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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. Financial Free Zones

On January 10, 2004, the U.A.E. Federal Supreme Council promulgated Constitutional Amendment No. 1 of 2004, amending Article 121 of the U.A.E. Constitution. Article 121 of the Constitution lists matters on which the U.A.E. federal government has exclusive legislative jurisdiction. The new amendment adds the "regulation and method of the formation of financial free zones and the scope of exemption thereof from application of the provisions of federal legislation."

Previously, there was no express provision in the Constitution denying the individual Emirates the power to establish and regulate financial free zones without federal involvement, although an individual Emirate could not exempt parties located in financial free zones from federal legislation on such subjects as banking, financial services and insurance. Indeed, the Dubai International Financial Center was created by the Emirate of Dubai pursuant to Dubai Law No. 3 of 2002 (see the March 2002 edition of this Newsletter).

Federal Law No. 8 of 2004 Regarding the Financial Free Zones implements the legislative powers formally granted by Constitutional Amendment No. 1 of 2004. Among other things, the new Law provides that a financial free zone must be established by federal decree; shall be an independent juristic entity represented by the chairman of its board of directors; shall be subject to U.A.E. anti-money laundering law and all other federal laws, other than federal civil and commercial law; and must abide by the detailed licensing requirements and financial activity restrictions set forth in the Law. The new Law also provides that individual Emirates may issue legislation governing the activities of a financial free zone within the limits of the Law.

2. End of Telecommunications Monopoly

Decree-Law No. 3 of 2003 concerning regulation of the telecommunications sector comes into effect on April 11, 2004. It ends the exclusivity of Emirates

Telecommunications Corporation ("Etisalat") in transmission of wire and wireless telecommunications and operation, maintenance and development of the public telecommunications system in the U.A.E. and between the U.A.E. and other countries.

Etisalat's 28-year monopoly will not end, however, until new entrants arrive in the market. Etisalat is majority owned by the federal government, and there has been media speculation that new entrants will be required to be 60% owned by the federal government. Such a requirement will restrict the pool of potential market entrants, but the exact position is currently unclear as the necessary implementing regulations have yet to be issued. The basis of the media speculation was the remark by a member of the newly created Supreme Committee that all future licenses will follow the same system that applies to Etisalat.

a. Supreme Committee. The Law creates a three-member "Supreme Committee for Supervision of the Telecommunications Sector." The Supreme Committee is responsible for issuing detailed implementing regulations, issuing permits to new entrants and determining all applicable fees.

b. General Authority. While high-level policy decisions are reserved to the Supreme Committee, day-to-day supervision of the telecommunications sector is to be the responsibility of the "General Authority for the Regulation of the Telecommunications Sector." The General Authority will be based in Abu Dhabi and there will be a branch office in Dubai. As the regulator of the industry, the General Authority is responsible for monitoring the activities of licensed market entrants and ensuring that an acceptable level of service is provided to all parts of the country. Etisalat has historically provided infrastructure to the more remote and unprofitable parts of the country. The General Authority will be responsible for seeing that these areas are not now neglected.

c. Regulated Activities. The new Law requires a market entrant to obtain a permit and to be licensed before engaging in a Regulated Activity. "Regulated Activities" are defined in the Law as operation of a public telecommunications network or the provision of public

telecommunications services to subscribers (plus all other activities as may be specified by the Supreme Committee). "Telecommunications Network" and "Telecommunications Services" are in turn broadly defined.

d. Actions to be taken by Etisalat following removal of monopoly. The Law contains various transitional provisions to allow Etisalat to continue its current activities pending the issue of a license pursuant to the Law. Etisalat is required to make available to the General Authority details of its operations including copies of all its records. The Law also contains specific amendments to Federal Law No. 1 of 1991 Concerning Emirates Telecommunications Corporation aimed at removing any inconsistencies between the primary Etisalat legislation and the new Law.

e. Cooperation by Etisalat. Etisalat's obligation to cooperate with new entrants to the market is expressly enshrined in the Law. Etisalat is obliged to accept all applications of licensed parties for connections to and use of the existing network and is required to do so in "a prompt and effective manner with the lowest cost." There is also an obligation that it must offer and provide access to existing facilities on terms and conditions corresponding to the "best international practices." Furthermore, Etisalat must provide licensed parties with the same facilities and information that it would provide to its own subsidiary entities or itself.

