

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. Diya Increased

Federal Law No. 9 of 2003 increases the quantification of Diya from Dh 150,000 to Dh 200,000. Diya is an amount that a court applying Islamic law would ordinarily order a person who has caused the death of another person by a wrongful act to pay to the family members of the deceased. Diya does not preclude pursuit of other remedies, including criminal complaints and civil actions.

2. Securities and Commodities Authority

Pursuant to Federal Law No. 10 of 2003, the Director General of the Securities and Commodities Authority will now hold the rank of Undersecretary. The new Law, which amends the original Law creating the Securities and Commodities Authority, also provides that the Director General shall be appointed by Federal Decree based on the proposal of the Board of Directors of the Securities and Commodities Authority.

3. Indian Ocean Rim-Association

Pursuant to Federal Decree No. 68 of 2003, the U.A.E. has acceded to the Charter of the Indian Ocean Rim-Association for Regional Cooperation (IOR-ARC). Members include three Arab League states (the U.A.E., Oman and Yemen), as well as fifteen other nations bordering the Indian Ocean as far East as Australia.

The Charter of the IOR-ARC was agreed in 1997. It sets forth fundamental principles for the member states, among which are the facilitation of commercial and economic cooperation. It provides that decisions on all matters will be taken on the basis of consensus, and that bilateral and other issues likely to be contentious shall be excluded from deliberations. The IOR-ARC functions through a Council of Ministers meeting at least once every two years. The Charter also contemplates a Committee of Senior Officials composed of government officials of member states, and a Secretariat, which is based in New Delhi.

4. Sharjah Chamber of Commerce

The Sharjah Chamber of Commerce and Industry has been given new roles and functions pursuant to Sharjah Law No. 1

of 2003, which replaces Sharjah Law No. 1 of 1980.

It continues to be a requirement that any business operating in Sharjah must obtain membership in the Chamber of Commerce, in addition to the other licensing requirements that apply. The Chamber of Commerce continues to play a role in collecting commercial data and authenticating documents. The new Law gives the Chamber an enhanced role in promoting economic development and supporting trade delegations. The Chamber of Commerce has the authority to issue statements of data pertaining to members and to issue certificates of the Emirate's trade practices.

A requirement has been added that prohibits any member of the Board of Directors of the Chamber of Commerce from engaging in any transactions involving the Chamber of Commerce. Similar conflict of interest provisions exist in the statutes governing the Chambers of Commerce in Abu Dhabi and Dubai.

The new Law creates two new agencies at the Chamber of Commerce, a Business Women's Council and an Exhibitions Council.

PAKISTAN

Contributed by Rizvi, Isa, Afridi & Angell, Pakistan

1. Telecom and IT Sectors Need Policy Reforms

The last few years have witnessed substantial growth in the telecommunications and information technology sectors. The continuous development of the sectors has necessitated legal and policy reforms.

Accordingly, the analysis outlined below recommends establishing an exclusive IT regulator, setting up a telecom and IT tribunal and enlarging the scope of existing legislation, streamlining investment policy, and achieving uniformity of IT and telecom legislation.

a. IT regulator. With expanding dimensions of IT related activities that entail the emergence of issues pertaining to e-commerce, e-banking and cyber crimes, the IT sector needs an exclusive regulator to create uniformity of response to such issues. Establishment of an exclusive

IT regulator will be viewed as an additional attraction for foreign investment in the wake of competitive incentives offered by the neighboring economies; besides, it will attach to the regulatory mechanism an aspect of certainty, which is pivotal in the context of foreign investment.

In addition to streamlining the state's response to emerging issues, the IT regulator should be the only competent forum to adopt or authorize adoption of an interception mechanism as an anticipatory and preventive measure against the commission of cyber crimes. It is only a question of time before Pakistan evolves a framework for an interception mechanism as a safeguard against cyber crimes. An expected surge of cyber crimes would compel a regulatory response. This can be predicted from the ad hoc measures that have been taken against cyber crimes, which include establishment of the cyber crime wing in the Federal Investigation Agency (FIA). The FIA's crusade against cyber crimes cannot meet the constitutional and legal requirements mandated in this regard, nor can the existing investigative authority of the FIA be considered sufficiently extended to intercept citizens' electronic activities.

An IT regulator is also essential to facilitate new business opportunities, which include providing large-scale online assistance (offshore outsourcing). A few local organizations have already started providing such assistance in respect of completing and analyzing tax returns of other countries. Offshore outsourcing can generate massive employment opportunities in Pakistan, and the chances for Pakistan to attract such outsourcing assignments are clearly favorable in view of the inexpensive computer expertise available here.

While formulating jurisdictional contours of the IT regulator, the new regulator should be made exclusively responsible for IT and related activities by minimizing any possibility of overlapping jurisdiction with any other regulator, including the Pakistan Telecommunication Authority (PTA). In this regard, the categorization of activities falling under the telecom or IT sectors should be revised, along with a mechanism to provide for continuous updating of such categorization.

