



THE YEAR IN REVIEW

AN ANNUAL SURVEY OF INTERNATIONAL LEGAL DEVELOPMENTS AND
PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

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Mexico

OLIVER FERNANDO BUENROSTRO FIGUEROA,
BÁRBARA ÁVALOS GARCÍA, MATÍAS MEDINA SÁNCHEZ, SUSAN BURNS,
EDUARDO SÁNCHEZ MADRIGAL, EDITOR, LUIS ARMENDARIZ,
ALAN ZAMARRIPA, ANA SOFÍA VILLA HERNÁNDEZ,
AND ENRIQUE GARCÍA.

The results of the 2018 presidential elections brought a renewed air of optimism among Mexicans, who above all else demanded a departure from the traditional politics of the dominant parties. Nevertheless, the enthusiasm reflected at the ballots seems to have faded soon after President Andrés Manuel López Obrador (AMLO) took office. While the new administration clings to its pledge to end corruption and violence with austerity and goodwill, Mexico's levels of rampant violence and impunity have reached historical numbers. Moreover, the uncertainty generated by AMLO's controversial approach to decision-making has resulted in a paralyzed economy and in the mistrust of foreign investment. The transition of power, however, has not prevented legislative innovation, as significant reforms in the health, labor, and energy sectors have been introduced in the country throughout the year.

I. The New Administration: First Year in Review

A. FIRST YEAR OF PRESIDENT AMLO IN OFFICE¹

AMLO took the presidential office of Mexico on December 1, 2018, at the Legislative Palace of San Lazaro, the seat of Mexico's Federal Congress.²

For the first time in the modern history of Mexico, citizen consultations to decide on topics of great relevance for the country were conducted by AMLO's far-left party *Movimiento Regeneración Nacional* (MORENA) even before he took office.³ One of the first citizen consultations had the effect of cancelling the construction of Mexico City's new airport in its current location in Texcoco, a controversial move that has contributed to an

1. The author, Oliver Fernando Buenrostro Figueroa, is a fifth semester law student at Universidad Panamericana, in Guadalajara, Mexico, and currently serves as chair of the Law School's Student Association.

2. Patrick J. McDonnell, *Lopez Obrador Takes Office as Mexican President, Vowing to Fight Corruption*, L.A. TIMES (Dec. 1, 2018), <https://www.latimes.com/world/la-fg-mexico-amlo-inauguration-20181201-story.html>.

3. *Morena Strongholds Get a Big Say in Vote on Future of Mexico City Airport*, MEX. NEWS DAILY (Oct. 18, 2018), <https://mexiconewsdaily.com/news/morena-strongholds-get-a-big-say-in-vote/>.

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increased unease in the stock market and the Mexican economy by domestic and external investors.⁴ The cancellation of the new airport is estimated to cost around 100 million Mexican pesos (roughly \$5 million), according to Javier Jiménez Espriú, Secretary of Communications and Transportation.⁵

Likewise, in its first month in power, the current administration decided that the best strategy to tackle clandestine pipeline drilling would be to shut down certain pipelines across the country and instead distribute gasoline via freight trucks.⁶ This shift in distribution methods sowed chaos in most of the major cities in Mexico's center-west region.⁷ Although AMLO's strategy drastically decreased illegal drilling, a net loss of 87.8 million pesos has resulted, along with a drop in crude oil production of 6.7 percent in the last quarter of the year, compared with last year's period.⁸

B. AMLO'S NATIONAL GUARD⁹

In 2006, former President Felipe Calderón declared a war against drug trafficking.¹⁰ By using the term "war," he enabled the mobilization of military forces inside the country.¹¹ With the aid of several governmental institutions,¹² he launched a coordinated effort called *Operación Conjunta*

4. Gabriel Quadri de la Torre, *El Nuevo aeropuerto, víctima electoral* [*The New Airport, an Electoral Victim*], EL ECONOMISTA (Mar. 23, 2018), <https://www.economista.com.mx/opinion/El-nuevo-aeropuerto-victima-electoral-20180323-0023.html>.

5. *Cancelación del NAIM costará menos de 100 mil mdp: Jiménez Espriú* [*Cancellation of the NAIM will cost less than 100 thousand mp: Jiménez Espriú*], EL FINANCIERO (Feb. 13, 2019), <https://elfinanciero.com.mx/empresas/cancelacion-del-naim-costara-menos-de-100-mil-mdp-jimenez-espriu>.

6. Ioan Grillo, *El saqueo del oro negro: el gran retro de AMLO* [*The Plunder of Black Gold: AMLO's Great Challenge*], N.Y. TIMES (Mar. 28, 2019), https://www.nytimes.com/es/2019/03/28/huachicol-amlo-gasolina-mexico/?rref=collection%2Fsectioncollection%2Fnyt-es&action=click&contentCollection=huachicoleros®ion=stream&module=stream_unit&version=latest&contentPlacement=2&pgtype=collection.

7. *Id.*

8. Gabriela Jimenez, *Comienza la distribución de gasolina en nuevas pipas: AMLO* [*The Distribution of Gasoline Begins in New Pipes: AMLO*], EL SOL DE MEX. (Feb. 7, 2019), <https://www.elsoldemexico.com.mx/mexico/politica/comienza-la-distribucion-de-gasolina-en-nuevas-pipas-amlo-3026835.html>.

9. The author, Matías Medina Sánchez, is a fifth semester law student at Universidad Panamericana, in Guadalajara, Mexico, and is currently a member of the editorial committee of the Mexico Update Newsletter, a periodical publication by the ABA Section of International Law: Mexico Committee.

10. Brianna Lee, Danielle Renwick, & Rocio Cara Labrador, *Mexico's Drug War Backgrounder*, COUNCIL ON FOREIGN REL., <https://www.cfr.org/backgrounder/mexicos-drug-war> (last updated Oct. 22, 2019).

11. James Fredrick, *Mexico's New President Has a Radical Plan to End the Drug War*, VOX (Aug. 15, 2018), <https://www.vox.com/2018/8/15/17690420/mexico-president-amlo-drug-war-cartels-violence-legalization>.

12. These institutions include the Secretary of Governance (SEGOB), the Secretary of Defense (SEDENA), the Secretary of Public Security (SEGURIDAD), Secretary of Navy (SEMAR) and the then-Attorney General's Office (PGR). Press Release, Presidencia de la República, Anuncio sobre la Operación Conjunta Michoacán (Dec. 11, 2006), <https://www>

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Michoacán, whose main purpose was to eradicate illegal drug plantations and establish control zones in order to dismantle drug-dealing centers in the state of Michoacán.¹³ But by 2012 the so-called “war on drugs” had failed to yield any tangible results. Rather, it drastically decreased security throughout the country, which continued into the next presidential term.¹⁴ Accordingly, the following president, Enrique Peña Nieto, enacted the Interior Security Law, which sought to allow the federal executive branch to send its military forces to any of Mexico’s states whenever the conflict exceeds local enforcement capacities.¹⁵

According to the National Institute of Geography and Statistics (INEGI) database, throughout 2012 there were 35,139 crimes committed for every 100,000 inhabitants, a number that increased to 39,369 by 2017.¹⁶ The current administration, led by President AMLO, seeks to depart from this approach through the creation of a national guard.

The National Guard was created through constitutional amendment to ensure “the public security which comprises the prevention, investigation and prosecution of crimes, the sanction of administrative infractions, the coordination and collaboration with the States and Municipalities and the safeguarding of goods and resources of the Nation.”¹⁷

The amendment was approved in the Chamber of Deputies by 362 votes in favor, 119 against and four abstentions on January 16, 2019.¹⁸ The Senate endorsed the reform and returned it to the Chamber of Deputies on February 26, 2019.¹⁹ Two days after, on February 28, 2019, the Chamber of Deputies referred it to each of the legislatures of the Mexican States for their

.resdal.org/caeef-resdal/assets/mexico—anuncio-sobre-la-operaci%C3%B3n-conjunta-michoac%C3%A1n.pdf.

13. See Miguel Tinoco, *Michoacán fué el inicio de la crisis; combate al crimen [Michoacán Was the Beginning of the Crisis; Fight Crime]*, EXCELSIOR (Dec. 12, 2016), <https://www.excelsior.com.mx/nacional/2016/12/12/1133699>.

14. James Fredrick, *Mexico’s New President Has a Radical Plan to End the Drug War*, VOX (Aug. 15, 2018), <https://www.vox.com/2018/8/15/17690420/mexico-president-amlo-drug-war-cartels-violence-legalization>.

15. *Peña Nieto promulga la Ley de Seguridad Interior [Peña Nieto Enacts the Internal Security Law]*, EL ECONOMISTA (Dec. 21, 2017), <https://www.economista.com.mx/politica/Pena-Nieto-promulga-la-Ley-de-Seguridad-Interior-20171221-0098.html>.

16. *Incidencia delictiva [Criminal Incidence]*, INEGI, <https://www.inegi.org.mx/temas/incidencia/> (last visited June 12, 2020).

17. Press Release, Cámara de Diputados, Aprueban diputados, en lo general, reformas constitucionales para crear la Guardia Nacional [Deputies Generally Approve Constitutional Reforms to Create the National Guard], Bulletin No. 0892 (Jan. 16, 2019), <http://www5.diputados.gob.mx/index.php/esl/Comunicacion/Boletines/2019/Enero/16/0892-Aprueban-diputados-en-lo-general-reformas-constitucionales-para-crear-la-Guardia-Nacional> (Mex.).

18. *Id.*

19. Cámara de Senadores del H. Congreso de la Unión, Dictámenes de Discusión y Votación [Opinions for Discussion and Voting], LXIV/ISPO-87/89770 (Feb. 21, 2019), http://www.senado.gob.mx/64/gaceta_del_senado/documento/89770.

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ratifications.²⁰ On March 14, 2019, the Senate announced that the legislatures of the Mexican states had unanimously approved the amendment, then turned it to the Federal Executive Branch for its promulgation,²¹ which happened on March 26, 2019.²²

The current members of the National Guard were distributed on 150 regional groups, with special attention to the highest criminal activity areas around the country, i.e. Mexico State (which concentrates thirty-two regional coordination groups), Oaxaca and Michoacán (nine groups each), Jalisco and Veracruz (eight groups each).²³ It is the Administration's intention to increase the number of regional groups to 266 and to recruit a total number of 140,000 members.²⁴

Even though the National Guard has an army-like structure and is subject to military discipline, its role in public security will mostly be carried out under civilian leadership, meaning that members would be prosecuted for a felony or administrative offense in a civil court.²⁵ However, National Guard members belonging to the Army or Navy forces shall maintain his or her rank and be tried by a military tribunal for any offenses.²⁶ The National Guard will remain active for as long as violence and insecurity in the country continue, being subject to review by both the federal executive and legislative branches every three years.²⁷

C. GLYPHOSATE LITIGATION AND TEXCOCO AIRPORT²⁸

At the end of November 2019, the Mexican government refused to allow a 1,000-ton shipment of the pesticide glyphosate into the country, citing

20. Press Release, Cámara de Senadores del H. Congreso de la Unión, Emite Cámara de Diputados declaratoria de reforma constitucional que crea la Guardia Nacional [Chamber of Deputies Issues a Declaration of Constitutional Reform that Creates the National Guard], Nota No. 1673 (Mar. 14, 2019), <http://www5.diputados.gob.mx/index.php/esl/Comunicacion/Agencia-de-Noticias/2019/Marzo/14/1673-Emite-Camara-de-Diputados-declaratoria-de-reforma-constitucional-que-crea-la-Guardia-Nacional>.

21. Cámara de Senadores del H. Congreso de la Unión, LXIV/ISPO-102/91252 (Mar. 14, 2019), http://www.senado.gob.mx/64/gaceta_del_senado/documento/91252.

22. *Id.*

23. Int'l Crisis Group, *Mexico's Everyday War: Guerra and the Trials of Peace*, LAT. AM. REPORT NO. 80 (May 4, 2020), <https://d2071andvip0wj.cloudfront.net/080-mexicos-everyday-war-guerrero.pdf>.

24. Rebekah F. Ward, *Mexican National Guard Expands into Capital to Address Crime Surge*, REUTERS (June 27, 2019), <https://www.reuters.com/article/us-mexico-security-guard/mexican-national-guard-expands-into-capital-to-address-crime-surge-idUSKCN1TS2OB>.

25. Decreto por el que se reforman, adicionan y derogan diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos, en materia de Guardia Nacional, Diario Oficial de la Federación [DOF] 26-03-2019 (Mex.).

26. *Id.*

27. *Id.*

28. Susan Burns, a solo practitioner based in Minneapolis, Minnesota, authored this article.

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health and environmental concerns.²⁹ With that step, Mexico became the latest in a string of countries to announce bans on glyphosate, the active ingredient in weed killer Roundup used in agriculture pesticides, primarily for use on genetically modified (GMO) corn and soybeans.³⁰ Mexico's environmental department has stated that "glyphosate represents a high environmental risk, given the credible presumption that its use can cause serious environmental damage and irreversible health damage."³¹ This statement is consistent with the 2017 decision by the first chamber of the Mexican Supreme Court of Justice of the Nation (SCJN), which rejected an appeal by Monsanto regarding the issuance of commercial permits for sowing of GMO—or transgenic—maize.³² There have been a series of U.S. lawsuits against Monsanto, now Bayer, in which plaintiffs have successfully demonstrated the causal link between glyphosate and cancer.³³

Another significant development came at the end of 2018, in which AMLO canceled the construction of the new, state-of-the-art, airport in Texcoco.³⁴ The project was designed to be the world's most sustainable airport, aiming for a LEED Platinum certification, the first phase of which would have opened in 2020.³⁵ But the AMLO administration abruptly shut down its development in late 2018 and instead started construction of an international airport at Santa Lucía airbase north of the city.³⁶ This highly controversial move has spawned several lawsuits³⁷ and has been criticized as an inadequate solution to Mexico City's saturation problem and contrary to the goal of the Texcoco project, which was to become a hub for air travel in Latin America. In fact, several Latin American based airlines have said the Santa Lucía airport will be difficult to use.³⁸ It is also controversial because

29. Associated Press, *Mexico Bars Shipment of Glyphosate Pesticide*, WASH. TIMES (Nov. 25, 2019), <https://www.washingtontimes.com/news/2019/nov/25/mexico-bars-shipment-of-glyphosate-pesticide/>.

30. *Id.*

31. *Id.*

32. *Mexican Supreme Court Refuses to Review Monsanto Appeal on GMO Maize Permits*, SUSTAINABLE PULSE (May 12, 2017), <https://sustainablepulse.com/2017/05/12/mexican-supreme-court-refuses-to-review-monsanto-appeal-on-gmo-maize-planting/#.XemF8EBFw2w>.

33. Leigh Day, *The Roundup on Toxic Pesticides - Regulatory Divergence, Growing Litigation*, LEXOLOGY (Sept. 12, 2019), <https://www.lexology.com/library/detail.aspx?g=03f2eb5b-0780-44d9-9383-3b7cea48c587>.

34. Mia Taylor, *Mexican Government Will Spend \$9 Billion to Cancel Texcoco Airport Project*, AVIATION PROS (Nov. 18, 2019), <https://www.aviationpros.com/airports/news/21114810/mexican-government-will-spend-9-billion-to-cancel-texcoco-airport-project>.

35. See *New International Airport Mexico City*, FOSTER & PARTNERS, <https://www.fosterandpartners.com/projects/new-international-airport-mexico-city/> (last visited June 13, 2020).

36. Taylor, *supra* note 34.

37. *Id.*

38. *Latin American CEOs Say it Would Be Difficult to Operate in Santa Lucía Airport*, YUCATAN TIMES (Oct. 30, 2019), <https://www.theyucatanimes.com/2019/10/latin-american-airlines-ceos-say-it-will-be-difficult-to-operate-in-the-santa-lucia-airport/>.

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of its alleged disruption of indigenous communities and their claims of the government's failure to conduct free, prior, and informed consent.³⁹

II. Legislative Innovation

A. MEXICO UNDER FIRE: THE FOURTH TRANSFORMATION'S NATIONAL PEACE AND SECURITY PLAN⁴⁰

The cautious optimism with which Mexicans received the long-awaited change brought by AMLO's election as president last year, was met with the sour taste of reality soon after he took office in December 2018. Through a series of ill-advised and impulsive decisions, the new government's self-proclaimed "Fourth Transformation" or "4T" (the past transformations being, in chronological order: Mexico's independence, Reform War, and Revolution)⁴¹ has proven to be yet another misstep in the political history of the country. AMLO's national security strategy has not been an exception to the new government's many deficiencies. Met with controversy since its presentation on November 2018,⁴² the 4T's National Peace and Security Plan (NPSP), has fallen short of its target to "recover peace, reestablish public security, prevent crimes, enforce justice, and reestablish the rule of law"⁴³ as violence reaches historic numbers in Mexico. In fact, during the first months of the new administration, the number of victims of Mexico's ongoing slaughter has increased at an alarming rate, becoming the most violent months in the history of the country since the Revolution (1910–1920), with 100 drug gang-related murders every day.⁴⁴ A policy based on "hugs not gunshots" is what AMLO promised his approach would be to organized crime,⁴⁵ but even then, such a pledge seemed to be the

39. *Indigenous Communities are Against Santa Lucía Airport Project*, YUCATAN TIMES, (Aug. 30, 2019), <https://www.theyucatanimes.com/2019/08/indigenous-communities-are-against-the-santa-lucia-airport-project/>.

