

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. Bank Guarantees for Employees

Cabinet Resolution No. 21 of 2003 amends the rules on bank guarantees that were introduced in 2001. It significantly curtails the exemptions from the requirement that an employer must submit bank guarantees to the Ministry of Labor and Social Affairs in respect of the employees that it hires. Previously, the requirement applied only to specified categories of employers (see the April 2001 edition of this Newsletter). Now, however, the requirement applies to all employers who are not expressly exempted, and the exempt categories have been defined more narrowly. In lieu of exempting all employers in certain sectors, the exemptions are now limited to industrial projects with a workforce that is at least 25% U.A.E. national; companies established by a Federal or Emirate government or in which such a government participates in ownership; public authorities, corporations and companies operating in the sectors of oil, gas, mining, banking, insurance, tourism or hotels; sole proprietorships wholly owned and directly managed by U.A.E. nationals that are supported by the agencies and funds designated for promoting youth projects and emiratization of the workforce; public welfare and cooperative societies and national establishments operating under the supervision of the Ministry of Labor and Social Affairs in the fields of social care and development; and facilities having a workforce that is at least 25% U.A.E. national, as documented by the records of the Ministry of Labor and Social Affairs.

The rules governing the amounts of the guarantees that must be submitted have also changed. An employer having more than 1000 employees must submit a bank guarantee of Dh 500,000 to the Ministry of Labor, and an employer having more than 100 but not more than 1000 employees must submit a bank guarantee of Dh 300,000. Such an employer is then required to submit a separate bank guarantee for each new employee hired. An employer with not more than 100 employees must submit a bank guarantee in the amount of Dh 3,000 per employee. The new Resolution expressly allows such guarantees to be exercised by court order, applied for by the Ministry of Labor and Social Affairs, to satisfy labor entitlements.

2. CITES Regulations

Cabinet Resolution No. 23 of 2003 sets forth the Implementing Regulations under Federal Law No. 11 of 2002. That Law, as reported in this Newsletter last year, enacted the obligations of the U.A.E. under the Convention on the International Trade in Endangered Species.

Among other obligations, CITES requires signatory states to designate a national Administrative Authority and a national Scientific Authority. Cabinet Resolution No. 23 of 2003 designates an Administrative Authority both at the Ministry of Agriculture and Fisheries and at the Federal Environmental Authority. The Ministry of Agriculture and Fisheries is directed to control the entry and exit points of the U.A.E., to coordinate with the other concerned authorities in the U.A.E. on information exchange and staff training, to prepare the reports required by CITES in conjunction with the Federal Environmental Authority, to provide advice to the Cabinet on enforcement of the CITES obligations of the U.A.E., to prosecute violations, to consider applications for permits and licenses, to keep the registers required by CITES, to prepare further implementing regulations in coordination with the Federal Environmental Authority and the Scientific Authority, to establish one or more rescue centers, and to perform other functions assigned by the Law, by the CITES treaty or by the Cabinet. The Federal Environmental Authority is tasked with cooperating with the Ministry of Agriculture and Fisheries as aforesaid, and also with preparing reports on compliance within the Emirate of Abu Dhabi.

The Emirates Research and Wildlife Development Agency is designated as the Scientific Authority, with the tasks of reporting to the Administrative Authority on matters relating to the movement of fauna, flora of items derived therefrom listed in the Annexes to the CITES treaty, giving opinions to the Administrative Authority on the handling of seized items, reviewing and reporting on the preparedness of importers to care for items they wish to import, monitoring permit compliance, and advising the Administrative Authority on any other matters referred to it.

3. Securities Brokers Regulations Amended

The Regulations on securities brokers have been amended slightly. It has been a requirement since 2000 that a securities broker must submit a bank guarantee in an amount of not less than Dh 10 million to the clearinghouse of the market in which the broker is admitted. The amount may be increased in proportion with the volume of the business carried on by the broker, in an amount determined by the board of directors of the relevant market. Pursuant to a Resolution of the Chairman of the Securities and Commodities Authority, a broker admitted in multiple markets may submit such a bank guarantee to the clearinghouse of each market, provided that the total value of such guarantees is not less than the required minimum.

