

**MONTHLY NEWSLETTER**

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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. Sponsorship Transfer

Cabinet Resolution No. 18 of 2005 establishes new rules for the transfer of employees, while also repealing Cabinet Resolution No. 30 of 2001, which had made transfer of employment available to nine specific categories of employees (see the November 2001 edition of this Newsletter).

The new Resolution allows employees in all categories to transfer from one employer to another. However, the number of such transfers is limited for most categories of employees, and most employees are now subject to stricter length of service requirements prior to transfer.

In general, the transfer of an employee may be approved by the Minister of Labor and Social Affairs if (1) the employee holds a valid residence visa in his passport, (2) no nationals of the U.A.E. or other GCC states who seek employment could fill the vacant position to which the employee will be transferred and (3) the employee has served the required period of time with his current employer. Holders of master's and doctorate degrees shall be subject to a one year length of service requirement and may transfer their employment an unlimited number of times. Holders of bachelor's degrees or the equivalent are subject to a length of service requirement of two years and may transfer only twice during a single continuous term of residence in the U.A.E. Other categories of employees are subject to a minimum three year length of service requirement and may transfer employment only once during a single continuous period of residence in the U.A.E. Length of service requirements may be waived by the Minister against payment of a Dh 3,000 supplementary fee in each case.

A sponsorship transfer fee is imposed in the amount of Dh 1,500 for the holder of a master's or doctorate degree, Dh 3,000 for the holder of a bachelor's degree or the equivalent, and Dh 5,000 for any other category of employee. The Minister may approve the transfer of sponsorship of employees of all categories without regard to the length of service requirement if both employers are

located in the same Emirate and owned by the same person, against a fee of Dh 500 for each employee; however, the normal transfer fees of Dh 1,500, 3,000 and 5,000 will apply if the places of work are located in two different Emirates.

The new Resolution also contains rules governing the temporary secondment of employees in the construction and building sector. This is a provision that is likely to be of particular value to manpower supply companies. Employees may be seconded to employers in the construction and building sector if (1) the number of employees is no less than 20, (2) the employer applying for the employees has a requirement for the employees in accordance with information available to the Ministry of Labor and Social Affairs, (3) the current employer consents to the transaction and (4) the new employer pays the applicable fee. The fees for secondment of an employee are Dh 1,500 for secondment of not more than 3 months, Dh 2,000 for secondment of more than 3 months but not more than 6 months, Dh 2,500 for secondment of more than 6 months but not more than 9 months, and Dh 3,000 for secondment of more than 9 months but not more than 1 year. Fees may be doubled in the event that the conditions for secondment are breached. An employer who commits a violation may also be denied the right to recruit new employees for a period of six months from the date of payment of the doubled fee.

## 2. Bank Guarantees for Employment

The rules on bank guarantees for employment have been revised again. The new rules are contained in Cabinet Resolution No. 19 of 2005, which also addresses fees for Labor transactions generally and introduces for the first time incentives in the fee structure for employment of U.A.E. nationals.

Employers are now to be classified into category A, category B and category C. The lowest fees are payable by category A employers, while the highest fees are payable by category C employers. The criteria for classifying an employer are its compliance with the law and regulations, Emiratization of its workforce, and cultural diversity. Although not expressly defined, the cultural diversity element appears to reward employers who employ staff from multiple nationalities and to penalize those with a

concentration of employees (in excess of 30%) of a single nationality.

Category A employers have no labor violations, have achieved their Emiratization targets, and have a cultural diversity ratio of 30% or less. If any of these criteria are not satisfied, then the employee will be classified as category B. A category C employer is an employer that has hired employees who are guilty of violations, has not complied with its Emiratization requirements or has a cultural diversity ratio of 75% or more.

Emiratization targets are set at 4% of workforce for banks, 5% of workforce for the insurance sector, and 2% of workforce for employers operating in the commercial sector with at least 50 employees. Employers that are not subject to express Emiratization levels but nevertheless achieve Emiratization of 2% shall be classified as category A, provided they comply with the other requirements for classification in category A.

