lex arabiae

Legal News of the Gulf

Vol.XV – 3rd Issue **July 2011**

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United Arab Emirates

One Entity - Two Premises?

Guiding Principle

Insufficient office space is a problem that many companies face when business increases. Once a company is well established and growing it usually requires more space in order to satisfy its clients' demands. Obviously, in such a case instead of moving, the company prefers to stay in the same location and rent additional office or workshop space. Moving offices involves time consuming procedures with the authorities, additionally, moving is rather costly, and finally - and probably most important - the clients and customers are familiar with the existing location. Accordingly, companies in Dubai ask for options which allow them to grow their businesses without giving up their existing location.

A. May a company operate in two locations under the same trade license?

Generally a company established under the laws of the Emirate of Dubai is only allowed to operate at one location. This rule applies to all business forms, may it be a branch of a foreign company or a LLC. However, the Ministry of Economy (MoE) and the Dubai Economic Department (DED) allow to rent additional units at the same location, e.g. in the same building. The determining factor is that the premise is registered under the same premise number at the Real Estate Regulatory Agency (RERA). Renting additional room in a different location will not be approved under one trade license.

B. May the company in Dubai establish a subsidiary?

In order to lease additional premises, the company needs an additional trade license. It is worth considering that a subsidiary is formed by the company already existing. Meaning a branch would have to be established. This idea is however only feasible for a legal entity as a LLC. When it comes to a branch, UAE laws do not allow the establishment of a subsidiary ("sub-branch"). Thus and different from an LLC, a branch cannot establish another branch.

C. May the mother company of a Dubai branch establish a second branch?

The foundation of another branch is an alternative to obtain additional premises in Dubai. The DED and the MoE do not have any objection for a mother company to establish several branches in Dubai. As the name of a branch is determined by the mother company's name, all branches will operate under the same name. The second branch's trade license will be registered under the new location. However, it should be observed, that laws regarding the commercial licenses for branches of foreign companies have changed within the last years. Therefore, it is possible that the new license will not be granted for the same activities as the existing branch conducts. The most important change in company regulations is that the DED does not approve any trading

activities anymore. It is worth mentioning that the application for a new branch will not have an impact on the existing license.

D. Requirements and Procedure

The procedure for the establishment of a second branch is similar to the establishment of the first branch. The DED and the MoE require only few additional documents. Firstly, the mother company must provide a resolution stating that a second branch should be opened. Secondly, a General Manager must be appointed. In case the General Manager will be the same person as the General Manager of the existing branch, the mother company has to issue a non-objection certificate for his appointment in the name of the first branch. At last, the new lease agreement must be submitted.

The national agent, who has to be appointed for each branch, does not necessarily have to be identical. However, if the additional branch should cooperate with a national agent different from the existing one, a non-objection certificate from the presently registered national agent must be submitted.

Lena Brand,
Meyer-Reumann & Partners - Dubai

Egypt

Child Custody in Egypt

Guiding Principle

According to the Egyptian Family Law the custody is preferably given to the mother rather than given to the father, which lead to the result that many fathers are prohibited from seeing their children, especially if they are foreigners, as seeing the child is controlled by the custodial parent in case of agreement between parents or by a court order in case it is difficult to arrange a visit with the children by agreement.

A. Enforcement of Foreign Custody Orders in Egypt[1)]

A parent can request from the Egyptian Courts that a foreign custody order be recognized in Egypt, but enforcement will result only if the order does not contravene Shari'a law and "paternal rights." Therefore, as a practical matter, foreign custody orders are generally not automatically recognized in Egypt and the left-behind parent must work within the Egyptian court system in order to obtain legal custody over the child in Egypt.

Shari'a law as it is applied in Egypt primarily favors the mother. Mothers are most commonly considered to be the appropriate custodians of children until the age of 15. Generally, if custody disputes arise between the parents,

[1] According to International Divorce Website: www.international-divorce.com

Egyptian courts uphold presumptive custody.

