

**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. Environmental Matters

a. Handling of radioactive materials. Federal Law No. 1 of 2002 regulates and controls the use of sources of radiation. The new Law supplements the rules introduced by Federal No. 24 of 1999 Concerning the Protection and Development of the Environment (see the December 1999 edition of this Newsletter). Federal Law No. 24 of 1999 introduced a comprehensive framework to regulate pollution and hazardous wastes and to prevent damage to the marine environment, the drinking water and the air. It imposed severe penalties for violations, including capital punishment for the unauthorized import of nuclear materials and hazardous wastes. It did not, however, establish a regime for licensing the use of nuclear materials.

This gap has now been filled by Federal Law No. 1 of 2002. The new Law establishes a new Department in the Federal Ministry of Electricity and Water that is responsible for preparing regulations pertaining to the safe handling of radiation sources and for inspection and supervision of the use of radiation sources in cooperation with the competent Emirate authorities.

The Law also establishes a Radiation Protection Committee chaired by the Undersecretary of the Ministry. The Committee comprises specialized members representing different governmental entities. It is directed to define the tasks and responsibilities for the concerned authorities in each Emirate. It is also directed to prepare regulations to implement the Law, to provide technical advice on matters referred by the Chairman of the Committee, and to prepare emergency plans to combat accidents involving radioactive materials.

Natural and juristic persons are prohibited from carrying out any of the following activities without a prior permit from the concerned Emirate authorities and a license from the Department:

- 1) Importation, exportation, transportation, storage, operation, manufacturing or handling of sources of ionizing radiation.
- 2) Treatment or disposal of radioactive waste resulting from the foregoing.

3) Installation of radiation sources; construction of facilities, laboratories or warehouses for the handling or storage of sources of ionizing radiation; or changing the locations or specifications of such facilities or decommissioning them.

Violations may be punished by imprisonment and a fine of no less than Dh 150,000 and no more than Dh 1,000,000.

Licenses for the handling of sources of radiation used in medicine may be issued by the Federal Ministry of Health, the Dubai Department of Medical Services and the medical departments of the Armed Forces and the Police, each within the spheres of their competence and in cooperation with the Department. Employees of the Ministry and the concerned Emirate authorities will have the power to conduct judicial investigations of violations of the Law.

Any party holding a license issued in accordance with the provisions of the Law must take the necessary precautionary measures with regard to radiation sources and must promptly notify the authorities of any accident involving radiation. Failure to take the required precautions is punishable by imprisonment and/or a fine of no less than Dh 50,000 and no more than Dh 150,000. Failure to notify the authorities of an accident is punishable by imprisonment of no less than one year and a fine of no less than Dh 100,000 and no more than Dh 500,000. Violation of any other provision of the new Law shall be punished by imprisonment for no more than three months and/or a fine of no more than Dh 3,000, which shall also apply to any violation of the implementing regulations promulgated pursuant to the Law. The penalties set forth in the new Law shall be without prejudice to any more severe penalties that may be contained in separate legislation.

Equipment and materials that fail to comply with the provisions of the Law shall be confiscated, and the premises in which such a violation occurs may be closed and may not be reopened without the prior approval of the concerned Emirate authorities, the Department, and the Public Prosecutor.

Parties in possession or use of any source of ionizing radiation on the effective date of the new Law are required to apply to the concerned Emirate authority and the Department for a license and to achieve compliance with the Law within nine months following its effective date. The

effective date of the new Law was January 19, 2002, the date of its publication in the Federal Official Gazette.

b. Federal Environmental Authority. The Federal Environmental Authority was created by Federal Law No. 7 of 1993 (see the May 1993 edition of this Newsletter). A number of minor amendments have now been introduced by Federal Law No. 30 of 2001.

The number of members of the FEA Board of Directors, chaired by the Federal Minister of Health, has been increased from nine to fourteen. Appointment and compensation of the members of the Board are determined by Resolution of the Cabinet based upon a proposal of the Minister of Health. The Board chooses its own Deputy Chairman, who replaces the Chairman during the latter's absence. The Board formulates FEA policy and exercises all necessary powers and authorities. The Chairman is now authorized to approve transfers in the FEA's budget from one budget item to another, and the Board of Directors is likewise authorized to approve transfers from one budget heading to another. The administrative structure for the FEA and the rules for the FEA's personnel are to be prepared by the Board and promulgated by Cabinet Resolution.

