

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. Dubai International Financial Center

Dubai Law No. 3 of 2002 establishes the Dubai International Financial Center and provides a framework for the Center's functioning and regulation. The Dubai International Financial Center Authority is the body primarily responsible for overseeing the Center's functions. The Authority, comprising its chairman, a board of directors, a consultative council and an executive staff headed by the director general, is a financially and administratively independent body established by the Government of Dubai.

The Authority's objectives are aimed at enhancing Dubai's status as an international financial center, and include preparing policies and suggesting appropriate implementation strategies; providing advice and proposals to the Dubai Government on international financial services laws and related activities; forming establishments and companies within and outside the Center; and coordinating with other U.A.E. free zones. In order to achieve its objectives, the Authority shall perform the following tasks:

1. Provide infrastructure, buildings, management services and other services;
2. Organize the conduct of functions within the Center;
3. Work to provide an environment conducive to the rendering of all manner of international financial services and other related services;
4. Establish, license and accredit the establishments and companies ("Center Establishments") that wish to conduct their activities in the Center;
5. Regulate conduct between Center Establishments and other parties outside the Center;
6. Reach agreements with other free zones to enable Center Establishments to conduct activities in such zones;
7. Upon request, provide directors, managers, technicians and skilled and other personnel to Center Establishments;

8. Conclude agreements for the leasing of land and buildings in the Center for up to 50 years;
9. Provide services of all kinds;
10. Impose and collect fees for services provided by the Authority;
11. Establish an investment fund to provide Center Establishments with funding and to invest the funds of the Center in the form and manner and in the activities and projects that may be deemed advisable by the chairman;
12. Any other acts or tasks assigned by the chairman.

The board of directors and the consultative council each consist of a chairman and at least five members, expert in the services undertaken at the Center. The chairman appoints the members of each body and determines the term of service and compensation for each appointee. The chairman of the board of directors, appointed by Decree of the Ruler of Dubai, is further entrusted with the task of drafting rules and regulations required for the operation and management of the Center and for the implementation of Law No. 3 of 2002.

The board of directors is the general policy making body of the Center. It proposes draft rules and regulations for adoption by the chairman, approves organizational rules for the Center, establishes the modes of conducting board meetings, and undertakes such additional duties as the chairman may assign. The consultative council advises the board of directors and the chairman on matters relevant to the Center's activities.

The director general is appointed by the board of directors and presides over the Authority's executive staff. The director general is also responsible for the Center's management under the supervision of the board of directors. The Center's personnel shall not be liable to third parties for the operations or liabilities of a Center Establishment or its employees.

Center Establishments may be incorporated in the Center as limited liability companies and may be owned by one or more natural or juristic persons of local or foreign nationality. The Authority approves the incorporation of Center Establishments and will prepare rules governing their

activities. A Center Establishment is required to include a statement along with its corporate name indicating that it is incorporated in the Center and has limited liability, and such statement must appear on all transactions, documents, announcements, invoices, correspondence and printings of the Center Establishment. Failure to do so may result in loss of limitation of liability for the owners.

Center Establishments may be licensed to engage in any category of financial or banking services; insurance and reinsurance services; and financial, securities and commodities market services. Center Establishments may also be licensed to provide investment management services in respect of real estate, investment funds, project finance, corporate finance and Islamic finance; pension fund and credit firm services; brokerage, intermediary, settlement, clearance, safekeeping and trust services; all investment services relevant to the Center's commercial activities; and businesses and services in support of the foregoing. Any activities or businesses conducted in the Center may also be conducted in any other free zone in Dubai to the extent viewed appropriate by the Authority, provided that such activities and businesses shall be subject to the Center's rules and regulations. Activities and business conducted in another free zone shall be deemed conducted in the Center.

Subject to limited restrictions, the Center shall be open to all categories of services and products from all sources, both domestic and international. A customs exemption is granted to products and goods imported, manufactured, produced or developed in the Center, and exports thereof shall likewise be exempted from government charges. Products stored in the Center or used in any process, manufacture, service or production therein shall also be exempt from customs duties. Products and goods shipped from the Center to the customs zone in Dubai are deemed first time imports and are subject to applicable customs duties.

A foreign party with an established presence in the Center and its employees shall be exempt for a period of 50 years from taxes and from restrictions on repatriation of funds. The property and activity of Center Establishments shall enjoy protection from nationalization and from private ownership restrictions during the same period. Under the Law, the Ruler of Dubai may establish a court or arbitration panel for resolving disputes involving Center Establishments.