B. Custody and Abduction of Children in Egypt[2)]

The removal of a child by the non-custodial parent to or within Egypt is not a crime in Egypt unless the child is subject to Egyptian court-ordered travel restrictions.

The abduction of a child by either parent or grandparent from the person who, by a decision of the judicial authority in Egypt, has the right of guardianship or custody of the child is an offence according to Article 292 of the Egyptian Penal Code No.95 of 2003. In addition, the refusal of a parent or grandparent to deliver a child to a person with the right to claim the child according to a judicial decision is a crime according to the same article. Custody order must be decided by the Egyptian Court to consider kidnapping as a crime.[3)]

Egypt is not a signatory to the Hague Convention on the Civil Aspects of International Child Abduction which is a multilateral treaty. The Hague Convention on the Civil Aspects of International Child Abduction seeks to protect children from the harmful effects of abduction and retention across international boundaries by providing a procedure to bring about their prompt return. The Convention ensures that rights of custody and of access under the law of one contracting state are effectively respected in the other contracting states.[4)]

In October 2003, the U.S. and Egypt signed a Memorandum of Understanding (MOU) that purportedly confirms both countries' commitment to facilitating parental access to children in the other country. However, currently it only provides for the possibility to have some access in Egypt. It does not address international child abduction. In practice it has no teeth and is relatively meaningless.

As of May 2010 there were 27 active cases in the Secretary of State's Office of Children's Issues of American children abducted to Egypt. The Secretary of State has no power to get them back. As of May 2010, not one abducted child had been returned to the US from Egypt within the prior two years through judicial or official means.

C. Egyptian Government Efforts[5)]

In February 2000, by a Ministerial Decree, the Egyptian Ministry of Justice established the "International Cooperation Committee" for custody disputes related to children born from mixed marriages. It is also known as the "Good Office Committee".

The Committee's aim is consistent with the Ministry of Justice's policy to promote international cooperation in settling conflicts arising from the

2 According to International Divorce Website: www.international-divorce.com

3 According to Article 292 of the Egyptian Penal Code

4 According to website of Hague Conference on Private International Law

5 According to the website of the Minister of Justice in Egypt.

custody of children born from mixed marriages, according to the provisions of Egyptian legislation and the international conventions ratified by Egypt, as well as the relevant bilateral agreements.

In the light of what the parties amicably agree to or propose, the Good Office Committee issues convenient recommendation that suits the case. In fact this recommendation is issued based upon both parties being willing and understanding to resolve their dispute. Work of the Good Office Committee[6] does not prevent the parties from the right to initiate court proceedings or to continue any ongoing court proceedings. This is affirmed by the fact that the recommendations issued by the Good Office Committee are non-binding, meaning that the parties can go to the Good Office Committee, while at the same time pursuing the matter through the courts.

D. Custody according to Egyptian Family Law [7]

The women's right to the custody of children shall be terminated with the son or daughter attaining the age of fifteen (15).[8]

The right to the custody of children shall be established for their mother then for the female relatives who are in degrees of consanguinity that prohibit marriage. The priority in this regard shall be given to the mother's female relatives over the father's female relatives.

Each one of the parents shall have the right to see the children. In case it is difficult to arrange visiting right of the children by agreement, the Court shall organize that, providing it shall take place where there is no psychological harm to the children.

Visiting rights shall be not less than three (3) hours a week between the hours of nine in the morning and seven at night, taken into account as much as possible that this visitation is during the official holidays, and does not contradict with the regularity of the young child in his education.[9]

E. Conclusion

As a result, many fathers are prohibited from seeing their children according to

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6 The Good Office Committee receives a request concerning a case, whether from the concerned person or authorities. Then the members of the Good Office Committee are then invited to a meeting to examine the case. Afterwards the party resident in Egypt is invited to meet the Good Office Committee in order to discuss the case and listen to his point of view. Similarly the other party or his legal representative or an official from his Embassy or Consulate can meet the Good Office Committee. According to Mr Adel Ahmed FAHMY Chief Justice, Director of International and Cultural Cooperation Department, Ministry of Justice, Cairo in his report at this website http://www.hcch.net/upload/newsletter/JN16_Egypt.pdf