40. This article was authored by Eduardo Sánchez Madrigal, a human rights master student and research assistant at the University of Oslo (UiO) and the Norwegian Centre for Human Rights, currently serving as Year-in-Review Vice-Chair for the ABA Section of International Law: Mexico Committee.

41. Yngrid Fuentes, *AMLO president: ¿qué es la "Cuarta Transformación" que propone Andrés Manuel López Obrador para México? [AMLO President: What Is the "Fourth Transformation" that Andrés Manuel López Obrador Proposes for Mexico]*, BBC MUNDO (Nov. 26, 2018), <https://www.bbc.com/mundo/noticias-america-latina-45712329>.

42. *Presidente Electo Presenta Plan Nacional de Paz y Seguridad 2018-2024*, AMLO, (Nov. 14, 2018), <https://lopezobrador.org.mx/2018/11/14/presidente-electo-presenta-plan-nacional-de-paz-y-seguridad-2018-2024/>.

43. *Id.*

44. Jacobo García, *La Errática Política de Seguridad de López Obrador se Topa con la Violencia Descontrolada [López Obrador's Erratic Security Policy Encounters Uncontrolled Violence]*, EL PAÍS (Oct. 21, 2019), https://elpais.com/internacional/2019/10/19/actualidad/1571506100_833972.html.

45. AMLO made this statement in Mexico's second presidential debate. INETV, *Segundo Debate Presidencial #Elecciones2018*, YOUTUBE (May 20, 2018), <https://www.youtube.com/watch?v=CYP1hHV9y4Y>.

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empty words of a populist leader rather than a reflection of the strong leadership the country so desperately needs.

Instead of the zero-tolerance and belligerent approach to the “war on drugs” started by President Felipe Calderón (2006–2012) and continued by his successor Enrique Peña Nieto (2012–2018),⁴⁶ the NPSP aims at achieving reconciliation while tackling corruption and impunity as the roots of the carnage the country has undergone during its recent history.⁴⁷ Despite its non-binding nature, the NPSP set the framework for a restructuring of the security sector, proposing the creation of the National Guard⁴⁸ and a departure from the traditional role of the armed forces in line with the general pacification efforts of the new administration.⁴⁹

Moreover, as explained by AMLO’s public security secretary Alfonso Durazo, the 4T seeks to put an end to organized crime by “following the money” instead of focusing on the arrest of drug lords.⁵⁰ Nevertheless, not only have the new strategy’s efforts proven to be futile,⁵¹ but the government’s legitimacy has been irreversibly jeopardized. On October 17, 2019, a suspiciously unprepared military operation to capture Ovidio Guzmán, son of the infamous drug lord Joaquín “El Chapo” Guzmán (recently sentenced to life in prison in the United States),⁵² resulted in a rampant reaction by the Sinaloa Cartel.⁵³ The Cartel quickly took over the city of Culiacán through a horrifying display of force that overpowered the military and led to the ultimate release of Ovidio in exchange for a ceasefire.⁵⁴

A couple of weeks after the alarming consequences of Ovidio Guzmán’s failed arrest, the presidency suffered another blow⁵⁵ when unidentified gunmen ambushed, killed, and incinerated nine members of activist Julián

46. Lee, *supra* note 10.

47. Alfonso Durazo Montaña, President-Elect Presents National Plan for Peace and Security 2018–2024 (Nov. 14, 2018) (transcript available at <https://lopezobrador.org.mx/wp-content/uploads/2018/11/Discursos-Durazo-y-Sandoval-PNS-14nov18.pdf>).

48. *Id.*

49. *Id.*

50. Jacobo García, “Perseguir el dinero es más importante que detener a los capos” [*Chasing Money Is More Important than Stopping Drug Lords*], EL PAÍS (Aug. 18, 2018), https://elpais.com/internacional/2018/08/07/mexico/1533607975_638555.html.

51. *Id.*

52. Alan Feuer, ‘El Chapo’ Guzmán Sentenced to Life in Prison, Ending Notorious Criminal Career, N.Y. TIMES (July 17, 2019), <https://www.nytimes.com/2019/07/17/nyregion/el-chapo-sentencing.html>.

53. *Violencia En Culiacán: Quiénes Son los Hijos de “El Chapo” que Siguieron su Camino y qué se Sabe del Poder que Tienen*, BBC NEWS MUNDO, (Oct. 19, 2019), <https://www.bbc.com/mundo/noticias-america-latina-50086131>.

54. *Id.*

55. Carlos Loret de Mola, *Caso LeBarón: AMLO pasó de la ingenuidad a la irresponsabilidad* [*LeBarón Case: AMLO Went from Naivete to Irresponsibility*], WASH. POST (Nov. 5, 2019), <https://www.washingtonpost.com/es/post-opinion/2019/11/05/caso-lebaron-amlo-paso-de-la-ingenuidad-la-irresponsabilidad/>.

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LeBarón's family in northern Mexico.⁵⁶ Seven of his children (ranging from nine months to fourteen-years-old) managed to survive the attack and wandered into the desert alone for six hours before being rescued.⁵⁷ The tragedy of the LeBarón family, each of them Mexican-American members of the Mormon community in the State of Chihuahua, gained international attention. President Donald Trump proposed creating a joint strategy with Mexico to "wage war on the drug cartels and wipe them off the face of the earth,"⁵⁸ which AMLO promptly refused and confirmed that his national security strategy would not be altered.⁵⁹ Mexico's insecurity crisis is further aggravated by the controversial (and allegedly illegal) appointment of Rosario Piedra as president of the National Human Rights Commission (CNDH) in November 2019.⁶⁰ Her fierce support of AMLO's political party represents a serious impairment for the impartiality of the country's main human rights protection institution and a consequent increase in Mexico's already soaring levels of impunity.⁶¹

Although it is unquestionable that the AMLO administration inherited a country torn by conflict and systemic corruption, the time has come to look beyond polarizing excuses and accusations by addressing competently the issues that afflict the nation. The consequences of the 4T's ineffectiveness and unreliability have already been felt in Mexico's economy, as the country currently has a zero percent economic growth and has failed to create enough jobs for young people entering the labor market in 2019⁶² while companies struggle with corruption and violence on a daily basis.⁶³ Mexicans were hopeful that the same persistence with which AMLO sought

56. *Familia LeBarón: Quiénes son las víctimas de la emboscada en México que dejó al menos 9 muertos* [LeBarón Family: Who Are the Victims of the Ambush in Mexico that Left at Least 9 Dead], BBC NEWS MUNDO (Nov. 6, 2019), <https://www.bbc.com/mundo/noticias-america-latina-50310547>.

57. *Id.*

58. Lisbeth Diaz, *Nine Americans Killed in Mexican Ambush, Trump Urges Joint War on Drug Cartels*, REUTERS (Nov. 5, 2019), <https://www.reuters.com/article/us-mexico-violence/nine-americans-die-in-mexican-massacre-trump-proposes-war-on-drug-cartels-idUSKBN1XF0K1>.

59. Magali Juárez, *No vamos a cambiar de estrategia de seguridad: AMLO* [We Are not Going to Change Our Security Strategy: AMLO], EL PAÍS, (Nov. 7, 2019), <https://www.razon.com.mx/mexico/no-vamos-a-cambiar-estrategia-de-seguridad-amlo-violencia-culiacan-lebaron-conferencia-mananera/>.

60. *Controversy Dogs Human Rights Chief Even After Winning Senate Vote*, MEX. NEWS DAILY (Nov. 13, 2019), <https://mexiconewsdaily.com/news/controversy-dogs-human-rights-chief/>.

61. Patricia Dávila, *El Colegio de Abogados llama a Rosario Piedra a renunciar a la CNDH* [The Bar Association Calls Rosario Piedra to Resign from the CNDH], PROCESO (Nov. 24, 2019), <https://www.proceso.com.mx/607996/el-colegio-de-abogados-llama-a-rosario-piedra-a-renunciar-a-la-cndh>.

62. Viridiana Ríos, *¿Por qué México no crece?* [Why Does Mexico not Grow?], N.Y. TIMES (Nov. 13, 2019), <https://www.nytimes.com/es/2019/11/13/espanol/opinion/crecimiento-mexico-violencia.html>.

63. Anthony Esposito, *Nearly a Year in, Mexico's President Doubles Down on Management of Economy*, REUTERS (Sept. 2, 2019), <https://www.reuters.com/article/us-mexico-politics/nearly-a-year-in-mexicos-president-doubles-down-on-management-of-economy-idUSKCN1VN02O>.

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the presidency for twelve years would somehow be reflected in a reinvigorated strategy to tackle violence and corruption, but the limitations of the NPSP and the 4T became evident since their beginnings.

B. CANNABIS LEGALIZATION IN MEXICO⁶⁴

Following the 2017 amendments to the General Health Law (LGS),⁶⁵ that legalized the medical and scientific use of cannabis products with up to one percent of tetrahydrocannabinol,⁶⁶ and the 2018 landmark resolutions issued by the SCJN regarding recreational use of cannabis,⁶⁷ advocates of legalization had great expectations for 2019.⁶⁸ While, as of December 2019, many of those expectations, e.g., full legalization, have not been met, not all is lost for supporters, as significant regulatory and legislative developments occurred in 2019.⁶⁹

“For industry stakeholders, lobbyists[,] and advocates, the year started with a close follow-up on the eleven bills (or proposals to amend existing laws) that had been introduced to the Senate”—not counting a number of bills introduced in the past years at the lower house of Congress.⁷⁰ These bills included proposals to amend the LGS and the Federal Criminal Code (*Código Penal Federal*) in different ways but generally introducing “a distinction between the psycho-active and non-psycho-active varieties of cannabis, [e.g.] cannabis vs. hemp, and more rigid treatment of adult use than industrial use” of the plant, among other elements.⁷¹ The bill introduced on November 6, 2018, by then Senator, now Secretary of the

64. The authors, Luis Armendariz and Alan Zamarripa, are, respectively, a founding partner and associate, of CAAM Legal, a Mexican boutique corporate law firm specialized in highly regulated industries such as cannabis.

65. See Erika Paz & Anna Arroyo, *Overview of the Cannabis Reform in Mexico and Its Implications in Patent Protection*, UNTHOFF (Aug. 16, 2019), <https://en.uhthoff.com.mx/articles/overview-cannabis-reform-mexico-implications-patent-protection/> (discussing amendments made to Art. 237, 245, and 290 of the General Health Law).

66. Commonly known as THC, the psychoactive component of a cannabis plant. The Editors of Encyclopaedia Britannica, *Tetrahydrocannabinol*, ENCYCLOPAEDIA BRITANNICA ONLINE, <https://www.britannica.com/science/marijuana#ref715034> (last updated June 2, 2020).

67. See Luis Miguel De Alva-Morales, *Status of Cannabis Legalization in Mexico*, GLOBAL CANNABIS COMPLIANCE BLOG (May 20, 2019), <https://globalcannabiscompliance.bakermckenzie.com/2019/05/20/status-of-cannabis-legalization-in-mexico/> (discussing Amparos en Revisión No. 547/2018 and 548/2018, declaring “that the prohibition on recreational cannabis was unconstitutional).

68. Luis Armendariz, *Mexico Cannabis Update – 2019 Cannabis Year in Review*, TORKIN MANES (Jan. 13, 2020), <https://www.cannabis-law.ca/post/cannabis-blog/mexico-cannabis-update>. The ABA has first publication rights to the aforementioned materials. However, due to the nature of the publication of *The YIR*, the website materials went to press first.

69. *Id.*

70. *Id.*

71. *Id.*

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Interior, Ms. Olga Maria Sánchez Cordero, appears to be the frontrunner to be voted at the Senate.⁷²

The SCJN granted in October 2018 two separate *amparo*⁷³ resolutions in favor of individuals challenging the LGS provisions that prohibited marijuana consumption.⁷⁴ This ruling from “the country’s highest court recognized and protected a person’s human right to self-determination, health, and personality” and became binding precedent.⁷⁵ As a result, federal district court began ordering the Federal Commission for the Protection of Sanitary Risks (COFEPRIS) to issue permits to individuals seeking to use marijuana recreationally.⁷⁶ More importantly, the court required the legislative branch to amend existing laws or issue a new law that would be consistent with its rulings by October 2019.⁷⁷

On the executive front, on March 26, 2019, COFEPRIS Director José A. Novelo Baeza “announced the revocation of the October 2018 Guidelines for the Sanitary Control of Cannabis and its Derivatives (*Lineamientos en Materia de Control Sanitario de la Cannabis y Derivados de la Misma*).”⁷⁸ These guidelines

set the criteria and licensing requirements to be used for medical and scientific use of cannabis, as well as the commercialization, exportation, and importation of such cannabis products.⁷⁹ The grounds for such revocation were largely based on omitted legal formalities needed for the issuance of government guidelines of general application. Since then, no new guidelines or regulations have been issued.⁸⁰

72. *Id.*; see also Senado de la República, Gaceta del Senado, LXIV/1PPO-44/85686 (Nov. 8, 2018), https://www.senado.gob.mx/64/gaceta_del_senado/documento/85686.

73. A constitutional challenge regulated in Mexican law, which, if granted, results in an injunction-like resolution. *Amparo, Writ of*, ENCYCLOPEDIA.COM, <https://www.encyclopedia.com/humanities/encyclopedias-almanacs-transcripts-and-maps/amparo-writ> (last updated June 2, 2020).

74. Armendariz, *supra* note 68; Salvador Fonseca, Juan Pablo Moyano, & Carlos Vejar, *Mexico’s Supreme Court Issues Jurisprudence on Appropriateness of Amparo Indirecto*, JD SUPRA (Jan. 7, 2020), <https://www.jdsupra.com/legalnews/mexico-s-supreme-court-issues-64596/>.

75. Armendariz, *supra* note 68; *La Suprema Corte sienta jurisprudencia en uso recreativo de marihuana [The Supreme Court Sets Jurisprudence on Recreational Use of Marijuana]*, EXPANSIÓN POLÍTICA (Oct. 31, 2018), <https://politica.expansion.mx/mexico/2018/10/31/la-suprema-corte-sienta-jurisprudencia-en-uso-recreativo-de-marihuana>.

76. Armendariz, *supra* note 68.

77. *Id.*

78. *Id.*

79. Comisión Federal para la Protección contra Riesgos Sanitarios, *Se revocan lineamientos en materia de control sanitario de la cannabis y derivados de la misma [Guidelines on the Health Control of Cannabis and Derivatives Thereof Are Revoked]*, GOBIERNO DE MÉXICO (Mar. 27, 2019), <https://www.gob.mx/cofepris/prensa/se-revocan-lineamientos-en-materia-de-control-sanitario-de-la-cannabis-y-derivados-de-la-misma?state=published>.

80. Armendariz, *supra* note 68; Luis Armendariz, *Mexico Cannabis Update: Resolution of the Supreme Court on the Medicinal Use of Cannabis*, HLG GLOBAL (Sept. 18, 2019), <https://hoban.law/2019/09/mexico-cannabis-update/>.

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Therefore, those interested in applying for licenses to import or sell products currently permitted under the law “face legal uncertainty and government inaction.”⁸¹ By mid-2019, the SCJN unanimously approved a newly drafted ruling that ordered “the Health Secretariat and COFEPRIS to issue within 180 business days the regulations that would substitute [for] the revoked guidelines.”⁸²

On October 17, 2019, the Senate’s Justice Committee issued what would purportedly be the draft of the new law for Cannabis Regulation (*Ley de Regulación del Cannabis*) to be submitted to a general vote.⁸³ The new law would fully legalize the following uses: (1) recreational, which includes cultivation and possession at home or cannabis clubs, capped at four plants per person, or six per household; (2) scientific and research, allowing activities “ethically necessary” for scientific and research purposes; (3) medical or pharmaceutical and therapeutic or palliative; and (4) industrial, covering the sale, import and export.⁸⁴ Further, four contemplated types of licenses are available: cultivation, transformation (processing), sale, and export or import. They cover complementary activities of transportation and storage. “Permits” are also provided for personal use and for hemp transformation.⁸⁵ Finally, a new cannabis government agency called the Mexican Cannabis Institute, *Instituto Mexicano del Cannabis* (IMC), would be created and empowered to grant the aforementioned licenses as a decentralized government agency affiliated with the Secretariat of the Interior.⁸⁶

Some of the proposed provisions were controversial as some considered them to bar farming or low-income communities from growing cannabis and therefore failing to meet the “social justice” purpose sought by President AMLO through legalization.⁸⁷ For example, one controversial provision involves seed traceability and testing guidelines in order to avoid cultivation using “illicit” seeds, another is “the requirement to use sustainable (biodegradable, compostable and recyclable) materials for the packaging” of cultivated plants.⁸⁸ It is argued that low-income communities or farmers

81. Marihuana y Sus Derivados, Diario Oficial de la Federación, Dec. 20, 2013 (Mex.).

82. *Id.*

83. Armendariz, *supra* note 68; *see also* Senado de la República, Ley para la regulación del cannabis, REGULACIÓN DEL CANABIS, https://cannabis.senado.gob.mx/images/pdf/anteproyecto_LRC.pdf.

