

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. Final Set of Securities Regulations

Three new Resolutions issued by the Securities and Commodities Authority complete the regulatory framework for the trading of securities in the U.A.E. Although all three Resolutions were promulgated in early 2001, they took effect only upon their publication in the September 2002 Federal Official Gazette.

The Resolutions were promulgated pursuant to Federal Law No. 4 of 2000 (see the March 2000 edition of this Newsletter), which enabled the Cabinet and the Securities and Commodities Authority to promulgate implementing regulations. We have reported previously on regulations promulgated by the Cabinet on the functioning of the Authority, the licensing and supervision of securities and commodities markets, and the listing of securities, as well as regulations promulgated by the Authority on membership in the markets, brokers, and disclosure and transparency. We now report on regulations promulgated by the Authority on arbitration of disputes and on trading, setoff, settlement, transfer of ownership and safekeeping of securities. A future Newsletter will discuss the new regulations on the functioning of the markets.

a. Arbitration. Resolution No. 1 of 2001 establishes arbitration procedures for resolving disputes arising from dealings in securities. Parties trading on a U.A.E. securities market will be deemed to accept arbitration as the sole means for resolving disputes. The Resolution provides for a request for arbitration to be submitted to the Securities and Commodities Authority, who will notify the respondent of the request. The Chairman of the arbitration panel will be a judge nominated by the Minister of Justice or the Chairman of the Justice Department (as the case may be), and the other two members of the panel will be nominated respectively by the Director General of the concerned market and the Chairman of the Board of Directors of the Securities and Commodities Authority. The Resolution provides for procedural matters, including the setting of a timetable by the arbitration panel, the filing of evidence (including giving oral evidence if required by the parties), and the engagement of experts if required. The Resolution provides that the arbitration proceedings shall be confidential to the parties and the members of the arbitration panel and that the award shall be rendered in

the Arabic language. The decision of the arbitration panel shall be by the majority of its members, and the award must contain reasons unless the parties agree otherwise. Timeframes are prescribed for the making and resolution of applications to the arbitration panel to correct clerical, arithmetical or typing errors in the award, and to request an explanation of any specific points in the award. There is also provision for an aggrieved party to apply for an additional award to be rendered with regard to claims not dealt with in the award.

An award may be challenged on the grounds that it is invalid or void by way of an application to the competent civil court. There are limited grounds for such a challenge, and the application to the court must be made within 30 days of receipt of the award by the aggrieved party. An application to the court does not automatically stay execution of the award, although the court has power to order a stay.

Fees are payable on the filing of the request for arbitration. The tribunal has the power to award costs including the arbitrators' fees and expenses, the administrative fees of the Securities and Commodities Authority and the relevant market (in accordance with a scale to be published), and the fees and expenses of any experts and translators appointed by the arbitration panel. The panel has power to make provision for the payment of the costs of the arbitration.

b. Trading and setoff regulations. Resolution No. 2 of 2001 concerns the trading, setoff, settlement, transfer of ownership and safekeeping of securities.

Resolution No. 2 of 2001 first discusses the rules that apply to securities trading. Trading in a market is restricted to securities listed in the market, and the market is directed to display the prices at which securities are traded. Trading is conducted on the trading floor by registered brokers. Limited categories of trades may occur off the trading floor, including transfers of title among spouses and close relatives, transfers of title resulting from inheritance or wills, transfers of title pursuant to court orders, transfers of title pursuant to settlements with financial institutions, transfers of title among persons listed in a single certificate of ownership, and sales of securities by auction. However, such transfers off the trading floor must be conducted in accordance with applicable market regulations. A party trading in

securities off the trading floor must notify the market of the transaction within two business days.

Resolution No. 2 of 2001 contains specific rules for the trading of securities owned by an investor, defined as a person who undertakes the profession of sale and purchase of securities for its own name and account. A broker may not trade on behalf of an investor unless an account for the investor has been opened with the clearinghouse. A broker may not conclude a sale on behalf of an investor unless the relevant securities have been transferred from the investor's account with the clearinghouse to the investor's account with the broker.

Trading is to take place through the electronic trading system provided in the relevant market, unless the market consents in advance to specific trades that exceed 80% of the security provided by the broker. The broker is to enter purchase and sale orders via the channels provided by the market. The value of a security may not change more than 15% in a single trading day from its closing price the previous trading day, although the market may permit a greater fluctuation when required if approved by the Securities and Commodities Authority.

The board of directors of the market shall be liable for the daily follow up of securities trading in a manner that ensures fairness among traders. The opening of the trading session, the proper conduct thereof, and the proper application of trading instructions shall be overseen by a market supervisor who shall be assisted by a number of officials. The market supervisor shall be liable for managing the trading session and observing compliance by brokers with applicable trading rules, including the maintenance of order on the trading floor. The market supervisor shall immediately notify the director general of the market or his deputy of any matters or acts that may be in dispute, for taking necessary action.

