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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. New Patent Law

Federal Law No. 17 of 2002 is the new Patent Law of the United Arab Emirates, replacing Federal Law No. 44 of 1992 (see the June 1992 edition of this Newsletter). The earlier Law, which was the first Patent Law of the United Arab Emirates, had been a significant improvement over the preceding regime, which had lacked any patent protection. However, it suffered from a number of deficiencies, including the granting of protection to pharmaceutical processes but not pharmaceutical products. The new Law is more consistent with modern patent laws and the international treaty obligations of the United Arab Emirates.

The new Patent Law contains chapters on inventions, industrial designs and models, contractual licensing, and remedies and penalties. A patent may be granted in any field of technology for a new invention resulting from an original idea or from an original improvement of a patented invention. Any such idea or improvement must have a basis in scientific principles and must be capable of industrial exploitation, whether relating to new industrial products, novel industrial processes, or new applications of known industrial processes and methods. An inventor's certificate may be granted for any new invention with industrial application that is not the result of effort sufficiently original for the granting of a patent, or for any new invention that qualifies for a patent but whose owner instead requests an inventor's certificate.

The new Law provides that a patent or inventor's certificate may not be granted to botanical or zoological studies, botanical or zoological species, or biological methods for plant or animal production, except for microbiological methods and products; diagnostic, therapeutic and surgical methods necessary for treating humans or animals; scientific laws, discoveries and theories and statistical methods; plans, rules or strategies used in the conduct of business, purely intellectual activities, or games; and inventions whose publication or exploitation would be contrary to public order or morals. Inventions that are found to relate to national defense shall be addressed

by implementing regulations to be promulgated under the new Law.

The rights to a patent shall lie with the inventor and his legal successors. If multiple persons participate in developing the invention, then each person and his legal successors shall have rights to the patent as partners with each other, but a person shall not be deemed to be an inventor or to hold the rank of inventor if his efforts were limited to assisting in the implementation of the invention without participating in an original step. The person who first deposits his application for a patent or inventor's certificate, or who first applies for priority in respect of such invention, shall have the right to the patent or inventor's certificate.

Patent protection is generally granted to the inventor. However, if the invention is achieved through performance of a contracting agreement or an employment agreement, then the right to the invention shall lie with the employer unless otherwise agreed. The Law contains further specific rules on matters such as inventions whose economic value exceeds the expectations of the parties at the time of signing the agreement. The period of protection afforded by the Patent Law is twenty years in lieu of the fifteen years afforded by the prior Law, provided that the inventor continues to pay an annual fee to the Ministry of Finance and Industry throughout the period of patent registration.

The new Patent Law contains more detail than before on the scope of protection extended to a patent holder. The old Law granted a patent holder the right to prevent others from engaging in the manufacture, import, exhibition for sale, sale, use or possession for use of the patented item. The new Patent Law gives the patent holder a general right to exploit the patent. If the patented item is a product, this right extends to the manufacture, use, exhibition for sale, sale, or import for such purposes, and to the prevention of others from engaging in these activities. If the patent relates to a manufacturing method or process, then the patent holder shall have the right to exploit that which is directly produced from the method or process, in addition to the right to exploit the method or process itself. When the patent or inventor's certificate is granted for a method, or for a new application of a known industrial process or method, then the protection shall extend to the method and

to the conduct of any of the foregoing activities with respect to the resulting product.

The new Patent Law also contains provisions for the registration of international patents. It contemplates the deposit of patent applications with the Ministry of Finance and Industry by holders of foreign patents that are protected by international agreements to which the U.A.E. is a party. Specific procedures and fees will be set forth in the implementing regulations to the new Patent Law.

Like before, patents and inventor's certificates may be subject to compulsory licensing in limited circumstances, including deemed underuse in the U.A.E. Such compulsory licensing may be implemented by a court or by the Ministry of Finance and Industry. Voluntary licensing agreements may be concluded by holders of patents and inventor's certificates. Such licensing agreements need to be registered in a special register prepared for such purpose by the Ministry of Finance and Industry.

2. Veterinary Medicine

The first Veterinary Law of the U.A.E. has been promulgated as Federal Law No. 10 of 2002. Prior to promulgation of the new Law, veterinarians and veterinary clinics were licensed by the Municipalities in which they were located.

The new Law imposes a layer of Federal regulation on veterinarians and veterinary clinics. All veterinarians who wish to practice in the U.A.E. must obtain licenses from the Federal Ministry of Agriculture and Fisheries. A veterinarian must hold a Bachelor's degree in veterinary medicine and surgery from a university recognized by the U.A.E., and must have at least five years of experience (two years for a U.A.E. national). A veterinary clinic must be U.A.E. national owned and must employ at least one veterinarian licensed by the Ministry, although a foreign owned veterinary clinic that was licensed prior to promulgation of the new Law may continue with its foreign ownership.

All veterinarians in the U.A.E. are obliged to observe care and diligence in their professional conduct. They are required to cooperate with other authorities in the country

to protect the health of both persons and animals. A veterinarian who suspects that an animal may be afflicted with a contagious disease has the authority to quarantine such animal and the obligation to notify the concerned authorities within 24 hours and to ascertain the location and address of the owner of the animal.