84. Armendariz, *supra* note 68.

85. *Id.*

86. María Fernanda Navarro, *Instituto Mexicano del Cannabis, la dependencia que controlaría tu consumo de marihuana* [Mexican Cannabis Institute, the Agency that Would Control Your Consumption of Marijuana], FORBES (Oct. 29, 2019), <https://www.forbes.com.mx/instituto-mexicano-del-cannabis-la-dependencia-que-controlaria-tu-consumo-de-marihuana/>.

87. Armendariz, *supra* note 68; María Camila Hernández, *El Largo Camino Hacia la Legalización del Cannabis en México* [El Largo Camino Hacia la Legalización del Cannabis en México], FRANCE24 (Nov. 13, 2019), <https://www.france24.com/es/20191113-el-largo-camino-hacia-la-legalizaci%C3%B3n-del-cannabis-en-m%C3%A9xico>.

88. Armendariz, *supra* note 68; *see also* Hernández, *supra* note 87.

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with limited capital would have a difficult time obtaining eco-friendly packaging materials.⁸⁹

“After the Senate failed to meet the October deadline to pass ‘proper legislation,’ on November 5, 2019, the SCJN granted an extension due to the complexity of the matter.”⁹⁰ Such deadline was initially set to expire on the last day of the first 2020 legislative period, that is, April 30, 2020.⁹¹ On March 4, 2020 three Senate committees approved the bill in general terms and was scheduled to be submitted to general vote. However, on April 17, 2020, the SCJN granted a second extension in light of the COVID-19 pandemic. The SCJN granted such second extension mandating that legalization be in place by December 15, 2020.

The Coming years “will pose a series of challenges to harmonize other pieces of legislation, such as import/export tax classifications, industrial property (patents), taxation, and the overall secondary regulation that has to follow and complement this new federal law.”⁹²

C. COLLECTIVE DISTRIBUTED ENERGY IN MEXICO⁹³

On May 27, 2019, the Energy Regulatory Commission (CRE), in its effort to find clean energy alternatives, presented a preliminary project before the National Regulatory Improvement Commission (CONAMER).⁹⁴ The project, which CONAMER has yet to approve, is known as the “Agreement by which the Energy Regulatory Commission issues the model contract to be entered into with the Basic Services Supplier and its consideration methodology applicable to the collective distributive generation” (The Agreement).⁹⁵ The term “distributive generation” in this project’s title is defined by Mexico’s Electric Industry Act as (a) that which is made by an exempted generator and (b) is made in an electrical center that is interconnected to a distribution circuit that contains a high concentration of

89. See Hernández, *supra* note 87.

90. Armendariz, *supra* note 68.

91. *Id.*; see also *Otorga Suprema Corte al Senado prórroga para legislar sobre cannabis [Supreme Court Grants the Senate an Extension to Legislate on Cannabis]*, SENADO DE LA REPÚBLICA COORDINACIÓN DE COMUNICACIÓN SOCIAL (Nov. 15, 2019), <http://comunicacion.senado.gob.mx/index.php/informacion/boletines/46675-otorga-suprema-corte-al-senado-prorroga-para-legislar-sobre-cannabis.html>.

92. Armendariz, *supra* note 68.

93. The author, Ana Sofía Villa Hernández, is a legal counselor at Solar Energy Fund.

94. Nanda Singh, *Generación distribuida colectiva: los principales puntos del anteproyecto de la CRE que incluye modelo de contrato y metodología de contraprestación [Collective Distributed Generation: The Main Points of the CRE’s Preliminary Draft that Includes a Contract Model and Consideration Method]*, ENERGÍA ESTRATÉGICA (May 28, 2019), <https://www.energiaestrategica.com/generacion-distribuida-colectiva-los-principales-puntos-del-anteproyecto-de-la-cre-que-incluye-modelo-de-contrato-y-metodologia-de-contraprestacion/>.

95. *Id.*

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Charging Centers.⁹⁶ An exempted generator is the owner or possessor of an electrical center who is able to sell electric energy through a Supplier of Basic Services to final users in a charging center, without the need of an authorization or certification from the CRE.⁹⁷ While a model contract for the small-scale interconnection and collective generation already existed,⁹⁸ new alternatives would be available for projects and business models, if the agreement proposed by the CRE is approved. Such alternatives would allow final users, who are ordinarily prevented from installing electrical centers on their premises, to “access projects with which they will be able to generate their own energy, through the building and installation of electrical centers of distributed generation,” although they would be located in common areas.⁹⁹

Once the Agreement is approved, the criteria and guidelines for the collective consideration contracts to be entered into by the Basic Services Supplier with exempted generators shall be issued. On their part, the exempted generators will be able to enter into private agreements with beneficiaries or final users to determine the terms and conditions applicable to the distribution and sale of electric energy. This will cover (1) the conditions to maintain the qualification of beneficiary; (2) the proportional entitlements of each beneficiary; (3) the conditions for the operation of the electric central; and (4) payment conditions.¹⁰⁰

Currently, CONAMER is expected to issue a Regulatory Impact Assessment (MIR) that would set the Agreement in motion, as the provisions therein represent benefits that would far outweigh the costs in terms of competitiveness and market efficiency.¹⁰¹ Indeed, the project is relevant both for final users who would gain access to clean energy at lower prices and for private initiatives, which could develop business models based on collective distributive generation. Such initiatives could expand access to electric energy in locations with common areas and decrease the costs of energy consumption.

96. Decreto por el que se expiden la Ley de la Industria Eléctrica, la Ley de Energía Geotérmica y se adicionan y reforman diversas disposiciones de la Ley de Aguas Nacionales, ch. 1, art. 3, frac. XXIII, Diario Oficial de la Federación [DOF] 11-08-2014 (Mex).

97. *Id.* ch. 1, art. 3, frac. XXV.

98. See Singh, *supra* note 94.

99. *Acuerdo por el que la Comisión Reguladora de Energía emite el modelo de contrato con el Suministrador de Servicios Básicos y su metodología de contraprestación aplicable a la generación distribuida colectiva*, 27-05-2019, formato PDF, https://www.energiaestrategica.com/wp-content/uploads/2019/12/ACUERDO_Generacio%CC%81n-Distribuida-Colectiva.pdf?x53099.

100. See Singh, *supra* note 94.

101. *Manifiestación de Impacto Regulatorio (MIR) de impacto moderado con análisis de impacto en la competencia [Regulatory Impact Manifestation (MIR) of Moderate Impact with Impact Analysis on the Competition]*, NAT'L REG. IMPROVEMENT COMMISSION (May 27, 2019), <http://187.191.71.192/mirs/47035>.

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D. REFORM TO THE FEDERAL LABOR ACT¹⁰²

On May 1, 2019, the Official Gazette of the Federation published a reform to several provisions of the Federal Labor Act, which entered into force the next day (the Labor Reform).¹⁰³ This reform stems from three sources:

- The constitutional reform on the impartation of labor justice, which entered into force on February 24, 2017;¹⁰⁴
- The principles and guidelines established in Chapter 23 and Schedule A of the trilateral free trade agreement between the United States of America, the United Mexican States, and Canada (USMCA);¹⁰⁵ and
- The ratification of Covenant 98 of the World Trade Organization (WTO) on November 23, 2018, by the Mexican Senate.¹⁰⁶

Generally speaking, the Labor Reform may be divided in three different sections: (1) a new labor justice system; (2) collective relations; and (3) individual relations. Moreover, it is important to emphasize that the provisions relating to outsourcing have not suffered any modifications but may be subject to subsequent legislative revision in the future.

The new labor justice system section establishes the (not immediate) dissolution of the conciliation and arbitration quasi-tribunals, creating in their place proper labor tribunals that shall operate at the federal and state levels of government, beginning their functions within a four-year and a three-year period respectively.¹⁰⁷ The new system also provides for the creation of a Federal Conciliation Center and Labor Registry (CFCRL) and State Conciliation Centers.¹⁰⁸ At the federal level, the CFCRL will perform conciliatory functions and shall conduct the registration of collective labor agreements, of internal work rules and of trade unions. At the state level, the activity of the Conciliation Centers shall be limited to conciliatory functions. From May 2, 2019, the CFRL shall have six months to draft and publish its organic statute, two years to begin the registration of collective labor agreements and trade unions, and four years to start its conciliatory

102. The author, Enrique García, is a corporate lawyer and partner at Cannizzo, Ortíz & Asociados.

103. Decreto por el que se reforman, adicionan y derogan diversas disposiciones de la Ley Federal del Trabajo, de la Ley Orgánica del Poder Judicial de la Federación, de la Ley Federal de la Defensoría Pública, de la Ley del Instituto del Fondo Nacional de la Vivienda para los Trabajadores y de la Ley del Seguro Social, en materia de Justicia Laboral, Libertad Sindical y Negociación Colectiva, Diario Oficial de la Federación [DOF] 01-05-2019 (Mex.) [hereinafter the Labor Reform].

104. Decreto por el que se declaran reformadas y adicionadas diversas disposiciones de los artículos 107 y 123 de la Constitución Política de los Estados Unidos Mexicanos, en materia de Justicia Laboral, Diario Oficial de la Federación [DOF] 24-02-2017 (Mex.).

105. See United-States-Mexico-Canada Agreement [USMCA] ch. 23, Nov. 30, 2018.

106. *Mexico Ratifies the Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*, INT'L LABOUR ORG. (Nov. 26, 2018), https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/collective-bargaining/WCMS_651082/lang-en/index.htm.

107. See The Labor Reform, *supra* note 103 at transitory arts. 5–6.

108. See *id.* at transitory art. 3.

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functions.¹⁰⁹ The procedures that remain open in the quasi-tribunals shall be concluded in accordance to the laws applicable at the time they were initiated, as well as all the procedures that began before the new tribunals begin their functions.¹¹⁰

Regarding collective relations, workers shall vote for the obtention of a “Representative Certification” and for the approval and registration of a collective work agreement.¹¹¹ This measure aims to end unions and collective agreements that do not properly represent workers. Before May 2, 2023, all collective agreements must be reviewed in order to fulfill Mexico’s international obligations.¹¹²

In the case of individual labor relations, every contract shall include the appointment of beneficiaries in case of death or forced disappearance¹¹³ and terminations shall be ratified before the relevant body.¹¹⁴ Finally, employers shall provide every worker with a copy of the collective bargaining agreement once it has been submitted to the relevant authority. Employers will also implement a special protocol for the prevention of gender discrimination and violence and fulfill social security obligations.¹¹⁵

109. *See id.* at transitory art. 11.

110. *See id.* at transitory art. 3.

111. *See id.* at ch. XIII, art. 390 Bis.

112. Rosemarie Lally, *Changes to Mexico’s Labor Law Lead Employers to Reconsider CBAs*, SHRM (Oct. 1, 2019), <https://www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/global-mexico-amended-labor-law.aspx>.

113. *See* The Labor Reform, *supra* note 103, at ch. XIII, art. 503.

114. *Id.*

115. *Id.* at art. 132.

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Middle East

KELLY BLOUNT, HOWARD L. STOVALL, MAMOUN AIDOU, TANIA TOSSA, HASSAN RADHI, NOOR RADHI, NICOLAS BREMER, JOSEPH BUSA AROP, SEYED MOHSEN ROWHANI, JEREMY BENJAMIN, ELAD SHARABI, SAM HABBAS, IBRAHIM SATTOUT, FOUAD DEBS, MICHELA COCCHI, RAVINDER SINGH, MANSOOR MALIK, KHALID REHMAN, FRANK LUCENTE, YESSINE FERAH, AND ANNE BODLEY*

This article discusses significant international legal and political developments in the Middle East and North Africa (MENA) region.

I. Algeria

A. ENVIRONMENTAL REGULATIONS

The year 2019 was characterized by the promulgation of environmental laws and decrees. These legal instruments were aimed at protecting natural

* Kelly Blount and Howard L. Stovall are co-editors of the Middle East Committee's contribution to the 2019 Year in Review; Kelly is an American attorney based in Luxembourg and writing a PhD in law; Howard is a Chicago-based attorney working exclusively on Arab commercial law matters. Mamoun Aidoud (Algeria) practices at the Aidoud Law Firm in Algiers. Tania Tossa (Algeria) is a French Trainee-Lawyer, currently working as Trainee Attorney in the New Orleans offices of Koerner Law Firm (Louisiana) & CEO and Founder of Africa Legal Access, a LegalTech for the accessibility of Law in Africa. Nicolas Bremer (Bahrain, Egypt, Iraq, Libya, Qatar, Saudi Arabia and the UAE) is a partner at Alexander & Partner in Berlin. Joseph Busa Arop (Egypt) is General Counsel and Vice President of RexGalleria Entertainment. Seyed Mohsen Rowhani (Iran) is a JSD candidate at Cardozo Law School and an NGO representative at the United Nations. He has a Master's degree in Private Law from Imam Sadiq University and an LLM in International Law from Fordham Law School. Jeremy Benjamin and Elad Sharabi (Israel) work at Goldfarb Seligman & Co. in Tel Aviv; Jeremy is deputy head of the firm's Corporate, Class Action and Administrative Litigation Department; Elad is an associate in that Department. Sam Habbas and Ibrahim Sattout (Kuwait) are partners at ASAR - Al Ruwayeh & Partners in Kuwait City. Fouad Debs (Lebanon) is an associate at the Law Offices of Adolphe Debs & Associates in Beirut. Michela Cocchi (Morocco) is the head of Michela Cocchi Studio Legale in Bologna. Ravinder Singh and Mansoor Malik (Oman) are attorneys with Al Busaidy, Mansoor Jamal & Co; Ravinder is a senior associate on the commercial team at Al Busaidy, while Mansoor Malik is the firm's managing partner and a frequent advisor to the Omani government. Khalid Rehman (Pakistan) is a senior partner at Surridge & Beecheno in Karachi. Frank Lucente (Oman) is a partner in the Doha office of Al Tamimi & Co. Yessine Ferah (Tunisia 1) heads Ferah & Associates Law Firm in Tunis and is a tax and corporate lawyer specializing in large scale commercial transactions. Anne Bodley (Tunisia 2) is a London-based attorney and currently a Vice-Chair and Year in Review Editor of the ABA's Africa Law Committee.

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spaces—whether terrestrial, marine, or air—against the threats of chemical, biological, and physiological damage resulting from human activity.

The fight against marine pollution included preventative action against the occurrence of maritime events causing or likely to cause a massive oil spill at sea. In addition to oil, the legislation covers products that may constitute serious or imminent danger or damage to the marine and coastal environment. Dangerous goods carried at sea, defined as those that may constitute or cause nuisance or danger to persons, property, or the environment, must be identified and carefully secured and segregated. Goods fitting this definition include explosive substances, gases, flammable and oxidizing liquids and solids, as well as toxic, infectious, radioactive, and corrosive materials.¹ Algeria also acceded, *inter alia*, to the United Nations Convention on the Law of the Sea and the International Convention for the Prevention of Pollution from Ships (1973).²

In the fields of nuclear and space, a newly enacted nuclear safety policy aimed to protect individuals and the environment against radiological hazards and added responsibility for the operators of nuclear installations. Further, radioactive waste is now subject to stricter regulations. Space activities are governed by the Treaty on the Exploration and Use of Outer Space, its terms, which Algeria ratified with Law 19-06 on July 17, setting the rules for the peaceful use of outer space and creating an Algerian space agency.³

B. DECEMBER PRESIDENTIAL ELECTION PROTESTS

The year was marked by protests in which Algerians marched to force longtime President Abdelaziz Bouteflika to resign after twenty years in power, and to push for more government transparency and democracy.⁴ In April, following Abdelaziz Bouteflika's resignation, Abdelkader Bensalah was appointed as the interim president and planned presidential elections for December 12, 2019.⁵ Tens of thousands of Algerian organized protests to express their determination to reject the elections until all loyalists of the

1. *Pollution in Algeria*, FANACK.COM (Apr. 9, 2019), <https://fanack.com/pollution/pollution-in-algeria/>.

2. Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397, https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtmsg3&clang=_en.

3. *Emerging Nuclear Energy Countries*, WORLD NUCLEAR ASS'N (Oct. 2019), <https://www.world-nuclear.org/information-library/country-profiles/others/emerging-nuclear-energy-countries.aspx>.

4. See *'The B's must go': Algerians keep up pressure on old guard*, AL JAZEERA (Apr. 19, 2019), <https://www.aljazeera.com/news/2019/04/algerian-protesters-pressure-political-guard-190419135822859.html>.

5. *Algeria announces presidential election for December 12*, FRANCE 24 (Sept. 16, 2019), <https://www.france24.com/en/20190915-algeria-presidential-election-fixed-december-12-says-bensalah-bouteflika>.

