

**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. Environmental Protection Regulations

Ministerial Resolution No. 37 of 2001 promulgates the implementing regulations for Federal Law No. 24 of 1999, Regulating the Protection and Development of the Environment of the U.A.E.

The implementing regulations consist of four separate regulations on protection of the marine environment; handling hazardous substances, wastes and medical wastes; assessment of the environmental impact of facilities; and pesticides, soil additives and fertilizers.

a. Marine environment. The discharge of oil and oil mixtures is restricted and precautionary measures are imposed to avoid pollution from marine vessels. For example, the owner or captain of an oil transport vessel is required to inform the concerned authorities about any accident that leads to oil leakage and is also required to keep an oil register for information about the transported oil. The captain of a vessel entering a U.A.E. port is required to provide information to the port authorities about hazardous substances on board.

Also restricted are the discharge of sewage from marine vessels and the discharge of chemical products from marine platforms. Protective measures are imposed to avoid pollution from onshore sources such as industrial facilities, which are prohibited from discharging nondegradable polluting substances.

b. Hazardous substances, wastes and medical wastes. It is prohibited to deal in hazardous substances, wastes and medical wastes without a license issued by the concerned authorities. Procedures for applying for such licenses and conditions for granting them are established. Special approvals are required for certain kinds of licenses. Licenses to deal in chemical products are issued pursuant to approvals of the Federal Ministry of Health, the Federal Ministry of Interior, the Federal Ministry of Finance and Industry, the Federal Ministry of Agriculture and Fisheries, and the relevant local Municipality. Licenses to deal in hazardous medical wastes are issued pursuant to approvals of the Federal Ministry of Health and the relevant Municipality.

The importation, transportation, warehousing and packing of hazardous chemical products and hazardous wastes are also

regulated, and general rules that govern medical wastes, such as a requirement to separate medical wastes from other wastes, are established.

c. Environmental impact assessments. Every natural or judicial person is required to obtain an environmental license from the concerned authority in each Emirate when applying to start a project or activity or to amend an entry in a previously obtained license. The procedures to be followed in order to acquire such a license are established.

d. Pesticides, soil additives and fertilizers. Individuals, companies and institutions are prohibited from importing, for any purpose and by any means, any pesticide listed in the first schedule to this regulation. However, pesticides listed in the second schedule to the regulation may be imported after getting a prior written permit from the Ministry of Agriculture and Fisheries. Pesticides listed in the second schedule may be used only under the supervision and direct responsibility of specialized technicians and may not be offered for sale to the public.

Importation, manufacturing and trading shall be restricted to pesticides that are registered with the Ministry of Agriculture and Fisheries and to parties that are licensed by the Ministry. Each license holder must maintain a numerical register stamped by the Ministry of Agriculture and Fisheries, and this register must be kept for a period of five years following the last entry therein. The license is personal and not transferable.

The import of expired pesticides is not permitted, and a consignment of pesticides must reach the U.A.E. no more than six months after the date of manufacture. The packaging must be clearly and indelibly labeled in English and Arabic. Such labels must comply with specimen labels prepared by the Ministry of Agriculture and Fisheries, include symbols and pictograms that accord with World Health Organization classifications and Food and Agriculture Organization guidelines, and set forth manufacture and expiration dates and method of packaging.

Registration of pesticides with the Ministry of Agriculture and Fisheries requires field testing by the

Ministry. The applicant is notified of the test results within a period not exceeding three consecutive agricultural seasons, following which the pesticide may be registered in the applicant's commercial name and the applicant given a registration number. A product may be deregistered if it is shown to have side effects on human beings or the environment, if use of the pesticide has been prohibited for medical or environmental reasons, if there is local immunity to the pesticide rendering it ineffective, or if the pesticide was packaged improperly or inadequately.

## 2. Sharjah Department of Human Resources

Emiri Decree No. 16 of 2002 establishes Sharjah's Department of Human Resources, attached to the Ruler's Office.

The new Department is accorded primary responsibility for development of human resources in the Emirate. It is tasked with developing a comprehensive training system, setting a strategic framework for reorganization of manpower and use of best practices, improving manpower performance, instilling a public service objective in the civil service, and developing needed skills in the labor market.

The Department is also tasked with modernizing civil service regulations, developing training and technical education programs, decreasing the percentage of expatriates in the workforce, training and qualifying U.A.E. nationals seeking employment, providing advice and guidance on manpower, and acting on any other matters designated by the Ruler.

## 3. Ratification of Acts of Representative

Powers of Attorney tend to be strictly construed in the United Arab Emirates. Authorities in this country are reluctant to imply a delegation of authority where none is expressed, and tend to interpret expressions narrowly and not broadly. Nevertheless, legal doctrines are available to temper the otherwise harsh results that might flow from an overly technical reading of a power of attorney or other delegation of authority. In previous Newsletters, we have discussed the

doctrine of apparent authority. This report concerns a judgement that dealt with subsequent ratification.

In a construction dispute, a subcontractor sued the prime contractor for unpaid subcontract entitlements and interest. The prime contractor counterclaimed for delay penalties. In the course of the proceedings, the subcontractor went into insolvency, following which a liquidator conducted the litigation on behalf of the subcontractor.

