trowers & hamlins

thinking Business

NOVEMBER 2017

Contents

Welcome to this our Middle East edition of Thinking Business – where we share our expertise and ideas with you to support growth and sustainability in your business.

In this edition, we continue to examine the theme of maturing markets in the Gulf region, and the changing face of the region's economies. Our lawyers based in the Middle East talk about some of the many ways in which the GCC is going through a period of transformation, and examine the opportunities and challenges that this might present for people doing business there.

In this issue, we cover:

- The introduction of VAT in the region, and its impact on conducting business;
- The arrival of several new wealth structuring options for families in the Middle East, and what those mean for family wealth management;
- The drive to create a new investment climate in Bahrain, and the various initiatives the government is taking in the market;
- The challenges facing GCC businesses as cyber security moves up the agenda as a growing corporate risk; and,
- Increased connectivity in the Gulf, as states move towards greater coordination on infrastructure development initiatives.

We hope you will enjoy reading what we have to say, and should you wish to discuss anything in more detail, or ask any questions, please do get in touch with your usual Trowers & Hamlins contact, or feel free to email the Thinking Business team at thinkingbusiness@trowers.com.

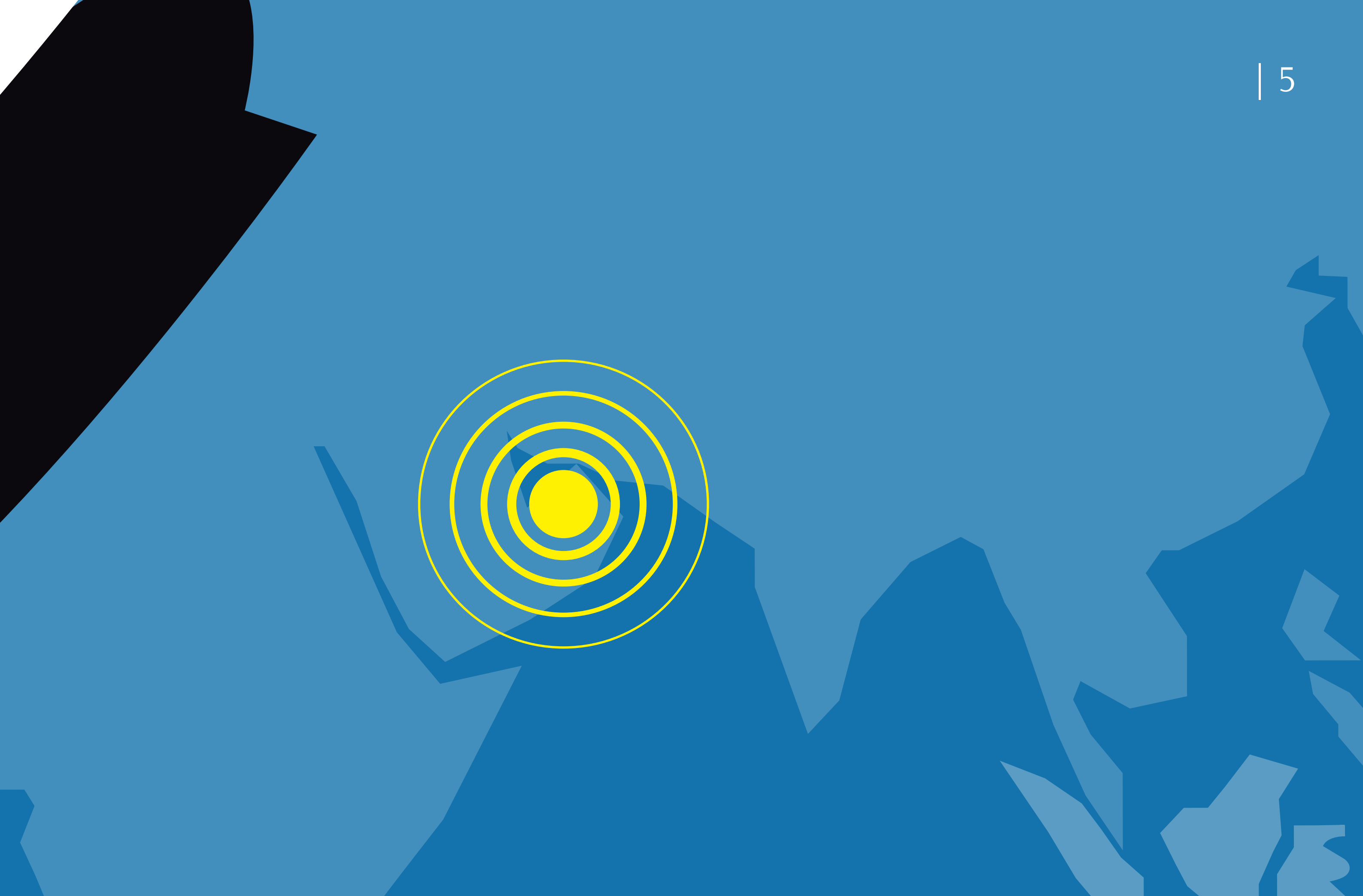
You can also follow us on Twitter @Trowers.

NOVEMBER 2017

VAT arrives

The impact on doing business

It is one of the building blocks of mature economies, and in January 2018 the member states of the Gulf Cooperation Council will begin the process of introducing value-added tax to the region.



After agreeing to the radical policy shift at the end of 2015, the United Arab Emirates and Saudi Arabia now look poised to introduce VAT at the start of next year, while the other four member states – Kuwait, Bahrain, Oman and Qatar – will likely do so later in 2018. Motivated by the need to shore up state finances under pressure from low oil prices, the move will see a 5 percent tax added to the sale of goods and services, and will represent the first time the states have imposed taxes on their citizens.

Abdul-Haq Mohammed, International Managing Partner at Trowers & Hamlins, based in Bahrain, says the introduction of VAT marks the latest sign of the maturing of the economies of the Middle East: “When you look at mature markets around the world,” he says, “sometimes things like tax are what drives an audit trail and level of transparency that means people have to take the way they set out their arrangements more seriously. You can no longer do a deal on the back of an envelope – this feels like a game-changer.”

