

**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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CONTENTS

UNITED ARAB EMIRATES

1. Companies Law Amendments: Treasury Shares
2. Finality of Settlement
3. Arbitration of Subcontract Dispute
4. Criminal and civil Responsibility
5. Sponsor's Responsibility
6. Federal Claims Committee
7. Retroactivity of Laws

UNITED ARAB EMIRATES

1. Companies Law Amendments: Treasury Shares

Federal Law No. 25 of 2001 amends Federal Law No.8 of 1984 Concerning Commercial Companies (the "Commercial Companies Law"). The amendments permit a public shareholding company, subject to certain conditions, to purchase and hold up to 10% of its own shares for the purpose of resale if the market value of the shares falls below book value. Previously, the Commercial Companies Law provided that a company could purchase its own shares only to decrease capital or to cancel shares.

The conditions imposed by the new provisions apply both before and after the share purchase. The pre-purchase conditions are that a resolution must be adopted by the company's extraordinary general assembly authorizing the board of directors to implement the purchase not later than six months from the date of the resolution; the Securities and Commodities Authority must approve the purchase; the company must have a cash surplus with which to repurchase the shares, and may not expend the company's capital or statutory reserves for this purpose; and notice concerning the transaction must be published in two local Arabic daily newspapers at least two weeks prior to the transaction. The purchases and the subsequent sales must take place on one of the licensed financial markets of the U.A.E.

The post-purchase conditions are that the shares must be sold within one year of the date of the most recent purchase; no shares may be sold during the six-month period scheduled for purchasing the shares; no new shares may be issued prior to completion of the sale; and a further proposal to repurchase shares may not be placed before the company's general assembly until two years after the date of the most recent share sale. Shares that are repurchased shall not have the right to receive dividends or to vote in the general assembly until such' shares are sold. If the shares are not sold within one year as required, then the share purchase will be deemed a reduction in the capital of the company. Banking institutions are further required to obtain the prior approval of the Central Bank to any proposal to purchase their own shares.

2. Finality of Settlement

A settlement agreement has the purpose of resolving a dispute and extinguishing the parties' claims against each other with finality. Accordingly, courts are reluctant to allow parties to reopen disputes following settlement, as a recent judgement of the Federal Supreme Court illustrates.

The parties were partners in a company which they decided to dissolve pursuant to a notarized settlement agreement, which also resolved related pending disputes between the parties. The plaintiff assumed all assets and liabilities of the company. The plaintiff then filed suit against the defendant, claiming that the defendant was indebted to the company and consequently indebted to the plaintiff. The Court of First Instance dismissed the plaintiff's suit, and the Court of Appeal affirmed.

The Federal Supreme Court affirmed the dismissal of the plaintiff's claim. The Federal Supreme Court stated that the settlement agreement dealt with the dissolution of the company and resolved all points of dispute between the parties. The plaintiff asserted that the claims that he was pursuing against the defendant were separate from the claims that were addressed in the settlement agreement. However, the Federal Supreme Court responded that the lower courts had concluded otherwise based on the facts of the case, adding that the Federal Supreme court could not reexamine conclusions of fact reached by the lower courts as long as those conclusions had an adequate basis in the evidence.

### 3. Arbitration of Subcontract Dispute

Back-to-back contractual arrangements are common features of construction projects. The purpose of such an arrangement is to require subcontractors to assume within the scope of works of each subcontract all of the obligations that are assumed by the prime contractor in the prime contract. This is often accomplished by providing in each subcontract that the provisions of the prime contract shall also apply to the subcontract. However, according to a recent holding of the Federal Supreme Court, such an incorporation by reference is not necessarily binding as regards an arbitration clause.

The case involved a dispute between a subcontractor and a prime contractor on a road project. The subcontractor sued the prime contractor, and the prime contractor brought a separate suit against the subcontractor seeking referral of the dispute to arbitration. The Court of First Instance consolidated the two suits and issued judgement in favor of the subcontractor. The Court of Appeal affirmed.

Before the Federal Supreme Court, the prime contractor asserted that the lower courts had erred in refusing to refer the dispute to arbitration. It was contended that the subcontract incorporated by reference the provisions of the prime contract, and that the subcontractor was therefore bound by the provisions of the prime contract, including the arbitration clause. However, the lower courts had concluded that the subcontractor was not a party to the prime contract and therefore was not bound by its provisions.

The Federal Supreme Court held that an agreement to arbitrate had not been properly formed between the prime contractor and the subcontractor. On the contrary, the Court stated that an arbitration clause in a prime contract could not apply to the parties to a subcontract unless the subcontract specifically incorporated the arbitration clause by reference, and that a general reference to the prime contract was not sufficient.

#### 4. Criminal and Civil Responsibility

The Federal Supreme Court has again addressed the interplay between criminal and civil proceedings arising out of the same set of events. In a recent case involving a construction accident, the Court held that the acquittal on criminal charges of the manager of the construction company could not shield the construction company from civil liability to an injured employee.

