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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. Commercial "Concealment"

Federal Law No. 17 of 2004 prohibits commercial concealment, which is defined as enabling a foreigner "to carry on any economic or professional activity the practice of which is not permitted" to such foreigner by the laws and regulations of the U.A.E. or enabling such foreigner to evade applicable obligations. The new Law is scheduled to take effect after three years from its date of publication, i.e., from November 16, 2007.

The penalty for the crime of commercial concealment is a fine of up to Dh 100,000 per offense. Repeat offenders may be jailed for up to two years. A commercial entity that violates the Law may be removed from the commercial register, stripped of its commercial license and prohibited from doing business for a period of two to five years. A foreign individual whose activities are concealed is subject to the same penalties and in addition, to deportation. All such penalties may be applied in addition to any penalties imposed under any other U.A.E. laws.

It is not clear how Law No. 17 of 2004 will be applied. The Law calls for the Minister of Economy & Planning to promulgate regulations necessary for implementing the Law in coordination with the concerned authorities. It is hoped that such regulations will shed light on the manner in which the authorities intend to apply it. Other countries in the region have similar statutes; however, concealment laws in such jurisdictions are generally viewed as having the purpose of deterring tax evasion, a rationale that is inapplicable to the U.A.E.

2. Federal Environmental Authority

The Federal Environmental Authority was created in 1993 and given an overall regulatory role over environmental matters in the U.A.E.

Federal Law No. 20 of 2004 introduces amendments to the governance of the Federal Environmental Authority. It provides, as before, that the Board of Directors of the Federal Environmental Authority shall be chaired by the

Minister of Health. However, in replacement of the prior requirement for nine members selected from among senior environment and development officials, is it now provided that there shall be a sufficient number of members representing the Armed Forces, Interior, Health, the environment, and the Municipalities. As before, the members of the Board of Directors shall be appointed by Cabinet Resolution based upon the proposal of the Minister of Health. The new Law now specifically provides that the secretary general of the Federal Environmental Authority shall be its rapporteur, that the Board of Directors shall select the deputy chairman who will chair meetings in the Chairman's absence, and that the Board of Directors may retain the services of experts who may attend board meetings but may not vote.

3. Judicial Cooperation Agreement with China

The United Arab Emirates has concluded a judicial cooperation agreement with China, the fourth such agreement between the United Arab Emirates and a non-Arab League member state. The treaty governs judicial summonses, the taking of evidence, and the recognition and enforcement of judgements.

With regard to the mutual recognition and enforcement of decrees, the treaty provides that each party shall recognize and execute decrees passed by the courts of the other country in civil, commercial and personal matters, and by criminal courts in civil matters. Unlike the treaties concluded two years ago with India (see the January 2002 edition of this Newsletter), the treaty does not provide for extradition or other cooperation in criminal matters.

An enforceable decree means a decision rendered in judicial proceedings by a competent court of either state. The agreement does not provide for enforcement of interim or provisional measures, except matters relating to allowances.

In contrast with the other judicial cooperation agreements to which the U.A.E. is party, the agreement with China does not provide for mutual recognition and enforcement of arbitral awards.

4. Bank Guarantees for Foreign Companies

Ministerial Resolution No. 353 of 2004 imposes a new requirement on foreign companies with licensed branch offices in the U.A.E.

The new Resolution specifically requires a foreign company seeking entry in the Register of Foreign Companies to submit a bank guarantee in favor of the Ministry of Economy and Planning in the amount of Dh 50,000. Foreign company branch offices that are currently entered in the Register of Foreign Companies must submit such guarantees at the time of annual renewal of registration.

The Resolution provides that a company shall be deleted from the Register of Foreign Companies if it fails to apply for renewal for two years following expiration of registration, with fees relating to such non-renewal being deducted from the bank guarantee.

