

MONTHLY NEWSLETTER

FOR CLIENT USE ONLY

Vol. XXI, Nos. 4 & 5

April & May 2003

Recent Legal Developments
in the
United Arab Emirates
and
Highlights from
Bahrain, Egypt, Iran, Kuwait,
Oman, Pakistan, Qatar and Saudi Arabia

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UNITED ARAB EMIRATES

1. GCC Customs Union

At the Doha summit in December 2002, the six GCC member states agreed to create a GCC Customs Union by January 1, 2003, a measure that has long been contemplated by the GCC Charter and the GCC Unified Economic Agreement. The principal objective of the Customs Union is to create a single customs zone among the GCC member states. This involves the harmonization of duties on imports into the GCC and the removal among the GCC countries of customs duties, charges and other obstacles to intra-GCC trade.

a. Implementation in the U.A.E. In the U.A.E., Federal Decree No. 55 of 2002 ratified a model GCC customs law as an appendix to the amended GCC Unified Economic Agreement. The GCC model contains rules on such subjects as the calculation of import duties; prohibitions and restrictions; product identification (place of origin, value, type); customs clearance (documentation, inspection, valuation of goods); payment of customs duties, refunds, transit goods, warehousing, free zones, temporary entrance and re-export; and exemptions. The model states that imports for diplomatic, military, personal and household, and charitable purposes shall be exempt from duty. It also provides that any claim for reimbursement of customs duty must be asserted within three years, while requiring the customs authority to maintain records for five years.

Federal Law No. 19 of 2002 imposed a uniform 5% duty on goods imported into the U.A.E. effective from January 1, 2003. The duty is imposed on the C&F value of the goods at the port of arrival. The prevailing earlier import duty had been 4%; however, Federal Law No. 19 of 2002 also eliminated duty exemptions on many categories of imports, effectively raising the import duty on such items from 0% to 5%. The only exceptions to the 5% import duty expressly set forth in Federal Law No. 19 of 2002 are the punitive 100% import duty on tobacco and tobacco products, the exemption from import duty accorded to fifty-three categories of goods listed in the schedule to the Law, and the exemptions granted pursuant to the GCC model law approved by Federal Decree No. 55 of 2002; an earlier general exemption for imports for public projects was eliminated.

Federal Law No. 1 of 2003 established the Federal Customs Authority, headquartered in Abu Dhabi. The Authority was granted corporate status and was delegated the powers to institute overall policy pertaining to customs matters in the U.A.E. in cooperation with the customs departments and to oversee the execution thereof; to propose draft laws relating to customs matters and to oversee the execution thereof; to regulate customs works in the U.A.E.; to propose duties relating to customs services, provided that the same be issued by Cabinet Resolution; to prepare the regulations, rules, procedures, terms and customs information applicable in the U.A.E.; to prepare the rules and regulations pertaining to the combating of smuggling and fraud in relation to customs and to oversee and to monitor the execution thereof; to coordinate with the customs departments regarding the consolidation of joint customs services of such departments; to control and to inspect the enforcement of the customs tariffs and procedures, to unify documents and data and to devise a plan for joint training and development; to collect and to publish customs data, information and statistics; to represent the U.A.E. in conferences and meetings at the Arab, regional and international levels relating to customs matters and to monitor the execution of resolutions issued thereby in cooperation with the competent authorities in the U.A.E.; to execute the steps required by the membership of the U.A.E. in the GCC Customs Union and any other customs unions; to invest the Authority's funds; and to perform any other duties assigned to the Authority by the Cabinet.

b. GCC implementation. The GCC Finance Ministers have agreed common principles for the implementation of the Customs Union. These include the implementation of a unified customs tariff for non-GCC goods; uniform customs regulations and procedures; a single point of entry into the GCC; free movement of goods between the member states without customs restraints; and the according of national treatment to any items manufactured in any member state.

The single point of entry for foreign goods will be any land, sea or air customs point linking a member state with the outside world. The first customs point of a member state at which imports arrive from outside the GCC shall inspect the goods, ensure that such goods conform with the import documents and are free of contraband, and collect the applicable customs duty. Non-GCC commodities entering the Customs Union from any of the free zones are subject to

customs charges. Unified conditions have been agreed for the import of governmental goods and customs exempt goods.