4. Jebel Ali Free Zone Offshore Companies

The Jebel Ali Free Zone Authority ("JAFZA") recently promulgated the Jebel Ali Free Zone Authority Offshore Companies Regulations 2003 (the "Regulations"), which regulate the registration and licensing of an offshore company in the Jebel Ali Free Zone ("JAFZ"). Under the Regulations, an offshore company with limited liability can be incorporated by one or more persons, none of whom are required to be U.A.E. nationals. The name of such offshore company must end with the word "Limited." The offshore company is required to appoint at least two directors and a secretary. The Regulations do not specify any minimum capital requirement for establishing an offshore company. The shares of such offshore company must be fully paid when allotted, must be of the same class, and may not be bearer shares. An offshore company must appoint an auditor and must maintain at all times a registered office and a registered agent approved by JAFZA.

Under Article 15 of the Regulations, an offshore company may carry on any lawful business which is not prohibited under the Regulations or by JAFZA. An offshore company may not carry on business with persons resident in the U.A.E., or carry on any banking business or business as an insurance or reinsurance company, insurance agent or

insurance broker. However, the prohibition against carrying on business with persons in the U.A.E. does not preclude maintaining professional contact with the offshore company's registered agent or auditors in the U.A.E.; maintaining records, keeping and operating bank accounts, or holding directors' meetings in the U.A.E.; or leasing or owning property in the U.A.E. in a project approved by JAFZA. If the offshore company wishes to engage in trading, manufacturing or providing services, whether within the JAFZ or elsewhere in the U.A.E., then it must obtain the appropriate license from JAFZA or other relevant governmental department or agency.

Individuals who wish to incorporate an offshore company must submit an application form to the JAFZA Registrar together with the constitutive and governing documents of the proposed offshore company along with the passport copy, the personal profile and business background, and a banker's reference for each such individual. An applicant who is a corporate entity would generally be required to submit its constitutive and governing documents, such as the memorandum and articles of association, its certificate of incorporation, its certificate of good standing, and the resolution of its board resolving to set up the offshore company. An application fee of Dh 2,000 is payable to the Registrar. Upon incorporation, the offshore company will be provided with a certificate of incorporation and a registration number. A further fee of Dh 1,500 is payable annually for maintenance of the company in JAFZA's records.

JAFZA may impose penalties for breach of the Regulations, *e.g.*, a fine of Dh 2,000 for failure to have a registered agent, and a fine of Dh 50,000 for breach of Article 15 of the Regulations (which contains the restrictions on the business activities of the offshore company, as discussed above). The Registrar also has the discretion to strike the offshore company off its register for non-compliance with the Regulations, including for non-payment of fees.

SULTANATE OF OMAN

Contributed by Trowers & Hamlins, Oman

1. Anticipated Changes in the Property Laws of Oman

Land law in Oman has traditionally been geared towards the ownership of land by Omani nationals, with the land rights for non-Omanis currently limited to secondary interests. However, as the economy and society in Oman become ever more developed and closer ties with other GCC countries are forged, the opportunity for this situation to alter becomes greater. This article examines how various factors, both internal and external, are now pointing towards a possible shift in the law to allow for outright foreign ownership of property in Oman.

The land law regime in the Sultanate of Oman has traditionally drawn a clear distinction between the interests and entitlements available to Omanis and those available to non-Omanis. Whereas Omani nationals currently enjoy the flexibility of being entitled to enjoy the benefits of land on both a freehold (ownership) and leasehold (contractual) basis, the rights of non-Omanis are limited. In terms of residential property, the large majority of non-nationals living in Oman occupy property on a leasehold basis. While termed leasehold, this is not a real property interest in the Common Law sense, but instead is strictly contractual, giving the tenant the right to occupy the land and the buildings built on the land in consideration for the payment of rent.

