

**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. Securities Regulations: Functioning of Securities Markets

Three new Resolutions promulgated by the Securities and Commodities Authority represent the final set of basic securities regulations in the U.A.E. that were specifically contemplated by the Securities and Commodities Law, Federal Law No. 4 of 2000. Two Resolutions, reported previously, address arbitration of disputes and trading, setoff, settlement, transfer of ownership and safekeeping. The third Resolution, discussed here, regulates the functioning of the securities markets. The relevant regulations are set forth in Resolution No. 3 of 2001 of the Securities and Commodities Authority.

Resolution No. 3 provides that no market may conduct trading in securities and commodities unless the market has been licensed by the Securities and Commodities Authority. The new Resolution imposes a number of substantive requirements on such licensed markets. Such a market must be established by the concerned authority in the relevant Emirate and administered by a board of directors appointed by the concerned authority, and no board member may be a member of the board of directors of a public joint stock company or be a broker. The market must have a Director General and a Deputy Director General, assisted by employees and administrative staff. The market must occupy suitable premises and have the required equipment for electronic trading. It must be electronically connected to the other markets in the U.A.E. so as to enable a common negotiation system among all licensed markets.

The market is required to operate under supervision and control of the Securities and Commodities Authority, and the Authority has general power to investigate a licensed market. All transactions in listed securities must be recorded by the market, and any transaction not so recorded shall be deemed void. Entries properly made in the records of the market shall be deemed prima facie evidence of the underlying transactions.

The board of directors of the market is tasked with a number of specific powers, including the appointment of the Director General and Deputy Director General and specification of their powers; establishment of the market's organizational structure and internal regulations;

preparation of proposed amendments to the regulations promulgated under the Securities and Commodities Law for submission to the Securities and Commodities Authority; follow up of securities trading to ensure fairness among transacting parties; submission of reports and statements to the Securities and Commodities Authority and issuance of press releases as required for transparency and disclosure; approval of the annual reports of the market's revenue and expenses; imposition of penalties on brokers and recommendation to the Securities and Commodities Authority that brokers be deregistered; consulting with the Securities and Commodities Authority on fees payable pursuant to the Securities and Commodities Law and the regulations promulgated thereunder; consideration of applications for registration of brokers and listings of securities; and any other matters that ensure the order and good conduct of business in the market. The board of directors may delegate the foregoing tasks to the Director General or Deputy Director General of the market.

The board of directors of a market may furthermore create specialized offices concerned with negotiation, setoff and settlement, follow up on prices, supervision and investigation, research and studies, and financial and administrative affairs. It shall have the power to develop, train and qualify the required workforce in accordance with the most current technical and administrative practices. It may also form permanent or ad hoc committees. The internal regulations of the market shall specify the procedures for calling board meetings, the location of, quorum for, and voting at board meetings, and the remuneration of board members.

Membership of the market shall be required of brokers licensed pursuant to the Securities and Commodities Law, shareholding companies that issue securities registered with the market, and any other issuers of securities registered with the market. Each market is required to prepare a register of members and to notify the Securities and Commodities Authority within one week of registration of a new member. All market members shall be subject to the directives of the market and the provisions of the Securities and Commodities Law and its implementing regulations.

The members of the market who have paid their registration fees shall together form the general assembly of the market, with each member having one vote. The procedures for the convening and conduct of meetings of the

general assembly shall be drawn up by the board of directors. The board may also promulgate standards of professional conduct with which brokers who are members of the market must comply.

The Resolution provides that no person may engage in the profession of brokerage who has not been issued a license by the Securities and Commodities Authority. A person licensed by the Securities and Commodities Authority may then apply to a market for a brokerage license. The granting or denial of such application shall be in the discretion of the market.

The market shall draw up the requirements for registration of a broker and a broker's representative, provided that such requirements shall be no less demanding than those required by the Securities and Commodities Law and its implementing regulations. The market shall maintain a register of brokers, and shall provide to the Securities and Commodities Authority a list of all registered brokers as well as any changes in the relevant particulars. The market may establish technical qualifications and examinations, approved by the Securities and Commodities Authority, for a broker or broker's representative seeking membership. A disciplinary committee established by the market shall have the authority to investigate broker misconduct. Sanctions include a warning, a fine, exercise of the broker's security, and suspension of up to one week. The market board of directors may make a recommendation to the Authority that the broker be deregistered. Decisions of the market may be appealed to both the Authority and to the relevant civil court within a thirty day period.

The listing of securities on the market requires that the issuer of the securities obtain the prior approval of the Securities and Commodities Authority. The market shall have discretion to approve or reject an application for listing, and may reject an application even if the issuer has been approved by the Authority.

