

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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Included with this Newsletter is an article entitled "The Rocky Course of U.S.-Iran Relations" by Ambassador Robert H. Pelletreau, Esq., Partner, Afridi, Angell & Pelletreau, Washington, D.C.

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UNITED ARAB EMIRATES

1. New Sponsorship Transfer Rules

A new Cabinet Resolution makes changing jobs more difficult for most foreign employees. Cabinet Resolution No. 30 of 2001 permits foreign employees to change jobs only if they are employed as:

- (a) engineers;
- (b) doctors, pharmacists and nurses;
- (c) teachers at universities and higher colleges;
- (d) experts, legal consultants, economists, financial advisors and administrators who have higher university degrees;
- (e) electronic information systems analysts and programmers who have university degrees in the field;
- (f) specialists and technicians working in the field of oil and gas extraction and refining and related industries;
- (g) coaches and trainers in various sports and educational activities;
- (h) professionals in maritime and air navigation, marine pilots and airplane pilots; and
- (i) any other categories with similar specializations designated by the Ministry of Interior and the Ministry of Labor and Social Affairs.

The new Resolution replaces Resolution No. 13 of 1991, which likewise restricted sponsorship transfers to certain categories of employees, but also allowed for limited case-by-case exceptions with the approval of the Ministry of Labor (see the January 1991 edition of this Newsletter). The new Resolution does not expressly provide for such exceptions.

The new Resolution also permits an employee to transfer between employers that have the same owner or group of owners. If the employer is acquired, then the foreign employee may transfer to the acquiring company.

To be eligible, the foreign employee must have worked for his or her current employer for at least two years before transferring, and the foreign employee must obtain the current employer's consent to the transfer. The new job must be of the same type as the current job, and the transfer will be permitted only if no U.A.E. or other Gulf Cooperation Council national is available to fill the position to which the foreign employee intends to transfer.

If the foreign employee is unable to transfer to a new job in accordance with the Resolution, then his or her visa will be canceled and no new visa will be issued for at least six months from the date of departure from the U.A.E. Domestic servants and persons holding similar jobs will not be permitted to reenter the U.A.E. for at least one year. The new Resolution states that an employee's visa will be canceled if the employee does not qualify for a job transfer, even if the foreign employee has a case pending before the courts of the U.A.E.

2. Coast Guard Transferred to GHQ

Federal Decree-Law No. 1 of 2001 transfers the U.A.E. Coast Guard and Border Guard from the Ministry of Interior to the Armed Forces. As a result, the Armed Forces Tenders Regulations will now govern Coast Guard and Border Guard procurements in lieu of the Federal Tenders Regulations. Moreover, the prohibition on the use of agents by foreign defense contractors observed by the General Headquarters of the U.A.E. Armed Forces will probably apply to Coast Guard and Border Guard procurements.

The new Law gives the Border Guard the following duties:

- (a) to guard land borders, passages, paths and entry and exit points;
- (b) to fight smuggling and illegal entry into the U.A.E., with power to stop and inspect individuals and machinery;
- (c) to report at early stages any suspicious activity at the borders;
- (d) to compile evidence of incidents occurring at the borders;

(e)to guard and monitor roads and passages at the borders;
and

(f)to secure historical excavations and similar sites relating to the national culture and to preserve the environment and marine resources at the borders in accordance with applicable legislation.

The Law gives the Coast Guard the following duties:

(a)to guard the maritime borders with neighboring countries, to report at early stages any suspected activity through operation of maritime patrols, and to build the necessary structures on the coasts and islands of the U.A.E.;

(b)to prevent violation of the security, customs, immigration, health, environmental protection and natural resources laws and regulations of the U.A.E.;

(c)to carry out search and rescue and to render assistance in emergencies;

(d)to monitor navigation in cooperation with the Ministry of Communication and ports authorities and to report any navigational risks;

(e)to protect oil structures, cables and maritime pipelines;
and

(f)to protect navigation vehicles, facilities and other structures.

The Law also states that the Border Guard may stop illegal entry into the U.A.E. and may confiscate property when necessary. Any foreign vessel may be stopped and inspected if the authorities have good reason to believe the vessel has violated the laws or regulations of the U.A.E. The ports police are given a security role at ports and bays pursuant to regulations that will be issued by the Minister of Interior in consultation with the Minister of Defense. The Minister of Defense or the Armed Forces Chief of Staff will specify the conditions of entry into interior waterways or into port facilities. The Minister of Defense may issue regulations regarding (a) suspension of innocent passage of foreign vessels in certain sections of the territorial waters, (b) safety of navigation and organization of maritime traffic and (c) designation of navigational

corridors for the purpose of organizing navigation in territorial waters.

