

**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. Federal Civil Service

Federal Law No. 8 of 2003 introduces a minor amendment to the Federal Civil Service Regulations, promulgated as Federal Law No. 21 of 2001. A U.A.E. national may now be appointed or reappointed to the civil service following conviction for a felony or a misdemeanor involving dishonesty provided that his sentence has been discharged, that he has been pardoned, or that the sentence has lapsed by passage of time. With regard to a non-national, it continues to be required that such a person must have been pardoned or had his status formally restored following such criminal conviction before appointment or reappointment to the civil service.

In addition, detailed implementing regulations to the Civil Service Regulations have been promulgated by Cabinet Resolution No. 12 of 2003. The implementing regulations generally apply to all national civil servants who receive their salaries from the general budget of the Federation, and to nationals employed by public authorities and establishments. Not subject to the implementing regulations are employees governed by special laws or regulations, with regard to subjects expressly addressed by such special laws or regulations.

The implementing regulations contain detailed rules on the administrative structure of the civil service and on appointment, assessment, promotion, allowances, secondment, further training and examination, and discipline. They also address the adjustment of status of civil servants who achieve additional academic qualifications while in the civil service, and extension of service beyond the ordinary retirement age of 60.

2. Sponsorship Transfer

Cabinet Resolution No. 13 of 2003 introduces a small but significant change to the rules for transfer of sponsorship. Previously, an employee was eligible for transfer of sponsorship only if the employee fell into one of the job categories in respect of which transfer of sponsorship is permitted (see the November 2001 edition of this Newsletter), subject to a further requirement that the

employee completed two years of service with the same employer. This two year requirement has now been shortened to a single year. It continues to be the case that consent is required from all three parties to the transaction, i.e., the old employer, the new employer and the employee.

### 3. Dubai Real Estate

Resolution No. 2 of 2003, promulgated by the Chairman of the Dubai Municipality, establishes a Committee for Evaluation of Lands in the Emirate of Dubai. The Committee is to evaluate land affected by planning projects and to determine the compensation payable to the owners of the affected land.

The Committee is to consider a number of factors in evaluating affected land, including regulatory planning of the area where the affected land is located, permitted use of the affected land, building regulations for the affected land, the area of the land that is affected, the evaluation of the surrounding lands, prevailing prices of lands in the real estate market, and the prevailing rental prices in neighboring areas.

The Committee shall have at least three meetings each month. The quorum for a valid meeting shall be a majority of the members, provided that the chairman or the vice chairman attends. Resolutions of the Committee shall require the vote of a majority of the members present at the meeting. The chairman shall have a casting vote. The Committee shall submit its resolutions to the Director General of the Municipality, who shall review the same for approval. Any such approval from the Director General shall be final.

### 4. Authentication of Documents

According to the Federal Law of Evidence, instruments issued in a country outside the U.A.E. shall be accepted as evidence in the U.A.E. courts provided that such instruments have been authenticated by the concerned authorities in the country in which the instruments are issued and by the diplomatic representative of the U.A.E.

in that country. Thus, all documents originating from outside the U.A.E. that are to be submitted as evidence before the courts must be authenticated up to the U.A.E. Embassy, Consulate or other representative in the country of origin. The documents then require further authentication by the U.A.E. Ministry of Foreign Affairs and translation into Arabic.

#### 5. Commercial Mortgage Registration

A commercial mortgage may be registered with the Commercial Register Department of the Dubai Department of Economic Development ("DDED") in accordance with Articles 49 through 56 of the Commercial Code, Federal Law No. 18 of 1993. A similar procedure is followed by the Commercial Register in Abu Dhabi. Articles 49 through 56, dealing with the creation of a security interest over the entirety of the mortgagor's business premises, have played an important role in project finance arrangements in the U.A.E. Separate provisions on the pledging of specific items of movable property are set forth in Articles 164 through 177 of the Commercial Code.

For registration in Dubai, the mortgagor and the mortgagee complete, sign and stamp an application for mortgage registration containing particulars such as the names of the mortgagor and the mortgagee, a description of the mortgaged property, the amount of the mortgage, and the expiry date of the mortgage. This application is submitted along with the notarized mortgage contract.

### **SULTANATE OF OMAN**

Contributed by Trowers & Hamlins, Muscat, Oman

#### 1. New Mining Law

For those who engage or wish to engage in mining activities, there has been a significant new legal development in Oman.