An employee of a construction company was injured in a workplace accident and suffered permanent disability. He sued his employer for entitlements under the Labor Law and for damages for wrongful failure to maintain safe conditions at the site. The Labor Law allows an employee who suffers a workplace accident resulting in death or disability to claim up to Dh 35,000 in compensation, while the Civil Code allows a person harmed by a wrongful act to claim compensation to make good the harm. In addition, the manager of the construction company was charged under the Penal Code, which imposes criminal penalties if a person causes injury to another person. Although the criminal case resulted in acquittal, the civil case resulted in substantial recovery for the employee.

The Court of First Instance concluded that the construction company had indeed failed to maintain a safe job site and should therefore be held liable for the plaintiff's injury. However, the Court of Appeal decided that the employee could be awarded no more than the statutory disability payment provided by the Labor Law, since the acquittal of the manager of the employer proved that the employer had not been responsible for the accident.

Before the Federal Supreme Court, the employee asserted that he was entitled to pursue remedies under the Civil Code as well as remedies under the Labor Law. The Federal Supreme Court agreed with the employee. The Court observed that the construction company could be held criminally liable for the acts of its manager and other representatives. However, it was erroneous for the Court of Appeal to conclude that the manager's acquittal on the criminal charges necessarily involved a determination that the construction company had no civil liability. The Federal Supreme Court accordingly vacated the judgement below and remanded the case to the Court of Appeal for further proceedings.

## 5. Sponsor's Responsibility

In a recent case, the Federal Supreme Court held that the local sponsor of a business owned by an expatriate could not be held liable for the obligations of that business to third parties.

The third party in this case was a landlord, who brought suit against the tenant, a video shop, for failing to pay rent. The Court of First Instance found for the landlord, but dismissed the case as against the sponsor of the shop. The Court of Appeal reversed the latter part of this holding and stated that the sponsor also should be liable for the shop's obligations.

The Federal Supreme Court reversed the Court of Appeal and held that the case against the sponsor must be dismissed. Reviewing the record, the Supreme Court held that none of the reasons articulated by the Court of Appeal constituted an adequate basis for holding the sponsor liable. At the outset, the Supreme Court observed that a person who agrees to sponsor a foreign business does not thereby guarantee the obligations of that business. On the contrary, a sponsor is required only to vouch to the licensing authorities for the expatriate's ability to practice commercial activity in the country. Sponsorship is thus distinct from surety, although a single word in Arabic, kafalah, signifies both.

Moreover, the documents in the record did not support a finding of liability on the part of the sponsor. The sponsorship agreement between the sponsor and the owner and the power of attorney that the sponsor issued in favor of the owner both disavowed the sponsor's assumption of any obligations created by the owner.

Finally, it could not be concluded that the owner and the sponsor had created a partnership for which both could be held responsible. The Federal Supreme Court observed that a partnership would be formed by a contract whose parties undertook an economic project by contributing funds or effort and sharing the profits or losses. However, in the present case, the sponsor provided no funds or efforts and had no share in the profits or losses.

## 6. Federal Claims Committee

The standard contract for construction works used by the Federal government requires a contractor to submit claims to the Claims and Arbitration Committee in the Federal Permanent Projects Committee before proceeding to court. In a recent decision, the Federal Supreme Court held that a contractor could proceed to court following an unexplained six-month delay on the part of the Claims Committee.

The case involved a contract between the Federal government and a construction company that was terminated by the government when the underlying project was cancelled. The contractor filed a claim for compensation with the Claims Committee, but the Claims Committee failed to issue a decision in the matter. After more than six months, the contractor proceeded to the Court of First Instance. The defendant asserted that the suit was premature and could not be filed before completion of the proceedings before the Claims Committee. The Court of First Instance dismissed the suit as premature, and the Court of Appeal affirmed.

The Federal Supreme Court, however, held that the contractor had complied with the agreed mandatory recourse to the Claims Committee, and further stated that it would be unreasonable to interpret the contract as indefinitely depriving the contractor of a judicial hearing no matter how long it took the Claims Committee to issue its decision. The Federal Supreme Court therefore vacated the judgement of the Court of Appeal and remanded the case for further proceedings.

#### 7. Retroactivity of Laws

In a recent decision, the Federal Supreme Court held that instructions on personal loans issued by the President could not be used by a borrower to shield himself from the obligation to repay a loan that was extended before publication of the instructions. The instructions in question were communicated in a Central Bank notice dated March 1, 1995 (see the April 1995 edition of this Newsletter). The instructions direct banks and financial institutions not to extend loans to persons who are unable to repay, and order that no case may be filed against a borrower if it is proved that the loan was granted without submission of proof that the borrower had sufficient financial resources to repay.

The loan in this case was granted after the instructions were promulgated. However, the bank asserted that it was notified of the instructions after the loan was granted. The borrower defaulted, the bank sued, and the Court of First Instance dismissed the suit on the basis of the bank's failure to comply with the instructions. The Court of Appeal affirmed.

Before the Federal Supreme Court, the bank argued that the lower courts erred by holding the bank subject to the instructions from the date of promulgation in lieu of the date of notice to the bank. The Federal Supreme Court agreed with the bank's argument. The Court further held that contracting parties may not be obliged to follow rules prior to notification thereof, and that a new law may not be adduced except from the date it is published or circulated. In order for the instructions of the President to be asserted against the bank, the prior publication of such instructions

or the bank's prior knowledge thereof must be proved. The Federal Supreme Court accordingly vacated the judgement below and remanded the case for further proceedings.

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