It has also been agreed to harmonize the rules on prohibited items. Items prohibited in some member states shall be shipped directly to the importing member state or shall transit only those member states that permit the relevant items.

For an initial period of three years, customs revenues will be allocated on the basis of the final destination of imports. Agreement on a permanent arrangement thereafter has not been reached. One option under consideration is proportional distribution, based on the size of imports of each country. Further subjects to be addressed include allowing clearing agents to work in all member states, shared trade registration, computer linking of the members' customs posts, and establishment of joint customs centers.

Notwithstanding the introduction of the Customs Union, Saudi customs officials continue to impose a 5% duty on shipments from the U.A.E. Other problem issues include preferential and protectionist measures applied by some member states to their domestic industries.

Future expansion of the Customs Union to the free movement of labor and services and monetary union is contemplated. The GCC has approved a provisional timetable for monetary union in 2005 and a single currency in 2010.

2. Securities Markets: Trading Floors

New regulations permit a securities market to open a trading floor at a location separate from the market. Resolution No. 70 of 2003, promulgated by the chairman of the Securities and Commodities Authority, defines such a trading floor as a location belonging to a licensed securities market but located in an Emirate other than the Emirate in which the market is licensed, carrying on securities trading under the supervision and control of the market to which it belongs.

Such a trading floor may be licensed with the approval of the concerned local authority and pursuant to a license issued by the Securities and Commodities Authority, provided that certain conditions are met. The relevant securities market must apply for the trading floor license and must itself hold a valid license from the Securities and Commodities Authority. The trading floor must have the

administrative and technical capability required for its task and must be electronically connected to the market. The market must prepare internal regulations governing the operation of the trading floor.

The market must provide a report to the Securities and Commodities Authority every three months concerning the conduct of business by the trading floor, including the hours of operation, the volume of trading, the number of brokers and investors transacting on the trading floor, and all other information that may be required to enable the Securities and Commodities Authority to monitor the trading floor.

3. Motor Vehicle Insurance Policies

Minor changes have been introduced to the uniform insurance policies that are required for operation of any motor vehicle in the United Arab Emirates. On balance, the changes introduced by Ministerial Resolution No. 28 of 2002 and Ministerial Resolution No. 76 of 2003 are favorable to insured parties. The policy language covering loss or damage to the insured vehicle now extends to loss or damage arising from a collision, an overturning, any accidental occurrence or a sudden mechanical breakdown or resulting from wear and tear. Previously, coverage extended only to loss or damage arising from an accidental occurrence or a collision or overturning that resulted from a sudden mechanical failure or wear and tear. In addition, an insurance company that wishes to cancel coverage for loss or damage may now do so only if valid reasons for such cancellation exist, and notice of such cancellation must be copied to the Ministry of Economy and Commerce. Previously, it was required only to provide notice to the insured.

4. Advocacy Regulations Amended

The implementing regulations for the Federal Advocacy Law have been amended pursuant to Ministerial Resolution No. 618 of 2002. Instead of proceeding directly to the chambers of a licensed advocate for training, a newly qualified advocate is now required to complete a six month training period with the Training and Legal Studies Institute of the Ministry of Justice. Successful completion of this initial training is to be followed by an assignment to the chambers of a licensed advocate for further training.

Contributed by Trowers & Hamblins, Muscat, Oman

1. Corporate Law Initiatives

a. Corporate governance. Oman has continued to draw from the spate of corporate failures in the West to develop its compliance requirements for corporate governance in public joint stock companies. In January, Oman revised its Code of Corporate Governance, installing new regulations regarding the composition of the board, the requirements for audit committees, non-executive directors, independent directors, internal auditors and legal advisers.

Currently, the board of directors of a public joint stock company must have between five and twelve directors. The majority of these directors must be non-executive, and at least a third of the board must be independent directors. In addition, the roles of the chief executive officer and chairman must be separated. The functions of the board of directors have been clearly set out, and there must be a secretary appointed to the board for board meetings.

