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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. Federal Decree Creating DIFC

The Dubai International Financial Center, the first financial free zone of the U.A.E., was created in 2002 by legislation of the Emirate of Dubai. Earlier this year, new Federal legislation on financial free zones resolved the coordination of the Federal and Emirate regulatory roles. The new Federal legislation required that each financial free zone be created pursuant to a Federal Decree.

The Dubai International Financial Center has now been constituted as a matter of Federal law, pursuant to Federal Decree No. 35 of 2004. The detailed rules on DIFC are to be addressed in separate legislation of the Emirate of Dubai.

2. GCC Nationals Permitted To Acquire Shares

Cabinet Resolution No. 9 of 2004 gives nationals of GCC countries the right to acquire shares in U.A.E. companies. GCC national shareholding in U.A.E. companies was previously limited to 75% (see the April 1985 edition of this Newsletter).

The new Resolution applies to companies operating in the fields of economic activity that are permitted to GCC nationals. These areas of economic activity have been substantially expanded, as we reported earlier this year. GCC nationals may establish companies with such activities and may subscribe to and trade their shares.

3. Federal Commercial Register

A Federal Commercial Register has existed on paper since 1975. However, in practice, the Commercial Registers in the U.A.E. have been maintained by the Governments of the respective Emirates.

Cabinet Resolution No. 14 of 2004 now instructs that a Federal Commercial Register shall be prepared and maintained, located at the Ministry of Economy and Commerce. The Federal Commercial Register will reflect the particulars set forth in all of the Commercial Registers maintained in the Emirates. An electronic version of the

Federal Commercial Register will also be prepared.

4. Securities Regulations Amended

Three Cabinet Resolutions were promulgated during May 2004 that introduce minor amendments to the securities regulations of the U.A.E.

Cabinet Resolution No. 15 of 2004 amends the regulations for licensing securities markets. It provides that a market shall be fined for any delay in payment to the Securities and Commodities Authority. The fine is equal to 1% of the amount payable for the first month of delay, 2% for the second month of delay and 5% for each month thereafter.

Cabinet Resolution No. 16 of 2004 amends the regulations for the listing of securities. It introduces an express requirement that all public shareholding companies incorporated in the U.A.E. must apply to have their shares listed.

It also provides that securities shall be divided into two classes. The first class of securities shall be securities of issuers that comply with nine criteria. Those nine criteria are (i) registration with the Ministry of Economy and Commerce, (ii) completion of at least two years since incorporation with audited accounts, (iii) approval of listing from the Securities and Commodities Authority, (iv) that the paid capital be no less than Dh 25 million or 35% of the subscribed capital, whichever is higher, (v) that the shareholders' rights with regard to each class of shares be equal, (vi) that the shareholders' equity in the company be no less than the paid capital, (vii) that the ordinary general assembly of the shareholders of the company has been called at least once during the year, (viii) that the issuer has published its balance sheet and business results in a daily publication before negotiation of its shares in the markets was permitted and (ix) that any other conditions that may be imposed by the Board of Directors of the Securities and Commodities Authority from time to time have been satisfied. In contrast, the second class of securities shall be those of any issuer that fails to comply with one or more of the foregoing criteria.

Finally, Cabinet Resolution No. 17 of 2004 introduces amendments to the regulations involving the operations of the Securities and Commodities Authority. Resolution No. 17 of 2004 permits the Securities and Commodities Authority to appoint outside consultants by resolution of the Executive Director with the ratification of the Chairman of the Authority. Minor changes to the powers of the Chairman have also been introduced.

5. Bank Guarantees for Employees

The implementing regulations on bank guarantees for employees have been amended again. This round of amendments, set forth in Ministerial Resolution No. 373 of 2004 promulgated by the Minister of Labor and Social Affairs, contains measures that will have a relatively marginal impact.

The bank guarantee requirement now applies to all employers that are governed by the U.A.E. Labor Law, and not simply to all employers. The six specific categories of exempt employers remain unchanged, as do the amounts of the guarantees that are required. The guarantees are designed only for the satisfaction of unpaid labor entitlements. A demand for exercise of a guarantee must be made to court, and it may be made either by the Ministry of Labor and Social Affairs or (in another change) by the concerned employee.

6. Investor Visas

A resolution of the Minister of Labor and Social Affairs published in June announced the intention of the Ministry to cancel labor permits issued to holders of investor visas. Investor visas are issued to individual foreigners who are owners or shareholders of U.A.E. businesses. The new measure is apparently motivated by the view that only employees should be required to hold labor permits and that proprietors are not employees.