f. Equipment permits. The Law will be of interest not only to potential new entrants in the market, but also to their suppliers. The Law prohibits using, selling or offering for sale any telecommunications equipment unless the General Authority has issued a permit for the same. This suggests that suppliers of various forms of technology may therefore need to apply for permits from the General Authority. Only government authorities are exempted from the requirement of obtaining a permit.

g. Organization and distribution of frequencies. The Law reserves the right to allocate a section of the available frequency spectrum to the Ministry of

Communication rather than the Supreme Committee or the General Authority.

h. Access to public lands. The Law makes a distinction between public and private land when discussing access to and use of land when building, maintaining and operating telecommunications networks. Private land is defined as land owned by, granted to or leased by any person other than government authorities. In other jurisdictions, some property owners have enjoyed financial windfalls, particularly where mobile operators have agreed to pay for the right to erect repeater stations on the roofs of the owners' properties. Whether this will become a feature of the telecommunications market in the U.A.E. is unclear. The Law specifies that government authorities will allow licensed parties the right of "operation and use of public lands" at no cost, including the right of passage through and access to public lands, in order to enable licensed parties to carry out their licensed activities. No such requirement is imposed on private land.

i. Offences and penalties. The Law creates a raft of offences and penalties. These range from fines of between Dh 50,000 and Dh 200,000 and imprisonment for up to two years. Where the offence is repeated, the penalty is doubled.

j. Dispute resolution. Any licensed party can apply to the General Authority for resolution of any dispute arising between it and another licensed party concerning subscription to the facilities or sites. The General Authority's decision in respect of that dispute shall be final and binding. The legislation further states that disputes relating to connections will likewise be resolved by application to the General Authority; this particular provision does not include explicit reference to licensed parties, suggesting that the General Authority would also be the forum for complaints by end-users and consumers. The details of the General Authority's dispute resolution procedures will be set out in the implementing regulations.

3. Double Taxation Treaty with Canada

The U.A.E. has ratified the Convention between the Government of the U.A.E. and the Government of Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital (the "Treaty"), pursuant to Federal Decree No. 3 of 2004.

The Treaty applies to natural persons and corporate entities who are residents of one or both of the contracting states. The Treaty covers taxes imposed on income and on capital, which shall be regarded as including taxes on elements of income or capital, taxes on gains from the alienation of movable or immovable property, and taxes on capital appreciation. The Treaty contains detailed provisions on the tax treatment accorded to various categories of income such as income from immovable property, income from business, dividends, interest, royalties, capital gains, income from professional services, and income from government service. The Treaty is based upon an OECD model treaty for the avoidance of double taxation. Like most double taxation treaties, it contains detailed rules for the attribution of income to specific categories of income-producing activity and the allocation of such categories of income to the taxing jurisdiction of one country or the other. As a result, persons with income that is allocated to the taxing jurisdiction of the U.A.E. would not be subject to Canadian tax on such income, and vice versa.

The Treaty applies to existing taxes as well as to taxes of the same nature that may be imposed in the future. The Treaty does not affect the right of the U.A.E. Government to tax income related to oil and natural resources situated in the U.A.E. in accordance with the relevant U.A.E. tax laws and regulations. The Treaty provides that the residents of one contracting state shall not be subject in the other contracting state to any taxation or related requirement which is different from or more burdensome than the taxation and related requirements imposed on residents of that contracting state.

For the purposes of the Treaty, a "resident" of Canada means any person who, under the laws of Canada, is liable to tax therein by reason of such person's domicile, residence, place of management, place of incorporation, or similar criteria, but does not include a person who is liable to tax in respect only of income from sources in

Canada. A resident of the U.A.E. means (i) a natural person who is a national of the U.A.E., provided that such individual has a substantial presence, permanent home or habitual abode in the U.A.E. and such individual's personal and economic relations are closer to the U.A.E. than to any other state or (ii) a company incorporated in the U.A.E. (a) all of whose shares are beneficially owned by U.A.E. residents or (b) all or substantially all of whose income is derived from the active conduct of a trade or business other than an investment business in the U.A.E. and all or substantially all of the value of whose property is attributable to property used in that trade or business.