The Court of First Instance and the Court of Appeal found for the subcontractor and dismissed the counterclaim of the prime contractor. Before the Federal Supreme Court, the prime contractor asserted formal deficiencies in the power of attorney that had been submitted by the subcontractor when suit was first filed. The prime contractor also alleged that the subsequent power of attorney that was signed by the liquidator in favor of litigation counsel failed to cure the deficiencies in the earlier power of attorney. The assertion, if sound, would have compelled dismissal of the subcontractor's claim.

The Federal Supreme Court held at the outset that the adequacy of the power of attorney was an issue of fact to be resolved by the lower courts and not subject to review by the Federal Supreme Court as long as there was a sufficient basis in the evidence for the conclusions of the lower courts. The Federal Supreme Court added, however, that whatever deficiencies might have existed with regard to the original power of attorney issued by the subcontractor, there appeared to be no dispute with regard to the adequacy of the power of attorney issued by the liquidator. Moreover, after the subcontractor entered insolvency, pleadings were entered that clearly adopted, reiterated and ratified pleadings that had been made previously. Accordingly, even if the original power of attorney had been inadequate, the Federal Supreme Court held that the subsequent ratification of the earlier pleadings was sufficient to cure whatever defect may have existed. The challenge to the subcontractor's claim was accordingly dismissed.

#### 4. Exercise of Performance Bond

Performance bonds are a standard feature of public sector contracts in the U.A.E. A contractor is typically required to submit to the project owner a performance bond equal to 10% of the amount of the contract. Such bond must be a guarantee

issued by a bank operating in the U.A.E., binding the bank to pay to the beneficiary the guaranteed amount upon first demand.

The guarantor bank is not permitted to assert defenses to a demand for payment made by the beneficiary, as long as the demand is properly made during the validity of the guarantee. However, exercise of a guarantee may in some circumstances be deemed wrongful, creating a cause of action on the part of the contractor. A recent judgement of the Federal Supreme Court illustrates how these circumstances can arise.

The case involved a contract between a contractor and a Department of the Government of Abu Dhabi. The contract was, accordingly, governed by the Abu Dhabi Tenders Regulations, and accorded with the standard form of contract that has been used by the Government of Abu Dhabi for more than twenty years. The contractor claimed that it successfully completed the contract in its entirety, and that the owner failed without cause to issue a preliminary acceptance certificate. The contractor further alleged that the owner made a call under the performance bond without cause. Both the Court of First Instance and the Court of Appeal found in favor of the owner, but the Federal Supreme Court reversed.

In the course of the proceedings before the lower courts, the contractor asserted that the owner had made a call under the performance bond not because of a breach of the contract at issue, but because of a breach by the same contractor of a separate contract with the same government department. The owner responded that the call under the bank guarantee for reasons related to a separate contract between the same parties was permissible in accordance with the Abu Dhabi Tenders Regulations. The Federal Supreme Court held that the failure of the lower courts to specifically consider these pleadings was reversible error. It accordingly vacated the judgement in favor of the owner and remanded the case to the Court of Appeal for further proceedings.

The ability of the government to make a call under a performance bond under a "cross default" theory has yet to be conclusively resolved by the courts. Moreover, the Abu Dhabi Tenders Regulations do not give this prerogative to the government in all circumstances of breach by a contractor. Instead, those regulations expressly accord the "cross default" remedy to government departments only in respect of supply contracts wherein the contractor's breach has caused the department to purchase from an alternative source.

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, Saudi Arabia and the U.A.E. were referenced in the USTR's announcement.

The USTR retained Egypt on the priority watch list, noting that Egypt had yet to enact modern intellectual property laws complying with the Agreement on Trade Related Intellectual Property Rights (the "TRIPS Agreement"). 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 referenced continuing specific concerns on copyrights and patents. The USTR stated that unwelcome efforts had been made to insert into Egypt's new draft patent law a provision treating applications for medical patents differently from other patent applications. The USTR also expressed concern over governmental approvals of licenses for pirated works, especially entertainment software and music.

Kuwait was retained on the USTR's watch list. 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 for U.S. intellectual property products. The USTR reported that Kuwait and the U.S. have developed a work plan to guide Kuwait's ongoing efforts to increase enforcement of intellectual property laws, apply deterrent penalties, revise copyright legislation and increase public-private cooperation.

Pakistan remained on the watch list. Although significant efforts have been made recently, the report noted continuing and widespread optical media and book piracy. The report also noted the lengthy registration processes for innovative drugs, which allows generic copies to enter the market.

Qatar was reinstated on the watch list, after having been removed last year. Qatar has prepared amendments to its copyright and trademark laws to bring them into conformity with the TRIPS Agreement, but such amendments have yet to be

enacted. The USTR also referred to the continuing high levels of end-user computer software privacy in Qatar.

Saudi Arabia, which remains on the watch list, continues to work on revisions to its intellectual property laws and to improve enforcement. However, U.S. copyright and trademark holders still experience high losses in Saudi Arabia, the intellectual property laws remain inconsistent with the TRIPS Agreement, and shortcomings in enforcement persist.

The U.A.E. was removed from the watch list, having addressed concerns over the unauthorized copying of patented pharmaceutical products.

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