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East Meets West In Dubai

*The Editor interviews **Sheila Shadmand**, Administrative Partner of the Jones Day office in Dubai.*

Editor: Please describe your background and your practice area within the Jones Day offices in Dubai.

Shadmand: I began my practice with Jones Day about 15 years ago in our Washington, DC office. I am of Middle Eastern descent and had worked on a number of matters for the firm's notable Middle Eastern family and company clients before relocating to the Middle East in 2008 to open our office in Dubai. In looking where we would re-establish our presence in the Middle East (Jones Day previously had offices in Saudi Arabia and Kuwait until the mid-1990s), Dubai became the obvious choice because of its socio-political climate and international scale – 80 percent of the world's Fortune 500 companies have a physical presence in Dubai. We opened our office in the Dubai International Financial Center (DIFC) in March of 2009, and have since grown to include offices in Jeddah, Riyadh and Al Khobar in Saudi Arabia. My practice consists of international litigation and arbitration and counseling on U.S. regulatory compliance issues.

Editor: Please describe the firm's services and client base for each office. How do these offices interact?

Shadmand: Our four offices in the region are strategically located to ensure that we meet the local needs of all of our clients – whether they are in the Middle East or around the world. Dubai in the United Arab Emirates (UAE) is considered by most to be the financial capital of the Middle East and the preeminent east-meets-west intersection for international business. Riyadh is the government and banking capital of the Kingdom, home to the government ministries, agencies and the major banks and financial institutions. Jeddah is a major port on the Red Sea, a significant commercial center and home to many of Saudi Arabia's leading commercial and industrial families. And Alkhobar is the heart of the Kingdom's oil and gas and manufacturing industries.

Sheila Shadmand

In line with Jones Day's "One Firm Worldwide" approach to client services, our Middle Eastern offices work across jurisdictions and practice areas as an integrated team to provide our clients with the best lawyer for the job, regardless of physical location. Our core practice areas for our lawyers in the region include: banking and finance, construction, corporate, commercial and M&A, employment, global disputes, intellectual property, real estate and U.S. regulatory compliance.

Editor: How has the region evolved as a destination for U.S. companies? What are the most important factors contributing to Dubai's appeal?

Shadmand: There is an unbelievable wealth of opportunity – quite literally – in the Middle East. Looking at sovereign wealth funds (SWFs) as one indicator, 14 of the 50 largest SWFs in the world are in the Gulf Cooperation Counsel (GCC) countries alone (which include Saudi Arabia, Qatar, Bahrain, and the United Arab Emirates). In the UAE, seven SWFs are in the top 50, with a UAE-based SWF holding the #1 position (with assets of over US$627 billion), and a Saudi SWF holding the #4 position (with assets of US$473 billion).

Another statistical indication for why U.S. companies should be looking very seriously at the Middle East is GDP growth rates. According to *The Economist,* many of the world's fastest-growing countries in terms of predicted GDP for 2012 are in the Middle East. Libya, Iraq and Qatar all have top-ten-ranked growth rates for 2012, and the UAE and Saudi Arabia are close behind.

Editor: How does a U.S. company operating in the Middle East assure itself that its operations are not subject to sanctioning under the FCPA or the UK Bribery Act?

Shadmand: This is a real issue, in this part of the world especially. In addition to the FCPA, the UKBA and the OECD Convention, international businesses must also be cognizant of the local anti-corruption laws that exist in most Middle Eastern countries. Historically speaking, however, the majority of anti-corruption enforcement worldwide comes from the U.S. government and the FCPA.

Over the past five years we've seen record penalties imposed by the U.S. government – from $44.1 million in 2007 to $579 million and $800 million most recently for multiple violations worldwide. In the third quarter of 2011 alone, we have seen three corporate enforcement actions, two individual convictions and three new FCPA-related indictments from the DOJ.

We regularly counsel clients on putting in place or buttressing existing anti-corruption compliance programs and training to increase effectiveness. Given the figures above, time and attention to these compliance issues *before* a violation occurs is an important component for U.S. companies doing business in the Middle East.

Editor: Has this legislation had an effect on U.S. business in the region?

Shadmand: It has had an effect to the extent that U.S. companies need to be very mindful of having robust compliance programs when doing business in the region. We keep our clients apprised of enforcement actions and make sure they are counseled about maintaining effective compliance programs. One of my principal practice areas has been counseling clients regarding compliance around the world, not

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only in the Middle East, having successfully led internal investigations for clients, including proceedings involving the U.S. government. And we as a firm have decades of knowledge and experience in this area, with many of our lawyers having an understanding of the prosecution and enforcement function gained through service in senior positions in the Department of Justice.

Editor: I would assume the U.S. Treasury Department's Office of Foreign Assets Control sanctions program would be part of that kind of counseling?