7 Law No. 25 of the Year 1929 Concerning Certain Personal Status Provisions as Amended by Laws Nos.100/1985 and 2/2006 – Article 20

8 Substituted by Law (no.4 /2005).

9 According to Decree of the Minister of Justice No.1087 for the year 2000 on places for seeing young Child

the Egyptian Law as it will give them only 3 hours a week which is not enough to communicate socially with their children.

A report by the Egyptian Gazette on April 13th, 2011 mentioned that many fathers, prohibited from seeing their children, recently demonstrated outside the Ministry of Justice. It is the Law on Visitation Rights that prevents them from communicating socially with their children.[10)]

Seven million children and 5 million fathers are harmed by this law that was issued by ex-President Mubarak, supported by his wife.

In the light of such protests, it is expected that incumbent Minister of Justice Abdel-Aziz El-Guindi will issue a decision allowing fathers to host their children in the custody of their divorced wives for 48 hours a week, instead of seeing them for just 3 hours a week, according to the Law on Visitation Rights.

We are still waiting for this decision which will give a hope to fathers.

Abdel Hameed Galal,
Meyer-Reumann & Partners – Cairo

[10] Website of the Egyptian Gazette : http://213.158.162.45/~egyptian/index.php?action=news&id=17147&title=Divorced%20fathers%20cry%20foul

Qatar

Public Procurement Law in Qatar

Guiding Principle

The winning of the World Cup 2022 in Qatar has already and still will result in a high increase in development projects in Qatar to prepare the country for the big event. This unveils a large number of public invitations to tender, which will attract foreign investors to participate. The interest in the projects is high and the run on participating in the projects has already started. On this occasion we herewith would like to provide you with an overview of the Public Procurement Law in Qatar.

Tender Procedures in Qatar

A. Introduction

The Tender Law in Qatar, Law No. 26 of 2005 as amended by Law no. 22 of 2008 ("QA-Tender Law") regulates all contracts of public works, services, and supplies. The QA-Tender Law applies to all ministries, governmental services and public institutions.

B. Tender Committees

The Supporting Committes for tendering in Qatar are:

- The Central Tenders Committee (the "CTC") (Art. 12 et seq. QA-Tender Law)
- Specialized Tendering Committees (Art. 18 QA-Tender Law)
- Local Tendering Committees (Art. 18, 60 QA-Tender Law)

1. The Central Tenders Committee

The Central Tenders Committee of the Ministry of Economy and Finance is responsible for processing the majority of public sector tenders. It administers tenders and bids including awarding on behalf of most government organs and sets the standards for rules and regulations for bidding procedures. Information about tender can be obtained under the website of the Central Tender Committee http://www.ctc.gov.qa/main-en.aspx.

The purpose of the oversight role of the Central Tenders Committee is among others:

- To ensure the fairness of the technical evaluation and financial companies and select the best company technically and financially.
- To ensure that a neutral party between the applicant and the companies works as a link between them.
- To preserve public property of the state through presentations to ensure to select the most viable technically and financially

2. Specialized Tendering Committees

Further, supporting committees for tendering in Qatar are the Specialized Tendering Committees. The Specialized Tendering Committee identifies and invites the bidders to participate at the limited tenders.

3. The Local Tendering Committees

The Local Tendering Committees are responsible and specialized in supervising the procedures of announcing local tenders, receiving, opening and considering their bids, and expressing recommendation on awarding thereof to the best bid.

C. Forms of Tender

The QA-Tender Law provides three types of tenders:

- General/Public Tenders (Art. 3, 24 et seqq. QA-Tender Law);
- Limited Tenders (Art. 4 QA-Tender Law);
- Local Tenders (Art. 5, 60 et seqq. QA-Tender Law).