Bouteflika regime, including Ahmed Gaid Saleh and Abdelkader Bensalah, are removed.⁶

II. Bahrain

A. BANKRUPTCY LAW

The Bahraini Reorganization and Bankruptcy Law, promulgated by Law No. 22 of 2018 (the Bankruptcy Law), came into force at the end of 2018, replacing Law No. 11 of 1987 (the Old Law).⁷ Following the model of Chapter 11 in the United States Bankruptcy Code, the Bankruptcy Law is directed at reorganization, aiming to help businesses to continue operations and avoid liquidation—as opposed to the Old Law’s focus on adjudication of bankruptcy and distribution of assets. The spirit of the Bankruptcy Law is reflected in Article 2, which provides that the objectives of the Bankruptcy Law include preserving and protecting the bankruptcy estate, optimizing its value, and avoiding liquidation when reasonably possible.⁸

Pursuant to Article 51 of the Bankruptcy Law, commencement of bankruptcy proceedings results in a general moratorium of claims, judicial procedures, and enforcement procedures on bankruptcy assets of the debtor.⁹ The Bankruptcy Law also contains cross-border insolvency provisions, providing that a foreign creditor (or representative of a foreign bankruptcy proceeding) shall have the right to apply directly to the court (and may request the commencement of bankruptcy procedures), and that foreign creditors shall receive treatment equal to that of Bahraini creditors.¹⁰

B. OPEN BANKING

In December 2018, the Central Bank of Bahrain issued regulations on “open banking,” compelling retail banks in Bahrain to allow third-party payment initiation service providers and account information service providers to gain free and efficient access to customer accounts.¹¹ According

6. Hamid Ould Ahmend, *Algeria’s protesters march against ruling elite as elections approach*, REUTERS (Oct. 11, 2019), <https://www.reuters.com/article/us-algeria-protests/algerias-protesters-march-against-ruling-elite-as-elections-approach-idUSKBN1WQ1V6>.

7. See *Bahrain’s new bankruptcy code: A move towards global conformity*, HASSAN RADHI & ASSOCIATES (2018), http://hassanradhi.com/en/newsletter/bankruptcy_code (last visited May 31, 2020).

8. Law no. 22 of 2018 on promulgating the Reorganization and Bankruptcy Law, art. 2 (قانون رقم 22 لسنة 2018 بإصدار قانون إعادة التنظيم والإفلاس), available at https://www.ilo.org/dyn/natlex/natlex4.detail?p_isn=109200&p_lang=en (Bahr.).

9. *Id.* at art. 51.

10. *An Overview of U.S. Bankruptcy Law Involving a Foreign Representative of a Foreign Proceeding*, AM. BANKR. INST. (Apr. 1998), <https://www.abi.org/abi-journal/an-overview-of-us-bankruptcy-law-involving-a-foreign-representative-of-a-foreign>.

11. *Regulations relating to ‘Open Banking’*, CENT. BANK OF BAHR. (Dec. 6, 2018), https://cbb.complinet.com/net_file_store/new_rulebooks/e/d/EDBS_KH_Regulations_relating_to_Open_Banking_6_Dec_2018.pdf.

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to the CBB, this regulation was intended to pave the way for new financial services (such as online payments) without relying on credit or debit cards. Furthermore, it seeks to allow for the aggregation of account information from different providers and to implement active financial management tools for customers.

On October 9, 2018, Bahrain issued Royal Decree 48/2018 on Value Added Tax (VAT), which came into effect on January 1, 2019.¹² The law was enacted in line with Bahrain's obligations under the Gulf Cooperation Council (GCC) VAT Convention. The Bahraini VAT law, however, deviates from VAT laws previously implemented by other GCC countries, such as Saudi Arabia and the United Arab Emirates. In particular, the Bahraini VAT law includes more comprehensive exemptions from VAT, as well as a wider application of zero rates.

On August 1, 2019, Royal Decree 30/2018 with respect to Personal Data Protection went into effect.¹³ The law, issued in 2018, is modeled after the European Union's General Data Protection Regulation (GDPR).¹⁴

III. Egypt

A. NGO LAW

In July 2019, Egypt's parliament approved a new law regulating non-governmental organizations, maintaining many existing restrictions on their work.¹⁵ The new law will also prohibit cooperation with foreign organizations or experts, impose a strict system of prior approval for foreign organizations to work in Egypt, and allow for government surveillance and monitoring of organizations' daily activities.¹⁶

B. BANKING LEGISLATION

The Egyptian cabinet has approved a new Banking Act,¹⁷ which introduces measures for licensing e-payment and fin-tech businesses, authorizing the Central Bank to regulate crypto currencies, ensuring data protection and customer privacy, and requiring all banks' fiscal years to begin in January.

12. Royal Decree 48/2018 (Oct. 6, 2018), Official Gazette No. 3387, *available at* <http://www.legalaffairs.gov.bh/Media/LegalPDF/L4818.pdf> (Bahr.).

13. Royal Decree 30/2018 (July 19, 2018), Official Gazette No. 3375, 5, *available at* <http://www.legalaffairs.gov.bh/Media/LegalPDF/K3018.pdf> (Bahr.).

14. Hazir Reka, *Companies Struggle with GDPR and global privacy – a report*, REUTERS EUR. (Dec. 30, 2019), <https://blogs.thomsonreuters.com/legal-uk/2019/12/30/companies-struggle-with-gdpr-and-global-privacy-a-report/>.

15. *Egypt: New NGO Law Renews Draconian Restrictions*, HUMAN RIGHTS WATCH (July 24, 2019), <https://www.hrw.org/news/2019/07/24/egypt-new-ngo-law-renews-draconian-restrictions>.

16. *Id.*

17. *Egypt's cabinet approves new Banking and Central Bank Act*, ENTERPRISE (Oct. 3, 2019), <https://enterprise.press/stories/2019/10/03/egypts-cabinet-approves-new-banking-and-central-bank-act/>.

C. MEDIA REGULATIONS

In September, Egypt's Supreme Council for Media Regulation issued new regulations regarding talk shows, sports, and religions television programs.¹⁸ The regulation, published in the official gazette *Al-Waqa'e Al-Masryia*, requires that a talk show or television program should not run for more than two hours, including the time fixed for the commercial advertisements.¹⁹

D. RESIDENCE

The Defense and National Security Committee of the House of Representatives approved amendments to the law of Entry and Residence of Foreigners in Egypt.²⁰ The law will stipulate that the prime minister has the right to grant Egyptian citizenship to any foreigner who bought a state-owned property or a private property, established an investment project in accordance with the Egyptian Investment Law, or deposited money in hard currency.²¹

E. CRYPTO REGULATION

"In May 2019, the Central Bank of Egypt announced that it is working on a draft law for crypto-related activities.²² When introduced, it will oblige financial institutions in the country to obtain licenses in advance for creating, advertising, or operating platforms that issue or facilitate trading of crypto currencies."

F. ALIMONY LAW

The Parliament approved in plenary a draft law presented by the cabinet to amend some provisions of the Penal Code promulgated by Law No. 58 of 1937, known as the 'Alimony Law.'²³ The draft law includes toughening the penalty on people who do not pay alimony to their spouses after divorce, raising the delay fine from EGP 500 to EGP 5,000, and imprisonment for a year.

18. *SCMR issues new regulations on T.V. programs*, EGYPT TODAY (Sept. 7, 2019), <https://www.egypttoday.com/Article/2/74546/SCMR-issues-new-regulations-on-T-V-programs>.

19. *Id.*

20. *Parliament approves law granting residence to foreigners buying property*, EGYPT TODAY (June 10, 2019), <https://www.egypttoday.com/Article/2/71425/Parl%E2%80%99t-approves-law-granting-residence-to-foreigners-buying-property>.

21. *Id.*

22. Elena Perez, *Egypt Lays out path for a Crypto Future with Draft Law*, COINTELEGRAPH (June 6, 2019), <https://cointelegraph.com/news/egypt-lays-out-path-for-a-crypto-future-with-draft-law>.

23. *Egypt's parliament approves new amendments to Alimony Law*, EGYPT DAILY NEWS (Oct. 28, 2019), <https://menafn.com/1099182623/Egypt-parliament-approves-new-amendments-to-Alimony-Law>.

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G. MILITARY PENSIONS

“In May 2019, the Parliament approved a draft law to increase military pensions by fifteen percent. Former army officers will see a minimum pension raise of 150 Egyptian Pounds (\$8.80) or the sum of their total incurred benefits up to a maximum of 900 Egyptian Pounds (\$52.79).”²⁴

H. SOCIAL SECURITY AND PENSIONS

In July 2019, the Parliament granted final approval to the Social Security and Pensions Act, which mandates that twenty-one percent of public and private sector workers’ salaries be contributed to a pension fund.²⁵ The new act sets a minimum pension of sixty-five percent of the social insurance subscription minimum wage; pensions will rise by up to fifteen percent on a yearly basis, and injury pensions for workers who do not receive salaries will increase from ten Egyptian Pounds to the minimum amount of pensions.²⁶ The Act also integrates the social security law and pensions law into one social security act.²⁷

I. REFERENDUM

In April 2019, Egypt held a referendum approving amendments to the country’s constitution.²⁸ The most publicized amendments were those preserving the two-term limit on the presidency and an increase in term duration to six years,²⁹ which also applies to President Abdel Fattah El-Sisi’s current term.³⁰ Furthermore, the amendments provide that President El-Sisi’s first two terms will not be considered with respect to the term limit,³¹ thus allowing him to stay in office for an additional two terms. The amendments substantially expand the power of the executive branch over the judiciary by authorizing the president to appoint senior judges and making him head of the Higher Council for Judiciary Authorities, which appoints public prosecutors.³² Further amendments solidify the influence of the military over all branches of government.³³ The most important corporate

24. *Egypt approves 15% raise in military pensions*, MIDDLE EAST MONITOR (May 13, 2019), <https://www.middleeastmonitor.com/20190201-egypt-approves-15-raise-in-military-pensions/>.

25. *International Update: Recent Developments in Foreign Public and Private Pensions*, SOCIAL SECURITY ADMINISTRATION (Feb. 2020), https://www.ssa.gov/policy/docs/progdesc/intl_update/2020-02/index.html.

26. *Id.*

27. *10 facts about the new Social Security and Pensions Act*, EGYPT TODAY (July 20, 2019), <https://www.egypttoday.com/Article/1/73006/10-facts-about-the-new-Social-Security-and-Pensions-Act>.

28. *Egypt’s 2019 Constitutional Referendum*, THE TAHIR INST. FOR MIDDLE EAST POL’Y (Apr. 30, 2019), <https://timep.org/reports-briefings/egypts-2019-constitutional-referendum/>.

29. CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, art. 140.

30. *Id.* at art. 241.

31. *Id.*

32. *Id.* at art. 185–86, 193.

33. *See id.* at art. 200, 234.

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law amendment repeals the requirement for limited liability companies to have at least one general manager who is an Egyptian national,³⁴ and new registration and reporting obligations imposed on joint stock companies.³⁵ The Egyptian legislature has sought to combat corruption by requiring all payments to the government and other public authorities to be made by bank transfer.³⁶

IV. Iran

A. AMENDMENT TO THE CITIZENSHIP ACT

According to the Global Campaign for Equal Nationality Rights, the Middle East is a region with one of the highest percentages of gender discriminatory citizenship laws.³⁷ Iran was one of twenty-five countries not permitting women married to foreigners to give Iranian nationality to their children.³⁸ But in May 2019, the Parliament enacted a historical amendment granting Iranian citizenship to the children of Iranian women married to foreign men.³⁹ Subsequently, significant human rights criticisms concerning the education, social security, and work authorization of this vast community should diminish.

B. STARTUP PROTECTION ACT

On May 22, 2019, the Board of Ministers passed the Startup Protection Regulations previously proposed by the Ministry of Information, Communications and Technology of Iran. The Regulations protect startups within their first three years of establishment,⁴⁰ applying only to information and telecommunication firms.⁴¹ The startups are immune to any taxes⁴² and social security fees for the employees.⁴³

34. See Law No. 159 of 1981 (Law on Joint Stock Companies, Partnerships Limited by Shares and Limited Liability Companies), vol. 198, art 120 (Egypt).

35. *Id.* at art. 25.

36. Law No. 18 of 2019 (Law on Non-Cash Means of Payment), vol. 13, 11 Mar. 2019 (Egypt).

37. See *Middle East and North Africa*, GLOBAL CAMPAIGN FOR EQUAL NATIONALITY RIGHTS, <https://equalnationalityrights.org/index.php/countries/middle-east-north-africa>.

38. Emma Batha, *Iran Expected to Scrap Ban on Women Passing Nationality to Children*, REUTERS (June 26, 2019), <https://www.reuters.com/article/us-iran-citizenship-law-women/iran-expected-to-scrap-ban-on-women-passing-nationality-to-children-idUSKCN1TRIUY>.

39. Law Amending the Law on Determining the Citizenship of Children of Iranian Women of 13 May 2019 (Iran).

40. Regulations in Support of Start-ups of 22 May 2019 (Iran).

41. See *id.* at art. 1.

42. See *id.* at art. 5.

43. See *id.* at art. 7.

C. CRYPTOCURRENCY REGULATION

On August 4, 2019, the Board of Ministers enacted the Cryptocurrency Regulation for licensing and monitoring mining activities.⁴⁴ Iranian mining licenses only apply to miners with equipment that requires thirty kilowatts, which might exclude homemade mining equipment or small operations. The Regulation also makes crypto mining a taxable event unless miners export the mined tokens out of Iran and bring profits into the country.⁴⁵ The Regulation also clarifies that the Government will not provide any banking or legal support to miners, and that using bitcoin or any other non-Iranian sovereign asset for domestic transactions remains banned.⁴⁶ Notably, the price of the electricity consumed for these activities will be calculated based on its export cost.⁴⁷

D. AMENDING THE ANTI-MONEY LAUNDERING ACT

On January 23, 2019, Iran adopted amendments to its Anti-Money Laundering Act,⁴⁸ which established the Supreme Council of Anti-Money Laundering and Anti-Terrorism Financing, directed by the Minister of Economy.⁴⁹ It also created the Center of Financial Transaction of Iran to collect the data of all governmental and suspicious non-governmental financial transactions.⁵⁰

V. Iraq

The Iraqi government endorsed ratifying the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) in February 2019.⁵¹ This action raised expectations that recognition and enforcement of arbitral awards in the country would be aligned with international practice. But Iraq was not yet to become a contracting party to the New York Convention.⁵²

44. Approval of the Use of Cryptocurrencies of 4 Aug. 2019 (Iran), *available at* <https://rc.majlis.ir/fa/law/show/1233690>.

45. Davit Babayan, *Iran Authorizes "Haram" Bitcoin as U.S. Sanctions Choke Economy*, NEWSBTC (Jul. 29, 2019), <https://www.newsbtc.com/2019/07/29/iran-authorizes-haram-bitcoin-as-us-sanctions-choke-economy/>.

46. *See* Regulations in Support of Start-ups, at art. 1.

47. *See id.* at art. 4.

48. Law Amending the Anti-Money Laundering Amendment Act of 23 Jan. 2019 (Iran), *available at* <https://rc.majlis.ir/fa/law/show/1107413>.

49. *See id.* at art. 4.

50. *See id.* at art.7.

51. *See* Noor Kadhim, *Finally, Iraq Says Yes to the New York Convention*, KLUWER ARB. BLOG (Mar. 13, 2018), <http://arbitrationblog.kluwerarbitration.com/2018/03/13/scheduled-15-march-better-late-never-iraq-embraces-new-york-convention/>.

52. *See Contracting States – List of Contracting States*, N. Y. ARB. CONVENTION, <http://www.newyorkconvention.org/list+of+contracting+states> (last visited May 31, 2020).

VI. Israel

A. CIVIL PROCEDURE

The entry into force of Civil Procedure Regulations promulgated in 2018, originally scheduled for September 5, 2019, has been again postponed. On April 15, 2019, the Minister of Justice postponed their enactment until February 2, 2020,⁵³ and on September 16, 2020 (the eve of Israel's second 2019 election), the temporary Minister of Justice postponed their enactment until September 6, 2020. The Minister also ordered that a committee be established to consider the regulations and the timing of their entry into force, in light of claims by the Israel Bar Association that the civil procedure reform harms litigants and grants courts undue discretion in procedural matters.⁵⁴

B. INSOLVENCY LAW

On September 15, 2019, the Insolvency and Economic Recovery Law, 2018-5778, entered into force, replacing an antiquated collection of bankruptcy provisions, including ordinances dating back to the British Mandate and revised piecemeal over time.⁵⁵ The new law seeks to create a centralized bankruptcy code that is suited to the current economic environment and modern social values.⁵⁶

The new law enables bankruptcy trustees to terminate contracts established prior to the bankruptcy order with court approval, if doing so will facilitate the recovery plan, and to allow the performance of contracts duly terminated shortly prior to the bankruptcy order;⁵⁷ limits the right of the holder of floating pledges over the assets of a company implementing a recovery plan to receive a maximum of seventy-five percent of the proceeds from the sale of the pledged assets (the balance of the debt owed to the holder will be treated as unsecured debt);⁵⁸ and stops the accrual of penalty interest upon the commencement of bankruptcy proceedings.⁵⁹

The new law also clarifies that foreign creditors are entitled to the same rights and protections in bankruptcy proceedings as Israeli creditors;⁶⁰ and provides for recognition of foreign bankruptcy proceedings, the issuance of

53. (Civil Procedure Regulations), 5779-2019, KT 8231 p. 3186 (Isr.).

54. (Civil Procedure Regulations), 5780-2019, KT 8285, p. 44 (Isr.); Matan Barnir, *Replay: The Entry Into Effect of the Reform of the Civil Procedure Regulations Has Been Postponed Again by Half a Year*, GLOBES (Sept. 16, 2019), <https://www.globes.co.il/news/article.aspx?did=1001300925>; Efrat Neuman, *The Temporary Minister of Justice Hands Out Sweets: Gives a Gift to Lawyers a Day Before the Elections*, THE MARKER (Sept. 16, 2019), <https://www.themarker.com/law/1.7846136>.