Implementing regulations pursuant to Federal Law No. 10 of 2002 have been promulgated by Ministerial Resolution No. 170 of 2003. These implementing regulations detail the requirements for the licensing and registration of veterinarians, the licensing of veterinary clinics, and the veterinarian's specific obligations and responsibilities.

3. Environmental Protection

a. CITES. Federal Law No. 11 of 2002 Concerning the Regulation and Control of International Trade in Fauna and Flora Threatened with Extinction implements a number of the obligations of the United Arab Emirates under CITES, the Convention on the International Trade in Endangered Species. The U.A.E. joined CITES in 1974, but significant progress was made only recently in denying illicit traffickers easy access to shipment and transshipment facilities in the U.A.E.

The Law lists a number of internationally endangered plant and animal species in schedules attached to the Law and prohibits international trade in such species or in parts or products derived from such species otherwise than in accordance with the provisions of the Law. The Law requires that specific permits be obtained for the import into the U.A.E. and export out of the U.A.E. of listed species. Similar measures implementing compliance with CITES had previously been promulgated as Ministerial Resolutions. The Law also establishes an administrative authority and a scientific organization to monitor compliance and to liaise with and report to the CITES secretariat.

b. FEA regulations. Cabinet Resolution No. 14 of 2002 established the formal organizational structure for the Federal Environmental Authority, originally formed pursuant to Federal Law No. 7 of 1993 (see the May 1993 edition of this Newsletter). The Resolution appears to pave the way for the FEA to play its intended leading role in regulating environmental matters.

The Resolution sets forth the respective powers of the FEA board of directors, chairman and director general. It also establishes bureaus in the FEA for discharging specific functions, including a consultants' bureau; an international relations and follow-up bureau; a technical services department, including an environmental awareness and media section, an environmental emergencies and disasters section and an information systems and attestation section; an environmental forecast, monitoring and studies department, including a forecast and pollution prevention section, a natural life and natural protectorates section and a central laboratory; a continuing development and environmental evaluation department, including an industrial activity and environmental permits section, an agricultural activity and anti-desertification section and an urban environment section; and a financial and administrative affairs department.

4. Dubai Executive Council

Dubai Law No. 3 of 2003 establishes the Dubai Executive Council as an advisory body to the Ruler, intended to assist the Ruler in the discharge of his functions.

The members of the Executive Council are its chairman, its deputy chairman, the chairmen or secretaries general of various government departments, and other persons. The Crown Prince has been appointed chairman. The government departments represented in the Executive Council include the Ruler's Office, the Department of Health and Medical Services, the Ports, Customs and Free Zone Establishment, the Dubai Police Headquarters, the Dubai Electricity and Water Authority, the Department of Awqaf and Islamic Affairs, the Department of Economic Development, the Department of Lands and Properties, the Civil Aviation and Free Zone Department, the Finance Department, the Courts Department, the Department of Tourism and Commerce Marketing, the Information Department, and the Dubai Municipality.

The Dubai Executive Council meets on a periodic basis to discuss various issues concerning Dubai's development and matters of public interest and to make recommendations to the Ruler. It is authorized to take all requisite steps to draft laws, rules, decisions, decrees and orders before referring them to the Ruler for approval and promulgation;

to prepare and to seek approval of the annual budget; to set up new government departments and institutions and to reorganize existing ones; to vet oil agreements; and to perform any other work envisaged for the development of Dubai together with the responsibility for supervision and coordination of such work.

The Executive Council has already begun to review a number of projects and topics. Its chairman has ordered the formation of various committees, and it has been announced that some members of such committees should be elected. The formation of a technical committee to study proposals for the expansion of the Dubai Drydocks has already been announced. An Economic Committee and an Educational Council have also been announced.

a. The Economic Committee. The Executive Council has assigned to the Economic Committee the tasks of stabilizing and strengthening Dubai's economic position, working to cement the principles of local economic integration within the framework of comprehensive development in the U.A.E., and maintaining and increasing the quality of the business and production sectors. The Economic Committee has also been assigned the underlying duty of ensuring that its allocated revenue is used to support and enhance the welfare of the local society. The members of the Economic Committee at present include businessmen and economists from the public and private sectors. Other members will include the president and vice-president of the Dubai Chamber of Commerce and Industry; representatives of the Dubai Electricity and Water Authority, the Department of Ports and Customs, the Dubai Municipality, the Dubai Corporation for Investment and Development, the Dubai Department of Economic Development, the Department of Tourism and Commerce Marketing, the Dubai Financial Market, and the Department of Civil Aviation; and representatives from the banking sector in Dubai.

b. The Educational Council. The Executive Council recently approved the formation of the Educational Council as part of the government's efforts to modernize the style, methodology and standard of the local educational sector in Dubai. Its stated task is to implement an educational strategy, drawn up by the Dubai Executive Council, with specific targets to develop educational methodologies at all levels and to find a scientific and practical mechanism to bring into action the visions and recommendations of the

Dubai Executive Council. The chairman of the Dubai Executive Council has announced the allocation of five percent of the income of the Palm and Jumeira Residence projects in Dubai to the Educational Council.

