

**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. GCC National Businesses

Cabinet Resolution No. 6 of 2004 gives further rights to GCC nationals to conduct business and professional activities in the U.A.E.

The Resolution states that nationals of the GCC countries shall be allowed to "carry on all economic activities" in the U.A.E., with the exception of ten categories of activities not covered by the Resolution. These ten categories are the following:

1. Haj and Umra services (which relate to the Islamic pilgrimage to Mecca).
2. National recruitment and labor supply offices.
3. Insurance services.
4. Commercial agencies.
5. Surveillance services at government departments.
6. Real estate leasing and management.
7. Any of the following social activities:
  - Handicapped care centers.
  - Handicapped rehabilitation centers.
  - Geriatric centers and clubs.
  - Social service offices or centers.
8. Any of the following cultural activities:
  - Establishment of printing and publication houses.
  - Establishment of newspapers and magazines.
  - Establishment of studios for photography and cinema and artistic production.

- Establishment of commercial theater troupes.
- Establishment of cinemas.
- Establishment of theaters for drama shows.
- Establishment of artistic exhibition halls.

9. Car rental.

10. Transportation services.

Two notable omissions from this list of ten exempted categories are sponsorship of and partnership with foreign entities. If applied literally, this could allow GCC nationals from outside the U.A.E. to sponsor foreign company branch offices in the U.A.E. and to act as 51% local shareholders in companies established in the U.A.E.

## 2. Armed Forces Personnel Regulations

Two new Laws have been promulgated to govern U.A.E. nationals working for the Armed Forces. The new rules replace personnel regulations that had been in place for more than twenty-five years. Federal Law No. 6 of 2004 governs the service of officers, and Federal Law No. 7 of 2004 governs the service of non-commissioned personnel.

The new rules contain detailed provisions on the rights and obligations of Armed Forces personnel, including rules on enlistment, rank, seniority, promotion, retirement and other subjects.

Armed Forces personnel are expressly prohibited from engaging in outside business activities. There is an express prohibition in the new Laws on the performance of any act with or without compensation, even outside of official working hours, unless done with the permission of the Chief of Staff, with an exception for acting as a representative for family members. It is also expressly prohibited to accept any gift or gratuity from any interested person, either directly or indirectly. A member of the Armed Forces is also prohibited from having any direct or indirect interest in any business, contracting agreement or contract related to the Armed Forces, with the exception of leasing out real estate which he owns. In

addition, a member of the Armed Forces may not engage in any kind of service following termination of his service with the Armed Forces unless he obtains approval therefor from the Chief of Staff.

### 3. Dubai Internet City

Dubai Law No. 9 of 2003 amends Dubai Law No. 1 of 2000, which established the Dubai Technology, Electronic Commerce and Media Free Zone, also known as Dubai Internet City (see the February 2000 edition of this Newsletter). The new Law changes the formal name of Dubai Internet City to the "Dubai Technology and Media Free Zone," introduces changes in governance, and designates additional activities for the Free Zone.

The amendments provide that the Dubai Technology and Media Free Zone Authority shall own all land and buildings in the Free Zone and may sell or rent such property on such terms as it may decide. The earlier more limited competence to enter into leases of up to 50 years has been repealed. The Free Zone Authority is further permitted to issue all types of guarantees and securities, including mortgages of such assets, to secure payment of any debt or performance of any obligation.

The new Law now augments the Chairman, Director General and Secretariat of the Free Zone Authority with a Board of Directors. The Board of Directors shall be appointed for three years by the Chairman. The functioning of the Board shall be regulated in accordance with regulations proposed by the Board and approved by the Chairman.

The Free Zone Authority now has the competence to establish or participate with others in projects within or outside the Free Zone. In addition to other activities, the business of education services and tourism services may be conducted in the Free Zone.

Pursuant to Dubai Law No. 1 of 2000, businesses licensed by the Free Zone and their employees were exempt from the laws and regulations of the Dubai Municipality and the Dubai Department of Economic Development with respect to their activities in the Free Zone. This exemption is now extended to the Free Zone Authority itself. At the same time, the new Law stipulates that there shall be no exemption in the Free Zone from laws and regulations regarding the environment.\_\_\_\_

#### 4. Dubai Healthcare City

A new Free Zone has been created in Dubai by Resolution of the Chairman of the Dubai Ports, Customs and Free Zone Corporation.

The new Free Zone, known as Dubai Healthcare City, was created pursuant to Resolution No. 9 of 2003. A companion measure, Resolution No. 10 of 2003, appointed the Dubai Healthcare City Board of Directors. Both measures took effect in January 2004. Dubai Healthcare City is attached administratively and financially to the Dubai Development and Investment Authority; the DDIA, created pursuant to Dubai Decree No. 2 of 2002, has a broad mandate to conduct an ambitious agenda of development projects in the Emirate of Dubai.

Dubai Healthcare City contemplates the establishment and licensing of free zone enterprises and free zone companies. The particular focus of Healthcare City is the creation of a world class healthcare community, attracting not only hospitals and clinics but also suppliers of medical equipment, pharmaceutical companies and institutes for research and study.

#### 5. Attorney Malpractice

Actions for professional malpractice are relatively rare in the U.A.E. Malpractice actions against attorneys are particularly rare, making especially notable a recent case in Dubai where a client brought a successful action against an attorney for losing a case that should have been won.

Prevailing in a malpractice action against an attorney usually requires a demonstration that the client would have succeeded but for the professional negligence of the attorney. Since failure can have a number of causes, this standard of proof is often insurmountable. However, in the recent Dubai case, it was found that the attorney's wrongful conduct did indeed cause the case to be lost.