1. General/Public Tenders

The General/Public Tenders are the widest form of tenders. They are the common tender form in Qatar and advertised internally and/or externally and internationally and have an open tender process. Generally, everybody, locals and foreigners, without being registered in Qatar, can take part in Public Tenders. The bidders are all equal and there is a generell freedom of competition. The authority inviting to tender may decide on whether a tender is public or not. For the performance of the tender, foreigners may open a branch in Qatar, which is restricted to the contract resulting from the tender.

2. Limited Tenders

The Limited Tenders are restricted to a specific number of bidders and apply in cases requiring particular expertise or capabilities. The bidders are identified and invited by the special tendering committee.

3. Local Tenders

The Local Tenders apply for contracts with less than one (1) million Qatari Rials and are restricted to local suppliers. Bidders must be registered in Qatar and the bids are advertised only internally in Qatar.

D. Tender Procedure

1. Prequalification of Contractors / Suppliers

For larger projects, the CTC normally invites pre-qualification documents from short-listed foreign and/or local contractors or merchants. The Government announces invitations to pre-qualify in local and/or foreign papers and occasionally through Qatari embassies abroad. The QA-Tender Law provides for classification of contractors by a committee operating under the CTC. The classification process is based on the firm's financial strength, business reputation, and experience.

2. Invitation to Tender

All government procurement contracts are subject to the provisions of bidding and tender regulations included in the QA-Tender Law.

The concerned governmental body prepares the tender and the Central Tendering Committee advertises the tender in Qatar in two local daily newspapers and on the notice board at the central tender committee headquarters and the relevant government entity. Outside Qatar, the tenders are usually published by state's embassies (Art. 25 QA-Tender Law). The advertisements for tenders must contain a minimum of informations as provided in the Law (Art. 26 QA-Tender Law), including but not limited to rules for submitting the tender, the authority to which the tenders are submitted and the date for opening the sealed envelopes.

3. Submittal Procedure, Art 27 et seqq. QA-Tender Law

The tenders have to be submitted together with a tender bond in sealed envelopes, on time and in accordance with the specific rules.

To avoid any disqualifications, the application documents should be filled in properly. Arabic is the official language in Qatar though English is widely used. Bids should be in Arabic unless the tender document specifically indicates that English is required or accepted. If not stated otherwise, the bid-currency is Qatari-Riyal. Specifications generally conform to European standards.

Foreign companies wishing to participate in government procurement programs may be required to have a local agent and provide bid and performance bonds. It is prohibited for a bidder to be a member of any tendering committees or an employee of the governmental entity. The prohibition extends to the partner, sponsor/agent, employee and/or member of the board of the bidding entity or any other person that has an interest in the tender. The bidders must comply with the terms and conditions of the tender documents and amendments to the tender documents are not allowed. They must contain fixed

overall prices. Adjustments of the overall price after submittal is not possible.

4. Accepted Tenders, Art. 41 et seqq. QA-Tender Law

Tenders, which have been accepted, are referred to the relevant governmental body. The committee choses, convenes, deliberates and nominates the most suitable tender. Provided all technical specifications are satisfied, the contract is generally awarded to the bidder with the lowest quoted price. The successful bidder will be notified and invited to sign the contract with the concerned governmental authority (Art. 52 QA-Tender Law). The final guarantee must be deposited by an acceptable bank guarantee letter from a local bank before the execution of the contract.

5. Contracting after successful rewarding, Art. 44 et seqq. QA-Tender Law

Foreign bidders must have or establish a legal presence in Qatar for performing the contract. Therefore foreigners participation in tenders in Qatar are more or less restricted to general, international tenders. For the performance of the tender, foreign companies may, according to the foreign investment law, open a branch.