7. Tenders Regulations Relief for Emirates Airlines

By Order of the Ruler of Dubai, Emirates Airlines has been exempted from some of the provisions that are normally

required in contracts with the Government of Dubai.

The exemption specifically applies to directives dating back to 1988 that contracts of government departments and corporations, unless otherwise ordered by the Ruler of Dubai, must be governed by Dubai law and must not incorporate FIDIC terms and conditions by reference, and that arbitration clauses in such contracts must provide for conduct of arbitration in Dubai under Dubai law. The exemption enables Emirates Airlines to obtain financing from international lenders for acquisition of new aircraft.

SULTANATE OF OMAN

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1. Money Laundering

As a result of one of the biggest global investigations into criminal funding ever seen, money laundering and the need effectively to combat it have become increasingly important concerns of governments and their legislatures around the world, resulting in a heightened awareness of how terrorists and other criminals have been funding their activities. Resulting legislation has tended to adopt an unforgiving approach in tackling the problem; the Sarbanes Oxley Report (and resulting legislation) in the U.S. and the similarly tough, some might even say draconian, laws passed in the U.K. are examples. Oman is no exception to the rising tide of financial controls and there have been recent significant changes in the duties and obligations of many organizations in Oman to detect and report money laundering activities.

Oman's own Money Laundering Law was promulgated by way of Royal Decree No. 34 of 2002 but remained largely unfinished pending issue of the Executive Regulations.

It is the intention of this article to begin by highlighting some of the more important provisions contained in the Money Laundering Law before moving on to discuss how the Executive Regulations introduced by Royal Decree No. 72 of 2004 will impact on companies and individuals in Oman.

a. The background: Royal Decree No. 34 of 2002. Article 2 of the Money Laundering Law makes it a money laundering offense to intentionally possess or deal with money that has been secured, directly or indirectly, from an offense or from an act that constitutes complicity in an offense, or to misrepresent or conceal anything to do with money. Interestingly, a reverse onus is placed and the person or company who possesses or deals with such money is deemed to know of the illegal source of the money unless they can prove otherwise, a stringent and worrying reversal of the usual "innocent until proven guilty" principles that have historically been the building blocks of successful legal systems around the world.

Under Article 3 of the Money Laundering Law, participation in inciting, helping or agreeing to the commission of a money laundering offense, where done by any member of staff of an establishment, will result in the conviction and punishment of the member of staff and of the relevant establishment as if they were convicted under Article 2 as the original offenders.

The penalty for committing, or merely commencing, a money laundering offense -- provided for by Article 15 of the Money Laundering Law -- is set at a maximum of ten years' imprisonment and a minimum of three, and includes the possibility of a fine ranging from R.O. 5,000 up to and including the full value of the funds involved in the money laundering offense.

These very stringent, and reverse onus, provisions place a great responsibility upon those exposed to potential money laundering schemes. Unwitting participation by, for instance, a bank, a lawyer, an accountant, a real estate broker or a share broker will be excused only where they can prove positively that they did not know and could not reasonably have known (a very important extension of the test) of the source of the funds. Some might protest that those engaged in money laundering are invariably sophisticated criminals and that it is harsh, even unrealistic, to expect all members of an establishment to be able to protect themselves fully from being unwitting participants in a money laundering offense. The Money Laundering Law recognizes this harshness and makes an initial attempt to mitigate it in a number of ways,

essentially all of which are designed to help establishments acquire a reasonable level of awareness and understanding about, and protection from, money laundering; for example, by placing an obligation upon establishments to adopt client identification procedures, and by requiring them to retain records of transactions, to establish internal procedures of surveillance, and to advise and implement training programs to keep employees up to date with the latest developments in money laundering law.

b. The Executive Regulations. With the arrival of Royal Decree No. 72 of 2004, issuing the Executive Regulations under Royal Decree No. 34 of 2002, matters have become much clearer. The nature of the obligations and the ways to achieve compliance with them are much more detailed.

The Executive Regulations apply to both individuals and companies working in one or more of a number of specified fields which are listed in Article 1. The most noteworthy of these fields are:

- (1) Lending or financial transactions;
- (2) Trading;
- (3) Guaranteeing;
- (4) Insurance;
- (5) Real estate; and
- (6) Legal practice and auditing.