Shadmand: Yes, absolutely. Sanctions programs are another area where we regularly counsel U.S. clients doing business in the Middle East. Under the OFAC regulations, which change periodically, there are a number of issues that U.S. companies need to be mindful of, given the different levels of restrictions that may apply in any given country at any given time. As with the FCPA, we regularly monitor these sanctions programs and counsel clients in maintaining compliance with these laws.

Editor: Tell us about your arbitration and litigation practice.

Shadmand: Historically and culturally, disputes in the Middle East have generally been considered private matters. Unlike in the U.S., where we are so litigious, in the Middle East a public airing of grievances or a public dispute is not culturally the norm. Procedural rules tend to be more sparse and evolving in emerging markets. Many jurisdictions in the Middle East are civil law jurisdictions (where a lack of precedents does not provide the certainty and clarity expected in common law jurisdictions), and the rule of law is often notional in many undeveloped countries. Add all of that up and you get – until recently – very few big-ticket disputes being resolved through the legal process in the Middle Eastern countries.

However – these times are a-changing. Arbitration is growing at a rapid pace in the Middle East, not only in the number of arbitrations but also in the size of the disputes. And the rule of law in certain jurisdictions is becoming solidified, making way for the accessibility of existing court systems and giving birth to new fora. For example, the DIFC Courts in Dubai have recently expanded its jurisdiction to hear claims from any company. (Previously they could only hear disputes arising from companies based in the DIFC.) The DIFC Courts are an English-language, common law system with international judges, providing a court for international companies having business in Dubai that has a more familiar process of adjudication. This is a major step toward increasing the justiciability of disputes in Dubai.

Editor: Why has arbitration experienced such growth?

Shadmand: Arbitration has expanded exponentially in the Middle East because it provides the confidentiality that is culturally desired. In an arbitration proceeding, you can more easily protect information and avoid the unwelcome publicity that goes along with court proceedings. Arbitration also may provide companies greater flexibility to enforce their awards across several jurisdictions. There are a number of Middle Eastern countries that are a signatory to the New York Convention, including Bahrain, Oman, Saudi Arabia, Syria, the UEA and Lebanon. There also is a GCC convention for mutual enforcement of arbitration awards among the GCC countries.

As an example of this growth, *The American Lawyer* reported that in 2010 there were a hundred disputes of one billion USD or more being resolved through arbitration. Over a third of those billion-dollar arbitrations related to oil and gas disputes, with many of them originating in the Middle East. That is an impressive figure that cannot be ignored. Mediation is also becoming a growing area in this part of the world. It is not as often invoked in the Middle East as it is in the West, but it is a dispute resolution mechanism that is starting to attract Middle Eastern regional companies and international companies doing business here as a prudent first step in the resolution of disputes.

Editor: Have the DIFC courts attracted much activity that might have taken place elsewhere?

Shadmand: While the DIFC courts' expanded jurisdiction has only been recently announced, I think we will certainly see DIFC law and DIFC courts being written into more contracts. Given the expanded jurisdiction, I think we will also see disputes that arise between international companies doing business here, whether or not a DIFC preference is written into the contract, finding their way into this court. And we are poised to assist, having rights of audience to represent clients in the DIFC courts.

Editor: Where are the current investment opportunities for western countries in the Middle East?

Shadmand: Since the Arab Spring, the UAE (Dubai in particular) has seen a noticeable spike in foreign investment. Because the UAE is a politically stable, moderate country and because Dubai in particular is such an international community, Dubai has received the benefit of some of this unrest – a "relocation" of many existing international companies from other parts of the Middle East, as well as new international investment from companies who have been looking to invest in the Middle East for some time, and who see the UAE as a beacon of stability in a wealthy emerging market region.

I would also say that close attention should be paid to Libya and Iraq because of the great abundance of natural resources that resides in those countries, which have been relatively inaccessible for so long. Libya's percentage increase of GDP for 2012 has been predicted by some to be as high as 22 percent, which is astounding, and Iraq's percentage increase is commonly predicted to be in double digits as well. Obviously these are all predictions, but by historic measures I would not be surprised if those figures prove to be fairly accurate. There are enormous opportunities there that have until this point in time been unreachable for international investment.

Editor: To what extent does Sharia law figure into your practice?

Shadmand: All companies doing business in the Middle East need a certain understanding of Sharia law because in most countries Sharia law is an overlay that informs how all laws are applied and interpreted. Sharia law is something we understand and discuss with our clients. Rather than limiting, it is important to understand its purpose and to make sure that your business activities are in conformity with your own agenda as well as in compliance with Sharia law.

Editor: What are your thoughts about the future of your office and American business in the Middle East?

Shadmand: We would not be here – four offices deep – if we did not believe that the Middle East is a region that must be paid attention to because of its enormous opportunity. This is a relatively – as compared to Europe and Asia – untapped market for the United States, and that should change if American companies don't want to be left behind in this ever increasing world of globalization.