The chairman of the Dubai Executive Council has approved the names of the members of the board of the Educational Council, which will comprise ten top educational and cultural figures, under the chairmanship of the Director of the Dubai Ruler's Court. The Educational Council has recently studied drawings and plans regarding the proposed construction of a university town and a new campus for Zayed University.

SULTANATE OF OMAN

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1. Recent Changes to the Commercial Companies Law

The Commercial Companies Law of Oman (Royal Decree No. 4 of 1974) (the "CCL") was recently amended by Royal Decree No. 77 of 2002. Pursuant to this Royal Decree, Ministerial Decision No. 137 of 2002 of the Ministry of Commerce and Industry has been published setting out certain rules and conditions for the election of directors of public joint stock companies. In addition, the Capital Market Authority (the "CMA") has issued several Administrative Decisions providing further regulation in this important area. Companies now have to start treading carefully over what is fast becoming new ground.

These changes are all part of the ongoing policy of developing the rules and regulations governing directors and their appointment, conduct, liabilities and duties. Until very recently, the laws of Oman, while certainly laying down a solid foundation for determining these questions, did not provide significant detail. All public joint stock companies are required to amend their articles of association in order to comply with the rules and conditions contained in the Ministerial Decision. These changes generally have to be completed at the company's next annual general meeting.

There is now a requirement that the majority of board members not work for the company in consideration of a

fixed monthly or annual remuneration. Although this should not prevent a director from receiving sitting fees, it will prevent company employees from serving as non-executive directors.

In addition, a minimum of one third of the directors must be independent directors. No such independent director or any of his first degree relatives may have occupied any senior post in the company for the last two years. Moreover, an independent director may not have any relations with the company, its parent company or its affiliated or sister companies which could result in financial transactions. These provisions largely reflect those set out in the Code of Corporate Governance of Muscat Securities Market listed companies published by the CMA earlier this year.

Prior to Royal Decree No. 77 of 2002, Article 97 of the CCL provided that any person holding at least 10% of the company's shares had an automatic right to be a member of the board of directors. This has been deleted from the CCL, and represents a major change which will substantially affect the appearance of many boards. It has also been cause for concern in the minds of many shareholders who saw this right as a good way to protect their investments.

Article 97 now provides that the directors should be elected from among shareholders or non-shareholders, provided that the shareholder candidate holds the minimum amount of shares fixed by the company's articles of association. There are no longer any automatic appointees, and every director must be voted onto the board.

Under Article 4 of Ministerial Decision No. 137 of 2002, directors shall be elected by a secret ballot of the shareholders using what is referred to as the "cumulative voting" system. Cumulative voting is widespread, although generally not compulsory, in the United States, but unfamiliar in most other countries. It is a system whereby each share may cast as many votes as there are vacancies on the board of directors, in lieu of casting only a single vote. The candidates with the largest numbers of votes are then appointed to fill the vacancies.

The system that has been adopted by the CMA allows a shareholder to cast all of its votes in whatever way it chooses. If there are a number of vacancies, then the

shareholder may cast all of its votes for a single candidate or spread the votes among the candidates. Cumulative voting in this manner has historically been primarily conceived as a protection for minority shareholders. A minority that is sufficiently organized could usually ensure that it will have representation on the board of directors to an extent roughly proportionate to the size of that minority. However, the merits of the system have been the subject of debate for well over a century. The system does not achieve its objective if the minority shareholders are not well organized, and majority shareholders must also bear the features of the system in mind.

A number of other changes have been made by Ministerial Decision No. 137 of 2002. Notably, Article 6 states that the directors of a public joint stock company are jointly and severally liable (without prejudice to their personal or criminal liability) for their acts which violate the provisions of the CCL or which are detrimental to the company or its shareholders' rights as a result of failing to assume their powers and responsibilities. The CMA has stated that this does not mean that the entire board of directors will always be liable for whatever actions might be carried out by a rogue director. Rogue directors will still have personal liability for losses arising out of their actions. If, however, the board of directors finds out about a rogue director's activities and does nothing about them, any losses that result from that inaction could be claimed against the board as a whole jointly and severally. Boards, therefore, need to be very careful that they maintain a sensible monitoring process, particularly when they delegate some of their authorities to one of their members or to other parties.

A number of circulars and decisions have also been issued by the CMA. These deal with a number of important issues such as the internal regulations and bylaws of companies, private placement of shares, regulation of audit committees, internal auditors and legal advisors.

These and many other decisions of the CMA send a very clear message to the market place. The sophistication and vigilance of the market regulators are increasing. There is a very firm desire to make sure that the Oman corporate community acts in accordance with international best practices. It is of the utmost importance that all

companies and their management boards take very careful notice of all of these new regulations. Moreover, the terrain which the corporate community will have to negotiate is going to change dramatically over the next two to three years. A greater level of sophistication of regulatory regimes as well as clearer and more detailed laws will be the order of the day. Companies will be well advised to make sure that they maintain an up to date understanding of all of these changes.

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