6. Participation of Foreign Companies in Tender

Foreigners can generally participate at General Tender, however, however, by the time a contract is ready to be signed, participating foreign firms may need to have a local presence. Qatar generally gives preferential treatment to contractors that include high local content in bids for government tenders.[11] Qatar is not a signatory to the WTO Agreement on Government Procurement. The WTO Agreement on Government Procurment is based on the principles of openness, transparency and non-discrimination, which apply to parties' procurement covered by the Agreement to the benefit of parties and their suppliers, goods and services.

Roueida Hamdan,
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Oman

E-Tendering Service in Oman

Guiding Principle

Electronic Tendering (E-Tendering) is carrying out the traditional tendering process in electronic form by using internet. By using E-Tendering the Ministries of Oman can create and publish tender, sell tenders, receive bids, evaluate tenders and award contracts.

In addition and through E-Tendering, the suppliers may receive notification of the relevant tender, purchase tenders document, submit bids online and track the status of their bids.

A. Overview of Tender Board:

The Tender Board (TB) was established in 1972 to handle all government

11 http://www.state.gov/e/eeb/rls/othr/ics/2011/157346.htm

projects and requests for projects from civil service ministries and other government agencies. Projects below OMR 250,000.00 can be awarded through the ministry's internal procurement committees. Projects above that amount must be floated and awarded through the Tender Board.

B. Forms of Tender

There are different types of tender currently existing:

- **General** (also called open Tender): General Tenders to all companies, be it local or international.
- **Limited.** The Tender Board invites all qualified companies (classified and given a degree) Local and international. Local companies must have a valid Tender Board registration. International companies participating in this tender must complete the registration formalities within one month of awarding of a contract.

C. E-Tendering

As part of the Oman initiative, the Government Tender Board (GTB) has computerized all tendering and procurement processes in the Omani government sector.

The primary objective of E-Tendering is to establish a centralized state of the art tendering management system & processes. This will help in achieving higher efficiency and will also enhance elements of transparency and accuracy in government tendering process. E-Tendering will make it possible for government entities to prepare, float, evaluate and award tenders using E-Tendering solutions. It will also provide Contractors, Suppliers and Consultants with the mechanism to purchase tenders, submit offers, register and renew registration with the Government Tender Board online.

The E-Tendering solution fits with the requirements of the tendering process governed by the Tender Law No 36/2008 and Regulation No 29/2010. The GTB is also involved, together with appropriate entities, to integrate with other government applications over the e-governance system to ensure seamless service availability and secure transactions.

D. Merits of E-Tendering Solution

The merits and advantages of the E-Tendering solution shall be as follows:

- Simplified and interactive tendering process.
- Increased transparency and accountability of tendering process.
- Effective utilization of resources in E-Tendering process.
- Increased number of participants in government tenders.
- Reduced processing time of tenders.
- Helpdesk support availability in Arabic & English.
- Access to E-Tendering solution 24 hours and 7 days a week.

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Meyer-Reumann & Partners - Muscat

Saudi Arabia

Nitaqat - the New Localization System for Jobs in the Kingdom of Saudi Arabia

Guiding Principle

In order to reduce the unemployment rate among the Saudi citizens, the Saudi government issued a new system for the localization of jobs in Saudi Arabia under the name of "Nitaqat". The new system replaces the system applied since 1994 under the name of "The Saudization". Nitaqat adopts several principles, which will have impacts on non-Saudis working in the Kingdom.

A. Introduction

The economy in Saudi Arabia – as it is the case in other states of the Gulf Cooperation Council (GCC) - depends largely on the existence of a large proportion of expatriates[12)] working for various establishments in the private and public sector. However, unlike the other states of the GCC, Saudi Arabia has large number of unemployed citizens[13)], which creates a state of resentment among those citizens.

[12] Expatriates occupy about 84% of the jobs in the private sector in the Kingdom of Saudi Arabia.

[13] The unemployment rate among Saudi citizens is estimated with more than 15%.

B. The Saudization

In an attempt to reduce the unemployment rate among the citizens, the Saudi government applied a system in 1994 for the localization of jobs under the name of "**The Saudization**". The basic principal of the system was the requirement to appoint certain percentage of the total workforce of all the establishments existing in the Kingdom from the Saudi citizens. This percentage varies in accordance to the activity of the establishment. Generally the percentage was fixed by 30%.