55. Insolvency and Economic Recovery Law, 5778-2018, SH No. 2708 p. 310 (Isr.), available at https://www.nevo.co.il/law_html/law01/501_802.htm.

56. Insolvency and Economic Recovery Bill, 5776-2016, HH No. 1027 (Isr.).

57. Insolvency and Economic Recovery Law, SH No. 2708 §§ 67-70, 76.

58. *Id.* § 244(a)(2).

59. *Id.* §§ 29(6), 235(c), 243(c).

60. *Id.* §§ 298-99.

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judicial orders in support thereof (including orders for interim relief), and cooperation with foreign bankruptcy courts, trustees, and authorities.⁶¹

C. CORPORATE LAW

In recent years, the Business Judgment Rule (BJR) has been adopted by Israeli courts.⁶² In July 2019, the Economic Department of the Tel Aviv-Jaffa District Court held that the BJR does not apply when the decision of a Board of Directors violates the law.⁶³ This case addressed the decision to distribute proceeds from the sale of shares in a subsidiary to shareholders without court approval, even though the company did not have net profits to distribute a dividend.⁶⁴

D. COPYRIGHT LAW

On January 1, 2019, the Knesset passed Amendment 5 to the Copyright Law, 5768-2007, which adds Chapter H1 to the law.⁶⁵ Chapter H1 entered into force on October 9, 2019 and sets the criteria and procedures for issuing judicial orders (at the request of copyright holders) for the disclosure by Internet Service Providers (ISPs) of the identity of persons suspected of copyright infringement.

VII. Kuwait

A. EASE OF DOING BUSINESS

Throughout 2019, Kuwait continued modernizing its laws in order to attract more foreign investments, develop local business opportunities, and diversify its economy. These improvements were recognized in “World Bank Ease of Doing Business Index 2020,” ranking Kuwait 83 out of 190 countries.⁶⁶ According to the index, Kuwait has strengthened minority investor protections, improved cross-border trading, and simplified

61. *Id.* §§ 301–15.

62. CA 7735/14, *Verdnikov v. Elovitch* (Dec. 28, 2016), Nevo Legal Database (by subscription, in Hebrew) (Isr.); File No. 47302-05-16 Central District Court, *Better Place Israel (HT) 2009 Ltd. (In Liquidation) v. Agasi*, Nevo Legal Database (by subscription, in Hebrew) (Isr.) (holding good faith actions or decisions of corporate officers taken in the absence of conflicts of interest, based on sufficient information, and properly documented, will enjoy a presumption of propriety despite damage or losses).

63. File No. 47621-07-16, *Horev v. B Communications Ltd.*, (Jul. 18, 2019) Nevo Legal Database (by subscription, in Hebrew) (Isr.), available at https://www.nevo.co.il/psika_html/mechozi/ME-16-07-47621-142.htm.

64. *Id.*

65. Copyright Law, 5768-2007, SH No. 2199, p. 34 (as amended by Amendment No. 5). (Isr.).

66. *Doing Business 2020*, WORLD BANK 4, (2020), <https://openknowledge.worldbank.org/bitstream/handle/10986/32436/9781464814402.pdf>.

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company incorporation requirements (as well as requirements to obtain other licenses and permits).⁶⁷

B. BOURSA KUWAIT

In recognition of Bursa Kuwait's market development efforts, Kuwait was upgraded in December 2018 to a Secondary Emerging Market by the Dow Jones Global Benchmark Indices.

Additionally, the privatization of Bursa Kuwait⁶⁸ continued during the first quarter of 2019 when the Capital Markets Authority sold forty-four percent of its shares to a consortium led by the Athens Stock Exchange. The final phase of the privatization process (i.e., Kuwaiti nationals subscribing to fifty percent of Bursa Kuwait share capital) was completed in December 2019. The involvement of major international stock market operators and local Kuwaiti financial institutions in the privatization has been a major boost to the local capital markets sector.

In order to further enhance the regulatory and organizational framework of Bursa Kuwait, the Rulebook promulgated in 2018 was modified in April 2019 with the issuance of the second version of the Rulebook. The modified Rulebook recognizes and regulates certain new transactions, including swaps, short-selling, security lending, and borrowing. It also amends certain rules governing the execution of trades, the sale of five percent or more of shares by public auction, tender offers, and off-market trades.⁶⁹

C. BANKING SECTOR

Until December 2018, non-Kuwaiti investors wishing to own more than forty-nine percent of a local bank were required to obtain Council of Ministers' approval. This rule was amended by Ministerial Resolution No. 694 of 2018, and no longer limits foreign ownership to forty-nine percent, instead requiring investors who wish to acquire more than five percent of the share capital of a local bank to obtain Central Bank of Kuwait's (CBK) approval.⁷⁰

The CBK has also recognized that fintech is playing a pivotal role in innovation in traditional payment systems, as well as modern payment settlement systems involving blockchain technologies and has extended its supervisory oversight into this sector. Pursuant to CBK regulations, e-payment infrastructure service providers and agents are required to obtain

67. *Id.* at 4–5.

68. Capital Markets Authority, *Establishment of the Capital Markets Authority and Regulating Securities Activities*, Law No. 7 (2010), art. 33, <https://www.cma.gov.kw/en/web/cma/law>.

69. *Bursa Kuwait Rulebook*, BOURSA KUWAIT (April 2019), https://cis.boursakuwait.com.kw/Portal/BursaReports/BK_PR_2019_E_2910201910216385.pdf.

70. Ministerial Resolution No. 694 of 2018, 11 Dec. 2018 (Kuwait).

approval to operate e-payment platforms and must observe anti-money laundering and counter-terrorism financing regulations.⁷¹

VIII. Lebanon

The economic crash of 2019 signaled itself as early as 2016.⁷² In addition to corruption, crumbling infrastructure, and lacking social services, the Lebanese faced monetary restrictions. Obtaining U.S. dollars became harder,⁷³ and the Central Bank applied a two-tier system for distinguishing importers of essential goods.⁷⁴

On October 17, 2019, the Minister of Telecommunications proposed taxing WhatsApp calls,⁷⁵ prompting thousands to join in the streets demanding “the fall of the system.” People from different ages, sects, regions, gender, and social classes,⁷⁶ joined in protesting against inequality,⁷⁷ economic crisis, dubious financial measures,⁷⁸ corruption, disastrous environmental policies, and above all, the neoliberal system.

A few days into protests, the national unity government requested a deadline to introduce a plan. The economic paper, prolonging the policies of the system, was rejected by protesters⁷⁹ and the government resigned. Banks closed for two weeks, citing the security situation, when in fact they were unable to provide markets with liquidity,⁸⁰ despite transferring money

71. *CBK Resolution No. 44/430 of 2018*, CENTRAL BANK OF KUWAIT, https://www.cbk.gov.kw/en/images/38part2-142658_v10_tcm10-142658.pdf.

72. Dan Azzi, *Bloomberg Lebanon’s Richest Need To Take a Haircut*, BLOOMBERG (Nov. 7, 2019), https://www.bloomberg.com/opinion/articles/2019-11-07/lebanon-s-richest-need-to-take-a-haircut?fbclid=IwAR2hT2-n37Gv1oVYAMccXNY7iQf6g0BF5lio6Z3wfs_mFO14bZHDfVzT8Rk.

73. Stefanie Dekker, *Is Lebanon on Brinks of Collapse*, AL JAZEERA (Nov. 2019) <https://www.aljazeera.com/news/2019/11/lebanon-brink-bankruptcy-191110074708847.html>.

74. Sahar Al Attar, *A Chronicle of an Announced Crisis*, LE COMMERCE DU LEVANT (Nov. 1, 2019), <https://www.lecommercedulevant.com/article/29402-les-raisons-de-la-colere>.

75. *Lebanon protests: How WhatsApp tax anger revealed a much deeper crisis*, BBC NEWS (Nov. 7, 2019), <https://www.bbc.com/news/world-middle-east-50293636>.

76. Mara Mordecai, *Protests in Lebanon highlight ubiquity of WhatsApp, dissatisfaction with government*, PEW RESEARCH CENTER (Nov. 19, 2019), <https://www.pewresearch.org/fact-tank/2019/11/19/protests-in-lebanon-highlight-ubiquity-of-whatsapp-dissatisfaction-with-government/?fbclid=IwAR2sPqzoT9I34Z5joSqS5eYHUdWXm9pFwZLH7yywcb0dfMUkrfotAQk1Dpw>.

77. Lydia Assouad, *Lebanon’s rent economy has generated extreme levels of inequality*, LE MONDE (Nov. 18, 2019), https://www.lemonde.fr/idees/article/2019/11/18/l-economie-rentiere-libanaise-a-engendre-des-niveaux-d-inegalite-extremes_6019538_3232.html.

78. *Is Lebanon’s central bank governor to blame for fuel shortages?* AL JAZEERA (Nov. 15, 2019), <https://www.aljazeera.com/ajimpact/lebanon-central-bank-governor-blame-fuel-shortages-191115175845408.html>.

79. Natalia Sancha, *Libano toma la calle para pedir la salida del Gobierno y un adelanto electoral*, EL PAÍS (Oct. 25, 2019), https://elpais.com/internacional/2019/10/25/actualidad/1572030291_790052.html?prm=enviar_email.

80. Stefanie Dekker, *Lebanon Banks Remain Closed*, AL JAZEERA (Nov. 13, 2019), <https://www.aljazeera.com/news/2019/11/lebanon-banks-remain-closed-191113055759454.html>.

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abroad for wealthy clients. As a result, banks adopted aleatory measures enforcing unofficial capital control,⁸¹ treating customers according to their wealth.⁸²

The ruling class has blamed the revolution for the state of the nation, fighting protesters morally and physically with hired aggressors, propaganda, and the security forces.⁸³ A minority of the ruling class has unsuccessfully attempted to align itself with protesters.

IX. Libya

Legislative reform in Libya remains thwarted by political struggle, as ongoing military conflicts have stalled legislative and judicial processes, and the fracturing of the country limits the application of law and the reach of judicial authority.⁸⁴ Consequently, companies are enforcing claims against Libyan debtors in other jurisdictions. For instance, General Dynamics United Kingdom Limited has successfully petitioned the Court of Appeal of England and Wales to enforce an International Chamber of Commerce arbitral award against the State of Libya.⁸⁵

Criminal investigations by local authorities in connection with war crimes and crimes against humanity have also stalled. While the Public Prosecutor in Tripoli has issued arrest warrants against prominent leaders of armed groups in early 2019, investigations are not progressing.⁸⁶

X. Morocco

A. EDUCATION LAW

In July 2019, Morocco's Parliament passed the proposed Education Bill, Law 51.17, stipulating French is the language of instruction for scientific

81. Dana Khraiche, *Capital Control Seen on the Cards for Lebanon as Crisis Deepens*, REUTERS (Oct. 31, 2019), <https://www.dailystar.com.lb/Business/Local/2019/Oct-31/494666-capital-controls-seen-on-the-cards-for-lebanon-as-crisis-deepens.ashx>.

82. Samia Nakhoul & Lisa Barrington, *Banks will seek to stop money leaving Lebanon when doors open: sources*, REUTERS (Oct. 31, 2019), <https://www.reuters.com/article/us-lebanon-protests-banks/banks-will-seek-to-stop-money-leaving-lebanon-when-doors-reopen-sources-idUSKBN1XA2QH>.

83. *A Major Attack by Supporters of the Amal Movement and Hezbollah on the Demonstrators at the Ring Bridge*, AL JADEED TV (Nov. 25, 2019), <https://www.aljadeed.tv/arabic/news/local/2411201994>.

84. *See A Quick Guide to Libya's Main Players*, EUROPEAN COUNCIL ON FOREIGN RELATIONS (2019), https://www.ecfr.eu/page/-/Lybias_Main_Players_Dec2016_v2.pdf.

85. *Gen. Dynamics United Kingdom Ltd. v. Libya* [2019] EWCA (Civ) 1110 (Eng.).

86. International Commission of Jurists, *Accountability for Serious Crimes under International Law in Libya: An Assessment of the Criminal Justice System*, MINISTRY OF FOREIGN AFF. OF NETH. (2019), <https://www.icj.org/wp-content/uploads/2019/07/Libya-Accountability-serious-crimes-Publications-Reports-Thematic-reports-2019-ENG.pdf>.

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and technical subjects.⁸⁷ The law was adopted a week after the Moroccan Parliamentary Commission for Teaching, Culture, and Communication approved the framework. In addition to implementing foreign languages in these subjects, the law also requires Tamazight (Berber) to be taught in all schools.

Both Parliament and Moroccans remain divided on two provisions, Articles 2 and 31.⁸⁸ Article 2 specifies that scientific and technical subjects can now be taught in foreign languages through the pedagogy, “Linguistic Alternation,” defined as a “progressive educational choice used in multilingual education, in an aim to diversify the teaching of languages . . . while prioritizing Morocco’s two official languages (Arabic and Tamazight).” Article 31 states that “upon completing high school, students should have mastered both Arabic and Tamazight in addition to two foreign languages.”⁸⁹

B. CIVIL SOCIETY ACTIVISM

“We, Moroccan citizens, declare that we are outlaws,” read the statement by hundreds of Moroccan women on September 9, 2019, following the arrest of journalist Hajar Raissouni for “abortion” and “sexual relations outside wedlock.”⁹⁰ Article 490 of the Criminal Code punishes sexual relations out of wedlock, while also forbidding all abortions unless the mother’s life is in danger.

At the initiative of writers Leila Slimani and Sonia Terrab, more than 490 Moroccans signed a manifesto denouncing the “liberticidal laws” of the Criminal Code and launching a “national debate on individual freedoms.”⁹¹

87. See Maulline Gragau, *Morocco’s Controversial New Education Law Sparks Outrage*, THE AFRICAN EXPONENT (July 23, 2019), <https://www.africanexponent.com/post/10606-morocco-parliament-adopts-new-controversial-education-law>.

88. See Tamba Francois Koundouno, *Morocco’s House of Councilors Approves Controversial Education Bill*, MOROCCO WORLD NEWS (Aug. 3, 2019), <https://www.moroccoworldnews.com/2019/08/279669/morocco-house-councilor-controversial-education-bill/>; Saadeddine Othmani, *Arabic enters university education under compulsory law in Morocco for first time*, MIDDLE EAST MONITOR (Aug. 5, 2019), <https://www.middleeastmonitor.com/20190805-saadeddine-othmani-arabic-enters-university-education-under-compulsory-law-in-morocco-for-first-time/>; *Morocco activists, politicians oppose ‘Frenchification’ of education system*, MIDDLE EAST MONITOR (Aug. 10, 2019), <https://www.middleeastmonitor.com/20190810-morocco-activists-politicians-oppose-frenchification-of-education-system/>; Yahia Hatim, *Moroccan Education Minister Urges Schools to Implement New Law on Use of French in Technical Subjects*, MOROCCO WORLD NEWS (Aug. 28, 2019), <https://www.moroccoworldnews.com/2019/08/281313/minister-urges-schools-implement-french/>.

89. See Margot Eliason & Kawtar Ennaji, *New Framework Law Promotes Multilingual Education in Morocco*, MOROCCO WORLD NEWS (July 17, 2019), <https://www.moroccoworldnews.com/2019/07/278437/new-law-multilingual-education-morocco/>.

90. *Moroccan women say they are abortion ‘outlaws’ in protest at journalist’s trial*, FRANCE24 (Sept. 23, 2019), <https://www.france24.com/en/20190923-morocco-women-sex-abortion-manifesto-protest-journalist-raissouni-leila-slimani>.

91. See *We, Moroccan citizens, declare that we are outlaws*, TLAXCALA’S MANIFESTO (Sept. 23, 2019), <http://www.tlaxcala-int.org/article.asp?reference=27071>.

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The signatories of the manifesto declared that they have broken their country's "unfair and obsolete laws." "We are having sex outside wedlock. We are suffering, enabling or being complicit of abortion."⁹²

XI. Oman

A series of new laws were issued in 2019, aiming to modernize the Sultanate's business and investment environment, and encourage the private sector to increase its role in infrastructure development. Some key changes include the introduction of the: Commercial Companies Law,⁹³ Foreign Capital Investment Law,⁹⁴ Privatisation Law,⁹⁵ Public Private Partnerships Law,⁹⁶ Bankruptcy Law,⁹⁷ Takeover Code,⁹⁸ and changes to the Omani tax system regarding withholding tax and the introduction of an Excise Law.⁹⁹

The new Commercial Companies Law makes sweeping changes to the establishment and administration of commercial companies established in Oman, including the introduction of a commercial entity known as the single shareholder company¹⁰⁰ and specific provisions relating to Sukuks.¹⁰¹

The Privatization Laws and Public Private Partnership Laws seek to improve and streamline processes for introducing private investment into public services. The Public Private Partnership Law introduces a legal framework for the government to invite private sector operators to provide services and undertake activities where the government had been engaged exclusively.¹⁰²

Pursuant to the Takeover Code, a person intending to acquire twenty-five percent or more of the voting rights of a company listed on the Muscat Securities Market is obliged to make an offer to all remaining shareholders of the target company.¹⁰³ The requirement also applies when a person

92. *Id.*

93. Royal Decree No. 18, Feb. 13, 2019, Promulgating the Commercial Companies Law, *in* Official Gazette of Oman, <https://www.dentons.com/en/insights/alerts/2019/march/6/the-oman-update-official-gazette-1281>.