The Mining Law, issued by Royal Decree No. 27 of 2003, repeals the provisions of Royal Decree No. 42 of 1974 and sets out a new legislative framework to govern the extraction of Oman's mineral wealth. By virtue of Royal

Decree No. 27 of 2003, the Ministry of Commerce and Industry now has the authority to implement this legislation and expand upon it by issuing implementing regulations.

In essence, Royal Decree No. 27 of 2003 allows Omani individuals and companies, foreign companies and branches of foreign companies based in Oman to exploit Omani mineral resources, which are owned by the state, by means of either licenses or concessions. A license is primarily intended to be issued for exploration and prospecting, while a concession envisages the actual extraction and sale of "mineral raw materials" or the processed product of these raw materials or ores. The scope of a license holder's activities is further limited by a prohibition on the holder removing any mineral from the area covered by the license, except for scientific analysis, without the prior written permission of the Director General of Minerals at the Ministry of Commerce and Industry. A holder of either a license or a concession must obtain a license from the Ministry of Commerce and Industry in order to "dispose" of the product if new reserves of "mineral raw materials" are discovered.

The new Law contemplates a "mining utilization agreement"; this appears to be an agreement between the holder of the license or concession and the Ministry of Commerce and Industry addressing matters such as royalties, environmental protection, and dispute resolution. Common to both licenses and concessions is the requirement to resolve disputes via arbitration in Oman. It is not clear whether this addresses disputes between the holder and the Ministry of Commerce and Industry or other government ministries, or the holder and private entities in connection with the operation of the license or concession. It is clear, however, that this provision will not have retroactive effect, i.e., the provisions of previous licenses or concessions will not be affected in this regard.

Both licenses and concessions contain geographical and time limits. A license or concession shall be restricted to a certain area, with a license limited to a maximum term of five years and a concession limited to a maximum term of 25 years. Licenses and concessions oblige their holders to be proactive in the exploitation of their rights. A holder of a license is legally obliged to spend a minimum monetary amount exploring or prospecting the area covered by the

license and conducting the mining activities envisaged by the license, while the holder of a concession is obliged to install the necessary infrastructure, "develop the mining of mineral raw materials which are in the scope of the concession agreement," and fulfill the terms of the "activities plan," an integral yet distinct part of the concession agreement.

It remains unclear whether an "activities plan" *i.e.*, an agreed program of activities, is intended to form part of a license as well as a concession. Article 1 defines an "activities plan" as an approved program incorporated into both licenses and concessions. However, Article 10 obliges the license holder to conduct only those activities "pursuant to the license issued to him." Both licenses and concessions carry the obligation to make safety a priority in all mining or exploration activities, as both licenses and concessions oblige holders to implement the safety recommendations of the Director General of Minerals. An obligation to employ and train Omanis will also be a condition of either a license or a concession, reflecting the Labor Law's emphasis on the Omanization of the labor force.

Although not included in the "obligations of holders" section of the legislation, it is clear that both licenses and concessions will require payment of royalties to the Ministry of Commerce and Industry. These royalties must be paid on the dates specified in the license or concession, and failure to pay may result in the Ministry of Commerce and Industry using its authority to ban the holder from disposing of any extracted mineral until satisfaction of the outstanding amount. The exact amount of the royalty must not exceed 10% of revenues obtained from the sale of the materials extracted from the license or concession area. The exact amount for each license or concession will be specified by further implementing regulations issued by the Ministry of Commerce and Industry.

Applications for both licenses and concessions are subject to consideration of safety and environmental concerns and the potential effect on Oman's water resources and archaeological heritage. It is implied that various relevant ministries will have a consultative role in the application process. It is also implied that these ministries will play a continuing role in the overall

supervision of the license or concession once operations have commenced.

Quite logically, applicants for concessions face more stringent requirements than applicants for licenses as regards the possible environmental effects of their intended activities. A mining concession will not be granted until the applicant presents reports approved by both the Ministry of Regional Municipalities, Environment and Water Resources and the Ministry of Heritage and Culture setting out the predicted impact on the environment and sites of archaeological interest. These reports must include an Environmental Impact Assessment that satisfies international standards. Perhaps more significant is that concessions could potentially contain requirements that concession holders must take restorative action in respect of areas in which mining has ceased. The legislation does not specify whether a holder would be required to undertake this action only with regard to its works or also with regard to works of previous holders of the concession. It is left open for further regulations to lay down the specifics of this requirement. Obviously, this could impose significant liabilities on prospective concession holders.