2. Listing of Foreign Companies

Resolution No. 7 of 2002 issued by the Securities and Commodities Authority establishes a regulatory framework for the listing of the shares of foreign companies on U.A.E. securities exchanges. This move represents a further initiative aimed at realizing the Authority's long term objective of facilitating a transparent, robust and attractive environment for all participants in the U.A.E. securities markets.

The Resolution envisages that a foreign company may apply to the Authority to have its shares listed on a U.A.E. securities exchange upon submission of an application in prescribed form. Such application shall include pertinent information relating to the company, its operations, its shareholding, and any restriction on transfer to nationals other than those of the company's country of origin.

The completed application must be accompanied by a report on the activities of the company issued by its board of directors. The details required in the report of the board of directors include information such as a history of stocks issued and any future plans for further public offerings, names of shareholders owning in excess of five percent of the issued shares, the number of shares held by each such shareholder, the main events experienced by the company since incorporation and a financially substantiated evaluation of the performance of the company.

A financial statement must also be submitted, which must include annual reports of the company for the two financial years preceding the date of the application and financial statements for previous quarters of the current financial year. The following additional documents must also accompany the application:

1. duly attested memorandum and articles of association;
2. the company's certificate of listing from any jurisdiction other than the U.A.E.;
3. minutes of general assembly meetings for the two years immediately preceding the application;
4. copy of the publication in a daily newspaper of the company's balance sheet and its operational results;
5. an undertaking that the company's constitutive and governing documents and the laws applicable in the

company's jurisdiction of origin permit the free transfer of title in the company's shares or, if such is not the case, a statement on the nature of any relevant restriction; and

6. copy of the appointment of the company's representative in the U.A.E. designated to effect registration of shares, distribution of dividends, and receipt and issuance of the reports and documents relating to the commercial activities of the company.

The Resolution also requires that a foreign company applying for listing in the U.A.E. must have satisfied all applicable legal requirements in the country of incorporation and must assume the form of a public shareholding company with a capital of not less than Dh 40,000,000 and with at least 100 shareholders. The company must be listed on a market in its home country, and such market must be subject to regulation by a body performing functions similar to those of the Authority. The company must have net assets of not less than 20 percent of its paid up capital, or have realized distributable net profits averaging not less than five percent of the paid up capital during the two years immediately preceding the application date. The company must have held at least one annual general meeting of shareholders, as evidenced by documents accompanying the application for listing, and the company must satisfy any additional conditions the Authority's Board of Directors may determine.

3. Jebel Ali: Real Estate Mortgages

Dubai Law No. 1 of 2002 allows lessees of land located in the Jebel Ali Free Zone to mortgage buildings located on such land. The Law contemplates the establishment of a register that would serve as an authoritative record of real estate mortgages in the Free Zone.

The register shall record mortgages in chronological order, including information on the mortgaged property; the approximate value of the mortgaged property and its contents; the value of the debt secured; and the creditor's identity, nationality and place of residence. Perfection of the mortgage requires the conclusion and filing of a written mortgage contract. The mortgagor and mortgagee submit a registration application to the registrar along with the mortgage contract. The registrar examines the application, determines the competence of the parties to execute the mortgage, ensures that the mortgagor is the owner of the property to be mortgaged, determines the value of the construction and any contents, reviews the mortgage contract and records its terms, and collects the registration fee. Thereafter, the mortgagor and the mortgagee execute the mortgage contract before the registrar, who authenticates the mortgage deed by placing thereon his name and signature and the seal of the Free Zone Authority. Such executed and authenticated mortgage deed is deemed to accurately reflect the entry in the register.

In case the registrar has reservations about any documentation or information provided in or with the application, the registrar may refuse registration until satisfied that all required documentation and information has been adequately furnished. Once effected, entries in the register may be altered only by way of amendment or cancellation, each of which must be witnessed by the registrar.

A single property may be subject to multiple mortgages, chronologically recorded in the register. Such record shall reflect the relative priority of each mortgage, where an earlier registered mortgage is presumed to rank in priority over any subsequently registered mortgage. All mortgages expire upon expiry of the lease of the land upon which the mortgaged property is located, at such earlier time as may be specified in the agreement between the mortgagor and the mortgagee, or by final judgement of a court of competent jurisdiction.

After ascertaining that appropriate documents accompany an application for cancellation of a mortgage, the registrar may cancel the relevant mortgage by recording the cancellation in the register, specifying the reasons for and date of such cancellation.

A mortgagee may foreclose on the mortgaged property if the mortgagor defaults in payment of the debt secured by the mortgage, for any other reason stipulated in the mortgage deed, or pursuant to applicable laws. Foreclosure requires submission of the mortgage deed to the execution judge and institution of sale proceedings pursuant to the Federal Code of Civil Procedure. Subject to compliance with the laws and regulations of the Jebel Ali Free Zone, a buyer of foreclosed property may rent out or use the same for the remainder of the period of the lease.

