

**MONTHLY NEWSLETTER**

FOR CLIENT USE ONLY

Vol. XXII, Nos. 9 & 10

September & October 2004

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. Federal Anti-Terrorism Law

Federal Decree-Law No. 1 of 2004 on Fighting Crimes of Terrorism establishes a range of criminal penalties, including life imprisonment and capital punishment, for individuals involved in terrorist acts. The new Law also provides for the establishment of the National Committee for Fighting Terrorism.

Terrorist acts are defined to include "every act or failure to act by the criminal, in execution of an individual or group criminal project, aiming to cause terror among the public, if the same could cause disturbance of the public regulations, expose the safety and security of the society to risk, harm persons or expose their lives or freedom or security to risk." In addition to the imposition of prison sentences, and in some cases capital punishment, the Law gives courts the power to seize the property, funds and other assets of individuals and organizations implicated in terrorist acts.

Capital punishment may be imposed on leaders of terrorist organizations or other individuals who commit terrorist acts resulting in death. Life imprisonment may be imposed on an individual who joins a terrorist organization with knowledge of the organization's objectives or who forces or encourages other persons to join or participate in a terrorist organization. Attempting to induce another person to commit a terrorist act where such inducement "does not result in any action" can result in imprisonment for up to ten years.

In addition to imposing criminal penalties on natural persons, the Law stipulates that corporate entities can be punished for involvement in terrorist acts. Corporate entities whose "representatives, managers or agents commit or participate in the commission of any of the crimes" stipulated by the Law are subject to a fine of up to Dh 500,000 "if the crime is committed in its name or for its account." Moreover, the assets of the corporation can be seized, the corporation's places of business can be closed and the corporation can be dissolved.

The Law has extra-territorial application in cases of terrorist acts against any citizen of the U.A.E., against any public property of the U.A.E. including embassies and other diplomatic missions, or on board a means of transportation registered in the U.A.E. or flying its flag, for the purpose of "influencing the State to take or refrain from taking any act." Moreover, any person committing outside of the U.A.E. any of the crimes set forth in the Law can be tried for such crimes in the U.A.E. if the person is found in the U.A.E. or extradited to the U.A.E.

The Law gives the Federal Supreme Court exclusive jurisdiction over all of the crimes stipulated in the Law. Any matters not covered by the Law are governed by the U.A.E. Penal Code and the U.A.E. Code of Criminal Procedure. The crimes set forth in the Law are not subject to any statute of limitations.

The Public Prosecutor or any public attorney designated by him is empowered by the Law to "issue an order for commencement of review or compilation of any data or information relating to any accounts, deposits, treasuries, transfers, or movements of funds which are, pursuant to sufficient evidence with the Public Prosecution, related to the financing or commission of any of the crimes" set out in the Law. Further, the Public Prosecutor may freeze assets in connection with the conduct of his investigation. The Governor of the Central Bank is also given the power to freeze assets by the Law.

The Law provides for a National Committee on Fighting Terrorism to be formed upon the issuance of a resolution by the Cabinet, consisting of a representative from the Ministry of Foreign Affairs, the Ministry of Interior, the Ministry of Justice, Islamic Affairs and Endowments, the State Security Authority, the Ministry of Defense, the Central Bank, the Federal Customs Authority and any other authority joined by Cabinet resolution. The functions of this Committee include inter-departmental coordination of efforts to fight terrorism, proposing further anti-terrorism legislation, following up on the implementation of anti-terrorism measures taken by the Security Council and the exchange of information with other countries and

international bodies relating to the fight against terrorism.

2. Abu Dhabi: General Holding Company

Abu Dhabi Law No. 5 of 2004 establishes the General Holding Company as a public joint stock company that is wholly owned by the Higher Corporation for Specialized Economic Zones in the Emirate of Abu Dhabi.

The objectives and powers of the company include owning all property of the now abolished General Industries Corporation and to establish public and private joint stock companies, alone or with others.

The Law transfers to the company all assets and liabilities of various enterprises that had been established and owned by the General Industries Corporation and subsequently by a committee formed to acquire the assets and liabilities of the General Industries Corporation. These enterprises include Emirates Iron and Steel Factory, Emirates Flour and Animal Feed Factory, Emirates Cement Factory, Hobas Gulf Factory, Abu Dhabi National Pipes and Bags Factory, Al Ain Mineral Water Bottling Factory, Al Ain Concrete Block Factory and Al Mafraq Concrete Block Factory. The Law also transfers to the company all employees of these entities. In a separate measure, Abu Dhabi Law No. 9 of 2004 transferred to the company the entire 70% shareholding in the National Petroleum Construction Company that was previously held by the Abu Dhabi National Oil Company.

