitable giving and receiving without falling foul of the new laws.

For more information, please contact:



Ross Barfoot

Lead Partner, Global Education Group

D: +971 2 494 3598

E: ross.barfoot@clydeco.com



Sinead Boden

Community Investment Manager

D: +971 4 384 4688

E: sinead.boden@clydeco.com

Demand for British Schools in the UAE

Last month, Clyde & Co contributed to a White Paper produced by Colliers International in relation to the Demand for British Schools in Dubai and Abu Dhabi. We provided an opinion on various legal matters involved in establishing a school in the UAE. Please see the report [here](#) and a summary of the key findings below:



By 2025, Dubai will require an additional 166,000 to 224,000 seats in the private education sector out of which approximately 55,000 to 74,000 will be for British Curriculum Schools.

Out of a total of 255,000
Private school students



British Curriculum schools represent some
85,000 students
approximately 33% of total students
in private schools in Dubai



31%
Indian
curriculum



18%
US
curriculum



By 2025, Abu Dhabi is estimated to require an additional 172,000 to 230,000 seats in the private education sector out of which approximately 39,000 to 52,000 will be for British Curriculum Schools.

Out of a total of 223,000
Private school students



British Curriculum schools represent some
50,000 students
approximately 22% of total students
in private schools in Abu Dhabi



24%
US
curriculum



23%
Ministry of Education
(MoE) curriculum

Press release

Clyde & Co advises Brighton College on new international school in Dubai

Global law firm Clyde & Co has advised Brighton College on the establishment of a new international school in Dubai.

The school, opening in Dubai in partnership with UAE-based Bloom Education, will be located within an 89,000 sqm campus in Al Barsha South, which will also include a Centre of Excellence for the Arabic Language, Culture and the Arts. Brighton College Dubai will offer a K-12 British curriculum.

Clyde & Co previously advised Brighton College in its agreements with Bloom Education to develop leading English Curriculum international schools including those already established in Abu Dhabi and Al Ain. Our role this time also included advising Brighton College on the KHDA regulatory framework for establishing private international schools.

Ross Barfoot, Lead global education partner at Clyde & Co, commented:

“We are delighted to have assisted Brighton College again in the region. Brighton College is the UK’s top co-educational school (Sunday Times Parent Power League Table 2016), renowned for combining academic excellence with a wealth of extra-curricular opportunities, and we have developed a strong working relationship with them over the years.”

Rishi Soni, Commercial Director at Brighton College International Schools commented:

“Clyde & Co are leaders in the education sector and combine excellent legal skills with an unsurpassed knowledge and understanding of the regulatory framework for establishing schools in the region. Ross and his team were instrumental in helping us and Bloom Education navigate this regulatory framework.”

Clyde & Co has quickly established itself as the go-to law firm in the region for education sector transactions.

The Clyde & Co team was led by **Ross Barfoot** and supported by Legal Director **Stephen McKenna**, Partner **Keith Hutchison** and



Need help with debt collection?

Did you know our MENA dispute resolution practice offers Collect as a 'no cure no pay' pre-litigation debt recovery service across the MENA region? A number of our education sector clients are regular users of this cost-effective and low-risk legal service to recover unpaid fees and other debts at a time when there is significant pressure on costs and the need for cash.

Recognising the problem

In our many years of experience of handling debt recovery work in the region, we have seen that debt management and collections often take second place to new revenue generation or are inadvertently side-lined by other operational issues. The efficiency and effectiveness of collections can significantly impact the financial performance of a business, either positively or negatively, while budget allocation may not always be available to support the dedicated internal collections resources that you really need. Acting to tackle problem debts early and with the right local approach is key to successful collections.

What we offer

With Collect we will help you achieve improved results with cash collection through proactive, timely and cost-effective debt recovery solutions with the level of technical knowledge, market experience, resources and reporting you will expect from a leading international law firm. Our objective in debt recovery cases is to achieve full payment for our clients in the shortest time period possible, or to negotiate

with debtors to agree a workable payment solution without recourse to litigation. We have a particular focus providing collection assistance in the UAE, KSA and Qatar.

What does it cost?

As an attractive alternative to the billable hour, the Collect service is provided for a one-off placement fee of US\$500 plus a contingency fee of 15% charged on any recovered amounts. So you pay nothing more than the placement fee unless we recover money for you.

Contact

To know more about Collect, please contact:



Keith Hutchison

Partner

D: +971 4 384 4676

E: keith.hutchison@clydeco.com

Employing thoughts

An Employers' Starter Pack for UAE or Qatar Schools

1 Who is the 'Employing Thoughts' Starter Pack for?

The pack is primarily designed for schools who are setting up, or have recently set up, in the UAE or Qatar.

As part of the set up, you will of course need to recruit employees in what is undoubtedly a very different and often challenging labour law system. In addition to the UAE and Qatar Labour Law (which applies to all employees save for the financial free zones), you will need to be aware of any labour provisions set out in the relevant free zone regulations (if you are setting up in one of the UAE's free zones), the ADEC Regulations (if you are setting up in Abu Dhabi), the KHDA Regulations (if you are setting up in Dubai) or the Ministry of Education Regulations (if you are setting up in Qatar) and the various UAE Federal Laws and Qatar laws that apply specifically to private education sector providers.

The Employing Thoughts Starter Pack is intended to simplify this process for you by providing you with the initial documentation and information you will need as an employer.

2 What does the Employing Thoughts Starter Pack include?

A template contract of employment complying with the minimum statutory legal requirements for (i) teaching staff and (ii) non-teaching staff*.

A briefing note on the key legal provisions you should be aware of as a school employer in the UAE or Qatar addressing:

- Contracts – limited and unlimited term
- Probation periods
- Working hours and overtime
- Statutory leave entitlements – annual, sickness, maternity and other statutory benefits
- Termination – disciplinary process, notice requirements, statutory terminations payments and risk

For more information please contact:



Rebecca Ford

Partner, Dubai

T: +971 4 384 4653

E: rebecca.ford@clydeco.com



Samantha Ellaby

Senior Associate, Dubai

T: +971 4 384 4871

E: samantha.ellaby@clydeco.com



Emma Higham

Legal Director, Qatar

T: +974 4496 7434

E: emma.higham@clydeco.com



Yasser Shabbir

Associate, Doha

T: +974 4496 7434

E: yasser.shabbir@clydeco.com

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