

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. Dubai Commodities and Metals Center

The Emirate of Dubai has created another free zone known as the Dubai Commodities and Metals Center. The new Center was created by a Resolution promulgated by the Crown Prince of Dubai, which was accompanied by regulations designed to provide a framework for the Center's functioning and regulation.

The Resolution provides that the Center shall serve as a center for trade and exchange of commodities, manufacture of metals and provision of related services. The Resolution also creates the Authority for the Dubai Commodities and Metals Center, a financially and administratively independent body established by the Government of Dubai.

The regulations, promulgated as Regulation No. 4 of 2002, provide that the Authority shall be composed of a chairman, a board of directors and an executive staff. The chairman is to supervise the Center, while the board is to manage the Center under the supervision and control of the chairman. The chairman is directed to issue regulations regarding the formation of the board of directors, the term of the directors' service, and the meetings of and the passage of resolutions by the board of directors.

The Authority's tasks include creating infrastructure and buildings for the Center; establishing rules and regulations for the operation of the Center; organizing and supervising activities within the Center; entering into relationships (including contracts and agreements) with parties both within and outside of the Center; licensing companies wishing to conduct business within the Center; cooperating and entering into agreements with other free zones and other local and international organizations; and imposing and collecting fees for the services rendered by the Center. The Authority may delegate the management and operation of the Center to outside parties.

The functions and powers of the board include creating the general policy of the Center; proposing rules and regulations for the management of the Center and the activities conducted therein and submitting such resolutions to the chairman for approval; adopting the Center's organizational structure and establishing rules and regulations for the operation of the Center; appointing

the executive staff; proposing the Center's annual budget and submitting the budget to the chairman for approval; establishing regulations for the conduct of the board and its meetings; and any other functions assigned to the board by the chairman.

The business and activities that may be conducted in the Center include the following:

1. The treatment and refining of gold, diamonds, metals and precious stones, including the molding and minting of coins and metals, the processing of stones and the cutting and polishing of precious stones;
2. The import, export, warehousing and distribution of commodities, defined as any natural material or animal, agricultural or industrial product or derivative, including gold, diamonds, precious metals and stones, and other metals;
3. The provision of products and services relating to commodities and derivatives of commodities;
4. The provision of information technology and telecommunications relating to commodities and the trading of commodities;
5. The creation of a center for the attestation of commodities in cooperation with international organizations; and
6. The establishment, development and support of institutes and academic and professional institutions for the education and training of employees of the companies incorporated or operating in the Center in order to improve the level of the commodities services industry in Dubai.

The board may issue schedules specifying the types of commodities that may be traded in the Center. Before operating in the Center, a company must obtain a license, which shall specify the scope of the activities the company may undertake.

Companies with limited liability owned by one or more natural or corporate persons may be incorporated in the Center in accordance with the rules and regulations of the

Center. Each such company is required to include a statement along with its corporate name indicating that it is incorporated pursuant to Regulation No. 4 of 2002, that it has limited liability, and that it is a Center company. Such statement must appear in all of its business transactions, contracts, advertisements, invoices, correspondence and publications. Failure to do so may result in loss of limitation of liability for the owners.

The courts of Dubai are directed to apply the laws relating to the Center when considering any dispute regarding business conducted within the Center. In the absence of a relevant provision in such laws, the laws in effect in Dubai shall apply to the dispute.

Companies and individuals working in the Center shall enjoy the following exemptions with respect to their activities in the Center. First, they shall not be subject to the rules and regulations applied by the Dubai Municipality, the Dubai Tourism and Commerce Promotion Department, the Dubai Department of Economic Development, or any other department of the Government of Dubai. Second, they shall be exempt, for a fifty year term that is renewable for a similar term by resolution of the chairman, from taxes and from restrictions on the transfer of capital, profit or wages in any currency to any destination outside the Center.

Goods shipped to, manufactured in, produced in, developed in or kept in the Center shall be exempt from customs duties, and neither customs duties nor any other duties shall be charged on such goods upon their exportation from the U.A.E. Products shipped from the Center to the customs zone in Dubai shall be considered imported to Dubai at that point, and customs duties shall be charged on them in accordance with the applicable customs tariff.