The UAE has now started registering businesses for VAT and has been issuing a number of regulations on the tax in the lead-up to January 2018. Firms with annual revenues of at least $100,000 must register or face fines. It is estimated that more than 300,000 companies will need to come forward.

> **“**
>
> **The introduction of VAT means people’s relationships with government are changing,**

and is another move away from the region’s status as a tax-free haven,” says Mohammed. “As soon as you have VAT, everyone has to file records, you have to have tax authorities, and you have so much data that it forces a degree of transparency. This will have an impact on the whole business environment, because it should give people investing from outside much more clarity about their investments, and comfort that they should be able to deal with local counterparties with greater certainty.”

While the details are still being ironed out, it looks like VAT in the GCC will be pretty far-reaching, applying to most goods and services, with the exception of healthcare, education, social services and a select number of food items. The tax imposed will be the responsibility of a taxable person who makes taxable supplies, or what is deemed to be a supply or an import.

While the VAT tax rate of 5 percent is one of the lowest rates in the world, countries that have introduced VAT at such low rates in the past have historically quickly moved on to a 10 percent rate.

How long it will take the other Gulf states to follow in the footsteps of UAE and Saudi Arabia with implementation of VAT remains to be seen. “Bahrain is likely to introduce it in the middle of next year,” says Nick Green, a Corporate Partner with the firm in Bahrain. “It seems that they will wait and see how things go in Saudi and the UAE. It is not yet clear what the timetable will be for Oman, Qatar and Kuwait.”

While all six countries agreed in 2015 to introduce the tax by the end of 2018, they need to introduce domestic legislation before they can do that, and all are moving at different speeds, with different motivations.

“The original idea was that everyone will introduce this on 1 January 2018,” says Green. “We all thought that was quite an aggressive timetable, particularly for those states that were not so keen. Saudi and UAE have always been leading this, because of the new revenue stream it offers their national economies, and because it will help modernise their economies. Bahrain might want to wait and take advantage of some arbitrage whereby Saudis will come across the border and pick up big-ticket items in Bahrain for a while."

Since the region agreed to implement the tax, Saudi Arabia, the UAE and Bahrain have cut diplomatic and transport ties with Qatar, which could affect Qatar's timetable for introducing VAT. Meanwhile Kuwait's parliament is yet to have the final say on approving or rejecting draft legislation on the tax, and Oman has yet to announce its plans.

As the tax arrives, there is lot of work for businesses in the region to do. Mohammed says: "There's a whole exercise for people of upgrading their systems and their arrangements across the board. Everything needs to be looked at because old systems will no longer work. There will need to be VAT clauses in contracts and efforts to create VAT efficiencies throughout corporate groups – this requires all our clients to look closely at their frameworks, systems and contracts."

Smaller businesses may not currently keep paper records of transactions, and will now have to set up the appropriate mechanisms to do that, and to collect monies and pay taxes to the government.

Green says: "The current timetable gives every business in the UAE two months to get registered, get systems in place, hire staff and train existing staff in a system that's entirely brand new to the region."

International businesses may find themselves at an advantage, according to Bill Jefferies, a Corporate Partner based in the UAE. He says: "The international businesses will already, to a large degree, have systems in place to deal with tax and VAT, particularly across multiple jurisdictions. Meanwhile, local businesses may not have a clue where to start, so there's a very clear difference."

The implications for the way people operate are potentially significant. Mohammed says:

“

This is about creating a more transparent business environment, albeit driven by the primary motivation of revenue generation in the UAE and Saudi.

It will have an impact, because people need to document things, keep records, take professional advice, think about the implications of getting things wrong from a tax perspective, and organise their structures to derive tax benefits. Businesses in this region have never had to think before about how to make deals tax efficient, so that's a big change."

Green concludes: "Some big family businesses in the Middle East have informal group structures and aren't necessarily owned in a coherent manner. For the first time, clients are now having to think about maybe reorganising their groups and structuring them properly. Tax structuring will become a primary driver for the way that groups are established going forward, in the same way that it is in more developed markets around the world."

While ostensibly a revenue generation measure being driven by low oil prices, the arrival of VAT in the Gulf is clearly the next step in the coming of age of the region's economies.


123
AC
1
2
3
4
5
6
7
8
9
0
00
+
x
–

WEALTH STRUCTURING OPTIONS INCREASE FOR FAMILIES IN THE MIDDLE EAST

Two significant new pieces of legislation introduced by GCC countries in the last 12 months have increased the options available to families dealing with the effective management and transition of substantial wealth.

Bahrain's new trust law, which came into effect in November 2016, provides a comprehensive framework for the creation and administration of trusts in the kingdom, and for the first time formally recognises trusts governed by the laws of other jurisdictions.

Meanwhile, the Abu Dhabi Global Market (ADGM) free zone has enacted the UAE's first foundations regulations, offering an alternative wealth planning tool for individuals and families. The regulations are designed to assist individuals and investors with wealth management, succession planning and asset protection within the region and internationally.

Alastair Glover, a Private Wealth Partner in the Dubai office of Trowers & Hamlins, says: "Trusts are already available in both the Dubai International Financial Centre (DIFC) and ADGM which has essentially adopted English trust law. However, uptake of trusts in the DIFC and ADGM has been relatively limited and there is a perception in the market that foundations will hold greater appeal for regional clients as they are more similar in form to a company. The introduction of foundations is unique in the region, and this development certainly presents an interesting alternative to the trust for any family reviewing their succession planning options."

The foundation enjoys a separate legal personality to the founder, who establishes the foundation. It can therefore enter into contracts and hold assets in its own name. Importantly, the foundation's liability is limited, unlike that of trustees. Unlike a company, there are no shareholders. Instead, the foundation must have a living founder or guardian to enforce its terms.

"Foundations are hybrid vehicles which share similarities to companies and common law trusts,"

says Glover, "with the main advantage being that, unlike a trust, they have their own legal personality and can include the founder and other family members on the foundation council, which is similar to the board of a company. In this way the family can retain control of their assets without the need to transfer them to unknown third-party trustees in another jurisdiction, which will appeal to some GCC families."

ADGM's latest innovation is a sign of increasing competition between Gulf jurisdictions to cater to the needs of the region's high net worth individuals. In 2015, the DIFC set the ball rolling with a new wills and probate registry that made it the first jurisdiction in the region where a non-Muslim could register a will under common law principles of freedom of testamentary disposition.