Category A employers are exempted from the requirement to submit bank guarantees in respect of their workforce. Category B employers are required to submit a bank guarantee in the amount of Dh 3,000 for each employee up to the first 500 employees hired, and a guarantee in the amount of Dh 1,000 for each employee in excess thereof, subject to a maximum amount of Dh 3 million. An employer in category C is required to submit a bank guarantee in the amount of Dh 3,000 for each employee, subject to a maximum of Dh 5 million.

Exempt from the requirement to submit bank guarantees are industrial facilities licensed by the Federal Ministry of Finance and Industry enjoying priority in the granting of privileges and exemptions; companies founded or partially owned by the federal government or a local government; public authorities, corporations and companies operating the sectors of oil, gas, mining, banking, insurance, tourism or motels; sole proprietorships wholly owned and personally managed by nationals of the U.A.E., if supported by corporations and funds dedicated to the support of youth and Emiratization projects; and public welfare societies, cooperative societies, and national corporations working under the supervision of the Ministry in the fields of social care and development.

The bank guarantees are designed to cover the costs of repatriation of an employee, other employment entitlements of the employee, and the employee's death benefits. The Ministry or the employee may apply to the courts for an order to pay entitlements from the relevant bank guarantee. The new measure repeals and replaces the earlier Cabinet resolutions on fees, penalties and bank guarantees.

3. Accountants and Auditors

Cabinet Resolution No. 13 of 2005 grants a further two year extension in respect of the obligation to comply with the provisions of the new Law on Auditors and Accountants, enacted in 1995 (see the January 1996 edition of this Newsletter). The recently granted extension is scheduled to expire on July 1, 2007.

4. Implementing Regulations for Privatized Telecom Sector

The implementing regulations to the new telecom sector law have been promulgated, in the form of a Resolution of the Supreme Committee for the Supervision of the Telecommunications Sector. Chapter 1 of the new Resolution deals with the organizational structure of the General Authority for Regulation of the Telecommunications Sector, which is also known as the Telecommunications Regulatory Authority or TRA. Chapter 1 provides that the TRA shall be governed by a board of directors composed of five members, including the chairman and the general manager. They shall be appointed by resolution of the Supreme Committee and serve for terms of four years. The members of the board shall have no civil liability for acts taken in good faith as board members.

Chapter 2 provides that licenses and equipment permits shall be granted pursuant to detailed specifications promulgated by the Supreme Committee. The Supreme Committee shall have the authority to issue licenses. Equipment permits shall be issued by the TRA in accordance with specifications promulgated by the TRA board of directors. Chapter 3 deals with connections to the public telecom network, approvals for which shall be granted by the TRA. Chapter 4 governs the use of the frequency spectrum, which shall be deemed to be national wealth administered and used by the TRA. Chapter 5 deals with the internet network, and

Chapter 6 contains general and concluding provisions.

5. Protection of the Ozone Layer

The United Arab Emirates has joined the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer. Parties to these agreements are obliged to adopt appropriate legislative and administrative measures and to cooperate in harmonizing the control, limitation, reduction and prevention of human activities that have or are likely to have adverse effects resulting from modification or likely modification of the ozone layer. In addition to limitations on emissions of Chlorofluorocarbons and other substances, parties to the agreements are obliged to cooperate in respect of research, assessment, legal, scientific and technical matters. The Protocol contains further restrictions on trade of CFC's and other controlled substances with states that are not parties to the Protocol.

6. Kyoto Protocol

The United Arab Emirates has ratified the Kyoto Protocol to the United Nations Framework Convention on Climate Change, a convention that the U.A.E. joined in 1995 (see the February 1996 edition of this Newsletter).