3. Protection of the Marine Environment

Ministerial Resolution No. 302 of 2001 promulgates the Implementing Regulations to Federal Law No. 23 of 1999, which governs the exploitation, protection and development of the marine bio-resources of the United Arab Emirates (see the February 2000 edition of this Newsletter). Two registers, for fishermen and for fishing vessels, are established at the Ministry of Agriculture and Fisheries. The Resolution sets forth the procedures and documents required for registration. The Resolution also regulates the services that the Ministry provides to fishermen, including grants and loans.

The Resolution establishes fishing quotas and the areas where fishing vessels are forbidden from anchoring or navigating. The Resolution regulates the use of fishing equipment and forbids the use of dynamite as well as certain kinds of fishing nets. Scuba diving for fishing purposes is prohibited without a prior license from the competent authority in the Emirate concerned. Importers of fishing equipment are required to obtain the Ministry's prior consent. Nylon fishing nets, nets with openings less than 1.5 square inches, dynamite and toxic substances may not be imported, sold or possessed. Exporters of fish are obliged to obtain licenses from the Ministry.

4. Sharjah Decency Rules

The Emirate of Sharjah has promulgated a set of rules aimed at promoting public decency and proper conduct. The rules include a dress code for both men and women; rules regarding bathing suits; rules on places where only women are allowed; a prohibition on men and women who are not married or related from being alone; a prohibition on irritating other people; and a prohibition on wearing certain clothing in mosques. The rules were promulgated as Local Instructions No. 1 of 2001 and Executive Council Resolution No. 12 of 2001. A multi-lingual booklet has been published to direct the attention of the public to the new rules.

The dress code prohibits men from wearing shorts in public or commercial places and in public offices. It also prohibits men from appearing in public shirtless or wearing

only an ezar (a type of local undergarment). Women may not wear clothing that exposes their backs or abdomens, shorts or skirts that are cut above the knee, or other clothes that are tight or transparent.

The rules require all swimmers to wear conservative swimwear that is acceptable to the culture in Sharjah. They prohibit wearing bathing suits in the streets or other public places. The rules provide that men may not enter specified private areas to be used only by women, except in emergency circumstances. An unmarried man and woman may not be alone in a public place or in suspicious times or circumstances.

The rules prohibit disturbing the peace with acts of vulgarity or loud noise and also prohibit acts of harassment that violate public decency. People may not enter a mosque wearing pajamas or clothing that has images or improper slogans.

The Sharjah Police, security officers and building guards are charged with ensuring adherence to the rules, and they may issue warnings or refuse to provide public services to persons who violate the rules.

5. Actions on Checks

The Commercial Code of the U.A.E. recognizes bills, notes and checks as commercial paper. When properly issued, commercial paper may be negotiated by endorsement and delivery to a holder who is not the original beneficiary. Such a holder in good faith enjoys the right to enforce the payment obligation without regard to most of the defenses that might exist between the original parties to the instrument. The special status accorded to commercial paper is reinforced by Article 401 of the U.A.E. Penal Code, which makes it a crime to issue a check in bad faith without covering funds. Three recent judgements of the Federal Supreme Court address the circumstances in which this special treatment applies, under both the Commercial Code and the Penal Code.

a. Immediate parties. The original beneficiary of a check is treated differently from a holder in good faith following negotiation, as illustrated by the first of our cases. The plaintiff brought a civil suit against two parties who had issued checks in favor of the plaintiff, which were returned for lack of adequate funds in the

issuer's account. The Court of First instance ruled in favor of the plaintiff, and the Court of Appeal affirmed.

Before the Federal Supreme Court, the issuers of the checks argued that the lower courts had erred by failing to investigate their argument that there was no indebtedness between the parties, and that the checks in question had been delivered as security and not for payment of a debt. The petitioners stated that the evidence supporting their assertions had been wrongfully disregarded by the lower courts. Such an argument would fail if it were asserted against a holder in good faith following negotiation, but in the current case it was raised between the immediate parties to the checks.