Abu Dhabi subsequently announced in May 2017 that it would introduce its own registry of wills and probate, giving non-Muslim expatriates greater freedom to pass their local assets to their chosen beneficiaries when they die, rather than the default rules based on Shariah fixed share principles. The ADGM Foundations Regulations are the latest innovation in the Emirates wealth planning arena and it is likely that the DIFC will shortly follow suit having released a consultation on a foundations law of its own on 10 October 2017.

For now, the majority of high net worth families in the Middle East tend to look outside the region for wealth structuring solutions, frequently choosing well-established jurisdictions such as Switzerland, the Caribbean and the Channel Islands, but these changes present viable alternatives closer to home.

"The uptake will increase,"

says Glover. "There's a lot of interest in how these jurisdictions can help clients moving forward, and they will have their attractions, particularly where they can be utilised to hold local assets. A lot of people have moved holding companies into the DIFC and ADGM, and there is a new level of sophistication in the legal tools that are available, which simply did not exist before. There were previously only limited options for wealth structuring in the region from a governance perspective, and now families can access more sophisticated laws that are more in line with the established offshore jurisdictions."

More robust and sophisticated structures also appeal to entrepreneurs in the GCC, many of whom are building significant businesses and are understandably keen to protect their interests both from an asset protection and succession perspective

Youssef Boulos is a partner in Trowers & Hamlins' international Corporate Team, based in Abu Dhabi, and says: "One of the fundamental advantages historically of structuring via the traditional jurisdictions like the British Virgin Islands, Jersey and Guernsey was the confidentiality element. But with the advent of so many transparency initiatives among regulators globally, that benefit is going, so some Middle Eastern families are thinking they may as well keep their wealth locally."

Those looking to keep money in the region and make use of the new legislation will need to give careful thought to issues that might arise around restrictions on the ownership of local assets, for example, where different approaches have been adopted by Bahrain and ADGM.

Boulos adds:

"When setting up structures, people need to think carefully about what their medium to long term objective is

– whether that is about effectively distributing wealth to the next generation, passive protection of assets, or educating the next generation. Is the focus purely economic – looking at maximising income and yield – or is it about bringing in some independent oversight of the assets, with third parties on the board?"

He concludes:

"Developing a proper wealth management strategy is all about balancing all of these key medium and long-term drivers, and then deciding what is the best fit for that based on all the different regimes and structures that are available around the world."

The arrival of new legislation in the GCC can only enhance the options available to high net worth individuals living and working in the region.

Bahrain's new trust law — key features

Modern regime: The predecessor law in relation to financial trusts was extremely limited in scope. The new trust law provides a framework for family succession structures under a more flexible regime.

Waiver of foreign ownership restrictions: Trustees of Bahraini trusts are not subject to foreign ownership restrictions that might otherwise apply. Currently, Bahrain is the only GCC country to include the waiver of foreign ownership restrictions for trusts.

Purpose trusts: An example of the flexibility of the new trusts is the inclusion of rules for non-charitable purpose trusts, which gives families much more flexibility in structuring.

ADGM Foundations — key features

Structure: The ADGM foundation is a hybrid of a trust and a company. It can be used for similar purposes as a trust – including wealth management, planning and preservation – but it is a separate legal entity with limited liability. The similarity to a company (but without shareholders) provides more control over the foundation when compared to a trust.

Governance: The council carries out the executive functions of the foundation, acting like a board of a company. Oversight of the council rests with the founder or the guardian, who effectively supervises the council.

Client confidentiality: The regulations aim to achieve a balance between client confidentiality and the transparency of ownership. The foundation's charter contains limited publicly available information, which is held by the ADGM Registrar, while the by-laws remain confidential.

International: Foreign foundations can be migrated to the ADGM from other jurisdictions and vice versa and can, subject to the relevant law outside ADGM, hold overseas assets.

Similar jurisdictions: The most comparable jurisdictions to the ADGM's foundations regime are Jersey and Guernsey.

CREATING A NEW INVESTMENT CLIMATE IN BAHRAIN

In the last two years, Bahrain has focused on securing its place as a destination for international foreign investors, particularly within the GCC. The government has approved a raft of measures aimed at improving systems and processes for incorporating companies, clarifying and updating regulatory frameworks, and allowing companies to do business more effectively within its borders

One of the first significant changes came in 2015, when the capital requirements for establishing new businesses were lowered, immediately resulting in the number of commercial registrations in the kingdom increasing threefold, from 9,130 registrations in 2015 to 31,600 in 2016. The introduction of a new commercial registration portal, called Sijilat, shortly afterwards has also speeded up the process, such that it is now possible to achieve a registration in a matter of hours, before necessarily completing all the documentation.

There have been clarifications of the labour laws, providing more certainty on employee costs, and the visa process has also been significantly improved, with prices coming down and the process of obtaining work permits eased.

In July 2016, the government approved an amendment to the existing Commercial Companies Law that will allow foreign investors in Bahrain to acquire 100% of businesses when they do deals in a wide range of sectors, including food, entertainment and leisure, manufacturing, scientific and technical and information and communications activities.

One sector Bahrain is particularly focused on developing is financial technology, where it has been working to establish a regulatory framework for the incubation of fintech companies.

Brian Howard, a partner in Trowers & Hamlins' Corporate team, based in Bahrain, says: "Financial technology fits very well in Bahrain, which has one of the most developed IT and telecommunications infrastructures in the region. It is now working to create an equivalent of Silicon Valley as part of its investment plan, servicing asset managers, banks and financial institutions around the globe."

The government has also introduced legislation to support crowdfunding, with a view to providing a quick, safe and easy environment for GCC-based entrepreneurs with great ideas to get access to funds. Amazon's cloud computing arm, Amazon Web Services (AWS), has recently announced ambitions for its first data centre region in the Middle East, with plans for three cloud computing zones to launch in Bahrain by early 2019. Amazon has beaten Google and Microsoft to become the first to announce a cloud region in the Middle East, and also intends to open offices in Dubai and Bahrain in the near future.

Nick Green, a Corporate Partner in the firm's Bahrain office, says:

"AWS looked around the whole of the GCC before announcing a decision to come to Bahrain.