The Director General of the FEA is the Secretary General of the Board. He must have specialized educational qualifications and experience in environmental matters, and he now holds the grade of Undersecretary. The Director General was previously appointed by a Resolution of the Minister of Health following the ratification of the Board of Directors, but is now appointed by a Federal Decree upon the nomination of the Minister.

## 2. Dubai: E-Commerce Law

Dubai Law No. 2 of 2002 is the new Dubai Electronic Transactions and Commerce Law. The Law applies to electronic records and signatures related to electronic transactions and commerce.

The new Law has among its objectives the facilitation of electronic correspondence through reliable electronic records, removal of barriers to electronic commerce, facilitation of submission of electronic documents to government offices, minimization of forgery of electronic correspondence, establishment of uniform criteria for documentation and security of electronic correspondence, enhancement of public confidence in security and validity of

electronic records and electronic correspondence, and enhancement of electronic commerce and other electronic transactions by employing electronic signatures.

Expressly excluded from the scope of the Law are personal status matters such as marriage, divorce and inheritance; negotiable instruments; documents relating to the sale, purchase or ownership of immovable property; and any document requiring attestation by the Notary Public. This list of excluded matters may be amended by resolution of the Chairman of the Dubai Technology, E-Commerce and Media Free Zone Authority.

No party shall be compelled to use or accept electronic information. The consent of a government party to use or accept electronic information in a particular transaction must be express, although the consent of a non-governmental party may be implied by affirmative conduct.

The new Law establishes general rules on electronic transactions, while giving parties scope to agree to separate rules. The Law provides that the electronic nature of correspondence shall not deprive it of its legal effectiveness or acceptability. Moreover, information that is referenced in electronic correspondence but not stated in detail shall not lose its legal effectiveness or acceptability as long as the particulars thereof are electronically available and accessible for review. If for any reason the law requires retention of a document, a record or information, then the obligation may be met by keeping the document, record or information in electronic form, provided that it is kept in the same format in which it was created, sent or received or in a manner that otherwise accurately and verifiably reproduces the information as originally created, sent or received; that the information is saved in a manner that permits subsequent use and referral; and that any information on the origin, destination, and time and date of dispatch and receipt of the electronic correspondence be kept. An electronic record or document that complies with the foregoing requirements shall be deemed equivalent to a written document. Likewise, an electronic signature that complies with the requirements established by the new Law shall be deemed to satisfy a legal requirement for a signature. An electronic document or record shall be regarded as an original if there is reliable technical evidence proving that it accurately reproduces the information originally created and it permits information to be presented on request.

Electronic correspondence or an electronic signature may not be excluded from evidence simply because it is electronic. The probative value of electronic information shall be evaluated in light of the reliability of the input, composition, preparation, storage, presentation or delivery processes; the reliability of the method by which information is kept secure; the reliability of the source of information, if known; the reliability of confirmation of the identity of the origin of the information; and any other relevant factors.

A contract may be validly formed by the electronic exchange of offer and acceptance. A contract shall not be unacceptable or unenforceable simply because it was concluded electronically. Further, valid agreements may be concluded by electronic communications among two or more information systems, without intervention of natural persons.

The Law provides a framework of rules on the origin and destination of electronic communications. In general, the Law provides that an electronic message may be regarded as sent by the originator if the message was sent (i) by a person authorized by the originator or (ii) from an automated information system programmed by the originator to automatically send messages. An addressee may assume that the message was issued by the originator and may act accordingly if (i) the addressee applies a measure previously accepted by the originator to verify that the message was actually sent by the originator for the relevant purpose or (ii) the message is received through a third party certification service provider that confirms the identity of the originator; however, the addressee may not treat such a message as authentic if alerted by the originator, if the addressee knows or suspects that the message is not authentic, or if treating the message as authentic or acting thereupon would be unreasonable.

The Law discusses acknowledgements of receipt of electronic messages. An acknowledgement mechanism may either be pre-agreed or stipulated in a message. Duly acknowledged electronic messages are deemed to have been delivered to the recipient. Failure to comply with a pre-agreed or specifically stipulated acknowledgement mechanism gives rise to a presumption of non-delivery. In either case, the presumption may be rebutted by evidence to the contrary.