The funds and activities of a company licensed in the Center shall not be subject to any nationalization or other procedures restricting private ownership, for the duration of its activities in the Center. A company licensed in the Center may hire or employ any person it wishes for its business in the Center, provided that such person is not a national of any country politically or economically boycotted by the United Arab Emirates.

It shall be prohibited to bring into the Center or to transact in or to offer within the Center the following goods, products and services: defective goods; goods and services that violate laws protecting commercial, industrial, moral and artistic property, including goods and services that violate the laws and regulations of trademarks, patents, rights of publication and composition, and design rights; boycotted goods; goods bearing writings, drawings, decorations, marks or figures contradicting the beliefs, instructions and concepts of the heavenly religions; narcotics prohibited by law; military goods and ammunition, excluding those subject to a license issued by the concerned authority; and any business that contradicts the laws of the United Arab Emirates, including money laundering.

2. Dolphin Energy Limited

The corporate vehicle for the Dolphin project, Dolphin Energy Limited, has been incorporated pursuant to Abu Dhabi Emiri Decree No. 8 of 2002. The Dolphin project proposes the transport of gas by pipeline from Qatar to the U.A.E. and Oman. Upstream agreements for the gas supply have been concluded, and efforts are underway to secure downstream gas purchase agreements with potential customers.

The Decree gives DEL the further role of exclusive importer of gas necessary to meet all of the needs of the Abu Dhabi Water and Electricity Authority outside of Abu Dhabi's Western Region, in addition to the quantities of gas contracted for between the Government of Dubai and the Abu Dhabi National Oil Company, with the prior approval of the Government of Dubai. The Decree also provides that DEL will be given access, under an appropriate agreement to be concluded, to ADNOC's gas distribution network pending the development of a separate network to ensure the continuity of supply of ADWEA's requirements outside of the Western Region, and that a joint ADNOC-Dolphin team shall be formed to discuss the use of the network.

The shareholders in DEL are two international oil majors, TotalFinaElf and Occidental, and Offset Development Company. Offset Development Company has been incorporated as a public joint stock company pursuant to Abu Dhabi Emiri Decree No. 12 of 2002, with the Government of Abu Dhabi as its sole shareholder.

3. Late Presentation No Excuse for Bounced Check

The Federal Supreme Court has recently held that the elements of the crime of issuing a check without covering funds may be satisfied even if the beneficiary presents the check more than six months after the date the check becomes due.

The matter involved Article 401 of the Penal Code, Federal Law No. 3 of 1987, which makes it a crime in bad faith (1) to issue a check without covering funds, (2) to withdraw covering funds after issuing a check or (3) to make or to sign a check in such a manner as to prevent it from being paid. In the current case, the issuer of the check maintained covering funds in the account on the date that the check became due. Six months then elapsed, after which the beneficiary presented the check for payment. The drawee bank refused payment in reliance on Article 618 of the Commercial Code, which requires that any check payable in the U.A.E. be presented within six months of its due date. Article 620 of the Commercial Code, which apparently was not expressly adduced, provides that the drawee bank may effect payment of the check even if presented after such six month period.

The Court of First Instance convicted and was reversed by the Court of Appeal. The Court of Appeal held that the conviction could not stand given that there were covering funds in the account on the due date and that the drawee bank refused payment for reasons other than lack of covering funds.

The Federal Supreme Court held, however, that proof that the account contained covering funds on the date the check was due was not sufficient to defeat conviction. Instead, the Federal Supreme Court held that the party that issued the check was obliged to maintain covering funds until the check was presented for payment, and that a crime could be committed under Article 401 of the Penal Code as long as the check complied with the requirements stipulated by law. The Federal Supreme Court also held that the fact that the beneficiary submitted the check more than six months following its due date was likewise insufficient to defeat conviction. The Federal Supreme Court therefore reversed the lower judgement and remanded the case to another panel of the Court of Appeal for further review.