The country is certainly jumping ahead in the fintech sector – that's a great example of Bahrain working, as a slightly smaller jurisdiction, in a more nimble way to make the most of opportunities."

Another legislative development sees Bahrain on the brink of introducing new bankruptcy laws that will give better protection for businesses, and especially start-ups, against the risks of failure. The new rules could include a regime based on the model of Chapter 11 bankruptcy

protection in the United States, allowing entrepreneurs the ability to fail but regroup and reorganise before moving forward, with room to negotiate with creditors to come up with workable solutions.

On the private client side, the trust laws in Bahrain have been overhauled in the past year, introducing a much more flexible model based on that of Jersey and recognising, for the first time, trusts established and governed under the laws of foreign jurisdictions.

“We are receiving a lot of instructions based on the new trust law,”

says Howard, “which is something Bahrain can be really proud of. Bahrain has always had a relatively open economy for foreign investors, but with the drop in the oil price it is now even more focused on growing its non-oil sectors and encouraging entrepreneurialism. The trust law plays its part in ensuring that family businesses can be handed over and controlled in a professional manner.”

In the first quarter of 2017, growth in the non-oil part of Bahrain’s economy reached 4.4%, up from 3.7% during 2016.

Overall economic growth in the country for the first three months of the year was 2.9%.

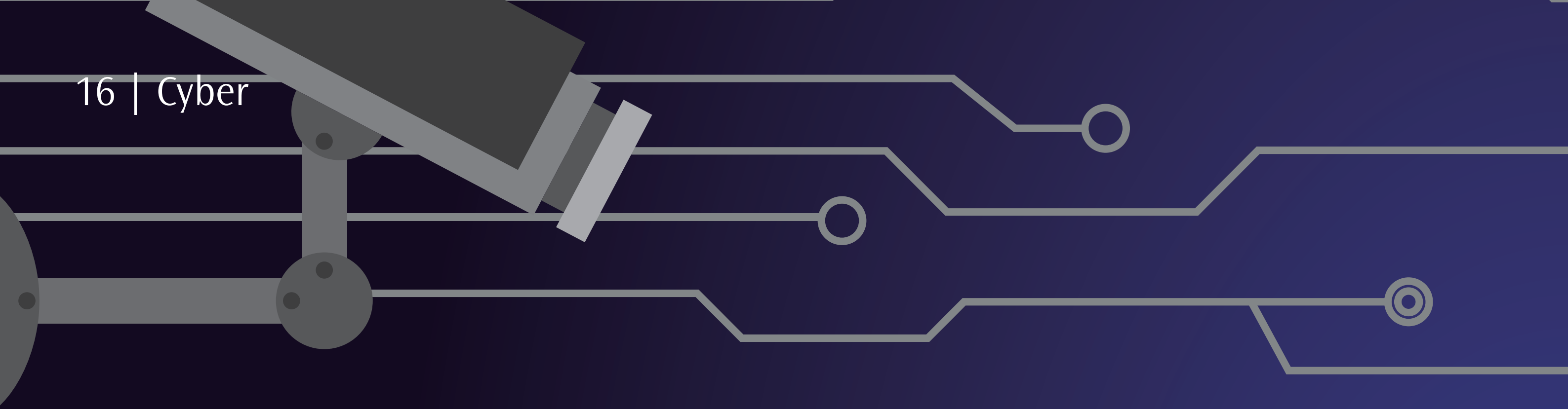
For businesses looking to enter the GCC, Bahrain has become increasingly popular with expatriates looking to live and work in the region, in part thanks to its easy links to Saudi Arabia. Despite being the giant of the GCC, Saudi Arabia is more restrictive in its approach to foreigners, and Bahrain’s free economy means many people choose to live and work in the kingdom for its way of life, which includes great restaurants and entertainment. As an island country in the Persian Gulf, it is connected to the northeastern coast of Saudi Arabia by the 25km King Fahd Causeway, and plans are underway for a second causeway that could deliver both road and rail links between the two countries.

The new bridge is just one example of a significant investment in infrastructure that is also being orchestrated by Bahrain’s government. A US$1.1 billion project is currently underway to construct a new passenger terminal at the airport, as well as upgrading the existing main services building and aircraft bay, and there are also plans to modernise the aluminium smelter. Bahrain’s most prominent non-oil industry is the Aluminium Bahrain (Alba) plant, which supplies various downstream manufacturing plants and consistently ranks as one of the largest smelters in the world. The upgrade project kicked off at the end of 2016, with a view to being more cost and energy efficient by increasing productivity.

Howard says: “Bahrain has a highly-educated workforce that is both bilingual

and entrepreneurial. With all these recent changes, it is reasserting itself as a useful hub for foreign direct investment in the region. It was the first country in the GCC to sign a free trade agreement with the US, and it is now looking to build on that.”

Green concludes: “For international businesses looking to set up in the GCC, Bahrain really does now offer a reasonable alternative to the UAE and Qatar. Now the Economic Development Board of Bahrain is going on a promotional drive around the world, and has set up offices to promote Bahrain as a jurisdiction for those looking to get a toehold in the region, we see a lot of opportunities for investors here.”



CYBER SECURITY MOVES UP THE AGENDA FOR GCC BUSINESS

Five years ago, a major oil producer from the Gulf suffered what was then the world's largest cyber attack, when the oil company saw 35,000 computers either partially wiped or totally destroyed. Since then, the Gulf's businesses have remained tight-lipped about cyber breaches and so data is limited, but there is no doubt the risks to cyber security have increased.

Online activity has mushroomed across the Middle East in the past decade, at the same time as geopolitical conflicts and tensions, causing businesses to wake up to the need for cyber security measures and procedures. When Saudi Aramco, one of the world's largest oil firms, was hit in 2012 it was forced back to using typewriters and fax machines to continue doing business. The company that supplied 10 percent of global output was hit by a group calling itself Cutting Sword of Justice, citing the oil producer's support of the local regime. Many claimed the attack was sponsored by Iran.

Today, several Gulf countries remain prominent players in local proxy wars, making them vulnerable to both politically and economically-motivated attacks. The United Arab Emirates, with its growing tourism industry and oil reserves, and Qatar, which has risen to global prominence since being awarded the 2022 FIFA World Cup, are in the spotlight.