Immediately upon issuing a decision to list a security, the market shall give the issuer a code and an abbreviated name. The market will keep an updated electronic register of the issuer's shareholders, and the market will install a terminal in the office of the company registrar to enable the registrar to access the company register to make inquiries and to update information. The market shall keep a register of companies and other issuers and notify the Securities and Commodities Authority of any changes within

one week of occurrence. Within ten days of market approval for listing, the issuer shall publish its annual financial statements and a summary of the report of its board of directors in two Arabic language newspapers of wide circulation published in the United Arab Emirates.

The market shall be open for securities trading for at least five days each week, with the exception of public holidays, and for at least two hours each day. The market may amend the hours and days of work with the approval of the Securities and Commodities Authority. The market is required to maintain an electronic system for negotiation of securities, which among other things must automatically block purchase orders in excess of specified limits and in excess of the broker's security, and must enable all issuers of securities and their registrars to review their share registers. With the exception of special orders, all negotiations in the market shall be done electronically over the system provided by the market. A special order shall be an order approved in advance by the market that equals or exceeds 80% of the security provided by the relevant broker.

Each investor shall be assigned a numerical code by the market, and each investor shall be assigned a negotiation account with its broker. Setoff and settlement in the market shall be conducted on the basis of delivery of consideration. The board of directors of the market may define the time period between negotiation and settlement, provided that settlement must take place no later than the second business day following negotiation. The Director General may cancel a transaction that is not implemented after receipt of a written request therefor from the broker, provided that there are legitimate reasons justifying the request, and provided that the parties can be restored to their pre-transaction positions.

## 2. Dubai International Financial Centre

Dubai Law No. 3 of 2002 establishes a new free zone in Dubai known as the Dubai International Financial Centre. The same Law also establishes a governing body known as the Dubai International Financial Centre Authority.

The financial services to be conducted in the newly created DIFC specifically include provision of financial and banking services; insurance and reinsurance services; money market, stock exchange, and commodity market services; money management, investment, project finance, corporate finance and investment and Islamic finance services; pension annuity

funds and credit unions; brokers, financial agents, clearing houses, custodianship and trustee services; investment banking services; and support, classification and rating services and information technology services. A license to conduct business in the DIFC shall allow the licensed entity to engage in business in the other free zones in Dubai.

The Authority includes a chairman, a board of directors, a consultative council, a secretariat and an executive body. The chairman is charged with overseeing the operations of the DIFC, with the power to establish rules and regulations necessary for the operational management of the Centre and implementation of the provisions of Dubai Law No. 3 of 2002. The chairman appoints the members of the board of directors and the consultative council, who must be experts in the field of financial, banking and insurance services and the business of stock exchanges. The board of directors shall determine the duties, remuneration and term of service of the director general and shall appoint the DIFC executive body.

The detailed business activities in the DIFC will be governed by bylaws and regulations prepared by the board of directors of the DIFC and promulgated by the chairman.

Corporations and establishments located in the DIFC and all of their staff and employees shall be exempt from all taxes, including income tax, relating to their operations in the Centre. In addition, Dubai Law No. 3 of 2002 creates a fifty year holiday from any restrictions on transfer of capital or profits and currency restrictions, beginning on the date of commencement of operations or employment of personnel. This may be extended by resolution of the chairman for further terms of fifty years each.

### 3. Ministry of Labor: Subcontracts

Resolution No. 496 of 2002, promulgated by the Minister of Labor and Social Affairs, is an attempt to regulate manpower supply subcontracts. The Resolution provides that the Ministry of Labor will not recognize any subcontracts that are not registered with the Ministry, and imposes strict conditions on such arrangements. The Resolution specifically requires that both the prime contractor and the subcontractor must hold licenses that authorize performance of the relevant works. For example, if a subcontractor were appointed to perform bridge construction works, then the

prime contractor and the subcontractor would each need to have such licensed activity in their commercial licenses.

The Resolution does not allow subcontracts solely for the supply of manpower. The Resolution further provides that the employees of the prime contractor shall work under the authority and supervision of the prime contractor, not the project owner. It likewise provides that the subcontractor's employees shall work under the authority and supervision of the subcontractor, not the project owner or the prime contractor. The prime contractor shall sponsor all of the work permits of its employees, and the subcontractor shall likewise sponsor all of the work permits of its employees.

The Resolution contains further provisions allowing the Ministry of Labor to conduct site inspections to verify compliance.