Establishment of an exclusive IT regulator will achieve certainty as to the regulatory regime for both the IT and telecom sectors. Consequently, a close coordination between the IT regulator on the one hand and existing IT

and software related bodies and associations (such as the Pakistan Software Export Board and the Pakistan Software Houses Association) on the other will help consolidation of the IT sector and thereby strengthen the investment friendly environment.

b. IT tribunal. The existing IT and telecom regime does not envisage specialized courts for trying criminal issues arising out of the regulatory exercise of power under such regime. Although it is not unusual for the regulators to enjoy quasi-judicial powers, there is always some distance between the regulator and its quasi-judicial branch.

The latest trend in Pakistan legislation is in line with international legislative practice, which is to provide for a judicial forum for the determination of facts and law after a decision by the quasi-judicial authority and before sending such decision to the High Court (for examining issues of law and not factual or technical issues). Specialized courts with professional understanding of the complexities have been set up to deal with technical issues. Specialized courts can expeditiously and consistently dispose of matters that require specialized attention. The hierarchy of taxation forums could be the most appropriate example in this regard. The taxation forums, although an administrative part of the Central Board of Review/Ministry of Finance, perform their functions with reasonable independence under the law that established them.

Accordingly, a specialized telecom and IT tribunal should be established to adjudicate violations of the applicable telecom and IT laws. With respect to criminal action under such laws, the PTA and IT regulator should prosecute the delinquent party before the tribunal.

At present, the PTA prosecutes and adjudicates some violations of the Telecom Act and of licenses issued therein. The Telecom Act also empowers the PTA to initiate a complaint in court in respect of an offence. The Act, however, does not specify a particular court or prescribe any special procedure. In this vacuum, the already overburdened magistracy is asked to try sophisticated telecom matters without any special training. It may be noted that the availability of specialized courts adds to the factors that attract foreign investment and that the absence thereof increases the jurisdictional risk and thereby minimizes investment opportunities.

A specialized tribunal should also serve as an appellate forum against regulatory decisions of the PTA and the IT regulator. The Telecom Act provides for an appeal before the High Court as a first appeal, which generally restricts the scope of appeal to questions of law and requires the High Court to remand the matter to the PTA for re-examination of the technical aspects. The availability of an appellate remedy on technical issues would expedite litigation and help discourage procrastinating rounds of litigation.

In contrast, the Electronic Transactions Ordinance, 2002 (ETO) does not envisage any right of appeal. It leaves no option to the aggrieved person but to approach the High Court in its constitutional jurisdiction, which again cannot be invoked for factual or technical issues and would result in remanding matters to the Certification Council established under ETO.

c. Investment. Since 1997 the government has treated "software development and information technology" as within the industrial/manufacturing sector, which treatment means that foreign investors in the sector may own 100% equity and are permitted 100% repatriation of their profits.

The new investment policy of the federal government includes a number of incentives for investment in Pakistan, including a relaxation on import duties. However, the investment policy categorizes some "software development and information technology" activities in the service sector, which categorization means that foreign investors in the sector may own equity and repatriate up to only 60%. No explicit guidance is available from the Board of Investment regarding which activities fall under the manufacturing or service sector.

However, one may generally infer that IT-enabled activities, which would mean use of IT in any industrial or commercial activity, would fall under the service sector. In contrast, IT-enabling activities, which would mean an activity intended to develop software or IT activity, would fall under the manufacturing sector.

The lack of comprehensive categorization threatens not only to impede foreign investment but also to make inevitable a case-by-case exercise of discretion by the Cabinet's Committee on Investment, thus making the applicable regime uncertain and procrastinating the decision making that is otherwise supposed to be a one-

window operation.

d. Legislation. In order to establish an efficient IT regulator, the scope and powers of the Certification Council established under the ETO should be enlarged so that the Certification Council is vested with powers, among others, to monitor e-banking, to regulate e-commerce, to adopt and to authorize adoption of interception measures, to promote and to facilitate offshore outsourcing in Pakistan, and to prosecute cyber criminals.

In addition, the proposed "electronic crimes act," 2003, after appropriate modifications, should be merged into the ETO by way of amending the ETO. In this way, the ETO would be the only sector-specific legislation for all IT-related issues and activities. Amendments should be made to the Telecom Act to provide for the prosecution and appellate mechanisms that were discussed above.

With the establishment of an exclusive IT regulator and the Telecom and IT tribunal, the federal government should be able to distance itself from the market, where it has an active and competitive interest in the form of Pakistan Telecommunication Company Ltd., and play its chartered role more robustly in accordance with its internationally acclaimed mission of using information and communication technologies for the alleviation of poverty and the eradication of the ensuing social evils such as illiteracy.

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