Contributed by Afridi, Angell & Khan, Pakistan

1. Pakistan's Oil and Gas Regulatory Authority
-- Initiatives and Challenges

Consistent with the current drive to promote investment in the oil and gas industries in Pakistan, the recently established Oil and Gas Regulatory Authority represents a policy initiative towards the creation of a new regime for the conduct of activity in the sectors and the autonomous regulation thereof. This article is a brief introduction to the enforcement and scope of the Oil and Gas Regulatory Authority Ordinance, 2002 and to the powers and functions envisaged for the regulatory entity established thereunder. Particular elaboration is provided on the extent to which tariff determination is subject to approval by the Oil and Gas Regulatory Authority.

a. Background. The Natural Gas Regulatory Authority Ordinance, 2000 (re-enacted after being allowed to lapse in 1997) was intended to create an edifice for the regulation of the petroleum and gas industries in Pakistan together with its proposed sister draft, the Petroleum Regulatory Authority Ordinance. However, although established in statute, the Natural Gas Regulatory Authority proved ineffective. Dialogue for revitalization was abandoned within a year when the Federal Government announced fresh plans in 2001 to enact new legislation for the establishment of a one-window consolidated oil and gas regulatory authority.

b. Establishment and effect. The Oil and Gas Regulatory Authority Ordinance, 2002 (the "OGRA Ordinance") was enforced on March 28, 2002 to establish the Oil and Gas Regulatory Authority ("OGRA"). Accordingly, Section 44 repealed the Natural Gas Regulatory Authority Ordinance, 2000, but subsumed and preserved all properties, assets, liabilities, appointments, agreements, licenses, rules and regulations acquired, made, issued or enforced thereunder. Furthermore, OGRA was substituted as the relevant authority under certain existing rules for the refining, blending production, marketing and distribution of petroleum, compressed natural gas and liquefied petroleum gas, while other rules were repealed to the extent that the OGRA Ordinance addressed the foregoing matters. Subordinate legislation in the form of rules relevant to particular aspects of OGRA's responsibilities include the Liquefied Petroleum Gas (Production and Distribution) Rules, 2001 and

the Natural Gas Regulatory Authority (Licensing) Rules, 2002.

Although Section 3(2) pronounces that OGRA shall be independent in the performance of its functions, Section 21 preserves the entitlement of the Federal Government to issue general policy guidelines to OGRA with respect to an illustrative list of matters not inconsistent with the OGRA Ordinance and further obliges OGRA to comply with such policy guidelines in the exercise of its powers and functions.

c. Scope. Essentially, the OGRA Ordinance establishes a regime for the licensing of "regulated activities" related to different categories of gas and petroleum products. The term "regulated activities" is defined to refer to an activity requiring a license, which in turn is elaborated at Section 23 to stipulate the following activities in the indicated sectors for which a license is required:

ACTIVITY	APPLICABLE TO
Construction/operation of a pipeline	<ul style="list-style-type: none"> • Oil • Natural Gas • LPG
Construction/operation of a storage or testing facility	<ul style="list-style-type: none"> • Oil • Natural Gas • LPG • LNG • CNG
Construction/operation of a production or processing facility	<ul style="list-style-type: none"> • LPG • LNG
Construction/operation of a blending facility	<ul style="list-style-type: none"> • Oil
Construction/operation of an installation	<ul style="list-style-type: none"> • Natural Gas • LPG • LNG
Transmission, distribution, or sale	<ul style="list-style-type: none"> • Natural Gas
Transportation or filling	<ul style="list-style-type: none"> • LPG • LNG • CNG
Construction/operation of any refinery	<ul style="list-style-type: none"> • Oil
Marketing	<ul style="list-style-type: none"> • Refined Oil

d. Powers and functions. In Section 6 of the OGRA Ordinance, OGRA is vested with the exclusive power to grant licenses for the carrying out of regulated activities and regulating such activities. Without prejudice to the generality of such scope, OGRA is expressly authorized to undertake a number of functions incidental thereto including determination of the manner and extent of, inter alia, the grant, termination, revocation, and modification of licenses; establishment of certified standards for the undertaking of regulated activities; resolution of disputes; provision of information and filings; and the making of rules and regulations. In particular, OGRA is charged with the authority to determine the financial viability of the conduct of regulated activities by licensees. This includes the authority to determine applicable tariffs pertaining to petroleum and natural gas, reasonable rates of return in undertaking the regulated activity, procedures, specifications and standards for refined oil products or investment programs in natural gas, and wellhead gas prices for producers of natural gas in accordance with relevant agreements or contracts.

e. Tariff regulation. Section 7 of the OGRA Ordinance imposes an obligation upon OGRA to determine or approve the tariff for regulated activities whose licenses provide for such determination or approval or where the same is authorized by the OGRA Ordinance. The criteria for determination, approval, modification and revision of tariffs is to be prescribed in rules and in the terms and conditions of each license and must include factors such as protection against monopolistic and oligopolistic pricing, cost of research development and capital investment, provision of reasonable returns to attract investment and qualitative improvement, encouragement and reward of efficiency, price reflection of scarcity or abundance of supply and the cost of alternate or substitute sources of energy.