The law has been relaxed to a certain extent in relation to commercial property, whereby a non-national can enter into a usufruct agreement. This is a form of statutory protected lease. While not a form of real property ownership as such, the usufruct does confer more rights on the holder than the standard leasehold. A usufruct agreement may be concluded in respect of privately owned land or state owned land and may last for a renewable term of up to fifty years. However, it is limited to use for social or economic reasons and is therefore generally not suitable for use in residential property.

Thus, the traditional approach has so far excluded the large number of non-nationals resident in Oman from real property ownership, a position reflected in many other countries in the Middle East. The reasoning behind this appears to be that the rights of the non-national in Oman are generally dependant on the securing of fixed employment

within the Sultanate. A limitation on the acquisition of real property rights appears strongly linked to the relationship between personal rights of habitation and work in the country. Despite this historically fixed position of excluding non-nationals from obtaining real property rights, there are signs that the situation is changing, both within the Middle East and specifically in Oman.

The leading examples of a departure from standard land ownership policies have been in the Emirate of Dubai, where a significant change in property ownership policy (if not law) has been witnessed in recent years. The construction of high profile developments such as Palm Island, Emirates Hills and Dubai Marina have attracted considerable interest from Gulf nationals and others after it was declared that properties at these locations would be offered for sale on a freehold basis to both U.A.E. and foreign nationals. This hugely popular policy catered to the demands of the large expatriate community living and working in the Emirate, who also wished to purchase property. These projects also attracted strong interest from builders and developers who were keen to capitalize on the healthy boom in the up market real estate sector in Dubai. Top of the market properties are perceived as attractive investments, as many investors feel that they are unlikely to depreciate in value. All property investment is speculative, however, and no certain predictions can be made in respect of any property investment.

Although it is unclear how this policy will be further developed, no radical alterations to the current property laws are expected to follow in the U.A.E. Instead, it is likely that future projects will proceed on an incremental basis, with relaxation in the law being granted in terms of each new development. It is thought that only when the true successes of this experiment have been properly assessed by the governing bodies in the U.A.E. can we expect to see any substantial new legislation in this area.

Other GCC countries are also witnessing a limited relaxation in the laws surrounding ownership of property. Bahrain has recently reviewed its laws on ownership of land and real property by non-Bahrainis. Although the proposed amendments are currently limited to citizens of other GCC countries, the move to recognize the property rights of non-nationals heralds the advent of a shift in the rigid

policy of law in this area and has been commended by the GCC. Given that the move is part of the Government's efforts to encourage and promote investment opportunities and attract investors to the country, it is not difficult to see how similar relaxations could be applied in the future in order to extend property rights to nationals of other countries. Indeed, it is predicted that this factor will be the driving force behind many similar projects in the Middle East.

Closer to home, plans are currently afoot regarding the development of a luxury apartment complex and golf course on land situated in the proximity of Seeb International Airport, to the west of Muscat. Drawing influence from the huge success of identical developments in the United Arab Emirates, the project is likely to attract considerable interest from both Omanis and non-Omanis. Although still in the early stages of planning, it is predicted that this proposed development could herald a similar departure from the current land law in allowing non-nationals to take freehold interests in properties for the first time in Oman. Certainly in terms of marketing, the pitch towards the luxury end of the market coupled with the lure of an international standard golf course appears to be a concerted effort by the promoters to attract non-Omanis in the same way as has been seen in Dubai.

It remains to be seen whether Oman will follow the lead of its GCC counterparts in terms of relaxing (albeit on a limited scale) legislation governing the ownership of land by non-Omanis. Certainly, as a result of the general development of land law in the Sultanate over the last twenty years, the right of foreigners to hold limited interests in land is now firmly established and it is expected that further rights will be accorded in the future. With the move by the Bahraini Government to allow nationals from other GCC countries to own property, it is expected that other member states will follow suit to reciprocate the right and establish closer GCC links.