The market must record all transactions in listed securities conducted in the market, and any such transaction not recorded pursuant to Federal Law No. 4 of 2000 and its regulations shall be void. Entries in the registers of the market, whether made by hand or electronically, and any documents issued by the market shall be deemed legal proof of trading and ownership of securities, unless the contrary can be proved.

Any trading in securities by the chairman, a member of the board of directors, the general manager or any other officer of a company whose securities are listed in the market must be conducted in compliance with the provisions of Federal Law No. 4 of 2000. Among other things, that Law imposes disclosure requirements whenever any such person trades directly or indirectly in securities of the same company or a corporate parent, subsidiary or affiliate. All transactions in contravention thereof shall be void.

A transaction shall be void that was carried out based upon undeclared or undisclosed information that came to the knowledge of the trader by reason of his position, or if the trader was the chairman, director or employee of the company using internal information about the company in the transaction. Also void will be any securities transactions designed to mislead others, such as a series of fictitious transactions designed to give the appearance of an active market, and any transactions that are designed to affect the value of securities for the purpose of encouraging other transactions. It is also prohibited to take any action that might have the effect of fixing the price of a security.

At the end of each trading day, the market and the brokers will review the day's orders and trades. In the event of any errors, the concerned brokers will submit the necessary amendments, with copies of the relevant purchase or sale orders attached. The market will prepare daily and weekly bulletins of traded securities for approval by the director general of the market and publication in a local daily Arabic newspaper. A further bulletin will be published monthly, reporting on trades, trading volumes in various activities compared to the previous month, and indexes. Bulletins will provide figures without disclosing the names of brokers or traders. The market is required to file reports with the Securities and Commodities Authority on forms prepared by the Authority.

The director general of the market, with the approval of the Authority, may temporarily suspend trading in a security in exceptional circumstances, or in cases where something threatens the good conduct of business and order in the market. The director general may also temporarily suspend trading in securities of a particular company pending publication of an important company notice that has been notified to the market, during a general assembly of company shareholders that coincides with trading hours, or

upon request of the company giving other reasons. A company with listed securities must announce in advance the date for its general assembly and the date for distribution of dividends. The holders of shares that are registered on the day before the general assembly shall be deemed authorized to attend and vote. The holders of shares on the date specified for the distribution of dividends shall be entitled to receive such dividends.

Each market shall promulgate rules on working hours on the trading floor, access to the trading floor, and observance of instructions on the trading floor; the number of representatives of a single broker who may be present together in the broker's office; entry into a broker's office and instructions to be observed by persons present therein; and the purchase and resale of securities in a single trading session.

In addition to the foregoing rules on trading, Resolution No. 2 of 2001 contains the following rules on setoff, settlement, transfer of ownership and safekeeping of securities. Within one week of obtaining approval for listing securities, a company must provide to the clearinghouse an updated list of its shareholders in accordance with the electronic data storage forms prepared by the market. The company shall thereafter update shareholders' names as required. Within one week of approving a securities listing, the market shall install a two way terminal in the office of the registrar of the company to be listed, to enable the company registrar to access the register for information and for updating company particulars in the register.

Resolution No. 2 of 2001 contemplates that a clearinghouse in each market will assign numbers to investors and supervise the same, operate the computerized register of shareholders on behalf of all of the companies with securities listed in the market, update the register of shareholders in accordance with transactions in the market and other transfers between brokers, approve updates in the register of shareholders pursuant to share transfers, operate the clearing mechanism in the market, issue orders for payment of net amounts owed to and by brokers, and act as custodian and manager of the security provided by brokers.

Each market shall prepare rules governing access to the clearinghouse by brokers and the public, the opening of accounts with the clearinghouse, transfers of securities

from the investor's account to the broker's account with the clearinghouse, the registration of securities mortgages, and any other task assigned by the market's board of directors. An investor may obtain confirmation from the clearinghouse of the listed securities that he owns. To do so, the investor submits an application on the appropriate form, on which the clearinghouse must act no later than 10:00 a.m. on the date following receipt of the application.

The number of securities sold shall be deducted from the account of the seller and added to the account of the purchaser at the time the trade is performed. Listed securities of the same class and issuer shall be treated as fungible moveable property. The broker for the purchaser shall pay the net amount due, as determined by the clearinghouse, by transfer from its account to the settlement account. The clearinghouse makes a corresponding transfer to the account of the broker for the seller, for transfer to the investor. Breach by the broker may entitle the clearinghouse to exercise the security provided by the broker and may entitle the market to take disciplinary measures.