The Chairman of the Dubai Technology, E-Commerce and Media Free Zone Authority is given the authority to promulgate regulations in implementation of the new Law, and to exempt any individual or corporate body from some or all of the provisions of the Law or its regulations.

### 3. Draft Penal Code Amendments

The Federal Penal Code, Federal Law No. 3 of 1987, introduced criminal provisions applicable throughout the U.A.E. (see the December 1987 edition of this Newsletter). A draft law that would amend 35 articles of the Federal Penal Code is currently under discussion. Some of the proposed amendments would enhance the existing anti-corruption provisions of the Penal Code and extend them to the private sector.

The amendments would continue to criminalize the solicitation of a bribe by and the offer or promise of a bribe to a public servant or person charged with public service. The Penal Code currently prohibits the solicitation or acceptance by a public servant or person charged with public service for himself or for another person of a gift or advantage of any kind or a promise thereof in exchange for performing an act or refraining from performing an act. Solicitation of a bribe as aforesaid is prohibited even if the official does not intend to perform or to refrain from performing the act in question, and even if performing or refraining from performing the act falls outside the scope of his official duties. Pursuant to the amendments, solicitation of a bribe would also be prohibited for a director, manager or employee of a private company or corporation, a cooperative society or a society for the public benefit.

The Penal Code as currently worded prohibits offering a bribe to a public servant or person charged with public service as well as acting as an intermediary in offering, promising, soliciting, accepting or receiving such a bribe. The amendments would make it criminal also to solicit or accept for oneself or another person any gift, privilege or benefit to intervene or use influence with a public servant to cause the public servant to act or to refrain from acting in a manner that would violate the duties of his office. Proof would no longer be required that a portion of the bribe was intended for the public servant.

In a further change, the proposed amendments would facilitate prosecution in the U.A.E. of persons involved in

money laundering. Currently, the Penal Code applies generally only to crimes committed in the U.A.E., although in some circumstances a person in the U.A.E. who committed a crime overseas can still be prosecuted if the offense involved sabotage or impairment of international means of communication, trafficking in narcotics, trafficking in persons, piracy, or international terrorism. The amendments would add money laundering to this list.

#### 4. Draft Trademark Law Amendments

Draft amendments to the Federal Trademark Law, Federal No. 37 of 1992, appear to be approaching enactment. The Trademark Law currently provides that a trademark may be registered in one of the classes of goods and services defined by the Law's Implementing Regulations. The amendments refer instead to the international classifications of goods and services; this will have the apparent effect of making unnecessary the promulgation of revised Implementing Regulations each time that a change occurs in the international classification system, as happened recently with the service mark categories (see the January 2002 edition of this Newsletter). The draft amendments also require an applicant, at the time that the application is filed, to provide particulars of any international priority right that it wishes to assert. Both of these changes seek to render the U.A.E. Law consistent with the international trademarks regime.

The Trademark Law currently prohibits registration of identical or similar marks. The draft amendments would further provide that no registration may be permitted if the usage of the mark might cause confusion with the products or services of the registered trademark's proprietor.

The draft amendments also include protections for well known international trademarks, even if not registered in the U.A.E. The amendments state that consideration must be given to the popularity of a trademark among the concerned public in determining whether a trademark is well known. The amendments would prohibit the registration of a mere translation of a well known mark if its registration may confuse consumers. Furthermore, a well known mark may not be registered to distinguish goods that differ from the goods that are ordinarily distinguished by the mark if this would indicate a relationship to the goods of the proprietor of the original mark or would result in possible damage to the interests of the proprietor of the original mark.

The Trademark Law currently allows proprietors of trademarks to seek precautionary remedies from a civil court of competent jurisdiction. Generally, such action requires the filing of a petition together with a certificate indicating registration of the mark. The draft amendments would remove the need for submission of a registration certificate in respect of a well known trademark.

As currently worded, the Trademark Law provides that a court order is required to rectify the Trademark Register. The draft amendments provide that the Ministry may rectify the Register on its own. The draft amendments also require the Ministry to delete unlawfully registered trademarks after notifying the concerned persons and after hearing their statements and defenses.

**Edited by Amjad A. Khan, Esq.  
Charles S. Laubach, Esq.  
Afridi & Angell**