The provisions on concessions also require high levels of fiscal transparency. A holder must provide "data" (the nature of which is to be specified in later regulations issued by the Ministry of Commerce and Industry), and a copy of the holder's audited accounts must be presented to the Director General of Minerals within three months of the end of each financial year. A holder must also send free of charge its books and records relating to the concession to the Director General of Minerals whenever he deems it necessary. Again, the exact nature of the records required is yet to be specified but will probably be of a financial nature. In contrast, no similar provisions are in place as regards licenses.

However, a license holder must give notice to the Director General of Minerals once mineral raw materials are discovered. A holder must also conduct a feasibility study investigating the economic viability of extracting the newly discovered mineral resources either no later than one year from the date of the notice or within the period specified by the Minister of Commerce and Industry.

The legislation gives the Ministry of Commerce and Industry the ability to enforce the provisions of the

legislation and the terms of individual licenses and concessions via the powers vested in the Minister. The Minister has the ability to suspend or cancel the rights of the holder if the holder breaches the provisions of the present legislation, the provisions of future regulations issued by the Ministry of Commerce and Industry, or the terms of the mineral utilization agreement. The Ministry also has at its disposal an inspectorate that is intended to have full judicial authority, and a regime of penalties that includes the imposition of fines of up to R.O. 10,000 or two years' imprisonment for acts of dishonesty connected with applications for licenses or concessions or with the maintenance of records concerning the operation of licenses and concessions.

Royal Decree No. 27 of 2003 provides a framework which the Ministry of Commerce and Industry will flesh out with regulations. Royal Decree No. 27 of 2003 specifically authorizes the Ministry of Commerce and Industry to issue implementing regulations on the procedures and fees for applying to the Ministry of Commerce and Industry for a license or concession, the areas covered by such licenses and concessions, the operational safety requirements of running a license or concession, and the data and records that should be maintained by license or concession holders.

#### **UNITED STATES**

##### 1. Section 301

The United States Trade Representative (the "USTR") has announced the U.S. government's decisions in respect of its annual review under the "Special 301" intellectual property provisions of the Trade Law. Among the countries covered by this newsletter, Egypt, Kuwait, Pakistan, Qatar and Saudi Arabia were referenced in the USTR's announcement.

The USTR moved Egypt from the priority watch list to the watch list, noting significant progress in strengthening protections of intellectual property rights. The U.S. government uses the watch list as a means of monitoring progress in implementing commitments with regard to the protection of intellectual property rights and providing market access to U.S. intellectual property products. In contrast, countries are placed on the priority watch list because of a lack of adequate and effective intellectual

property protection or market access that is particularly troublesome to the U.S. The USTR's announcement made reference to the promulgation in Egypt of a comprehensive intellectual property rights law, and the continuing efforts of the Egyptian government to ensure the use of legitimate software in all government offices. It also cited the Egyptian Parliament's ratification of the World Intellectual Property Organization Patent Cooperation Treaty and Egypt's progress in combating piracy of records, music, books and business software. The USTR noted, however, that many provisions of the new intellectual property rights law contain inconsistencies with Egypt's obligations under the Agreement on Trade Related Intellectual Property Rights.

Kuwait was retained on the watch list. The announcement welcomed Kuwait's efforts to improve enforcement of protection of intellectual property rights. However, the USTR stated that copyright violations continue, that the piracy rate in Kuwait remains the highest in the region, and that long promised amendments to Kuwait's 1999 Copyright Law have yet to be enacted.

Pakistan also remained on the watch list, cited as the fourth largest source of counterfeit and pirated goods seized by the U.S. Customs Service as they were entering the United States, with the majority of these being apparel items or optical media products. The USTR's announcement also referred to deficiencies in patent protection and to the need to improve civil and criminal enforcement of intellectual property rights.

Qatar was removed from the watch list, to which it had been reinstated last year. The announcement referred to new intellectual property rights legislation and a committee established by the Qatar Ministry of Economy and Commerce to supervise trademark enforcement.

Saudi Arabia, which remains on the watch list, has made great strides in fighting copyright and trademark violations. Patent protection received a boost from the first decision of the Patent Committee, which held in favor of a patent holder against an infringer. The announcement referred to continuing efforts by Saudi Arabia to revise its intellectual property rights laws, to the promulgation of amendments to its trademark law, and to a copyright awareness campaign that the Saudi Ministry of Information began in September 2002. However, high losses continue to be

experienced in the Kingdom by U.S. copyright and trademark based industries, and the Kingdom continues to lack deterrent penalties and transparency in enforcement.

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