Transfer of title to securities shall be effected in the market in accordance with the regulations issued by the market. The relevant procedures shall be undertaken by the issuer of the securities without delay. A company may not issue share certificates for shares that are held by the clearinghouse pending negotiation. For shares that are not held by the clearinghouse, company registrars may issue title transfer certificates only for the purpose of transferring title to the clearinghouse or transferring title pursuant to the limited types of transfers that are permitted off the trading floor, provided that the market is promptly notified thereof. The market is directed to prepare further regulations on share transfers to the clearinghouse pending negotiation and on share transfers off the trading floor.

2. Dubai Authority for Attraction of Investment and Development

Dubai Decree No. 2 of 2002 establishes the Dubai Authority for Attraction of Investment and Development and provides a framework for its functioning and regulation. The Authority's objectives are the development of Dubai as

an international commercial and financial center and the attraction of foreign and local investments. In order to achieve its objectives, the Authority may carry out the following functions:

1. Establishing strategies and policies relating to the attraction and encouragement of significant investments in Dubai;
2. Granting investment concessions and incentives for significant organizations and companies investing in Dubai;
3. Facilitating licensing and other governmental procedures for major organizations and companies;
4. Establishing, owning and developing investment organizations and companies, whether solely or in association with others; and
5. Any other functions or tasks assigned to it by the chairman.

The Authority is a financially and administratively independent body established by the Government of Dubai. Its administration shall consist of a chairman, a board of directors, a director general and an executive staff. The chairman, appointed by Decree of the Ruler of Dubai, is to supervise the Authority, and he has the power to establish the rules and regulations required for the operation and administration of the Authority and for the implementation of Decree No. 2 of 2002. The chairman also appoints the members of the board of directors and the director general.

The director general is to undertake the administration of the Authority under the supervision of the board of directors, and is to represent the Authority with regard to third parties. The nomination, election and terms of the employment of the executive staff are to be determined by regulations issued by the chairman.

The board of directors is vested with the following functions:

1. Proposing the policies, plans and general strategies for the Authority and referring the same to the chairman for approval;

2. Submitting to the Government of Dubai proposals on the laws and regulations that can enhance, develop and attract major investments in and to Dubai;
3. Establishing the organizational structure of the Authority and referring the same to the chairman for approval;
4. Preparing the internal rules and regulations relating to the administrative, financial and technical affairs of the Authority, supervising the implementation thereof and submitting such rules and regulations for the chairman's approval;
5. Approving the budget prepared by the director general and then submitting it to the Government of Dubai for approval;
6. Establishing the internal regulations for the proceedings and meetings of the board of directors; and
7. Any other function assigned to it by the Government of Dubai or the chairman.

3. Dubai Court Fees

The Dubai Court Fees Law, Law No. 1 of 1994, has been amended by the addition of a Dh 500 fee for objection to a proposed sale of a business.

SULTANATE OF OMAN

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1. Commercial Companies Law Amended

The Official Gazette published on September 1, 2002 contained the provisions of Royal Decree No. 77 of 2002 concerning principal amendments to the Commercial Companies Law (Royal Decree No. 4 of 1974). These amendments have a quite significant bearing on the law in Oman regulating companies and, in particular, affect the procedures for:

- conversion of companies;
- internal regulations;
- share transfers;

- increases in capital;
- bond issues;
- number of directorships;
- audit committees;
- general meeting supervision; and
- limited liability company capital.

This article seeks to inform those involved with corporate activities in Oman of the principal changes and their potential effect, although one should always seek expert advice when contemplating specific changes within any particular company.

a. Conversion of companies. Prior to the amendments to the Commercial Companies Law, there was a requirement that a company could not be converted into another type of company until that company had issued three annual audited balance sheets. This has now been removed. However, the conversion of a company still requires the passing of an appropriate resolution to amend either the constitutive contract or articles of association of the company in accordance with specified procedures.

The company will continue to be the same juristic person following its conversion. The conversion shall occur upon the members' discharge of existing liability to creditors, unless those creditors otherwise agree, and after the conversion is noted in the Commercial Register.

The Minister of Commerce and Industry is to issue a resolution setting out the regulations for conversion to a joint stock company. The effectiveness of the amendments will depend upon the requirements that the Minister of Commerce and Industry sets.

b. Internal regulations. Formerly, Article 68 of the Commercial Companies Law allowed a joint stock company at general meetings to adopt regulations governing the management and operation of the company. These regulations could then be amended only at a further extraordinary general meeting. Obviously, systemized processes relating to the management of the company, its business and affairs and the responsibilities of the various officers within the company are beneficial, if appropriately drafted, as they give everyone within a company a clearer understanding of their position, responsibility and authority.