Clearly, a change in the law will be required for freehold ownership by non-GCC nationals in developments in Oman along the lines of Dubai. The form of any such change is a matter for the Government. Many feel that any such change will, at least in the intermediate future, be limited to particular developments rather than being a

blanket approval for foreign national ownership in the wider market. It is unlikely that a foreign national will be able to go to any street in Muscat, for instance, and purchase a house. Despite the Government's continual drive of Omanization of the workforce, the number of non-nationals living and working in Oman remains and will remain high for the foreseeable future. While this number is nowhere near the levels which exist in the U.A.E., it is predicted that pressure on the governing bodies in the Sultanate will result in a reconsideration of the laws of property ownership. It is likely that the existing limited rights of freehold and usufruct will not be adequate or acceptable to the parties forging property development to continue in their current form.

It is expected that any future amendments will take the form of those seen in the U.A.E., being relaxations on an incremental basis. Therefore no radical amendment to the land law is expected. However, should developments such as the Muscat Golf and Country Club proceed with the backing of an amendment to the land law, there is no reason why this will not also be seen at other locations within the Sultanate, with the proposed development at Al Sawadi being a prime candidate also.

2. State Security Court

Royal Decree No. 21 of 2003 introduced the State Security Court, to adjudicate offences against state security and His Majesty the Sultan. Royal Decree No. 21 of 2003 provided that a State Security Court would be formed by a further Royal Decree, and that it would be presided over by H.H. Al Sayyid Hilal Bin Hamad Al Busaidi, the State's advisor for judicial affairs.

Royal Decree No. 63 of 2003 amended the name of the "National Security Committee" to the "National Security Council" (the "NSC") and appointed its members. The NSC has the jurisdiction to look into all matters relating to national security. The enabling legislation for the State Security Court is Royal Decree No. 64 of 2003, which sets out the rules and regulations relating to its operations and jurisdiction.

The State Security Court is composed of a president, a vice president and a number of members. It is intended to include separate departments for misdemeanors and felonies.

The Misdemeanors Department shall comprise two appeal court judges as members and a supreme court judge as president. The Felonies Department shall consist of four supreme court judges and shall be presided over by a supreme court vice president.

Members of security or military services may sit in the Court provided that their number does not exceed half the number of judges sitting in each department. They must hold a degree in sharia or law, and their ranks shall not be less than captains with respect to the Misdemeanors Department and majors for the Felonies Department.

The State Security Court has jurisdiction to try crimes mentioned in the second and third chapters of the first section of the Omani Penal Law, second volume (Royal Decree No. 7 of 1974, as amended) (the "Penal Code"). These include assault against His Majesty the Sultan, attempts to overthrow the regime, insurrection, civil war, intentional impairment of public authorities, acts of terror, usurpation of public authority, hijacking, riotous gatherings, bearing arms, contempt of the national flag, treason, obstruction of national defense and treachery. It also has jurisdiction over assaults against foreign heads of state and diplomats, and contempt of foreign flags.

Thus, the scope of the new law is limited by the fact that the jurisdiction of the State Security Court is defined by reference to the Penal Code. However, the State Security Court may also hear any case referred to it by His Majesty the Sultan, and the NSC can make recommendations to His Majesty for cases to be brought before this Court.

The State Security Court applies the provisions of the Penal Code and the procedures set out in the Criminal Procedures Law. The substantive handling of cases and the investigation of crimes within the jurisdiction of the State Security Court will be under the authority of (i) the public security authorities, to be carried out via officers nominated by a decision of the NSC having the same authority as the public prosecutor, and (ii) the State Security Cases Department, a new department which shall be formed within the Public Prosecution.

The accused is granted the right to legal representation. If the accused is unable to appoint a

lawyer, the Court will appoint one for him. However, the Court has discretion as to a lawyer's attendance of investigation sessions. Further, there is an overriding duty of confidentiality imposed on Court officials in respect of cases heard before the Court. Defendants before this Court will be given a fair trial and protection of their rights as afforded by the Criminal Procedures Law and the Basic Law.

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