A resident of a contracting state also includes the government of that contracting state or any corporation, authority or entity which is wholly owned and controlled by the government of that contracting state and which is established under the laws of that contracting state.

The Treaty does not affect the fiscal privileges enjoyed by members of diplomatic and consular missions under the general rules of international law or under the provisions of special agreements.

A resident of a contracting state who is taxed in a manner which is not in accordance with the provisions of the Treaty may address his grievance to the competent authority of the contracting state of which that person is a resident, by making an application in writing, stating the grounds for claiming the revision of such taxation. The Treaty provides that the competent authorities of the contracting states must endeavor to mutually resolve the matter in such event.

4. Dubai: Public Health Regulations

Local Order No. 11 of 2003 concerns public health and safety in the Emirate of Dubai. The rules set out in the Order address the objectives of the Dubai Municipality for the maintenance, protection and development of public health, repealing and superceding a series of Local Orders dating back to 1961. The Order specifically governs health hazards, foodstuffs, drinking water, establishments relating to public health, control of infectious diseases, pest control, public safety, control of smoking, health and safety of buildings, public cleanliness, animal health and

care, and burial of the dead and supervision of cemeteries.

The Order applies to every person and legal entity in Dubai. This includes schools, hospitals, pharmacies, medical laboratories, fitness centers, beauty salons, hotels and cinemas. The persons and entities governed by the Order are subject to the full supervision, inspection and control of the Municipality and have to adhere to the restrictions, rules, specifications, standards and conditions determined by the Municipality.

Designated officers and inspectors of the Dubai Municipality have investigatory and seizure powers to ensure compliance with the Order. Violators may be subject to fines of Dh 100 to Dh 500,000. In addition, the Municipality has the power to order the violating party to suspend work and/or to confiscate or destroy any offending goods, products and materials. A violator may also be required to pay compensation to rectify any harm caused.

SULTANATE OF OMAN

Contributed by Trowers & Hamlins, Muscat, Oman

1. Implementation of Civil Status Law

The Government of Oman has now chosen to implement Royal Decree No. 66 of 1999 issuing the Civil Status Law, as promulgated in the Official Gazette in 1999. With the implementation of this Royal Decree, the Sultanate of Oman has taken the decision to set up the civil status registration system contemplated in the enactment. The importance of this new law cannot be understated as it affects every person residing in the Sultanate of Oman, whether Omani or expatriate.

The goal of the registration system is to provide every citizen in Oman with an individual "smart card" ("Identity Card") for identification purposes. It is expected that the scheme will involve issue of more than 1.5 million Identity Cards. Under Article 42 of the Decree, all Omani citizens over the age of fifteen must apply to obtain an Identity

Card. Omani citizens under the age of fifteen may obtain an Identity Card with the approval of their parents or guardians. All expatriates in the Sultanate must obtain a residency card.

It is hoped that the Identity Card will serve a number of purposes in addition to identification, including serving as traveling documentation and other uses. The Identity Card will be regarded as an official document, and as such the information contained therein must be maintained regularly and accurately.

It is the responsibility of the individual to ensure that the card is not damaged or lost. Article 46 states that any lost or damaged card must be reported to the nearest police station within fifteen days. A new application must then be made in order to obtain a replacement card. Article 56 provides that the fee for a replacement Identity Card shall not be more than R.O. 20.

The Decree establishes a Directorate General, as a subdivision of the Royal Oman Police, which will be responsible for the recording and maintaining of all records to be collected under the Civil Status Law. In particular, this role will also involve the issuance of Identity Cards, the issuance of certificates recording civil status events (births, marriages and deaths), the verification of the authenticity of particulars concerning marriage or divorce between Omanis and non-Omanis and the recognition and restoration of Omani citizenship. The Directorate will also be responsible for ensuring that records of births and deaths of expatriates living in the Sultanate are kept up to date.

Article 4 of the Decree states that a civil register system shall be established for entering the civil status events of Omani citizens, both inside the Sultanate and abroad, and those of foreigners residing in Oman in accordance with the provision of this Law. Registration shall be by way of providing name, nationality and address. Each person will then be provided with a unique number under this system (the "Civil Number").