The Kyoto Protocol imposes an obligation on each Party that is listed in Annex 1 to the Protocol to achieve specified reductions in carbon dioxide equivalent emissions by specified deadlines. Parties to the Protocol that are not listed in Annex 1 (such as the U.A.E.) are subject to more general obligations to formulate and implement policies for the reduction of emissions affecting the climate.

7. Judicial Cooperation Treaty with Pakistan

Federal Decree No. 12 of 2005 ratifies a treaty between the U.A.E. and Pakistan on the service of judicial and extra-judicial documents, the taking of evidence, and the recognition and enforcement of judgments in civil and

commercial matters. The treaty establishes rules for the service of documents from one country in the other country through the Ministry of Justice in the country where the documents are to be served. The treaty also establishes rules for cooperation in the taking of evidence. Also ratified was a separate bilateral treaty on extradition.

With regard to the enforcement of judgments, each country undertakes to recognize and enforce final and enforceable judgments passed by the courts of the other country in civil, commercial and personal matters. The provisions of the treaty do not apply to interim or provisional matters or to matters of taxation or fees. The courts of the state in which enforcement is sought are directed not to review the merits of the dispute when enforcing the judgment of the courts of the other country.

With this treaty, Pakistan becomes the fifth non-Arab League member state to sign a bilateral treaty with the U.A.E. for the mutual recognition and enforcement of judgments. The other countries with similar treaties are France, India, Armenia and China.

#### 8. TIFA Agreement with United States

Federal Decree No. 40 of 2005 ratifies the Trade and Investment Framework Agreement between the U.A.E. and the United States of America. The TIFA provides a framework for the ongoing negotiations between the two countries towards the finalization of a bilateral Free Trade Agreement. The U.A.E. stands to be the fifth Arab League member state with a bilateral Free Trade Agreement with the United States, after Morocco, Jordan, Bahrain and Oman.

The TIFA provides for the establishment of a United Arab Emirates-United States Council of Trade and Investment, directed to meet at least once a year to promote economic cooperation between the two parties, including the eradication and removal of impediments to trade and investment. Reports indicate that conclusion of a Free Trade Agreement is expected during late 2005 or early 2006.

#### 9. Dubai International Arbitration Center

Dubai Law No. 10 of 2004 creates the Dubai

International Arbitration Center. The new arbitration center has its own juristic personality and financial and administrative independence. The center is governed by a board of trustees composed of 21 members experienced in the field of arbitration appointed by the Ruler of Dubai for three year terms of office. The new arbitration center replaces the earlier Conciliation and Commercial Arbitration Center of the Dubai Chamber of Commerce & Industry; it shall assume all of the rights and obligations of the earlier center, the staff of the earlier center shall transfer to the new center, and the rules of commercial conciliation and arbitration of the earlier center shall continue to be followed until new rules are promulgated.

10. Dubai: Suits against the Government

Sovereign immunity does not exist in the U.A.E. as a general principle of law, although limited sovereign immunity exists pursuant to statute.

Immunity from suit exists only in the Emirate of Dubai. Pursuant to directives of the Ruler of Dubai dating back to 1971, the Government of Dubai and the Ruler of Dubai enjoyed immunity from suit unless a waiver of immunity was granted by the Ruler in each specific instance. This immunity has now been narrowed by Dubai Law No. 10 of 2005. There is no general immunity against suit on the part of the Government of Dubai, although it continues to be the case that the Ruler, the Deputy Ruler and the Crown Prince may not be sued without obtaining the prior approval of the Ruler. A party wishing to bring suit against the Government of Dubai must first make a written submission containing full details of the claim to the legal advisor to the Government of Dubai. If an amicable solution is not achieved within two months, then the plaintiff may have recourse to the competent courts.

Law No. 10 of 2005 expressly provides that no debt or liability of the Ruler or the Government may be recovered by way of attachment. Instead, judgments against the Government shall be submitted to the Director of the Ruler's Court, and judgments against the Ruler shall be submitted to the Ruler, for an order as to execution. In this respect, Dubai is in harmony with the Federal courts, which are likewise prevented by the Federal Code of Civil

Procedure from initiating execution proceedings against public assets.