#### **SULTANATE OF OMAN**

Contributed by Trowers & Hamlins, Muscat, Oman

##### 1. Consumer Protection Law

A new wave of business practice requirements arrived in Oman in late November. Affecting particularly suppliers of products and services, Royal Decree No. 81 of 2002 promulgating the Consumer Protection Law (the "CPL") came into force on November 28, 2002. In the past, consumers received some protection under Oman law through various provisions in the commercial laws of Oman. In a significant advance, in keeping with international trends, the CPL dramatically expands those protections and seeks to regulate consumer related issues under one law for the first time.

a. Previous consumer protection laws. Prior laws on the consumer-supplier relationship continue in effect to the extent that they do not contravene the provisions of the CPL. Earlier provisions on this subject can be found in the Commercial Code (Royal Decree No. 55 of 1990), but they relate only to the supply of goods. No similar provisions have previously been applied to regulate the supply of services, although it is arguable that a court would imply similar provisions if necessary. These provisions of prior laws apply only in the absence of an agreement between the

parties. In contrast, the CPL could well apply even if the parties attempt to contract out, as Article 18 of the CPL states that "all the conditions contained in contracts, documents, remarks, advertisements or memoranda related to commercial business shall be considered invalid if they are inconsistent with the terms of the executive regulations of this Law or are liable to exempt the supplier from his civil liability towards the consumer."

b. Implications of the new Law. The CPL will have widespread implications for all kinds of businesses involved in the supply of goods and services, which may have to adapt practices and formalize procedures to comply with its terms.

A consumer, as defined in the CPL, is "a natural person or body corporate purchasing a commodity or service or benefiting from either of the two." The supplier is defined as "a natural person or a body corporate offering a service, manufacturing a commodity or distributing it, dealing in it, selling, importing or exporting it or participating in its production or circulation as an agent, intermediary or broker." It is possible that the executive regulations implementing the CPL will provide guidance as to the extent of the Law and will specify whether the definition of "consumer" will be interpreted broadly to cover the full range of end users extending as far as government bodies, or whether the legislation is intended more to protect the more vulnerable consumers in essentially day-to-day transactions. Whether "big industry" transactions between large companies will be included remains open at present, and there are potential issues with heavily negotiated commercial contracts made between fully advised experts in their respective fields. It is possible that the legislation may be interpreted in the future to allow large negotiated transactions to be outside the strict scope of its application, as is often the case in other jurisdictions.

Suppliers, manufacturers and distributors may need to act on the assumption that the definition of "consumer" will be interpreted in the broadest sense and to make the preparations necessary for their practices and procedures to comply with the requirements of the CPL. For many businesses operating in Oman, this may mean a review of their various policies and current terms and conditions of business, particularly in respect of refunds and guarantees.

c. Significant provisions. The CPL is broken down into four main areas:

1. Definitions and General Provisions;
2. The Rights of the Consumer;
3. Duties of Suppliers, Advertisers and Agents;
4. Penalties and Final Provisions.

Under Article 9, the consumer "shall be entitled to seek compensation for damage caused to him on account of his purchase or normal use of the commodity or receipt of service." This will mean that even where there is no specific guarantee in place to protect consumers, they will be able to rely on certain minimum rights. Payment may extend beyond simple refunds to requiring the supplier to provide the consumer with a payment over and above the purchase price by way of compensation. It will be interesting to see how the courts interpret the extent of the compensation which can be awarded to the affected consumer.

Under Articles 4 and 14, suppliers will have to guarantee the commodities and services they provide to ensure conformity with declared specifications. They will also have to meet health and safety conditions. This will include a duty on suppliers of commodities that are "liable to undermine the security of individuals or property" to display a "clear and specific notice. . . specifying the accurate method of using the commodity. . . ." Suppliers will have to take steps to ensure that product labeling is sufficiently clear if they are to avoid claims for personal injury or damage to property.

A supplier's duties will not end when the service or product has been purchased by a consumer. Under Article 15, when defects are identified by suppliers which are liable to undermine the safety of individuals or property, even when used in a proper manner by the consumer, there is an obligation on the supplier to notify the consumer and concerned entities promptly of this potential damage and the method of preventing its occurrence.

d. Penalties. In the event that suppliers breach the provisions of the CPL and its executive regulations, they will be subject to fines of up to R.O. 5,000. This fine can be doubled if the offense is repeated. Perhaps more significantly for larger companies is the threat that breach of the CPL can result in closure of shops and confiscation of goods. In addition to a direct loss of business from shop closures, this penalty could be very damaging for the reputation of the supplier.

As the extent and implications of the new Consumer Protection Law and any executive regulations have yet to be determined by the courts, those suppliers who potentially fall within the new provisions are encouraged to take a cautious approach and take active steps to prepare their businesses for the coming into force of the Consumer Protection Law. We wait with interest to see how this relatively new area of law will develop and how rights of the consumer are developed in the future.

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