The Federal Supreme Court agreed with the petitioners and held that it was reversible error for the lower courts to fail to examine the evidence submitted by the issuers of the checks. The Federal Supreme Court added that the petitioners' assertions that there was no underlying debt between the parties could be established by any means of proof.

b. Check submitted as security. Our second case involved an instrument bearing a written notation that it was delivered as security for performance of obligations pursuant to a partnership agreement between the parties. The beneficiary presented the check to his bank, and the check was returned for lack of adequate funds in the issuer's account. The issuer of the check was then charged and convicted under the Federal Penal Code. The Court of Appeal vacated the conviction, on the basis that a check expressly made as security could not be the basis for a criminal charge. The Federal Supreme Court affirmed the judgement of the Court of Appeal.

Before the Federal Supreme Court, the prosecutor asserted that the crime of writing a check in bad faith without adequate funds is committed the moment the issuer hands over the check to the beneficiary knowing that there will not be adequate funds on the maturity date. The Federal Supreme Court responded that the instrument in question must be payable upon maturity without reference to extrinsic factors in order for the provisions of the Penal Code to apply. In the current case, the Court of Appeal concluded that the purpose of the instrument was not to settle a debt in favor of the beneficiary, but was instead to provide security for the fulfillment of extrinsic contractual obligations. Accordingly, the Federal Supreme

Court upheld the conclusion of the Court of Appeal that the instrument in the current case was not a "check" for purposes of the Penal Code.

c. Certified check. Our third case deals with a certified check, the holder of which was awarded collection notwithstanding a pleading of forgery. The payee negotiated the check to his bank for discounting prior to maturity. When the certified check was dishonored following maturity, the holder brought suit against all of the other parties to the check, i.e., the issuer of the check, the drawee bank on which the check was drawn, and the payee who negotiated it.

When a bank certifies a check, it undertakes to pay the value of the check on maturity. The drawee bank in this case, however, asserted before the Court of First Instance that the check had been altered after certification, meaning that the check was essentially a forgery and therefore void. A court appointed expert agreed that the check had been altered, and the Court of First Instance held that the check was void and that the suit against all three defendants must be dismissed. The Court of Appeal appointed another expert, who concluded that the certifying bank had certified the check otherwise than in accordance with common banking practice, but who also concluded that the plaintiff bank had been negligent in accepting the check. On the basis of this report, the Court of Appeal held that the case could proceed against the issuer and the payee of the check, but not against the drawee bank.

The Federal Supreme Court reversed the judgement of the Court of Appeal with regard to the drawee bank. The plaintiff bank could not be denied its right to recover because of its negligent acceptance of the check. Instead, the Court observed that there were multiple errors and stated that it must be determined which error led directly to the harm. In the current case, the drawee bank certified the check without following common banking practice. The Court highlighted the facts that the drawee bank's stamp noting certification did not state the amount that was certified, that the bank took no other measures to guard against subsequent alteration, and that the certified check was postdated. The plaintiff accordingly had the right to proceed against the drawee bank for the value of the certified check.

6. Court Appointed Experts

Complex litigation in the U.A.E. typically involves an investigation by one or more court appointed experts. Such individuals assist the court in understanding factually complex situations. Because many disputes are heavily dependent upon the facts of the case, the investigation conducted by an expert can be the most important aspect of dispute resolution proceedings.

However, the expert's conclusions are not always final, as two recent decisions of the Federal Supreme Court demonstrate. Instead, courts have the power and the responsibility to disregard an expert's report that is poorly reasoned or lacks a basis in the evidence.

a. Expert's findings of fact. Our first case involved a dispute between a subcontractor and a prime contractor on a construction project. The subcontractor brought suit against the prime contractor. The Court of First Instance appointed an expert to investigate the facts of the case, the expert filed a report that supported a number of the subcontractor's assertions, and the Court of First Instance rendered judgement adopting the expert's conclusions. This judgement was affirmed by the Court of Appeal.

The prime contractor challenged the judgements below on the basis that they had adopted the expert's report, which contained several erroneous conclusions that were unsupported by the evidence, and were even contradicted by the evidence. In particular, the prime contractor alleged that the report of the expert reached erroneous conclusions with regard to delay penalties and incorrectly quantified the payments that the prime contractor had previously made to the subcontractor. With regard to the delay penalties, the prime contractor submitted into evidence a letter from the expert acknowledging that the report contained errors.