94. Royal Decree No. 50, Jul. 1, 2019, Promulgating the Foreign Capital Investment Law, *in* Official Gazette of Oman, <http://www.mola.gov.om/eng/legislation/decrees/details.aspx?Id=1091&type=L>.

95. Royal Decree No. 51, Jul. 7, 2019, *in* Official Gazette of Oman, Privatization Law.

96. Royal Decree No. 52, Jul. 1, 2019, *in* Official Gazette of Oman, Public Private Partnership Law.

97. Royal Decree No. 53, Jul. 1, 2019, *in* Official Gazette of Oman, Bankruptcy Law.

98. Royal Decree No. 2, May 9, 2019, *in* Official Gazette of Oman, Takeover and Acquisition Regulation for Public Joint Stock Companies (draft), [https://www.cma.gov.om/documents/en/OmanTakeOverandAcquisitionRegulationDraft\(April%202015\).pdf](https://www.cma.gov.om/documents/en/OmanTakeOverandAcquisitionRegulationDraft(April%202015).pdf).

99. Royal Decree No. 23, Mar. 13, 2019, *in* Official Gazette of Oman, Excise Tax Law, <https://assets.kpmg/content/dam/kpmg/om/pdf/kpmg-om-excise-tax-royal-decree.pdf>.

100. Royal Decree No. 18, Feb. 13, 2019, *in* Official Gazette of Oman, Promulgating the Commercial Companies Law, ch. 7, art. 291.

101. *Id.* at ch. 3, art. 149–59.

102. Royal Decree No. 52.

103. Royal Decree No. 2, ch. 3 (describing the conditions for takeover and acquisition offers).

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holding twenty-five percent of voting shares or rights increases its stake by acquiring additional shares carrying more than two percent of the voting shares in any six month period from the date of first purchase.

On June 11, 2019, the Secretariat General for Taxation issued a circular stating that withholding taxes payable on the payment of dividends and interest payable by Omani companies on their overseas borrowings stand suspended and deferred for a period of three years. Also, the Excise Law introduced a tax on importation of products causing negative health effects, including the introduction of a 100 percent tax on alcohol, tobacco, and energy drinks.¹⁰⁴

On January 1, 2020, the new Foreign Capital Investment Law will be introduced, permitting full foreign ownership for certain economic activities, subject to approval and registration with an “Investment Service Center,” to be established within the Omani Ministry of Commerce and Industry. The Bankruptcy Law take effects on July 1, 2020, clarifying the insolvency procedures, declaration and consequences of bankruptcy, preventive compositions, and mechanisms by which insolvent companies may be permitted to reorganize and restructure.

XII. Pakistan

Through 2019 Pakistan has been implementing significant changes in its legislative and regulatory landscape, brought about by appropriate judicial action. For example, when adjudicating a writ petition, the Islamabad High Court decided¹⁰⁵ that the Pakistan Telecommunication Authority (PTA) must draft and submit rules governing PTA’s exercise of seemingly discretionary power to block websites, per the Prevention of Electronic Crimes Act, 2016.¹⁰⁶ Accordingly, the ruling would enforce transparency regarding the current ambiguous blocking mechanism because the PTA would be obligated to work within a defined framework.

Another recent development was the introduction of the e-court system in the Supreme Court, established with a video-link between the Court in Islamabad and its Karachi bench, allowing proceedings via video conference.¹⁰⁷ This represents a huge step towards minimizing costs, avoiding time wastage, and promoting efficiency to reduce case backlog.

Finally, in a judgment penned by the present Chief Justice of Pakistan, directions have been issued to all courts to abstain from showing any

104. Royal Decree No. 23, at §11.

105. *Awami Workers Party v. Pakistan Telecommunication Authority*, (2019) Writ Petition No. 634 of 2019, available at <https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2019/10/Order-in-AWP-Website-Blocking-Case.pdf>.

106. Prevention of Electronic Crimes Act, 2016, THE GAZETTE OF PAKISTAN EXTRAORDINARY, Nov. 8, 2016.

107. See Naem Sahoutara, *SC makes history by hearing case at Karachi registry via e-Court system* THE DAWN (May 27, 2019), <https://www.dawn.com/news/1484909/sc-makes-history-by-hearing-case-at-karachi-registry-via-e-court-system>.

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leniency towards the delivery of false testimony.¹⁰⁸ This is expected to form an integral component of criminal jurisprudence. According to that judgment, “Truth is the foundation of the criminal justice system and justice is the core and bedrock of a civilized society and, thus, any compromise on truth amounts to a compromise on a society’s future as a just, fair and civilized society.”¹⁰⁹

XIII. Qatar

A. PROTECTION OF THE ARABIC LANGUAGE

In 2019, the legislature issued the Protection of the Arabic Language Law.¹¹⁰ The law addresses both the public and private sectors, seeking to preserve the use and relevance of the Arabic language in the Emirate, where with a high number of expatriates, foreign languages, particularly English, are dominant in public life. The law requires all ministries, government agencies, and other public bodies and institutions to use Arabic in meetings and discussions, decisions, regulations, contracts, and correspondence.¹¹¹

B. FOREIGN INVESTMENT LAW

One of the most significant legal developments for the business community in 2019 involves the Foreign Capital Investment Law of Qatar (Law No. 13 of 2000) being replaced by Law No. 1 of 2019 (the Foreign Investment Law), even though the law has not yet entered into force.

The restriction that foreigners generally cannot hold more than forty-nine percent of private Qatari companies is superseded. As such, ownership above the level of forty-nine percent is now permitted, subject to consent from the Ministry of Commerce and Industry.¹¹² In addition, Cabinet approval is needed for foreign shareholding above forty-nine percent in publicly listed companies.¹¹³ No guidelines concerning the exercise of the Ministry’s discretionary approval have yet been released, although forthcoming executive regulations are expected to dictate. In the event of an unfavorable Ministry decision, aggrieved parties can appeal only to the Minister of Commerce and Industry.

Non-Qataris are still restricted from any holdings in banks, insurance companies, or commercial agencies,¹¹⁴ and foreign involvement may only be

108. See Abdul Rasool Syed, *A major stumbling block for justice* PAKISTAN TODAY (Oct. 25, 2019), <https://www.pakistantoday.com.pk/2019/10/25/a-major-stumbling-block-for-justice/>.

109. *Id.*

110. Law No.7 of 2019, Law for the Protection of the Arabic Language (Qatar).

111. *Id.* at art. 3–4.

112. Law No. 1 of 2019, On Regulating Non-Qatari Capital Investment in the Economic Activity, art. 3 (Qatar).

113. *Id.* at art. 7.

114. *Id.* at art. 4.

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permitted by resolution of the Cabinet.¹¹⁵ The Cabinet is also empowered to place restrictions on other fields of activities.¹¹⁶ The prior restrictions for businesses trading in real estate have been removed; however, the restrictions for land ownership by foreigners will still apply. Finally, companies and individuals authorized by Qatar Petroleum to perform petroleum operations or which aim to invest in the oil, gas, and petrochemical sector are completely exempted from the provisions of the Foreign Investment Law.¹¹⁷

XIV. Saudi Arabia

On January 1, 2019, the Transfer Pricing Bylaws issued by the General Authority for Tax and Zakat,¹¹⁸ providing the first comprehensive regulations for transfer pricing practices, entered into force. According to the bylaws, persons and entities may be requested to provide transfer pricing documentation. The required form and content of such documentation is generally in line with the requirements of the OECD's Base Erosion and Profit Shifting Action 13 for Country-by-Country Reporting. In the spring, the legislature passed the Competition Decree.¹¹⁹ The Executive Regulations¹²⁰ to the Competition Decree were issued in September and the new competition regime was enacted in the third quarter,¹²¹ expanding merger control measures considerably. The Executive Regulations include additional details for notification and merger control procedures,¹²² and introduce a turnover-based notification threshold pursuant to which notification is required for combined annual turnover of the parties to the transaction exceeding Saudi Arabian Rial 100 million.¹²³ This threshold is additional to the existing market share-based threshold.

The Saudi Arabia Monetary Authority (SAMA), the Kingdom's financial regulatory authority, has updated its Guidelines for Banking Licenses.¹²⁴ The new guidelines seek to increase transparency and ease registration of foreign financial institutions, thereby boosting Saudi Arabia as a regional

115. *Id.*

116. *Id.*

117. *Id.* at art. 25.

118. GENERAL AUTHORITY OF ZAKAT & TAX, TRANSFER PRICING GUIDELINES (2019), <https://gazt.gov.sa/en/HelpCenter/guidelines/Documents/GAZT%20Transfer%20Pricing%20guidelines%20-%20EN.pdf>.

119. Royal Decree No. M/75, Mar. 27, 2019, Competition Law, *in* Official Gazette of Saudi Arabia.

120. Executive Regulations to Royal Decree M/75 of 29/6/1440H (2019), published on 20/7/1440H, entered into force on 30 September 2019, *available at* https://gac.gov.sa/pdf/comp_law_regulations.pdf [hereinafter Executive Regulations].

121. Royal Decree No. 75, at art. 28.

122. Executive Regulations at art. 11.

123. *Id.* art. 12.

124. SAMA *Banking Licensing Guidelines and Minimum Criteria* SAUDI ARABIAN MONETARY AUTH. (Dec. 2018), http://www.sama.gov.sa/en-US/Laws/BankingRules/SAMA_Bank_Licensing_Criteria_en.pdf.

financial center. The revised guidelines provide SAMA's minimum licensing criteria for applicants seeking to carry out banking activities in Saudi Arabia,¹²⁵ while explicitly permitting foreign banks to establish branches.¹²⁶ In principle, branches of foreign banks will be subject to the same legislative and prudential requirements as locally-incorporated banks. But the SAMA's prudential standards provide exceptions; most notably, foreign banks are not required to maintain capital in Saudi Arabia.¹²⁷ Yet, SAMA reserves the right to impose capital requirements on a case by case basis, such as setting where the branch plans to conduct high-risk business or wishes to focus on activities that require high levels of capacity or competence.¹²⁸ While the new SAMA guidelines do not specify which specific activities fall within the scope of this definition, it is expected that branches engaged with large numbers of customers, or conducting business that may affect the financial stability of the wider market, will likely trigger capital requirements.

XV. Tunisia (1)

A. THE CONCEPT OF EFFECTIVE BENEFICIARY

The concept of "Real or Effective Beneficiary" was recently introduced in Tunisian law. The effective beneficiary is defined as any natural person who owns or exercises actual final control or authority, direct or indirect, over the legal entity, the legal arrangement, or the structures of the administration or the management, as well as any natural person on behalf of whom and for the benefit of whom the transactions are performed by a natural person, a legal entity, or a legal arrangement. The definition of effective beneficiary also encompasses any natural person who has the status of partner, shareholder, or member, in a legal entity or arrangement and an amount of contribution in capital or voting rights, enabling such natural person the actual control over it.¹²⁹

With respect to companies, the Effective Beneficiary is identified as being:¹³⁰

(1) The natural person or persons who hold directly or indirectly a percentage equal to or exceeding twenty percent of the capital or voting rights;

(2) If the identity of the Effective Beneficiary(ies) is unclear or he was not determined based on the criterion referred to under item (1), the natural person or persons exercising in any way either in the facts or legally, a control or a power over the management bodies or the administration, or

125. *Id.* at § 2.

126. *Id.* § 2(1)(4).

127. *Id.* § 3(A)(10).

128. *Id.* at § 3(A)(11).

129. Law No. 2018-52 of 29 Oct. 2018, on the National Registry of Enterprises (Tunis.).

130. Governmental Decree No. 2019-54 of 21 Jan. 2019, Setting the Methods and Criteria of the Determination of the Effective Beneficiary (Tunis.).

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the direction, or over the General Meeting or over the course of business of the legal entity; or

(3) In case the Effective Beneficiary is not determined based on the criteria referred to under items (1) and (2), the Effective Beneficiary is the natural person occupying the position of main manager.

The list of the Effective Beneficiary must be filed with the National Registry of Enterprises. The filing requires that certain information and documents be provided with respect to each of the Effective Beneficiary identified.¹³¹

XVI. Tunisia (2)

A. PRESIDENTIAL ELECTIONS INTRODUCED

Presidential elections planned for November were introduced after the death of President Beji Caid Essebsi on July 25, 2019, to ensure a new president would take office within the constitutionally required ninety days. Analysts suggest that the election of law professor Kais Saied over better-known names, including many associated with Tunisia's revolution or the old regime of overthrown president Zine al-Abidine Ben Ali, reflects widespread discontent with the ailing economy—a key factor pushing Tunisians onto the streets in 2011.¹³²

XVII. United Arab Emirates

On April 30, the UAE Economic Substance Resolution was enacted, requiring certain businesses to maintain demonstrable economic substance in the UAE as a means of establishing compliance with EU standards.¹³³ On July 2, 2019, the UAE Cabinet of Ministers issued the list provided in the Foreign Direct Investment Law,¹³⁴ allowing relaxation of foreign ownership restrictions on entities engaged in designated onshore sectors. The list comprises 122 activities in which companies with up to 100 percent foreign shareholding may engage. It also imposes additional requirements on entities with over forty-nine percent foreign shareholding, in particular, high minimum share capital requirements.

131. *Tunisia Clarifies The Determination And Disclosure Of Ultimate Beneficiaries*, TPA GLOBAL (Feb. 7, 2019), <https://www.tpa-global.com/nieuws/2019-02-07/tunisia-clarifies-the-determination-and-disclosure-of-ultimate-beneficiaries>.

132. Michael Safi, *Tunisia Election: 'Robocop' Kais Saied wins Presidential Runoff*, GUARDIAN (Oct. 14, 2019), <https://www.theguardian.com/world/2019/oct/14/tunisia-election-exit-polls-point-to-landslide-win-for-robocop-kais-saied>.

133. Economic Substance Regulations, No. 31 of 2019, Official Gazette of U.A.E., Sept. 11, 2019, available at https://www.mof.gov.ae/en/lawsAndPolitics/CabinetResolutions/Documents/Cabinet%20of%20Ministers%20Resolution%20No%20%2031%20of%202019%20Concerning%20Economic%20Substance_English.pdf.

134. Foreign Direct Investment Law, No. 19 of 2018, Official Gazette of U.A.E., Sept. 30, 2018, available at <https://jiaac.it/wp-content/uploads/2018/12/Federal-Law-Regarding-Foreign-Direct-Investment.pdf>.

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In July 2019, the Central Bank introduced new corporate governance regulations for banks.¹³⁵ These regulations are issued as part of a comprehensive effort by the Bank to crisis-proof the country's banking and follow the introduction of new capital adequacy requirements under the Standards re Capital Adequacy¹³⁶ issued by the Central Bank at the end of June 2018, and a new banking law.¹³⁷ The new corporate governance regulations align standards in the banking sector with international best practices, and expand the existing regime to establish an overarching framework for minimum acceptable standards.¹³⁸ Ultimate responsibility and accountability for implementing the corporate governance standards falls to banks' boards.¹³⁹ The regulation's scope is not restricted to entities licensed by the Central Bank, but also applies to all international banks or groups of banks represented in-country.¹⁴⁰ International banks or groups of banks maintaining branches or subsidiaries in-country must ensure compliance with the minimum standards set by Circular 83/2019. With the Standards re Capital Adequacy, the Central Bank seeks further stability by ensuring that banks' risk exposure is backed by an adequate capital basis. The standards thus reaffirm the application of the Basel II Regulations implemented in 2009, and implements the Basel III Regulations, ensuring that banking regulations remain in line with international standards.¹⁴¹

135. Corporate Governance Regulation for Banks, No. 83 of 2019, Official Gazette of U.A.E., July 18, 2019, *available at* <https://www.centralbank.ae/en/laws-and-regulations/regulations/banking>.

136. Standards Regarding Capital Adequacy, No. 72 of 2019, Central Bank of the U.A.E., June 2019, *available at* https://www.centralbank.ae/sites/default/files/2019-07/Capital%20Adequacy%20Standards%20-%20June%202019_0.pdf.

137. The Central Bank & Organization of Financial Institutions and Activities Law, No. 14 of 2018, Official Gazette of U.A.E., Sept. 30, 2018, *available at* <https://www.mof.gov.ae/en/laws/AndPolitics/govLaws/Documents/Decretal%20Federal%20Law%20No.%20%2814%29%20of%202018%20Regarding%20the%20Central%20Bank.pdf>.

138. Corporate Governance Regulations for Banks, at art. 1.

139. *Id.* art. 2.

140. *Id.* at Scope of Application.