4. Advocacy Law

Amendments have been introduced to the Federal Advocacy Law that focus on the continuing ability of foreign nationals to appear before the courts of the U.A.E. (see the December 1991 and October 1997 editions of this Newsletter). To be admitted as an advocate, a person must be at least 21 years old; enjoy full capacity, be of good conduct, be of good reputation, and not have been judicially or administratively penalized for a felony or a misdemeanor prejudicial to honesty or trustworthiness; and must hold a degree in law or in Shariah and law from a university or an institution of higher learning recognized by the U.A.E. or the equivalent.

Foreign advocates are subject to further requirements. Prior to the amendments, it was required that a foreign advocate must have already practiced the profession of advocacy or a judicial profession for at least 15 years if he seeks admission before the Federal Supreme Court (ten years for other courts), that he hold a valid residence visa in the U.A.E., and that he practice the profession of advocacy through the office of a licensed national advocate. The new amendments apply the requirement of 15 years of experience to all foreign advocates, and provides that only national advocates may appear before the Federal Supreme Court. Moreover, the amendments now state that the Implementing Regulations of the Advocacy Law shall specify the number of non-national advocates who are registered to practice advocacy in each office of a U.A.E. national advocate.

The new amendments allow non-national advocates who comply with the foregoing rules to continue to appear before the Courts of Appeal and the Courts of First Instance for two more years. This two year period may be extended by Resolution of the Cabinet for further two year periods, subject to a maximum total extension of four years for the Courts of Appeal and eight years for the Courts of First Instance.

5. Tort Liability for Carriage of Goods

A recent judgement of the Dubai Court of Cassation considered whether a vessel could be liable to a consignee to whom it did not issue a bill of lading. The issue, frequently encountered in the context of multimodal transport of goods, arose here in the context of carriage of goods by sea.

A consignment of frozen meat was shipped from India to Jebel Ali. The carrier issued a bill of lading to the consignee, but arranged for shipment on a vessel other than the vessel shown in that bill of lading. The vessel on which the goods were carried issued a bill of lading in favor of the carrier, not the consignee.

The frozen meat was found to be spoiled upon its arrival, apparently because the freezer units had not been plugged in during the voyage. The consignee brought suit against the carrier and also against the owners and the charterers of the vessel that carried the cargo. The Dubai Court of First Instance dismissed the suit, holding that the plaintiff lacked standing to sue the defendants. The Court of Appeal reversed in part, holding that the plaintiff could recover from the carrier under the bill of lading. However, the Court of Appeal held that the plaintiff could not recover from the owners and the charterers of the vessel under the bill of lading, and moreover that it could not recover from them in tort given the facts of the case.

The Court of Cassation agreed that the plaintiff could not sue the owners and charterers of the vessel under the bill of lading, and that the carrier would be the only party with a claim against the vessel under the bill of lading. However, the Court held that the plaintiff could maintain a tort claim against the vessel, and that the Court of Appeal had not provided an adequate discussion of this portion of the case. Because the judgement below had not considered the elements of a possible tort claim, the Court of Cassation remanded the case for further proceedings on this issue.

6. Federal Civil Aviation Authority

A minor amendment has been introduced into Federal Law No. 4 of 1996 Creating the Civil Aviation Authority (see the April 1996 and August 1996 editions of this Newsletter). The Civil Aviation Authority was previously required to allocate 10% of its annual net profits towards accumulation

of a statutory reserve equal to one-half of the capital of the Authority. The amendment now requires the Authority to allocate 50% of its annual net profits towards accumulation of this same reserve.

7. Entry Prohibited

A minor amendment has been introduced into the Implementing Regulations promulgated under the Federal Law on Entry and Residence of Foreigners (see the October 1997 edition of this Newsletter). The Implementing Regulations provide for preparation of a blacklist of persons who may not enter the U.A.E. Before the amendment, this blacklist consisted of four categories, which were persons convicted of crimes and sentenced to deportation, persons deported by order of the Minister of Interior, persons whose activities have been reported to the authorities by the International Criminal Cooperation Department, and carriers of infectious diseases (including Aids) viewed as dangerous to public health by the Ministry of Health. A fifth category has now been added, composed of persons who have been deported from a member state of the Gulf Cooperation Council because of crimes.

8. Dubai: Rent Disputes

The instructions governing the Dubai Rent Committee have been amended, and now provide that an execution judge's order for implementation of a Committee decision to vacate premises will be final and no appeal will be available against such order.

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