Despite the apparent limitation on the people to whom the Executive Regulations apply, it is suggested that the list is non-exclusive and the Executive Regulations may well be applied to individuals or companies who are not listed but who nevertheless handle money in the course of their employment.

The Executive Regulations indicate that the activities most likely to involve money laundering are:

- (1) Drug trafficking;
- (2) Acts of terrorism;
- (3) Immoral acts or prostitution;
- (4) Any other offenses with material benefit listed in the laws of the Sultanate of Oman and the international conventions and treaties to which the Sultanate is a party.

Again, this is a non-exclusive list and any funds that might be regarded as the proceeds of crime, or money earmarked to fund crimes, will be caught within the framework of the legislation.

The Executive Regulations also expand on the obligations laid down upon establishments in the Money Laundering Law. For instance, in relation to the obligation to verify the identity of every prospective client before establishing a working relationship, provided for by Article 4 of the Money Laundering Law, Article 2 of the Executive Regulations lists specific documents which the establishment must demand from the client, and in addition stipulates that every relevant establishment must provide electronic data systems which have certain minimum capabilities with respect to tracking money transfers.

The Executive Regulations instruct that when employees of establishments which are governed by the Money Laundering Law -- in other words, all natural and juristic establishments, not confined to the list in Article 1 of the Executive Regulations -- are conducting certain specified transactions, they must carry out a thorough examination and checking procedure.

The Executive Regulations do not change the fundamental position under the Money Laundering Law that there is no defense to being involved in such an offense except positive proof that a person was both unaware of the source of the funds and reasonably so. This remains the most important and potentially dangerous principle of the legislation to the careless company or individual.

These Executive Regulations do act as a helpful guide for establishments in traversing the requirements of the checking and reporting process. By way of example, the procedure for informing the authorities, when suspicion of a dubious transaction arises, is formalized in Article 4 of the Executive Regulations, which stipulates that every establishment subject to the legislation must appoint a disciplinary officer to act as the channel between the person who becomes suspicious and the authorities, and also

to be responsible for the application of the money laundering laws in the establishment.

In turn, Article 8 of the Executive Regulations expands on Article 6 of the Money Laundering Law, which deals with training courses. Despite the fact that there is no penalty contained in either the Money Laundering Law or the Executive Regulations for non-compliance with these provisions, Article 8 will prove particularly useful to establishments in limiting their exposure to suggestions of a breach of the money laundering laws. Article 8 for the first time gives a clear indication of what an effective training program might consist of, such as introducing employees to the Money Laundering Law and the Executive Regulations and concentrating on the need to abide by them. Nevertheless, Clause D of Article 8 illustrates clearly that the Oman authorities consider a mere acquaintance with money laundering laws insufficient protection for an establishment; the clause suggests instead that employees should be considered almost as "outpost anti-money laundering agents" and should be trained accordingly.

Establishments are to be helped in the devising and implementation of these training programs by the National Committee for the Prevention of Money Laundering, which was constituted pursuant to Article 21 of the Money Laundering Law. The Committee will, under Article 12, set up a technical committee who will have the power to prepare training programs. Under Article 13(B), these training programs, along with basic principles and general guidelines for use as educational means while training the employees, will be put on a database. As emphasized throughout this commentary on the Executive Regulations, it must again be stressed that the idea behind them is to assist establishments in avoiding contact with dirty money and the resulting minimum term of imprisonment of three years and minimum fine of R.O. 5,000. Non-compliance with the training program provisions, also as already noted, does not of itself result in criminal sanctions of any kind, but non-compliance with such sensible advice would invite disaster.

There are a number of specific provisions relating mainly to banks and other financial institutions which apply quite strict and detailed requirements for control and monitoring of transactions, but space does not allow a

detailed description of these in this article, which is intended only to act as a general introduction to the Money Laundering Law and the Executive Regulations.

In summary then, the Money Laundering Law and its accompanying Executive Regulations must, as all laws must, be viewed in the social and political context in which they were born and in light of the problems they are supposed to resolve. Money laundering is an activity with potentially very serious consequences. The fact that the law imposes penalties on individuals and establishments for failure to comply with some of its provisions is merely an indication that the Oman authorities are taking this problem seriously, and does not detract from the fact that the emphasis is heavily in favor of both frustrating and catching the criminals. Such a stance is to be generally applauded, whether or not one agrees with the concept of reverse onus criminal liabilities as a more general concept. That is perhaps a discussion for another time.

So, in closing, the advice must be that you ignore these new provisions very much at your personal and corporate peril.

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