The attorney in question had succeeded in obtaining the dismissal of most elements of a civil action against his client in which a sum in excess of Dh 7,000,000 was

claimed. However, this judgment was reversed by the Court of Appeal, which instead entered judgment requiring the attorney's client to pay the amount claimed. It appears that the defendant's case depended critically on a set of photocopied documents that the Court of First Instance admitted into evidence. The Court of Appeal, however, held that the photocopies must be excluded from evidence given the plaintiff's denial of them, leading to failure of the defense when the attorney failed to produce the originals.

The unsuccessful client sought redress by filing a complaint with the Ministry of Justice, which led to a reprimand. The client then filed a civil action for damages. The court held that the attorney was required to exert his best efforts in accordance with the standards of a person of similar standing in the profession, and that the attorney's conduct in the circumstances constituted a breach of this obligation. The harm that resulted from the attorney's wrongful conduct was quantified by the difference between the amounts awarded by the Court of First Instance and the Court of Appeal.

The attorney asserted that the case was time barred under the three year limitation period on actions for wrongful acts set forth in Article 298 of the Civil Code. The court dismissed this defense by holding that the client's claim for damages was a claim in contract and not a claim in tort, and therefore was not time barred.

**SULTANATE OF OMAN**

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1. Capital Market Authority Investors' Trust Fund

Capital Market Circular No. 15 of 2003 and Administrative Decision No. 5 of 2003 introduced the Investor's Trust Fund ("ITF") into the legal system in Oman. Since its inception on January 1, 2004, the ITF has been

actively managed by the Capital Market Authority. It is anticipated that this amendment will have an important bearing upon how public companies manage the unclaimed dividends of shareholders.

The ITF has been introduced on the back of recognition by the Capital Market Authority that substantial amounts of money within public joint stock companies, investment funds and liquidators remain unclaimed for long periods of time. Accordingly, it was deemed that companies should be relieved from the unnecessary administrative burden of having to retain these amounts and make efforts to identify untraceable shareholders.

The ITF has several stated purposes. The first is to maintain shareholder funds, in order that such funds may eventually be claimed and returned to their lawful owners. In this respect, the ITF is governed by a board of trustees who are responsible for investing funds in Government bonds, term deposits and other fixed income investments approved by the Executive President of the Capital Market Authority. The ITF has an ongoing obligation to ensure that it always maintains sufficient liquidity to meet the claims of its beneficiaries as and when they arise.

The mechanism works by each public company entering into a mandatory contract with the Capital Market Authority. Pursuant to this contract, monies previously held internally by companies for the benefit of untraceable shareholders will now be held in trust by the ITF. Such monies include, among other sums, surplus subscription amounts after allocation, returned or rejected subscription amounts, cash dividends for shares and interest in bonds on maturity, and the original value of bonds on redemption or maturity.

On December 31, 2003, all public companies in Oman were obligated to transfer to the Capital Market Authority by check any funds due to investors/shareholders which had remained unclaimed for seven months or more. All transfers were accompanied by a detailed list showing the names of the shareholders and their respective entitlements. The company also had to provide the Capital Market Authority further details in electronic format enabling the identification of the untraceable shareholders/investors.

All companies transferring such funds must disclose the transfers in their audited financial statements. This should

be done by setting out the relevant funds in separate notes to the accounts for each financial period in which funds are transferred to the ITF.

There will be an ongoing obligation for public companies, investment funds and liquidators to provide to the Capital Market Authority amounts owed to untraceable investors. Such amounts must be transferred within two weeks after the seven month deadline.

Prior to a transfer of funds to the Capital Market Authority, the company must inform shareholders of their right to receive funds by publishing a notice in the local press. This notice should expressly indicate the deadline by which funds must be transferred to the ITF.

Previously, it had been the responsibility of the company to manage untraceable shareholders' capital. Now, however, following the new procedure, companies are released from and indemnified against this liability; clause 6 of the Standard Form Contract states that the Capital Market Authority will absolve a party of liabilities with respect to the amounts deposited with it.

From the perspective of an untraceable shareholder who wishes to claim outstanding funds, all claims must be directed to the ITF at the Capital Market Authority. Once entitlement has been confirmed, the ITF will pay out to the shareholder/investor. Companies are advised to inform any investors emerging with such claims to contact the ITF at the Capital Market Authority in order to process their claims.

It is intended that wealth created by ITF investment will be indirectly used for the benefit of investors. The first call on the proceeds of investment will be for administrative costs relating to the management of the fund. Any surplus monies will be utilized by the Capital Market Authority in executing various educational programs aimed at improving market efficiency and investor protection.

In summary, one must evaluate the ITF's benefits to public companies. Currently, many companies have compiled significant amounts of unclaimed dividends creating a huge administrative burden. Whereas such unclaimed funds previously had to be accounted for separately from the company's funds and held for extensive periods of time for the benefit of untraceable shareholders, now funds are managed by the Capital Market Authority. Some companies,

however, were able to benefit from unclaimed dividends through the interest/benefits associated with having accrued sums of money. Although such benefits will be lost under the new regime, the ITF will seek to preserve a broader public benefit as each company should gain indirectly through the proper management of a large combined fund.

As a substantial portion of untraceable shareholder funds may never be claimed, the ITF will accrue a sizeable capital sum which, if invested prudently, will benefit the Capital Market Authority in protecting the general investment market and increasing sophistication through various educational programs.

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