The bank guarantee must be issued by a bank licensed to operate in the U.A.E. It must be valid for one year and must be automatically renewable until released by the Ministry. Neither the text of the guarantee itself nor the new Resolution imposes any restrictions on the circumstances in which the Ministry of Economy and Planning may exercise such guarantee.

5. Electronic Banking Service Units

The Board of Directors of the Central Bank has published a licensing regime for electronic banking service units, which are defined so as to include automated teller machines. Resolution No. 132/5 of 2004 specifies that a bank may open an electronic banking service unit in the U.A.E. only after obtaining a license for each unit to be installed at a particular location. A bank may use an appropriately licensed electronic banking service unit to provide cash and statements of account, receive cash and check deposits, take instructions from current and potential customers, market the relevant bank's products, train customers in the use of the bank's automated banking services and guide customers in respect of the bank's services. Specific approval from the Central Bank's Board of Directors is required if any additional work is to be carried out by the bank through an electronic banking

service unit. The Resolution is specified to apply to electronic banking service units licensed prior to the promulgation of the Resolution and sets forth certain conditions for licensing.

6. Islamic Finance Companies

The Central Bank has promulgated new rules for the establishment and licensing of Islamic finance companies. The new rules are set forth in Central Bank Board of Directors Resolution No. 165/6 of 2004 Concerning the Regulation of Finance Companies That Conduct Their Activity in Accordance with the Provisions of the Islamic Sharia.

The new Resolution provides that an Islamic finance company must assume the form of a public joint stock company, unless one of its founders is itself a public joint stock company, and shall be subject to licensing, supervision and inspection by the Central Bank. An Islamic finance company may provide financing for various personal and consumer purposes, undertake trade financing, participate in the capital of existing or future projects, accept deposits from companies, and manage investment vehicles. The prior approval of the Central Bank is required before an Islamic finance company engages in any additional activities.

Islamic finance companies are prohibited from accepting deposits from, making loans to or opening any kinds of accounts for individuals. An Islamic finance company shall not be subject to the mandatory cash reserve requirements that are imposed on banks. The paid up capital of an Islamic finance company must be no less than Dh 35 million, and at least 60% of its shares must be held by nationals of the U.A.E. An Islamic finance company must set aside 10% of its annual net profits towards accumulation of a legal reserve, until such legal reserve equals 50% of the company's paid capital.

An Islamic finance company is subject to a number of continuing obligations. An Islamic finance company must not engage in currency exchange, the business of financial investment companies, or any other activity for which it is

not licensed. No more than 7% of the capital of an Islamic finance company may be used to finance a single person or to deposit or invest in a single facility or group without the prior approval of the Central Bank. An Islamic finance company may not provide financing to any member of its Board of Directors or a company belonging to such member in excess of 5% of its capital, and in excess of 25% in respect of all members of its Board of Directors.

The prior approval of the Central Bank is required for any change in the name, corporate form, capital or head office location of an Islamic finance company; for merger of an Islamic finance company with another entity; for opening a branch office; for charging its assets; for amendment of its Articles of Association; for any change in composition of the Board of Directors; for any change of shareholding in excess of 5%; and for any change in governance.

The name of an Islamic finance company may not contain the words "bank," "finance company," "commercial or real estate company" or any other word that indicates activity other than Islamic finance.

An Islamic finance company is required to appoint auditors, to maintain regular records in accordance with the forms required by the Central Bank, to use official documents with all of its clients, and to issue all correspondence, documents and deeds under signature of duly authorized representatives. An Islamic finance company may not provide any financing or facilities to or open accounts for its external auditors. An Islamic finance company may not provide financing or facilities or open accounts for any members of its Board of Directors except with the approval of its Board of Directors. The financial year for an Islamic finance company shall be from 1 January until 31 December of each year, except for the year of its incorporation.

7. Securities Regulations

Minor amendments have been promulgated to the Disclosure and Transparency Regulations for securities trading in the U.A.E. The new regulations amend the original regulations that were promulgated in 2000 (see the

February 2001 edition of this Newsletter).