Abu Dhabi Law No. 5 of 2004 provides that the shares of the company shall be held by the Higher Corporation for Specialized Economic Zones. The company's share capital may be modified by a resolution of the Board of Directors of the company. Any transaction or encumbrance in respect of the company's shares may be effected only by a resolution of the Executive Council of the Emirate of Abu Dhabi.

The company's management is to be conducted through a Board of Directors of five to nine members, which must include the Chairman, the Deputy Chairman and the Managing Director of the company. Among other matters, the Board is specifically empowered to establish financial and

administrative internal rules and regulations and to adopt resolutions required to incorporate or otherwise ensure the viability of the assets held by the company.

3. Abu Dhabi: Supreme Petroleum Council

Abu Dhabi Emiri Decree No. 12 of 2004 reconstituted the Supreme Petroleum Council, the government agency with supreme authority over petroleum affairs in Abu Dhabi (see the June 1988 edition of this Newsletter). Among the new members are the Chairman of the Abu Dhabi Department of the Economy and the Chairman of the Presidential Diwan.

SULTANATE OF OMAN

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1. Privatization

Earlier this year, two pieces of legislation were introduced in Oman relating to the privatization of traditional national industries. Royal Decree No. 77 of 2004 promulgated the law on privatization (the "Privatization Law") and was closely followed by Royal Decree No. 78 of 2004 promulgating the law of management and privatization of the electricity sector and its dependent water (the "Sector Law"). These pieces of legislation are significant in terms of the direction being taken by the Government of Oman regarding public financing of national industries. Both laws open up significant potential opportunities for private investment in Oman and will facilitate the redistribution of Oman's national wealth into other areas.

The Privatization Law sets out a legislative basis for the privatization of Oman's national industries and projects, while the Sector Law provides the details of how this may be achieved within the electricity generation and related desalination sectors in Oman. This article provides a brief overview of the content and effect of the new legislation.

a. The Privatization Law. The Privatization Law lays down a general framework for the privatization of public services or their restructuring in preparation for privatization.

Privatization has become an increasingly popular international trend over the last twenty years. It is seen as a way to free up governmental resources and rejuvenate markets, particularly where economies have historically been driven by national industries and monopolies. The anticipated benefits are set out in Article 2 of the Privatization Law, and clearly show the goals of the Government of Oman. They include:

- (a) The diversification of sources of national revenue and expanding the production base of Oman;
- (b) Increased opportunities for the private sector to contribute to the development of the national economy;
- (c) Activating the forces of the market and competition, a principal tenet of Oman's Basic Law;
- (d) More efficient use of resources;
- (e) A reduction in the burden on the general budget so that the Government of Oman may make strategic investment in basic services;
- (f) Encouraging foreign investments and attracting technical and administrative expertise and modern technologies.
- (g) The developing and promoting of the capital market; and
- (h) Increasing the opportunities for recruitment of citizens in the private sector.

Competition is seen as the main driver of privatization. In the privatized sectors more than one company may be set up so as to prevent monopolies as far as possible.

The mechanisms for privatization are set out in Article 3 and include a preliminary restructuring of the government agency, authority or business, followed by either complete or partial privatization. Privatizations may be carried out in accordance with the following illustrative mechanisms:

- (a) A grant to the private sector of rights to construct, own and manage suitable projects or concession rights or licenses for such projects;
- (b) The sale by the government of shares in its authorities, undertakings and commercial companies; or
- (c) The conclusion of contracts providing for participation in government-owned undertakings in respect of these undertakings' capital and/or management.

In terms of regulation, although the Council of Ministers retains ultimate control, various bodies set up under the Sector Law shall participate in analyzing which sectors are suitable for privatization, establishing the mechanisms of privatization and regulating the privatized sector. A Ministerial Committee for Privatization constituted from the Council of Ministers will be the main body to undertake this task. It will specify the sectors and projects to be privatized, review studies and programs of privatization and formulate clear rules for the process of privatization. In addition it will issue decisions in respect of the proper mechanism of work and timing for privatization and propose a method for handling the proceeds of the sale of government assets and projects.

This Committee will be supported by a technical secretariat. Its functions will be to conduct the relevant studies of privatization proposals, examine the organizational procedures for privatization and prepare documentation relating to bids and offers, procedures for tendering and advertising. The technical secretariat is also responsible for ensuring openness, transparency and neutrality in the process of privatization.