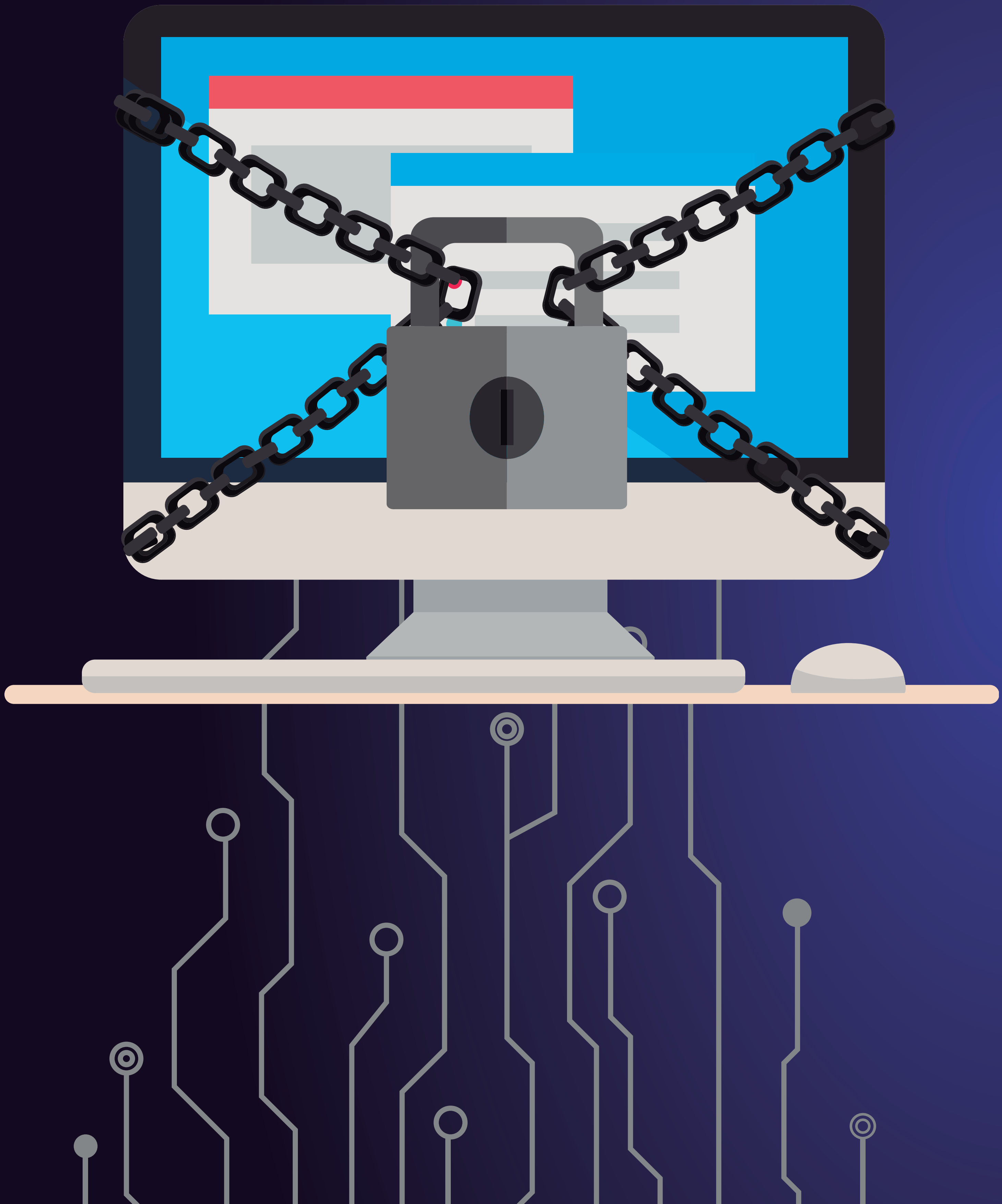
Meanwhile, businesses in the Middle East are at high risk, according to Cisco's recent Middle East ICT Security Study, because 65 percent of employees do not understand the security risks of using personal devices in the workplace, which means cyber criminals are attacking internet infrastructure rather than individual computers.

One reason that awareness of cyber risk is low is because companies do not report breaches, according to Saleem Adam, a partner focused on corporate work in the technology sector at Trowers & Hamlins in the UAE. "The problem is that most companies don't admit attacks in the way that they do in the West," he says. "There's no legal obligation to do so, except for companies based in some free zones, and so the tendency is to cover them up."

But he says companies are waking up to cyber security: "I sit on the Board of four power plants in the UAE," says Adam, "and over the last two years, cyber risk has become more than an IT issue and moved into the domain of senior management, the Board and the shareholders. There is a growing focus across the region on business continuity plans, and the need to have cyber attack plans in place."

When the major oil producer was struck, computer technicians literally ripped cables out of the backs of computer servers at data centres around the world to stop the virus spreading. Oil production remained steady, but managing supplies, shipping and contracts with governments and business partners all suddenly had to be done on paper. Corporate email went down, and the company – in one fell swoop – bought 50,000 new computer hard drives. It was five months until the company brought its systems back online.

Since then, attacks on major corporations in the Middle East have ranged from the amateur to the highly sophisticated. In May 2013, for example, an international crime



gang was charged in the US after USD45 million was stolen from RAKBank of the UAE, and BankMuscat of Oman, after a massive cyber fraud.

Regulators in the region are increasing the requirements on businesses around cyber preparedness, and free zones like the Dubai International Financial Centre and Abu Dhabi Global Market have data protection rules that are much more akin to those seen in Europe and the US.

But companies across the Middle East should take action to protect themselves and prepare for incidents. Adam advises every business to put in place a Cyber Incident Response Plan, setting out the role of every staff member in the event of an attack, and identifying where the greatest risks may lie. After the Arab Spring series of protests and demonstrations disrupted business in the region in 2010, many private companies developed sophisticated contingency plans, and these now need to be extended to cyber security, he says.

Secondly, firms must elevate cyber security to a boardroom issue, rather than leaving it to the IT department to oversee. Adam says:

“Senior management needs to take ownership, so that they can show they have done everything possible to mitigate the risk of attacks.”