**SULTANATE OF OMAN**

Contributed by Trowers & Hamlins, Muscat, Oman

1. A Time of Change in the Sultanate of Oman

Recent months have seen various changes in the laws of the Sultanate of Oman. These include amendments to the Commercial Companies Law, which is crucial to those conducting business in Oman, and a new postal law. In addition, there have been several new decrees to progress the development of the Yitti Beach Resort. Below is a quick summary of the main developments:

a. Royal Decree No. 44 of 2005, Amending the Commercial Companies Law. Article 13(8) has been amended regarding the procedure for mergers. There is now a provision allowing the Minister of Commerce and Industry to reduce the implementation period for a merger to less than three months if it is in the public interest. The other principles regarding objection and registration remain the same.

b. Royal Decree No. 48 of 2005 -- Postal Law. This provision establishes the Oman Posts Co. SAOC, which will be wholly owned by the Government. It is likely that this decree will lead to future changes in the postal system and better efficiency of the service. It marks another step towards privatization in the Sultanate.

c. Royal Decrees Nos. 49-51 of 2005 -- Yitti Beach Resort. The development area has been declared a public utility project in a series of decrees. This project has received attention as one of several ongoing major tourism initiatives around the country.

d. Royal Decree No. 61 of 2005, Amending the Land Law. Article 1 of the Land Law, Law No. 5 of 1980, has been amended so that foreigners and Omani companies can benefit from its provisions following approval from His Majesty the Sultan on a recommendation from the Council of Ministers.

This is in addition to the current exemption which can be provided by special Royal Decree. This is the most recent change in a long list of provisions making land in the Sultanate more accessible to foreign investors as part of a strong focus on tourism and development in the interest of the national economy.

e. Royal Decree No. 66 of 2005, Amending the Commercial Agencies Law. Article 7 has been amended and has particular implications for military sales agencies. The purchase of weapons, ammunition or military equipment concluded by the security and military authorities directly with the dealer shall be exempted from the requirement to deal exclusively with the appointed agent. This will provide greater freedom for the military but could have a more negative impact on the agents involved.

**UNITED STATES/INTERNATIONAL**

1. Section 301

The United States Trade Representative (the "USTR") has announced the U.S. government's decisions in respect of its annual review under the "Special 301" intellectual property provisions of the Trade Law. Among the countries covered by this newsletter, Bahrain, Egypt, Kuwait, Oman, Pakistan, Saudi Arabia, and the United Arab Emirates were referenced in the USTR's announcement.

Egypt, Kuwait and Pakistan were kept on the priority watch list. The U.S. government places countries on the priority watch list because of a lack of adequate and effective intellectual property protection or market access that is particularly troublesome to the U.S. As reasons for elevation of Egypt to the priority watch list last year, the USTR's announcement referred to marketing approvals for locally produced copies of patented pharmaceutical products and to deficiencies in Egypt's copyright enforcement regime, judicial system and trademark enforcement. The USTR stated that these problems continued to be unresolved this year.

Kuwait was kept on the priority watch list because of its high rate of copyright infringement and its failure to amend its copyright law. Pakistan was retained on the priority watch list because of high overall counterfeiting levels.

Saudi Arabia was kept on the watch list. The U.S. government uses the watch list as a means of monitoring progress in implementing commitments with regard to the protection of intellectual property rights and providing market access to U.S. intellectual property products. The USTR stated that legal protections are improving, but that greater progress is required.

The other countries that were referenced in the USTR's report remained off both the priority watch list and the watch list. The announcement referred to negotiations currently underway with both Bahrain and the U.A.E. toward conclusion of bilateral Free Trade Agreements. The announcement also referred to several improvements in

intellectual property protection in Kuwait.

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