In addition, and with particular reference to natural gas, Section 8 requires OGRA to determine an estimate of the total revenue requirement of each licensee engaged in the transmission, distribution and sale of natural gas to retail consumers and on that basis to advise the Federal Government of the prescribed price of natural gas for each category of retail consumer. In this regard, the licensee is entitled to submit its total revenue requirement for

review to OGRA while the Federal Government is correspondingly obliged to advise OGRA of the relevant minimum charges and sale prices for notification in the Official Gazette within a prescribed period, failing which OGRA is authorized to notify the price determined by it on the basis of the licensee's revenue requirements in the Official Gazette.

Although OGRA is entitled to undertake and make authorized determinations primarily on its own motion and initiative, the OGRA Ordinance provides a prescribed procedure for hearings, complaint or appeal against decisions or orders against which persons may be aggrieved. In addition, Section 22 provides express recourse to a licensee in the event that it is of the opinion that it is not financially viable for it to supply natural gas to a particular area based on the tariff applicable to it. It may accordingly submit its case to OGRA and if OGRA concurs it may refer the matter to the Federal Government, whereupon the licensee is not obliged to continue supply unless suitable financial arrangements are made by the Federal Government.

Rule 19 of the Natural Gas Regulatory Authority (Licensing) Rules, 2002 subjects the determination and application of tariffs for individual regulated activities to the review and approval of OGRA. Accordingly, no licensee is entitled to charge for any regulated activity any fixed or variable amount in excess of the relevant tariff that OGRA may approve and duly publicize, or provide service on terms and conditions other than those approved by OGRA in accordance with rules applicable to tariff determination. Furthermore, no licensee may charge any category of retail consumer for the supply of natural gas any sale price or minimum charge other than that notified by the Federal Government. In approving a proposed tariff OGRA is obliged to consider the criteria embodied in the OGRA Ordinance and would at all times be subject to any policy guidelines issued by the Federal Government. Similarly, licensees are obliged under the terms of Rule 20 to enter into all contracts on an arm's length basis and to refrain from entering into or amending any supply contract for a quantity greater than 5 MMCFD of natural gas unless it has been approved by OGRA. Thus, contractual tariff determination and composition would be subject to review and approval by OGRA as part of the overall review to which gas supply agreements would be subject.

f. Criticisms. Despite the purported vesting of

comprehensive regulatory control in OGRA, the Ministry for Petroleum and Natural Resources thus far retains control over petroleum regulation and has permitted OGRA only preliminary assumption of authority for gas related concerns.

The OGRA Ordinance still requires considerable amendment to identify and clarify certain inconsistencies that have arisen as a result of poor drafting. Thus, the definitions of certain essential terms relating to the categories of gas and oil require further clarification to avoid circularism. Similarly, the categories of activities identified create a disparity in the extent of regulation of the petroleum and gas sectors.

Regulation of certain activities continues to be governed by old law that remains substantively untouched by the OGRA Ordinance, which creates a degree of legislative overlap.

Furthermore, consumer groups have been particularly critical in highlighting concerns with regard to the insufficiency of environmental protections and the discretion conferred to OGRA in restricting minimum protections such as public consultation forums and access to the high courts.

Most relevantly, circumvention of the spirit of deregulation is feared through government intervention in tariff determination and has already resulted in litigation involving Pakistan's two main gas distribution companies, SSGC and SNGPL.

Although concerned market stakeholders have ostensibly been consulted with respect to revisions in price determination, delays have resulted and sector opinions indicate the creation of a level of confusion. Nevertheless, the Private Public Infrastructure Advisory Facility has recently issued a grant through the World Bank for developing an appropriate tariff regulatory regime which is expected to confer a standardized means for determination of tariffs.