However, due to several reasons, the system did not achieve the desired objectives and mostly the 30% has not been reached. Now, more than 6.5 million non-Saudi are working in the private sector of the Kingdom compared to 700 thousand Saudis. In addition, more than 2 million work visas were issued during the preceding two (2) years.

C. Nitaqat

Therefore, the Saudi government has endeavoured to find other solutions to eliminate the phenomenon of unemployment among Saudi nationals. The efforts of the government resulted in the implementation of several strategies. The most important of these strategies was the issuance of a new system under the name "**Nitaqat**" for localizing the jobs in the Kingdom to replace the system of Saudization.

The name Nitaqat means *Ranges* in Arabic, which actually represents the main idea of the new system as the main obstacles faced the previous system that

it was not practical to apply one fixed percentage, regardless of the particular circumstances of each activity, such as the availability of the qualified manpower for certain activities.

Nitaqat divides the labour market into 41 activities and each activity into 5 sizes (Giant, Large, Medium, Small and Very Small) to have in total 205 categories. The performance of the establishment in the localization of the jobs is to be evaluated compared with the similar establishment's activity and size in order to have fair standard for the evaluation

After the evaluation, Nitaqat classifies these establishments into ranges (Excellent, Green, Yellow and Red) based on the ratio of the citizens working in the establishment. The Excellent and Green range, which are the ranges with the highest localization ratios, will be rewarded, while the system deals firmly with the Red range, which is the range with the lowest localization ratio and gives more time for the Yellow range to adjust their positions, being the medium range.

The motive of applying the Nitaqat system is to make the appointment of Saudi citizens represent a competitive advantage for the establishments in the Kingdom.

D. The Rewards to the Excellent and Green Ranges and the Disadvantages of the Red and Yellow Ranges.

The MoL has granted the establishments located in the Excellent or in the Green Ranges several advantages by giving the establishments the eligibility to issue work visas for the development of new business. Furthermore the MoL will give them the ability to contract with non-Saudi workers from the establishments of the Red and the Yellow ranges in the Saudi market, which allows such establishments to benefit from their experience and presence. This will result in granting the establishments that have achieved high rates of localization the opportunity to appoint non-Saudi workers with no need to issue new work visas, which helps to rationalization the recruitment and employment of additional non-Saudi labor.

In contrast, the establishments located in the Red or in the Yellow range will be forced to speed the localization of the jobs within the establishments to upgrade their range to the Green or the Excellent range to maintain the expats they have. Otherwise, the establishments located in these ranges – Red and Yellow ranges - will be denied from obtaining new or alternative visas, lose control over the non-Saudi workers in the establishment as they will have the freedom of contract with a new employer and will not be allowed to obtain new work visas to appoint new-non-Saudis workers or to set up a new subsidiary or branch.

Hany Kenawi,
Meyer-Reumann & Partners – Riyadh

Yemen

Oil as an important sector in Yemen's Economic

Guiding Principles

Oil occupies a leading position among the rest of the sectors of economic activity, contributing to 30 % of GDP and 70 % of total state revenues, and the most important product connecting Yemen to the outside world, which constitute 90 % of Yemen's exports abroad.

A. Historic Background[14)]

The Ministry of Oil and Minerals website mentioned that the exploration and drilling for oil in Yemen goes back to the thirties of the last century and particularly in 1938 when Iraq Oil Company surveys seismic in some regions of Yemen.

In the summer of 1984, the U.S. company Hunt announced the first commercial discovery in Yemen (Gaza, "18" Marib / Jawf), where the process of development has been done in the construction of surface facilities and the establishment of the pipeline to the Red Sea.

In 1986 and for the first time, the launch of production and export of oil in Yemen from the Gaza (18) Marib / Al-Jouf took place.