Audit committees must consist of at least three board members, all being non-executive and the majority being independent. At least one of these members must have finance and accounting expertise. The audit committee is to meet at least four times a year. Its responsibilities include reviewing the terms of engagement of the company's auditors, reviewing audit plans, checking for financial frauds and putting in place appropriate systems of financial accountability, overseeing internal audit functions and internal control systems, reviewing financial statements, and serving as a channel of communication between the company's external auditors and the board.

In addition to the audit committee, the internal auditor has certain functions and duties including reviewing and examining procedures of internal control, assisting the management of the company and identifying weaknesses. Internal auditors are also to provide information to the board about the adequacy and effectiveness of the company's system of internal administration and accounting and financial controls and to review ways and means of safeguarding assets. The internal auditor also promotes awareness of risk management issues and reviews complaints or recommendations from all stakeholders. The internal auditor will have the right to

full, free and unrestricted access to all property, personnel and records of the company. He must have a high degree of independence such that he is not assigned duties or engaged in activities which he would normally be expected to review or appraise.

A company's legal adviser is assigned certain responsibilities as well. He is to ensure compliance with all applicable laws and regulations and with the internal regulations of the company. He must update the company's constitutive documentation in line with changes in law and prepare, review and approve contracts and agreements which the company enters into to ensure their compliance with legal requirements. He also has a company secretarial role approving agenda of board and shareholder meetings and providing advice with regard to the convening and conduct of meetings. The four principles of conduct which must be adhered to at all times by the internal auditors and legal advisers are those of integrity, objectivity, confidentiality and competence.

With the addition and refinement of these checks and balances in the corporate governance of Oman, it has to be noted that Oman must be one of the leaders in the Middle East region in ensuring competency, effectiveness and accountability in public company affairs.

b. Doing business. Having joined the World Trade Organization, Oman is now in the process of making the establishment of a foreign business presence simpler, cheaper and more attractive. Oman has relaxed several of its visa requirements and is currently in the process of renewing its Foreign Capital Investment Law. Indications are that the minimum capital requirement for setting up a limited liability company in Oman, which currently stands at R.O. 150,000, will be reduced to R.O. 20,000. In addition, it is reported that changes are being prepared such that suitable foreign companies will be able to establish branch offices in Oman without the need to have a contract with the government or a quasi-governmental entity. Branch offices are attractive, as they may conclude contracts and employ staff but do not require an Omani partner's participation for their establishment.

2. Insurance Coverage Forfeited for Failure to Disclose New Risks

In a recent judgement, the Supreme Court, the highest court in Oman, held that an insurer was entitled to deny coverage to an insured party who had breached the terms of the insurance policy by failing to disclose new risks to the insurer.

The dispute involved a contractor's all risk and third party liability insurance policy in respect of a warehouse under construction. One of the conditions of the insurance policy was that the insured must notify the insurer about new circumstances that increase the insured risks. While construction was underway, the owner of the warehouse transferred and stored goods within the construction area. The packaging of these goods was inflammable, and the goods were stored an insufficient distance away from the building works. A fire erupted, destroying the warehouse and all of its contents.

The appeal court, narrowly construing the grounds for forfeiture of coverage, held that coverage could not be denied, because it was not shown that the insured acted in bad faith, which is ordinarily required as a matter of custom. The Supreme Court agreed that there was no bad faith on the part of the insured. However, the Supreme Court went on to observe that bad faith on the part of the insured was not stated in the policy as a requirement for forfeiture of coverage. Furthermore, the Insurance Law sets out certain policy conditions that courts may not enforce, but these do not include conditions requiring notice of increased risks. As a principle of contract, the contracting parties are free to include whatever conditions they desire, and the court should enforce any condition that does not violate public order.

The Supreme Court went on to observe the importance of notifying the insurer of any developments or changes affecting the insured risk. The risk is the main subject of the insurance policy and is the subject of a joint obligation between insurer and insured. The insured is obligated to pay premiums to insure himself against the risk, and the insurer is obligated to pay the amount of the coverage if the risk materializes. The obligation to notify of increased risk is ongoing, in continuation of the insured's obligation to provide the necessary information in the first place.

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