Article 9 puts Ministries, government agencies, public undertakings, authorities, companies and individuals under a legal obligation to provide any information required by

the Ministry of National Economy to the Technical Secretariat. Although in theory this obligation seems wide, it is anticipated that it will rarely be called upon in practice.

Under Article 10, the Ministry of National Economy may appoint consultants and experts in various fields in respect of the process of privatization. Over recent years this approach has been used successfully, as can be seen from the increasing speed and efficiency with which industrial projects can now be set up, the "unbundling" of the telecommunication sector and, indeed, the Sector Law itself.

Tendering for privatization projects is to be open, and conducted in accordance with the Tender Law. The tender board is free to agree to invite bids for the projects in accordance with such rules and procedures as it considers suitable to the project, provided that the principles of openness, transparency and clarity are maintained.

It is also worth noting that there is a presumption that privatization project companies will take the form of public joint stock companies. Although closed joint stock companies or limited liability companies may be set up with the consent of the Council of Ministers, this presumption will allow public investors to play a more active part in the privatization process, which in turn will increase the liquidity of the capital market. International experience has shown that the privatization of national industries has positively encouraged private share ownership, as there is a common perception that public utilities make safe investments.

Privatization projects and project companies will be treated in the same way as companies fully owned by Omanis. This will be a significant encouragement to foreign investors. In addition, such companies will be entitled to rights in land similar to those granted to companies fully owned by Omanis. This means that foreign participation in project companies can be up to 100% and such companies will be entitled to freehold rights in land. Again, this should be a significant incentive to foreigners to invest in these projects.

Following a privatization, an autonomous regulatory body will be set up to regulate the dealings between the government, the investor and the consumer. Examples of these regulatory bodies are the Telecommunications Regulatory Authority and the Electricity Sector Regulatory Authority. Article 14 of the Privatization Law states that these bodies shall eventually merge into a single regulatory body, following practical experience.

The Privatization Law also sets out regulations for the transfer of assets and liabilities (including employees) from the relevant government authority, Ministry or utility to the private sector. The employment rights of transferred workers are to be preserved, including the benefits they would have been entitled to had they been government employees at retirement. Their wages will not be less than they were prior to the transfer, and there is a presumption that these transferring workers will be employed for a period of not less than five years, provided that they follow the rules and regulations of the project enterprise.

b. The Sector Law. The Sector Law implements the framework set out in the Privatization Law with regard to the "unbundling" of the electricity and related water desalination sectors. Oman has traditionally led the way in the Middle East in the field of private investment in the electricity sector. Independent power and water projects at Manah, Barka, Al Kamil and Dhofar (and the more recent Sohar IWPP) have demonstrated Oman's willingness to involve private finance within its infrastructure projects. The Sector Law is another step along this path.

The Sector Law envisages a transfer scheme for the process of privatization known as "unbundling." This involves the government setting up a series of joint stock companies to which the various assets of the government relating to the generation, transmission and distribution of electricity and water will be transferred. These companies will initially be owned by an electricity holding company, but shares in these companies may be offered to the public as and when the moment arises.

Certain key functions will be retained by wholly-owned government companies, such as the Power and Water

Procurement Company, which was established by the Sector Law. This Company takes over the functions of the government in relation to the generation of electricity. In this regard, the contracts of the Ministry of Housing, Electricity and Water for the purchase and sale of electricity will be deemed to be assigned to this Company on the transfer date. This date is required by law to be within the next eight months.

A new regulatory authority, wholly independent of the government, will be set up to oversee the electricity sector. It will be responsible for regulating and licensing the electricity sector. It will not be possible to generate, transmit or provide electricity without an appropriate license from the regulatory authority and such license will require regulated entities, both public and private, to comply with the regulatory authority's regulations in respect of safety, Omanization, environmental standards, grid connection, and other regulations.

Further, the Oman Electricity Transmission Company (Transco) will be set up to operate Oman's national grid and to deliver electricity from government and privately owned generation plants to the consumers.

c. Conclusion. These two new laws will bring about some significant changes in the way the various participants in the electricity sector manage their affairs. Parties will no longer be able to deal solely with the Ministry of Housing, Electricity and Water, but will also have to maintain links with, and watch developments within, Transco, the Electricity Holding Company, and the Power and Water Procurement Company. They will also have to comply with the standards and regulations imposed upon them by the regulatory authority.

The Government of Oman is sending out a clear message with these two new laws, which pave the way for a suitably broad-based and yet integrated system that can increasingly be placed in private hands under the watchful eye of the regulatory authority.

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