Issuers of publicly traded securities must provide the relevant market and the Securities and Commodities Authority with quarterly, semi-annual and annual reports within one month of the promulgation of such reports. Such reports must state the activities and business results so as to reflect the financial position of the issuer and must be certified by the auditor of the issuer, containing all details required from time to time by the relevant market or by the Securities and Commodities Authority. This replaces an earlier requirement that such reports be provided upon their promulgation.

8. Abu Dhabi Tourism Authority

Abu Dhabi Law No. 7 of 2004 creates the Abu Dhabi Tourism Authority. The Authority is an independent agency of the Government of Abu Dhabi governed by a board of directors appointed by Emiri Decree.

The Authority has the task of developing tourism throughout the Emirate of Abu Dhabi, developing plans for the tourism sector, and developing tourism projects, facilities and services. It shall prepare guidelines for the classification of tourism facilities, promote Abu Dhabi as a tourism destination, and prepare recommendations for the creation of Tourism Investment Zones. The new Law contemplates that Tourism Investment Zones will be created by order of the Abu Dhabi Executive Council. It is expected that special incentives for development of tourism infrastructure will be granted in respect of the Tourism Investment Zones, including scope for ownership of buildings and land by non-U.A.E. nationals.

SULTANATE OF OMAN

Contributed by Trowers & Hamlins, Muscat, Oman

1. Foreign Land Ownership In Oman

The Government of the Sultanate of Oman has recently opened its gates to allow foreigners and foreign corporate entities, for the first time, to acquire property in designated tourist complexes. This is an exciting and innovative prospect for foreigners who wish to own land whether for accommodation or investment purposes. The changes result from the recently introduced Foreign Ownership of Land Law (Ministerial Resolution No. 254 of 2004), which put Oman a step ahead of many other Gulf nations whose laws are not as far reaching or clear. It is anticipated that the legislation will give a boost to the real estate market and the already burgeoning tourist industry. In addition, banks will be more attracted to the greater certainty of this law for their lending to foreign property buyers.

One significant feature of the new law relates to residency rights. Foreign property owners, by virtue of their property ownership, may be given a residency permit for themselves and for their immediate family members subject to satisfying the laws of Oman. This will be an important incentive to those considering exercising the right to purchase afforded by the law.

This new legislation complements the recent drive by the Government to accomplish its objectives in respect of "the encouragement and development of tourism in the Sultanate and the development of its resources and investments, in order to increase its contribution to the national economy," as set out in the preamble of the Law of Tourism. The Government's commitment to achieving such objectives is further illustrated by the creation of a separate Ministry of Tourism, which will oversee the development of the tourist industry and, more specifically, hold responsibility for licensing the above mentioned tourist complexes. The remit for tourism previously fell under the Ministry of Commerce and Industry.

Now that a backbone is in place to facilitate the acquisition of property by foreigners, further implementing legislation will be introduced in the near future to flesh out the new law before foreigners can fully utilize and benefit from it. For example, legislation is currently being prepared in relation to the issuance of residency permits and the mechanism for licensing tourist complexes.

Despite the relative infancy of the Foreign Ownership of Land Law, the legislation will assist with and encourage large scale property development projects. It will enable foreign investment companies, or companies registered in Oman that are partially or wholly foreign owned, to purchase land in Oman for the purpose of developing tourist complexes. Property development companies will also be able to market and sell built properties to foreign individuals and foreign or foreign owned companies. A number of such projects are already in the planning stages and have received considerable media coverage. To name a few, the Wave will be a tourist resort situated in Al-Seeb and will include a number of hotels, a marina, a golf course, beaches and villas. In Al-Sawadi, the Blue City is destined to be one of the largest development projects in the Gulf region, and it is expected that more than 200,000 people will reside there. Both of these projects are to be undertaken by consortiums of Omani and international investors.

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