Under the amendments to Article 68, such internal regulations are now compulsory. Each joint stock company must by board resolution promulgate internal regulations governing the company's management, business and employee affairs. Such regulations must be in place upon the formation of a new company, or within one year of the effective date of the amendments (*i.e.*, October 1, 2003) for an existing company. However, it is noted that before boards start to review their internal regulations, these regulations must be made in accordance with rules yet to be issued by the Capital Market Authority. The effectiveness of this provision will depend upon such rules.

c. Share transfers. Negotiable shares in public joint stock companies which are bought and sold on the Muscat Securities Market are to be transferred in accordance with the Capital Market Law, and such transfers are not subject to the approval of the board of directors of the company. The provisions relating to conditional registration of share transfers have been removed, presumably indicating that there are now no conditions whereby a public joint stock company can refuse to register a transfer of shares, although the application of this amendment by the relevant authorities will make the position clearer as time passes.

Founder members of public companies may wish to note that there is still a minimum lock-in period for their shares, until issuance of balance sheets for two consecutive financial years with effect from the date of either production of those balance sheets or commencement of business. There have always been exceptions to this rule relating to the transfer of shares held by the Government and allowing founder members to transfer shares among themselves. However, the exception relating to a sale by a founder member to recover sums due and unpaid on those shares has been removed.

The ability of the Minister of Commerce and Industry to extend this two year period for a further year at the request of the Capital Market Authority has been preserved, but it is now expressly stated that this does not prejudice a founder member's right to give a second priority mortgage on his shares.

d. Increases in capital. The amendments to Articles 82 and 83 of the Commercial Companies Law remove the express ability of a company to allocate 5% of an increase in capital to the company's employees. However, this is

covered by a broader provision allowing a company to allocate increases in capital to specified persons. This will be subject to guidelines yet to be issued by the Capital Market Authority. It is expected that these guidelines will particularly focus on the private placement of shares and will, therefore, be of significance to any company seeking financing from the investment community.

The preferential rights of each shareholder to participate pro rata in any share issue is preserved. However, waivers of these preemption rights, which were necessary to give effect to private placements, are now to be regulated by guidelines which have yet to be issued by the Minister of Commerce and Industry. These guidelines will be crucial to the impact of the amendments.

If shares are not subscribed for by the shareholders during the preemption period, then the board may either offer such shares for public subscription in accordance with the procedures followed on incorporation of a joint stock company, or reduce the increase in share capital to the extent to which the shareholders' preemption rights were not exercised.

e. Bond issues. Subject to the Capital Market Law, a joint stock company by resolution adopted at an extraordinary general meeting may issue negotiable bonds by a public or private placement. Such bond issues will be subject to rules to be issued by the Minister of Commerce and Industry.

All bonds of the same issue are to have the same nominal value and maturity date. A bond must be fully paid on the date of subscription and shall be indivisible and non-transferable.

f. Number of directorships. No person may be a member of the board of more than four joint stock companies. Previously, this was five. A person may be a chairman of no more than two such companies or of any two companies which both carry out similar objectives within the Sultanate of Oman.

A person holding 10% ownership in a company no longer has a right to be a member of the board of directors, and the maximum number of non-shareholder ("technical") directors, previously two, has now been removed. However, the ownership requirement in relation to the board of directors may be set by a company's articles of

association, and the rules and conditions for elections of directors or representatives of any company and provisions relating to their liability are to be issued by a resolution of the Minister of Commerce and Industry.

It should also be noted that the board of directors by resolution may form committees to perform specified board functions. This is still subject to the exception that certain matters are reserved to general meetings, including the making of gifts, sale of substantial company assets, granting security over the assets of the company and guaranteeing debts of third parties.

g. Audit committees. A joint stock company must now set up an audit committee composed of members of its board of directors and appoint an internal auditor and a legal adviser in accordance with the rules of the Capital Market Authority. In respect of their audit committee functions, the members of the audit committee are subject to the same liability that is imposed on directors by Article 82 of the Commercial Companies Law.

h. General meeting supervision. The Capital Market Authority is now to be notified of general meetings for public joint stock companies, and the Ministry of Commerce and Industry is to be notified of general meetings for closed joint stock companies. These authorities may then send an observer to attend the meeting, supervise the procedure and ensure legal compliance. Minutes of general meetings must be maintained, signed by the secretary, chairman and the company's auditor and lodged with the Capital Market Authority or the Ministry of Commerce and Industry as appropriate within fifteen days of the meeting.

In addition, where the chairman of the board of directors does not attend the general meeting, the deputy chairman may preside.

i. Limited liability company capital. It is still the basic presumption that a limited liability company will have a share capital of at least R.O. 20,000. However, the Director General of Commerce may exempt certain companies from this limit following provisions yet to be issued by the Minister of Commerce and Industry. The minimum capital of an LLC may not fall below R.O. 3,000.

As before, if the capital of the company falls below its stated minimum capital, any interested party may serve

a written notice on the company requesting that the capital be restored. Failure to restore within one year allows the interested party to apply to the court for dissolution of the company.

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