141. Standards Regarding Capital Adequacy, No. 72 of 2019, Central Bank of the UAE, June 2019.

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KAVITA MOHAN, ASEEM CHAWLA, KRITI JAISWAL, TUSHAR RUSTGI,
JONATHAN BLANK, NAMRATA PATODIA RASTOGI,
ARSHAD (PAKU) KHAN, EBAAD NAWAZ KHAN,
ARUNABH CHOUDHARY, ADITI JOSHI, RISHABH RELA, AMIT GUPTA,
AND KATHERINE MADDOX DAVIS*

This article surveys significant legal developments in South Asia and Oceania during the calendar year 2019.¹

I. Asian Update on Climate And Clean Energy Policies

A. INDIA

At the UN Secretary General's Climate Action Summit in New York in September 2019, India launched the Coalition for Disaster-Resilient Infrastructure, a partnership to (1) expand the development of resilient infrastructure, (2) retrofit existing infrastructure for resilience, and (3) enable a measurable reduction in infrastructure losses.² Formed by India, the partnership brings together developed and developing countries. Its founding members include Australia, Bhutan, Fiji, Indonesia, Italy, Japan, Maldives, Mexico, Mongolia, Rwanda, Sri Lanka, and the United Kingdom.³

* The committee editors were Kavita Mohan, Of Counsel, GDLSK LLP (Washington D.C.); Aseem Chawla, Founder, Kriti Jaiswal, Associate, and Tushar Rustgi, Associate, at ASC Legal, Solicitors & Advocates (New Delhi, India); and Jonathan Blank, North American Representative, Surana & Surana International Attorneys (Chennai, India). Section I was authored by Namrata Patodia Rastogi, Consultant, World Bank (Washington D.C.). Section II was authored by Arshad (Paku) Khan, Executive Director, Khaitan & Co. (New Delhi, India and San Francisco, CA), and Ebaad Nawaz Khan, Associate, Khaitan & Co. (New Delhi, India). Section III was authored by Arunabh Choudhary, Partner, Aditi Joshi, Senior Associate, and Rishabh Rela, Trainee Associate, Juris Corp Advocates and Solicitors (Bengaluru, India). Section IV was authored by Amit Gupta, Counsel at the Supreme Court of India and the Delhi High Court (New Delhi, India). Section V was authored by Katherine Maddox Davis, Associate Attorney, Gibson, Dunn & Crutcher (Washington D.C.).

1. The information provided in the article is intended for informational purposes only and does not constitute legal opinion or advice. Readers are requested to seek formal legal advice prior to acting upon any of the information provided herein.

2. Delia Paul, *India Launches Global Coalition for Disaster-Resilient Infrastructure*, INT'L INST. FOR SUSTAINABLE DEV. (Oct. 3, 2019), <https://sdg.iisd.org/news/india-launches-global-coalition-for-disaster-resilient-infrastructure/>.

3. *Id.*

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1. *Electric Vehicles*

The Ministry of Heavy Industry and Public Enterprises announced the second phase of the Faster Adoption and Manufacturing of (Hybrid &) Electric Vehicles (FAME-II) program⁴ in March 2019. The objective of this phase is to accelerate the adoption of electric mobility and develop a manufacturing ecosystem in India. Implementation includes promulgating demand incentives, establishing a network of charging stations, and undertaking information, education, and communication activities.⁵ It also establishes an Inter-Ministerial Committee for overall monitoring, sanctioning, and implementation of the Scheme.⁶

2. *Renewables*

India is continuing to strengthen its action on clean energy as Prime Minister Modi announced more than doubling the share of renewable energy to 450 GW.⁷ At the state level, increased ambition is being seen with the state of Gujarat aiming for at least thirty GW of renewable energy generation capacity by 2022.⁸ Gujarat announced that no permits will be issued for new thermal plants in the state, which are largely coal.⁹ Similarly, Chhattisgarh, home to the country's third-largest coal reserves, recently announced that it will not build any new coal power plants.¹⁰

3. *Cooling*

The Ministry for Environment, Forest and Climate Change announced the India Cooling Action Plan (ICAP) in March 2019, one of the first cooling plans in the world.¹¹ The plan has a long-term vision to address the cooling requirement across sectors, and it lists actions to reduce the cooling demand. Specifically, the plan aims to reduce cooling demand across sectors by

4. Pravin L. Agrawal, Gov't of India, *Notification Regarding Scheme for Faster Adoption and Manufacturing of Electric Vehicles in India Phase II (FAME India Phase II)*, GAZETTE OF INDIA, Mar. 8, 2019, at Part-II §3(II) ¶ 8, <https://dhi.nic.in/writereaddata/UploadFile/publicationNotificationFAME%20II%208March2019.pdf>.

5. *Id.*

6. *Id.*

7. Mandvi Singh, *PM Modi's Ambition For 450 GW Renewable Energy Comes Amidst Slowdown*, DOWN TO EARTH (Sept. 26, 2019), <https://www.downtoearth.org.in/blog/energy/pm-modi-s-ambition-for-450-gw-renewable-energy-comes-amidst-slowdown-66961>.

8. *Gujarat Sets 30GW Renewable Energy Goal by 2022, 17% of India's Overall Target*, INST. FOR ENERGY ECON. & FIN. ANALYSIS (July 3, 2019), <https://ieefa.org/gujarat-sets-30gw-renewable-energy-goal-by-2022-17-of-indias-overall-target/>.

9. *Gujarat Govt Not to Issue Permits for New Thermal Plants*, INDIAN EXPRESS (Sept. 9, 2019), <https://indianexpress.com/article/india/gujarat-coal-thermal-power-plants-vijay-rupani-solar-carbon-emission-adani-clean-energy-5975547/>.

10. Akshat Rathi & Kuwar Singh, *One of India's Largest Coal-mining States Says It Will Not Build New Coal Power Plants*, QUARTZ INDIA (Sept. 16, 2019), <https://qz.com/india/1709483/after-gujarat-indias-chhattisgarh-wont-build-coal-power-plants/>.

11. Press Release, Ministry of Env't, Forest & Climate Change, *India Cooling Action Plan Launched* (Mar. 8, 2019), <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1568328>.

twenty percent to twenty-five percent by 2037–2038, reduce refrigerant demand by twenty-five percent to thirty percent by 2037–2038, and reduce cooling energy requirements by twenty-five percent to forty percent by 2037–2038.¹² It also recognizes “cooling and related areas” as a research area and commits to providing training and certification of technicians.¹³

B. NEW ZEALAND

In November 2019, the New Zealand government passed a law that committed the country to reduce all greenhouse gas emissions (except for biogenic methane) to zero by 2050.¹⁴ For biogenic methane, the Act calls for reducing emissions by ten percent below 2017 levels by 2030, and then by twenty-four percent to forty-seven percent by 2050.¹⁵

C. SINGAPORE

The Singapore government approved the Carbon Pricing Act, which came into operation on January 1, 2019.¹⁶ The carbon tax requires all industrial facilities that emit direct greenhouse gas (GHG) emissions equal to or above 2000 tCO₂e annually to be registered as reportable facilities and submit annual emissions reports.¹⁷ Industrial facilities emitting GHG emissions equal to or above 25,000 tCO₂e are subject to a carbon tax.¹⁸ The tax rate is set at a rate of \$5 (SGD) per ton of GHG emissions from 2019 to 2023.¹⁹ Following a review in 2023, the government plans to ramp up the tax rate to \$10 to \$15 (SGD) per ton of GHG emissions by 2030.²⁰

II. Ease of Doing Business in India Has a Competition Law Aspect

A. BACKGROUND

Since 2014, India has been one of the most improved economies in terms of ease of doing business (EODB) in the World Bank’s Doing Business annual report.²¹ India’s massive progress is a result of the Indian government’s continuous efforts to make the country an easier place to do business, and

12. *Id.*

13. *Id.*

14. Climate Change Response (Zero Carbon) Amendment Act 2019 (136-3), sch 2, sec 50 (N.Z.).

15. *Id.*

16. Carbon Pricing Act 2018 (No. 23 of 2018) (Sing.).

17. *Id.* at No. 11.

18. *Id.* at Schedule 2 Part 1.

19. *Id.* at Schedule 3 Part 1.

20. National Environment Agency, Carbon Tax (2019), <https://www.nea.gov.sg/our-services/climate-change-energy-efficiency/climate-change/carbon-tax>.

21. *Doing Business 2020—Sustaining the pace of reforms*, WORLD BANK (Oct. 24, 2019), <https://www.worldbank.org/en/news/feature/2019/10/24/doing-business-2020-sustaining-the-pace-of-reforms>.

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competition law has also been an important part of the changes to the Indian regulatory landscape. Recent noteworthy developments include the Indian government's creation of the Competition Law Review Committee (the CLRC) and the introduction of the "Green Channel" merger control clearance.²²

B. GREEN CHANNEL: EXPEDITION, NOT EXCEPTION

The urgency to close a deal usually starts as soon as the transaction documents are signed, and many times even earlier than that. Parties notifying transactions to the Competition Commission of India (the CCI) must suspend deal consummation until the CCI gives its clearance.²³ In India, a transaction is notifiable to the CCI if no exemption applies²⁴ and certain threshold tests are met.²⁵ The tests involve an analysis of the worldwide and Indian assets and turnover of both (a) the directly transacting parties and (b) the acquiring group and the target.

The CCI can approve, modify, or reject a notified transaction. In the first stage (called Phase I) of the review process, the CCI has thirty working days to form a prima facie opinion as to whether the transaction will, or is likely to, cause an appreciable adverse effect on competition.²⁶ But the Phase I can last considerably longer than thirty working days because the clock stops for the time taken by parties in responding to CCI information requests. The CCI may also decide to conduct, either by itself or through its Director General, an exhaustive Phase II investigation.²⁷

Until 2019, there were no provisions for fast tracking of CCI approval, even for a "no issue" transaction. But on August 13, 2019, the CCI amended its merger control regulations to allow a Green Channel approval for transactions where the acquirer and the target do not overlap horizontally, vertically, or "complementarily."²⁸ If the parties to a notifiable transaction wish to obtain Green Channel approval, they have to declare this in their merger notification form. Upon filing, the CCI would grant a deemed approval immediately.

A person seeking the Green Channel route must, however, exercise caution. The CCI reserves the power to hold a Green Channel approval

22. Press Release, Ministry of Corporate Affairs, Government Constitutes Competition Law Review Committee to Review the Competition Act (Sept. 30, 2018, 12:27 PM), <https://pib.gov.in/PressReleaseDetail.aspx?PRID=1547975>.

23. The Competition Act, 2002, No. 12, Acts of Parliament, 2003 § 6(2A). (India).

24. The most commonly used exemption is the target exemption whereby a transaction is not notifiable if either the value of assets of the target in India is not more than INR 350 crore or turnover of the target in India is not more than INR 1000 crores. *Id.* § 54.

25. *Id.* § 5.

26. *Id.* § 29(1).

27. *Id.* § 29(1A).

28. Competition Commission of India [CCI], Procedure in Regard to the Transaction of Business Relating to Combinations Amendment Regulations, 2019, Gazette of India, § 2 (Aug. 13, 2019).

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void *ab initio*, if, in their view, there are overlaps.²⁹ Extra care should be taken as there is also the risk of gun jumping, which can lead to hefty monetary penalties. Parties must also proceed with caution because, at the time of writing this article, there was no authoritative guidance on the meaning of a “complementary” overlap.

Notably, the CCI allows for a pre-filing verbal and non-binding consultation (PFC) with a CCI case team. With the introduction of the Green Channel, the CCI has also expanded the scope of its guidance on PFCs to include consultations on Green Channel filings.³⁰ A PFC in Green Channel filings is likely to provide some guidance and is recommended in case the notifying parties are not sure of their eligibility for an approval under the Green Channel.

C. MORE EODB: THE CLRC

India is one of the fastest growing economies in the world. The pace of economic growth has been sustained due to a large and vibrant market that thrives on innovation and technological developments. It is, however, recognized that to reap full benefits of a market economy, an effective and modern competition law regime is necessary.³¹ In 2009, India moved to a modern competition law regime under the Competition Act from the “command and control” regime of the now-repealed predecessor legislation, namely the Monopolies and Restrictive Trade Practices Act, 1969.³²

In September 2018, after nearly a decade of enforcement of the Competition Act, the Government of India constituted the CLRC to (a) address challenges that have come to the forefront in the decade-long enforcement experience and (b) recommend appropriate changes.³³ The CLRC’s focus has been to further ease the doing of business in India, to encourage start-ups, and to meet the challenges of the new economy—goals congruent with Government of India’s larger policy initiatives.³⁴

The CLRC submitted its key recommendations to the Indian government in August 2019, which included a proposal to introduce the concept of Green Channel. Other key CLRC recommendations that could see

29. *Id.* at Schedule 4.

30. *Consultation Prior to Filing of Notice of the Proposed Combination Under Sub-Section (2) of Section 6 of the Competition Act, 2002*, COMPETITION COMM’N OF INDIA (Aug. 13, 2019), https://www.cci.gov.in/sites/default/files/cci_pdf/PFCguidancenote.pdf.

31. *Preface to The Report of the Competition Law Review Committee*, MINISTRY CORP. AFF., GOV’T OF INDIA (July 26, 2019), http://www.mca.gov.in/Ministry/pdf/ReportCLRC_14082019.pdf.

32. The Competition Act, 2002, No. 12, Acts of Parliament, 2003 § 66. (India).

33. Press Release, Ministry of Corporate Affairs, Government Constitutes Competition Law Review Committee to Review the Competition Act (Sept. 30, 2018, 12:27 PM), <https://pib.gov.in/PressReleaseDetail.aspx?PRID=1547975>.

34. Press Release, Ministry of Corporate Affairs, Report of the Competition Law Review Committee submitted to Union Finance and Corporate Affairs Minister (Aug. 14, 2019), <https://pib.gov.in/newsite/PrintRelease.aspx?relid=192629>.

implementation include introduction of settlement and commitment mechanisms for enforcement cases under the Competition Act, issuance of penalty guidelines, strengthening of the CCI's governance structure by introduction of a Governing Board, introduction of a dedicated and specialized bench in the appellate tribunal for hearing appeals under the Competition Act, and opening of CCI offices outside of the Indian capital New Delhi. These are all welcome changes, given that they foster an enabling environment for businesses and enhance the efficiency of business regulation in India.

III. An Overview of the New Consumer Protection Regime in India

As a growing economy with the third largest consumer market,³⁵ India offers huge markets for businesses (domestic and international) to trade their products and services. Acknowledging this, the Indian parliament decided to relook at the consumer protection policy in India and enacted the Consumer Protection Act 2019³⁶ (New Act or CPA 2019), replacing the previous Act of 1986 (Old Act).

The New Act defines a consumer as a person who buys any good or uses any service for a consideration.³⁷ But it does not include a person who obtains a good for resale or a good or service for commercial purpose. It covers transactions through all modes including offline, and online via electronic means, teleshopping, multi-level marketing, or direct selling.³⁸ The New Act essentially focuses on the concept of *Caveat Venditor*.

The New Act has introduced several reformatory measures and is focused on tightening the existing rules for product manufacturers, sellers, and service providers to safeguard the interests of consumers. The following are some of the crucial legal developments that have been introduced under the New Act.

A. ESTABLISHMENT OF THE CENTRAL CONSUMER PROTECTION AUTHORITY (CCPA)³⁹

CPA 2019 provides for establishment of the CCPA to promote consumer rights and to investigate matters of consumer welfare concerning unfair trade practices or false advertisements wherein consumers are affected as a class. The CCPA has been further empowered to (a) take matters *suo motu* if it is of the opinion that consumer welfare is being affected in any manner and (b) file a complaint before the respective consumer courts post

35. World Economic Forum [WEF], *Future of Consumption in Fast-Growth Consumer Markets: India*, at 8 (Jan. 2019), http://www3.weforum.org/docs/WEF_Future_of_Consumption_Fast-Growth_Consumers_markets_India_report_2019.pdf.

36. See Consumer Protection Act, 2019, No. 35, Acts of Parliament, 2019 (India).

37. *Id.* § 1(7).

38. *Id.* § 2(7).

39. *Id.* § 10.

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conducting a preliminary investigation. The CCPA, based on its investigation, can give orders to recall goods, reimburse consumers, and discontinue unfair trade practices and misleading advertisements.⁴⁰ It is pertinent to note that the CCPA is a new authority being established under the New Act.

B. PRODUCT LIABILITY⁴¹

Unlike the Old Act, the New Act has introduced the concept of product liability. The New Act has provided comprehensive provisions to segregate the liability of product manufacturer, product seller, and service provider and has specified parameters to determine on whom the liability will be imposed in case of any default. But CPA 2019 also provides certain exemptions with regard to the liability imposed on the product manufacturer, product seller, and service provider, such as: at the time of use, the product was misused, altered, or modified by the consumer; at the time of selling the product, proper warning, or instructions were provided to consumers about the way the product is to be used; the product was sold as a component to be used in the end product, and consumer has faced problems due to the use of such end product; the product was meant to be used or dispensed only by or under the supervision of an expert, and the product manufacturer had employed reasonable means to give the warnings or instructions for usage of such product to such expert or class of experts; the consumer used the product under influence of alcohol or any other drug; and the manufacturer or seller failed to inform or warn about a danger that was obvious or commonly known to the consumer of such product.⁴²

C. UNFAIR CONTRACTS⁴³ AND UNFAIR TRADE PRACTICES⁴⁴

CPA 2019 provides exhaustive definitions of the terms “unfair contracts” and “unfair trade practices” and aims to protect consumers from unilaterally skewed and unreasonable contracts that lean in favor of manufacturers or service providers. Unfair trade practices include electronic advertising that is misleading, refusal to take back or withdraw defective goods, refusal to withdraw or discontinue deficient services, or refusal to refund the consideration within the period stipulated or in the absence of such stipulation, within a period of thirty days.⁴⁵ The definition further prohibits and punishes manufacturers, sellers, or service providers for disclosing personal information of a consumer to any third person without his/her consent.⁴⁶ In view of the above, product manufacturers, sellers, and service

40. *Id.* § 18.