The Federal Supreme Court held that the judgements of the lower courts, which had adopted the report of the expert without correction, could not properly stand. It ordered that the judgement of the Court of Appeal be vacated and that the case be remanded to a different panel of the Court of Appeal for further investigation of the facts.

b. Meeting with parties obligatory. Our second case dealt with Article 81 of the Law of Evidence, which requires a court appointed expert to invite the parties or their counsel to attend before him prior to the commencement of

his duties. Article 81 specifies that failure to invite the parties shall void the expert's conduct of his task.

The plaintiff sued two defendants, requesting that they be jointly and severally obliged to pay a sum of money alleged to be due and owing. The case involved an offshore construction project, and the Court of First Instance appointed an accounting expert and an engineering expert. Following receipt of the experts' reports, the Court of First Instance issued judgement in favor of the plaintiff, but for less than the sum claimed, and the Court of Appeal affirmed. Before the Federal Supreme Court, the plaintiff asserted that the lower courts had wrongfully disregarded its request to set aside the engineering expert's report because the expert did not invite the parties to attend before him prior to the commencement of his task.

The Federal Supreme Court cited Article 81 of the Law of Evidence and reversed the judgement below. The case was remanded to the Court of Appeal for further investigation of the facts by another panel.

7. Apparent Authority

Delegations of authority are common features in business transactions, and indeed are essential for efficient conduct of business. In the Gulf countries, there is a strong preference for a delegation of authority to be set forth in a written and notarized document, such as a power of attorney or an agency contract. Such instruments tend to be strictly construed as limited only to the powers that are expressed.

However, the courts recognize that situations sometimes arise where authority is delegated without a written instrument. Apparent authority can be deemed to exist when a person puts another in a position so that third parties will be reasonably expected to rely upon the latter's authority to act for the former. Ratification can occur when a person ratifies or accepts acts committed by another on his behalf, in the absence of written delegation of authority. The two examples reported now involve the apparent authority of a manager to act on behalf of the business which he manages. In each case, the owner unsuccessfully pleaded the absence of a written power of attorney as a defense to obligations incurred by the manager.

a. Company stamp. In the first case under discussion, the plaintiff filed suit against a pharmacy

demanding payment of four invoices for medicine supplied. The Court of First Instance ruled in favor of the plaintiff, and the Court of Appeal confirmed.

Before the Federal Supreme Court, the owner of the pharmacy asserted that the lower courts had wrongfully dismissed his contention that he had not entered into the contracts at issue or approved the relevant invoices. The Federal Supreme Court held that since the invoices were stamped with the pharmacy's seal, the owner may be reasonably viewed as responsible for the obligations of the pharmacy towards a bona fide third party that were reflected in the invoices. The Federal Supreme Court accordingly dismissed the appeal.

b. Acts beyond scope. In our second case, the plaintiff filed suit against the defendant demanding payment for electrical equipment supplied. The Court of First Instance ruled in favor of the plaintiff, and the Court of Appeal affirmed.

Before the Federal Supreme Court, the defendant argued that the lower courts had erroneously held him liable for acts committed by a manager. Although the defendant had issued a power of attorney in favor of the manager, that power of attorney did not extend to the checks that the manager had signed and the invoices that the manager had approved for the electrical equipment at issue. A statement from the manager was submitted into evidence stating that the manager had been acting for his own account in respect thereof.

The Federal Supreme Court responded that whenever a principal creates the appearance that makes third parties think that another has power to act on his behalf, the acts of such person with regard to bona fide third parties are binding on the principal. The lower courts have the power to decide whether such apparent authority exists as an issue of fact. The Federal Supreme Court stated that the same analysis applies when a principal grants a power of attorney to an agent and the agent exceeds the scope of such power of attorney. In the current case, the Federal Supreme Court held that the lower courts had adequate support in the evidence to conclude that the manager had apparent authority to act for the defendant in purchasing equipment from the plaintiff.

Another facet of this litigation was discussed at length by the Federal Supreme Court. The manager of the

defendant's business was joined as a third party in the course of the proceedings before the Court of First Instance, but did not appear or participate in the proceedings. The Court of First Instance found for the plaintiff and issued judgement against the owner and manager jointly and severally. On appeal, the Court of Appeal held that the owner's appeal could not name the manager as an appellee, because the manager had not appeared or participated in the proceedings. The Federal Supreme Court affirmed this portion of the judgement of the Court of Appeal, pointing out that the treatment of a joined party under the Code of Civil Procedure differs from the treatment of the original plaintiff and defendant.

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