The information collected using the civil register will

be utilized for a wide range of official and non-official uses. As stated in Article 6, all transactions requiring confirmation of an individual's address will rely on the information provided in the register. This will have implications for voting, service of legal documentation, invoicing and location and identification of persons. It is expected that the range of uses for the card will be extended in the future. Significantly, Article 48 states that employers may not employ any person who does not hold a valid Identity Card in accordance with this Decree.

It is important that information be regularly updated by individuals for the registration process to be effective. Accordingly, Article 7 provides strict requirements for any change in personal information to be reported. All changes in particulars are to be reported within thirty days of the date of occurrence, either by the individual or his named legal representative (in the case of a minor or missing person). Omanis based abroad are obliged to report any change in their particulars to the relevant Oman Embassy. Each Embassy will then periodically update the Directorate General.

Any birth, marriage or death occurring to a person registered with a Civil Number in a foreign country will be accepted as valid insofar as it accords with the provisions of that country's laws. This principle is most important in the context of marriage. For the marriage of an Omani citizen in a foreign country to be valid, it must first be in accordance with the local laws and duly approved by the local authorities of that country. Then, in order to have effect, the event must be certified by the competent authorities in Oman.

If the relevant information is refused entry in the civil register, Article 10 states that the Directorate General is to provide the relevant person with a written decision setting out the reasoning behind this refusal. An appeal process for citizens is prescribed under the same Article whereby every citizen has the right to appeal to the Inspector General within two weeks of receiving the written decision of refusal.

All births in the Sultanate and all cases of Omani new-borns are to be reported to the Registrar. The reporting of

births in the Sultanate must be made using the form designated (supported by the child's birth certificate) within two weeks from the date of birth. Any birth to an Omani citizen taking place abroad is to be reported to the relevant Embassy or mission in the country where the birth took place within three months of the date of birth. However, if the period of stay abroad is for a duration of less than thirty days, reporting of the birth must take place within fifteen days. Again, registration must be made on the form designated and must be supported by a birth certificate issued by the competent authority in the foreign country.

All reports on births shall include the following information: date of birth (in accordance with Hijri and Gregorian calendars), location, name and sex of the child, and details of the names, civil numbers, tribal names (or family names), nationalities, religions and professions of the parents.

All marriages (or divorces) in which one of the parties is an Omani citizen must be reported to the Registrar within thirty days from the occurrence of the event. Registration is achieved by submitting the prescribed form supported with a marriage or divorce certificate. The relevant authorities involved in these either of these civil events (such as a competent court) shall also supply details of marriages and divorces to the Registrar.

All deaths in the Sultanate of Oman and all deaths of Omani citizens abroad are to be reported to the Registrar and to the competent authorities. Reports of deaths in the Sultanate are to be made to the Registrar using the relevant form and supported by a death certificate within two weeks from the date of death. The Identity Card of the deceased must also be attached to this form. Article 30 provides a list of the persons who are entrusted with reporting a death and Article 31 prescribes the details to be provided in the report of death.

The death of any Omani citizen in a foreign country must be reported to the relevant Omani Embassy or mission in the country where the death took place. The death must be reported using the relevant form and attaching the death certificate issued by the competent authority of that country.

In order to ensure the success of this registration scheme, the authorities have attached strict provisions for failure to report civil status events. Article 57 stipulates a fine of up to R.O. 500 and/or imprisonment for any person who is found guilty of deliberately damaging an Identity Card, falsifying the loss of an Identity Card, forging an Identity Card, illegally obtaining an Identity Card by impersonating another person or deliberately making false representations, or submitting false documentation in order to obtain an Identity Card or recording a civil case. Penalties also apply under Article 58 for failure to report a civil status event within the prescribed time period. Citizens who are found guilty for breaching these time limits may be punished by a fine of up to R.O. 200 and/or imprisonment.

Royal Decree No. 66 of 1999 provides comprehensive guidelines for the establishment and operation of a civil status scheme in Oman. By incorporating an individual's civil information on to one Identity Card, the scheme will not only allow for an improvement in administrative services, but also, coupled with the information gathered in recent 2003 Census, allow the Government to ensure that resources, infrastructure and benefits are provided effectively and efficiently.

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