41. *Id.* §§ 82-87.

42. Consumer Protection Act § 87.

43. *Id.* § 2(46).

44. *Id.* § 2(47).

45. *Id.*

46. *Id.*

providers should be mindful of the aforesaid at the time of drafting agreements/terms and conditions. It is also important to note that CPA 2019 does not expressly cover online contracts, and judicial interpretation will be required in cases of click wrap contracts that are entered on e-commerce platforms wherein consumers do not have an opportunity to negotiate.

D. MISLEADING ADVERTISEMENTS⁴⁷ AND LIABILITY OF ENDORSERS⁴⁸

CPA 2019 expressly prohibits all sorts of false and misleading advertisements. It provides a thorough definition of what constitutes misleading advertisements and provides a stringent penalty of up to two years of imprisonment or a fine up to INR ten lakhs (USD 14,000) for an initial offense, and imprisonment of five years or fine of INR fifty lakhs (USD 70,000) for subsequent offenses.⁴⁹ Further, endorsement of goods and services by celebrities is also covered within the ambit of the CPA 2019. An additional onus has been placed on endorsers, apart from manufacturers and service providers, to prevent false or misleading advertisements by exercising due diligence to verify the veracity of claims made in the advertisement. Failure to do so may result in consequences including being prohibited from endorsing other products for a period of one year; subsequent offenses may extend such prohibition up to three years.⁵⁰

Apart from the above-mentioned changes, the New Act has brought numerous other changes that might affect the business strategies of entities dealing in Indian jurisdiction. Business entities will have to be mindful of the newly introduced regulatory framework to protect themselves from hefty penalties. But, it is still to be seen if the New Act has been successful in keeping the pace with the evolving consumer protection regime and is able to cover in its ambit the developments in commerce and technology that might come in the near future.

IV. Survey on Arbitration Law in India

The article surveys significant legal developments in India in the field of arbitration law in 2019.

47. *Id.* § 2(28).

48. Consumer Protection Act § 18.

49. *Id.* § 89.

50. *Id.* § 21(3).

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A. LEGISLATIVE DEVELOPMENTS

Significant changes were made to the Arbitration and Conciliation Act, 1996 (i.e., the Act)⁵¹ because of the 2019 amendments. The previous amendments to the Act were made in 2015.

Amongst the noteworthy changes, the 2019 amendments propose an “Arbitration Council of India” in Delhi,⁵² which would grade arbitral institutions based on infrastructure, the quality of arbitrators, and the performance and compliance of time limits for disposal of domestic or international commercial arbitrations.⁵³ Based on the grading, the Supreme Court/ High Court would designate arbitral institutions for appointing arbitrators.⁵⁴ An application for appointment will have to be filed before such institutions.⁵⁵ Qualifications and general norms of Arbitrators have been prescribed,⁵⁶ primarily to deal with impartiality, independence, and competence, among other things.⁵⁷

In cases where New York Convention is applicable, reference to an Arbitrator would be refused only if it appears prima facie that the arbitration agreement is null and void, inoperative, or incapable of being performed.⁵⁸ Earlier, the courts had to decide objections on merits. An award can now be challenged “on the basis of the record of the arbitral tribunal”⁵⁹ and not through additional evidence.

Some of the provisions first introduced in 2015 were also amended in 2019. For example, the timeline for arbitration proceedings has been modified.⁶⁰ An arbitral tribunal has power to pass interim measure only until the passing of an award.⁶¹ Thereafter, the power is with the concerned court only.

51. The Arbitration and Conciliation (Amendment) Act, 2019, No. 33, Acts of Parliament, 2019 (India).

52. *Id.* § 43B.

53. *Id.* § 43D.

54. *Id.* § 11(3A).

55. *Id.* §11(4).

56. *Id.* § 43J.

57. *See* Arbitration and Conciliation (Amendment) Act § 43J (The amendments regarding arbitrator appointment have yet to be notified, though).

58. The Arbitration and Conciliation Act, 1996, No. 26, 1996 (India), § 45.

59. *Id.* § 34(2)(a).

60. The Arbitration and Conciliation (Amendment) Act § 5 (noting that pleadings to be completed within six months when arbitrator/s get written notice about appointment); *Id.* § 6 (noting that award to be passed within twelve months after completion of the pleadings and this period is mandatory for international commercial arbitration).

61. The Arbitration and Conciliation (Amendment) Act § 4.

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B. NOTABLE JUDICIAL DECISIONS

The Delhi High Court consistently refused to pass anti-arbitration injunctions in 2019.⁶² The Supreme Court and the Delhi High Court indicated a clear preference for dispute resolution through arbitration. The Supreme Court emphasized the composite nature of transaction, single economic entity, and intention of parties to bind a non-signatory party to arbitration proceedings.⁶³ The Supreme Court relied on “Group of Companies” doctrine, akin to principles of agency or implied consent. But where the Supreme Court was not able to establish clear intention on the part of a Foreign Affiliate to assent, the doctrine was not applied.⁶⁴ In a pending civil proceeding, the Delhi High Court referred the matter for arbitration once it was satisfied that a commonality of interest existed amongst non-parties to an arbitration clause.⁶⁵

In *Giriraj Goel vs. Coal India Ltd.*,⁶⁶ the Supreme Court held that incorporation by general reference in a single contract is valid, but in a “two-contract case,” reference to the arbitration clause of the referenced contract must be specific. Likewise, disputes arising out of separate agreements having distinct clauses were referred to a joint arbitration, because the agreements formed a composite transaction.⁶⁷

In *M/s. Mayavti Trading Pvt. Ltd. vs. Pradyut Deb Burman*, the Supreme Court reiterated that after the amendment in 2015, while appointing an arbitrator, the role of the Court is strictly confined to examining the existence of an arbitration agreement.⁶⁸

An arbitration clause in an agreement, which is not stamped as per law, was held to be ineffective until duly stamped.⁶⁹ But a non-stamped foreign award is enforceable because “foreign awards” are not included in the Stamp Act.⁷⁰

In *Glencore International AG vs. Indian Potash Ltd.*,⁷¹ the foreign arbitration was conducted under the rules of an institution not agreed upon by the

62. Republic of India vs. Agusta Westland International Ltd., (2019) 257 DLT 171, ¶ 41 (No interim injunction was passed even though allegations of fraud, bribery and corruption were made.); Union of India v. Khaitan Holdings (Mauritius) Ltd. & Ors., 2019 SCC Online Del 6755, ¶ 1 (India) (interference in arbitral proceedings under BIT was held permissible only in “compelling circumstances” in “rare cases.”).

63. Mahanagar Tel. Nigam Ltd. vs. Canara Bank, 2019 SCC Online SC 995, ¶ 10.3 (India).

64. Reckitt Benckiser (India) v. Reynders Label Printing India Private Limited, (2019) 7 SCC 62, ¶ 9.

65. R.V. Solutions Pvt. Ltd. v. Ajay Kumar Dixit, 2019 SCC Online Del 6531, ¶ 13 (India).

66. Giriraj Garg v. Coal India, Ltd., 2019 SCC Online SC 212, ¶ 4.6 (India).

67. Global Infonet Distribution Pvt. Ltd. vs. Lenovo (India) Pvt. Ltd., 2019 SCC Online Del 9980, ¶ 18 (India).

68. M/S Mayavti Trading Pvt. Ltd. V. Pradyut Deb Burman, AIR 2019 SC 4284, ¶ 4 (India).

69. Garware Walls Ropes Ltd. v. Coastal Marine Constrs. & Eng'g Ltd., 2019 SCC Online SC 515 (India).

70. Shriram RPC Limited vs. Rioglass Solar SA, (2018) 18 SCC 313 (India); Glencore Int'l AG vs. Indian Potash Limited, 2019 SCC Online Del 9591, ¶ 18.5 (India).

71. Glencore Int'l AG vs. Indian Potash Limited, 2019 SCC Online Del 9591, ¶ 18.5 (India).

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parties, yet execution of the award was allowed. In a domestic arbitration award, a plea for unconditional stay, merely because the applicant is the government, was rejected because “the Act” does not provide for any differential treatment.⁷²

Before the Amendment Act of 2019 was brought into force, the Supreme Court held that irrespective of the commencement date of an arbitration, an award challenged after October 23, 2019,⁷³ would be considered as per law prevailing after 2015 amendments.⁷⁴

Section 87 in the Amendment Act of 2019, on the other hand, stated that only those arbitration proceedings that commenced after the 2015 amendments would be covered by the amended law.⁷⁵

The Supreme Court, however, struck down Section 87 as being manifestly arbitrary and unconstitutional. It held that the new provision would result in a delay of disposal of arbitration matters and increase interference by courts, defeating the very object of arbitration law.⁷⁶ Thus, the amendments made by the 2015 Amendment Act will continue to apply to all court proceedings initiated after October 23, 2015, irrespective of the date of initiation of the arbitration proceedings.

V. India Advocates For and Against Military Tribunal Intervention

July 2019 was a singularly busy month for South Asia’s international legal advocates. India both advocated to prosecute foreign nationals in its domestic military court and received a decision on its request to annul the conviction of an Indian national in a foreign military court—at once demanding and denying jurisdiction for international input in domestic criminal proceedings. Each case bid jurists to probe how far they may reach into domestic courts and whether the rules change amidst purported matters of national security.⁷⁷

On July 17, 2019, the International Court of Justice (ICJ) issued its ruling in *India v. Pakistan*, the Jadhav Case, finding Pakistan in violation of Article 36 of the Vienna Convention on Consular Relations (Vienna Convention) and ordering Pakistan to review and reconsider the ruling.⁷⁸

From July 8 to July 20, 2019, India and Italy arbitrated before the Permanent Court of Arbitration (PCA) in a case known as the *Enrica Lexie*

72. Pam Devs. Private Ltd. vs. State of West Bengal, (2019) 8 SCC 112, ¶ 25 (India).

73. The Arbitration and Conciliation (Amendment) Act § 13 (noting that the amendments made in the year 2015 were made operative from October 23, 2015).

74. Ssangyong Eng’g & Constr. Co. Ltd. vs. NHAI, 2019 SCC Online 677, ¶ 10 (India).

75. The Arbitration and Conciliation (Amendment) Act § 13.

76. Hindustan Constr. Co. vs. Union of India, 2019 SCC Online SC 1520, ¶ 48 (India).

77. See Jadhav Case (India v. Pak.), Judgment, 2019 I.C.J. 1, 20–25 (July 17) (the ICJ rejected Pakistan’s argument that Article 36 does not apply to alleged spies.) [hereinafter Jadhav Judgment]; The PCA is considering which of Italy and India’s military tribunals have jurisdiction. See *infra* n.79.

78. *Id.* ¶ 147.

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Incident.⁷⁹ Just as Pakistan challenged the jurisdiction of the ICJ in the Jadhav Case, India unsuccessfully challenged the jurisdiction of ITLOS in the initial provisional measures and initially withheld the jurisdiction of the PCA Arbitral Tribunal to proceed on the merits in the *Enrica Lexie Incident*.⁸⁰ The incident began in either Indian or international waters, then moved into Indian and Italian courts; both proceedings were stayed by the International Tribunal for the Law of the Sea (ITLOS), and the PCA will now decide where jurisdiction lies.⁸¹

India was not the only South Asian sovereign with split attention in international law. Also in July 2019, the World Bank's arbitral forum, ICSID, issued a multi-billion dollar arbitration award against Pakistan concerning an ill-fated mining contract in Balochistan—the very province in which Pakistan maintains Jadhav was arrested.⁸² Later in the year, Pakistan made headlines for settling a separate \$846 million ICSID award.⁸³

A. THE JADHAV CASE

Pakistan arrested an Indian national named Jadhav in 2016, then charged and convicted him of terrorism and espionage before a military court and sentenced him to death in 2017—all without alerting him to his consular rights, timely notifying India of his arrest, or permitting India to make contact with him.⁸⁴ The ICJ found that each omission violated Article 36.⁸⁵

India won preliminary measures in 2017: the ICJ required Pakistan to stay execution while the case was pending.⁸⁶ And while the Court found it lacked jurisdiction to grant India's requested relief, vacating the conviction and sentence, the Court ordered Pakistan to reconsider the case “by means of its own choosing”—even enacting new legislation to enable judicial action if necessary—and to stay execution in the process.⁸⁷

79. Opening Statements Transcript, *Enrica Lexie Incident (Italy v. India)*, Case No. 2015-28, at 15:5-6, 20:1-2 (Perm. Ct. Arb. 2019), <https://pcacases.com/web/sendAttach/3976> [hereinafter PCA Transcript]; see also Molly Quell, *India & Italy Fight Over Jurisdiction in International-Waters Shooting*, COURTHOUSE NEWS (July 20, 2019), <https://www.courthousenews.com/india-and-italy-fight-over-jurisdiction-in-international-waters-shooting/>.

80. Jadhav Judgment, at ¶ 36; *Enrica Lexie Incident (Italy v. India)*, PCA Case No. 2015-28 (2016), Provisional Measures Order of 29 April 2016, at ¶ 51.

81. *Enrica Lexie Incident (Italy v. India)*, Case No. 2015-28, Provisional Measures Order of 24 August 2015, ITLOS Rep. 186, 204 (ITLOS Trib.) [hereinafter *Enrica Lexie ITLOS Provisional Measures Order*].

82. See Tethyan Copper Company Pty Limited, Case No. ARB/12/1, Certified Award, ¶ 1847, (ICSID Trib. 2019).

83. See Caroline Simson, *Pakistan Settles \$846M Dispute with Turkish Energy Co.*, LAW360, (Nov. 5, 2019, 6:15 PM), <https://www.law360.com/energy/articles/1216990/pakistan-settles-846m-dispute-with-turkish-energy-co->.

84. Jadhav Judgment, at 8–13.

85. *Id.* at 25–33.

86. *Id.* at ¶ 147; *Enrica Lexie Incident*, Order of 18 May 2017, I.C.J. Reports 2017, 246, para. 61 (I).

87. Jadhav Judgment, at ¶ 148.

B. THE ENRICA LEXIE INCIDENT

In 2012, twenty miles off the Kerala coast, two Indian fishermen aboard an Indian vessel were killed by two Italian marines acting in a quasi-official capacity aboard an oil tanker flying an Italian flag.⁸⁸ Indian authorities took the Italian nationals into custody, and within one week, Italian and Indian authorities each charged the marines with serious crimes.⁸⁹ The case is understandably personal on both sides: two Italian men have been detained for years without adjudication of the charges against them; two Indian men lost their lives.

Italy unsuccessfully petitioned the Kerala High Court to quash its charges, asserting exclusive jurisdiction because the marines acted in a quasi-official capacity.⁹⁰ India's Supreme Court found Kerala lacked jurisdiction and that a special Indian court should try the marines.⁹¹ The Indian National Investigation Agency asserted jurisdiction and charged the Italians with maritime terrorism, a capital offense in India—though amidst diplomatic fervor, India's central government ordered the charges reduced to the non-capital offense of murder.

After two years of trial deferrals, Italy filed a case before the ITLOS in July 2015, requesting provisional measures pursuant to Article 290(5) of the Convention on the Law of the Sea (UNCLOS).⁹² ITLOS found the requisite urgency and prima facie jurisdiction to determine preliminary measures, ordering both states to suspend domestic legal procedures during the pendency of the international debate.⁹³ Pursuant to ITLOS procedure and the parties' differing ascension to the UNCLOS, the Permanent Court of Arbitration's Arbitral Tribunal has jurisdiction to determine the merits.⁹⁴

While most of July's arbitral proceedings were confidential, the sovereigns' opening statements were public and remain available online.⁹⁵ Italy's Ambassador Francesco Azzarello was adamant that the marines be looked on as "members of the Italian armed forces on official duties," such that they were immune to any domestic charges within India.⁹⁶ As he explained, "the rights that Italy seeks to vindicate in this arbitration are rights that belong to Italy as a matter of international law."⁹⁷ Joint Secretary (Europe West) for India's External Affairs Ministry, G. Balasubramanian, advocated that the marines were arrested on Indian territory, and that Italy

88. Enrica Lexie ITLOS Provisional Measures Order, at 7.

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.* at 24.

93. *Id.* at 14, 27

94. Enrica Lexie ITLOS Provisional Measures Order, at 14.

95. Opening Statements, Enrica Lexie Incident (Italy v. India), Case No. 2015-28 (Perm. Ct. Arb. 2019)), <https://files.pca-cpa.org/pcadocs/PCA%20Case%20No%202015-28.mp4>.

96. PCA Transcript at 15:5-6, 20:1-2.

97. *Id.* at 20:9-11.

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thwarted and delayed India's rightful domestic proceedings through interlocutory appeals.⁹⁸

Where the *Jadhav Case* quietly reminded the international community about the limits of pooled sovereignty, lacking jurisdiction to reverse a domestic military court's holding,⁹⁹ jurists now wait to learn how far the PCA perceives its authority to reach into domestic military courts' proceedings before a decision is reached.

98. *Id.* at 25:1, 25:4-26:7.

99. *Jadhav Judgment*, at 36-39.

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AMERICAN BAR ASSOCIATION
321 N. CLARK STREET
CHICAGO, ILLINOIS 60610

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