Third, careful attention needs to be paid to the risks associated with third-party IT suppliers. A lot of IT requirements in the Middle East are outsourced to external providers, particularly within the financial services industry, and plans need to be put in place to manage events in coordination with suppliers in the event of an attack. Adam says: “We have undertaken audits on behalf of clients to make sure that third-party agreements contain the necessary protections to deal with cyber attacks. The key thing is to identify the legal obligations of the supplier and the company.”

He says there is a move in the region to address cyber security breaches, but due to a misconception that a cyber attack is a force majeure event, there is often no real consideration given and force majeure is used as a catch-all provision intended to cover any type of act occurring outside either party’s control. This presents risks to everybody involved, and given the legal liability and often severe reputational damage caused by cyber attacks, we have been asked to carefully review and amend existing force majeure clauses. Some of our clients are negotiating a right to continue receiving services under the contract, at pre-agreed levels, during a cyber attack or force majeure event. For example, instead of 24/7 support receive support for 2-4 hours a day.

And finally, businesses need to make sure they do extensive due diligence on their critical IT suppliers around their cyber preparedness before signing up: “There’s a lot of information people can obtain upfront,” says Adam. “For example, have they been attacked before, and if so, how well did they deal with the incident? Build a profile of your supplier to identify how vulnerable they could be to a cyber attack.”

Longer term, it is likely that regulatory requirements for cyber resilience will increase in the Gulf region, just as they have elsewhere. “We regularly get asked by clients what they need to do in the event of a data breach,” says Adam,

“and it depends very much where they are. For the most part, there is currently no obligation to report a breach, but over time I suspect there will be. We are certainly finding out about more breaches.”

He adds, “There is this lack of reporting which makes it difficult for the region to fully address cyber risk. There is almost a sense that attacks aren’t happening, but you just need to look for them. They often go unreported. But all the time the Middle East has wealth and geopolitical conflicts, attacks are going to occur.”

Few in the GCC currently make use of sophisticated encryption technologies, and many conduct business using Hotmail and WhatsApp, leaving them vulnerable to attack. But cyber security is moving up the agenda, and companies are starting to take action.

INCREASED CONNECTIVITY IN THE GULF

In recent years, we have seen a trend across the GCC region towards greater coordination between states, and particularly efforts to improve infrastructure links. Steps are being taken towards joint investments in transport systems, customs enforcement and air traffic control systems, to encourage uniformity and ease of movement, and those initiatives are creating opportunities for infrastructure investors moving into the region. The launch of Value Added Tax across the region is a good example of a coordinated approach.

One of the most ambitious projects is the USD $200 billion GCC railway network that will link all six countries in the region. That project has encountered some delays, but is still reported to be moving forward, although there are no cross-border operations yet. Phase one of Etihad Rail is operational, and the railway network across a significant part of Saudi Arabia is also now up and running (with suggestions that the Haramain high speed line will be fully operational in 2018).

When it comes to road links, the UAE recently contributed AED 320 million for the newly-opened Amman Development Road, taking on half the project value for the 48-kilometre road aimed at easing movement of passengers and goods between Jordan and the GCC countries.

Meanwhile, Saudi Arabia and Bahrain plan to jointly build a new road and rail causeway between the two countries to ease congestion on the existing King Fahd causeway. The new King Hamad causeway is expected to cost more than USD $4 billion, and will seek funding from the private sector. As many as eight million passengers a year are expected to use the rail link by 2050, while some 600,000 containers and 13 million tonnes of bulk could also be transported by the railway, which could be developed using a public private partnership model.

There are also plans for three other inter-state bridges, although current political difficulties may delay them.

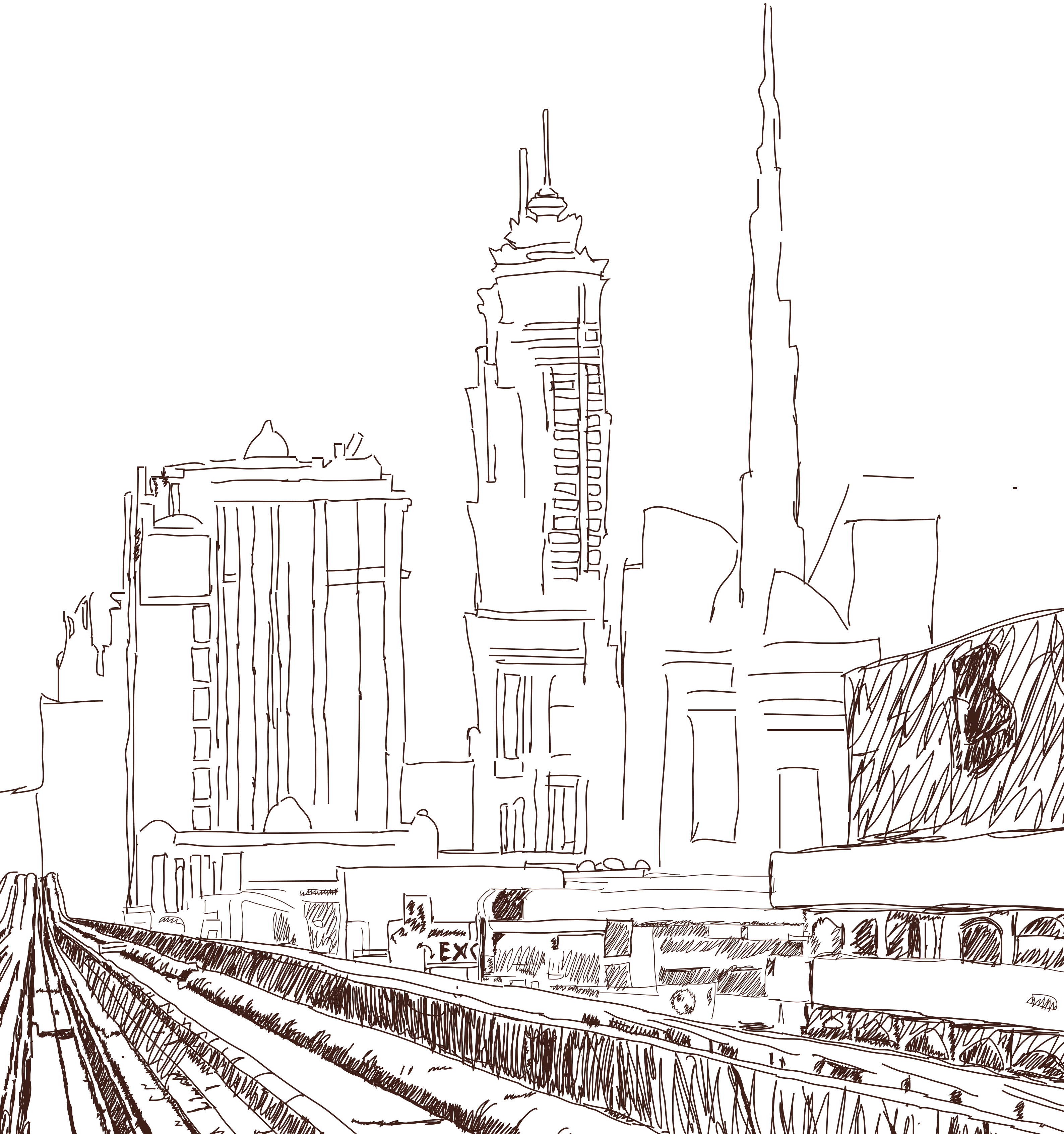
Abdul-Haq Mohammed, International Managing Partner of Trowers & Hamlins, based in Bahrain, says:

“At the heart of all of these initiatives is the ambition on the part of the GCC states to develop, and an appreciation that without easy transport links between them, they are at a disadvantage.

This goes back to the early ideas of what the GCC was meant to be about, which included a level of seamless borders, and is yet another sign of closer integration between the members.”

All of these infrastructure projects are of such a scale and complexity that they are particularly challenging when set against the backdrop of different states with quite distinct legal and regulatory systems. There is, therefore, a huge demand for international expertise to deliver on these projects, because capabilities are not always readily available on the ground.

Peter Greatrex is a partner and member of the firm’s Real Estate team in Dubai, and says: “There’s a certain level of concern at the borders, not necessarily in the other countries themselves, but in their regulatory systems. This complicates the passage of good and people across borders.”



He adds, “Each of the different states has different laws, and they all allow different levels of compliance with various principles of Sharia law. Despite both Saudi Arabia and Bahrain’s constitutions stating their laws are based on Sharia, there is no commonality. Currently there’s a firm, fixed border between them, which means that everything going from one country to another, particularly via the King Fahd Causeway, has to be checked, which can lead to a backlog of several weeks for goods to cross that border.”

The challenges around customs clearance could prove particularly complex in the future. With the construction of the GCC rail network between Saudi Arabia and Kuwait, it was agreed there would likely be a checkpoint operated by the Saudi Ministry of the Interior somewhere close to or within the freight-loading areas inside the Kuwaiti border, at which point Saudi Arabia would take responsibility for goods being put on trains. However, this is the starting point of the currently-planned GGC Rail Network, and is one of the smallest stretches of track operating only into Saudi Arabia.

But things may get more complex:

“The big issue is going to be where you have trains going from the south of Oman, into the UAE and then into Saudi Arabia and Kuwait or Bahrain,”

says Greatrex. “If goods are travelling through four countries, you cannot carry out four sets of checks without significantly delaying the operation of the rail network.”

For now, the momentum appears to be behind developing the infrastructure, and then establishing the necessary regulatory harmonisation to underpin transport links later. For infrastructure funds, investors and developers, there are clear opportunities as the region seeks to improve its communities, working environments, living spaces and transport links.

Greatrex says:

One of the things that is very important with these projects is pitching them at the right scale.

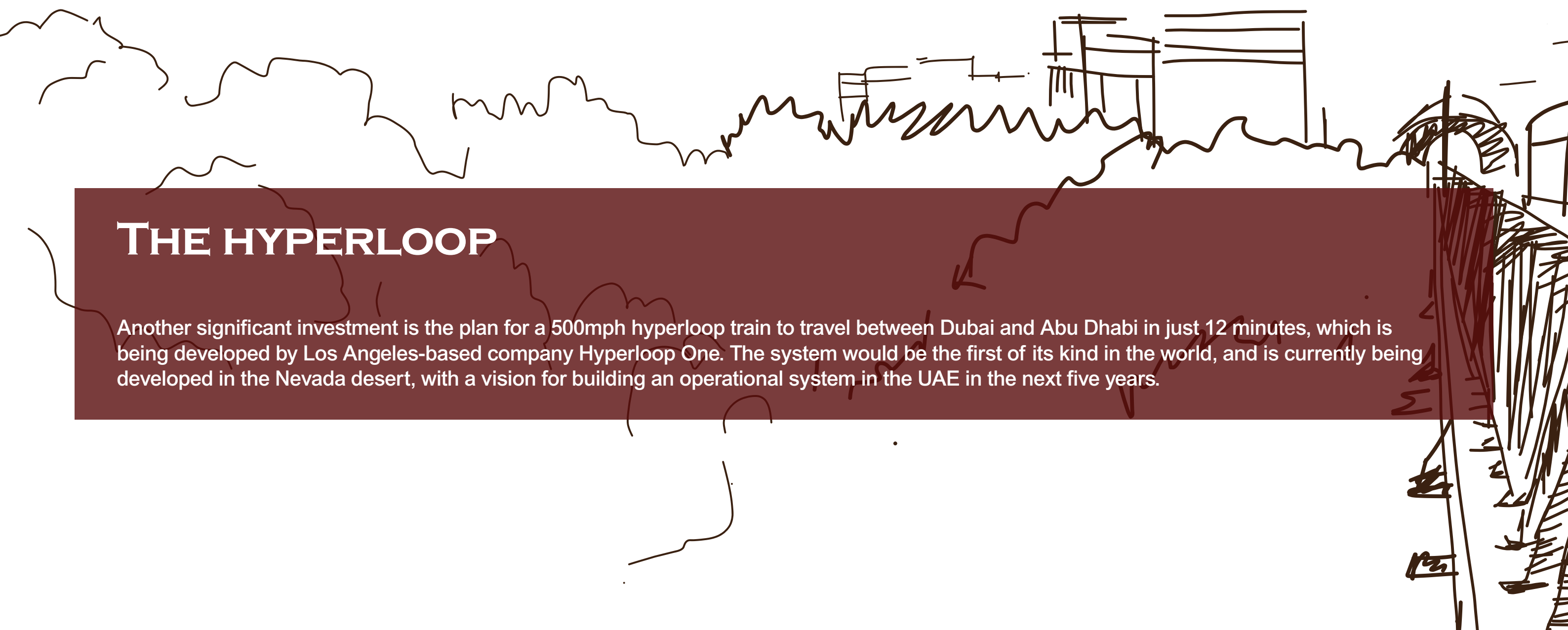
One reason why Saudi Rail has been a relative success is that they have looked at the most important routes first, and started developing those in tranches, so that they now have an operating rail system. It’s not complete yet, and there is still more work to go on other lines, but instead of trying to do everything at once they have focused on getting key routes operational, and that has been successful.”

The other key piece of learning is around getting the procurement strategy right. In June, private sector developers, investors, contractors and lenders were invited to express their interest in the King Hamad causeway, which might be developed under a design, build transfer, or a design, build, maintain and transfer model.

Mohammed says: “Having the right procurement framework on all these projects is critical. In Oman, they spent a long time trying to decide on the best procurement route, and getting that proper planning in place is critical.”

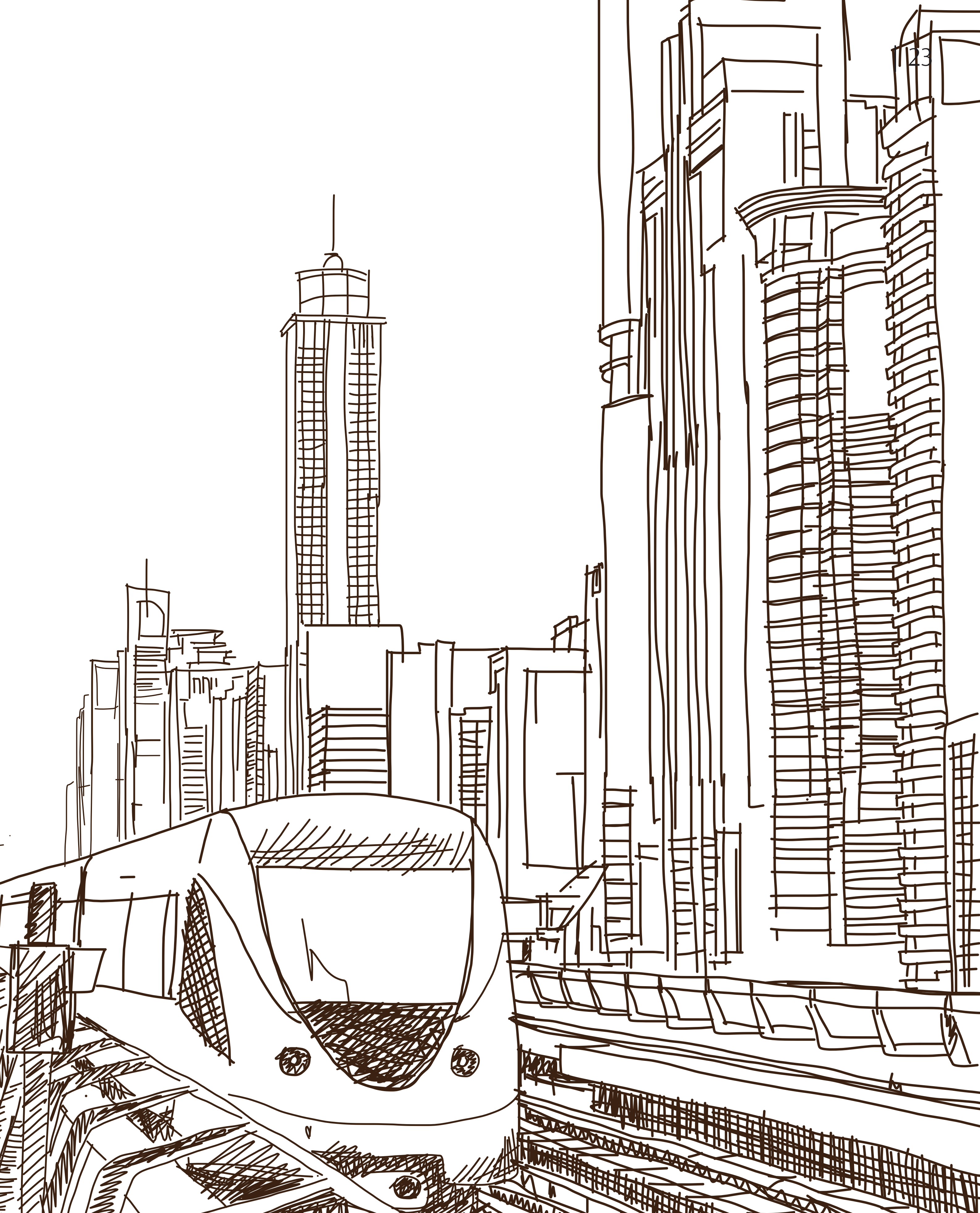
Trowers & Hamlins worked with the Bahrain Ministry of Transportation setting up a joint venture between National Express and Ahmed Mansoor Al A’Ali to develop the public bus network in the country, advising on the bid process, the selection of preferred bidders, and the finalisation of the project documentation with the operators. That was done with a view to future integration of the bus network into a broader public transport network, including cross-border rail.

As demands for transport infrastructure become increasingly complex, and move from being local, to national, to international, the need for cross-border cooperation across the GCC is growing.



The hyperloop

Another significant investment is the plan for a 500mph hyperloop train to travel between Dubai and Abu Dhabi in just 12 minutes, which is being developed by Los Angeles-based company Hyperloop One. The system would be the first of its kind in the world, and is currently being developed in the Nevada desert, with a vision for building an operational system in the UAE in the next five years.



trowers & hamlins

trowers.com
@trowers

London —— Birmingham —— Exeter —— Manchester —— Abu-Dhabi —— Bahrain —— Dubai —— Malaysia —— Oman