Other oil discoveries have been detected throughout many years in different parts of Yemen by many foreign companies especially after Yemen's unity in May 22, 1990.

B. Oil Importance in the National Economy

A report issued by the Yemen Government on 26 June 2011, mentioning that facts and scientific data confirmed that the future of Yemen's oil is a promising future

Furthermore the report said that oil occupies a leading position among the rest of the sectors of economic activity, contributing to 30 % of the GDP and 70 % of the total state revenues. Meaning, oil is the most important product connecting Yemen to the outside world, which constitutes 90 % of Yemen's exports abroad.

Today in Yemen, the oil map include 101 oil sector, 13 are already a productive sector working in it 10 oil companies, 8 sectors are under negotiation and the remaining sectors are under explore and open.

According to the chairman of the exploration and production of oil, the Plan Commission for the current year 2011 includes the drilling of 117 wells spread over 24 exploration wells, 11 wells Haknah and 82 wells developments, the implementation of surveys, seismic two-dimensional area of 6239 km and surveys of seismic three-dimensional area of 2893 km.[15)]

[14] Website of Ministry of Oil and Minerals in Yemen

[15] According to website of 26 September Arabic Edition (26.6.2011)

C. Laws Regulating the Oil Sector in Yemen

The oil sector is regulated by a Special Agreement between the government and the companies drilling or explore for oils in Yemen.

While Investment Law No. 22 of 2002 regulates Investments in Yemen, this law does not apply to the oil sector according to Article 1 of the law which reads as follows:

"This law aims to promote and regulate the capital investment of Yemeni, Arab and foreign subject to the provisions of this law within the state's general policy, objectives and priorities of the national plan for economic and social development, consistent with the provisions of Islamic Sharia in all sectors except the following:

1 - explore and extract oil, gas and minerals that are governed by special agreements."[16)]

In order to develop production sharing agreements, the Ministry of Oil and Minerals launched during the year 2008 the fifth generation of production sharing agreements, which included the first use of gas as well as oil and included the best economic conditions that serve the national economy along with an emphasis on environmental protection in all activities of exploration and production and export and provides more attractive incentives for investment companies.[17)]

D. Conclusion

As the oil sector is considered an important sector in Yemen, some criticism have been brought to the government for not promulgating a respective law governing this oil sector and therefore is depending on Special Agreements between the government and the foreign companies extracting and exploring the oil in Yemen.

Some analysts believe that one of the causes of the revolution in Yemen nowadays was according to the corruption in Oil sector which was under sovereign of government without any law governing this sector and lack of transparency in announcing the real numbers of revenues from the government side and from the companies on the other side, as people see that the revenues of the oil sector were not fairly distributed.

Abdel Hameed Galal,
Meyer-Reumann & Partners - Cairo

16 Investment law no. 22 / 2002 in Yemen

17 According to website of 26 September Arabic Edition (26.6.2011)

Yemen

New Patent Law in Yemen Guiding Principle

New Patents, Utility Models, Integrated Circuits and Trade Secrets Law No. 2 of 2011 has recently been published in the country's Official Gazette. The Law, which was issued on 12 January 2011 and published on 4 May 2011, entered into force on 12 April 2011.

A. The Main Features for the Law No. 2 of 2011

The main features of the new Patent Law include a reduction in the opposition period from 6 months to 90 days, an increase in the protection term for patents from 15 to 20 years and for utility models, 7 years as of filing date. The new Law prohibits the patenting of methods of human or animal diagnosis, treatment and surgery, organs, tissues, live cells, natural biologic substances, DNA, blood, hormones or genes and plants or animals and methods of producing plants or animals, except those involving micro-organisms. The Law also provides for compulsory patent licenses if the patentee has not properly exploited its patent within a period of 4 years from the date of filing or 3 years from the date of grant without a legitimate reason.

B. The Main Important Points of the new Law

Points of particular significance with respect to Patents, Utility Models, Integrated Circuits and Trade Secrets in the new Law are highlighted below:

1. Patents

- An employer is entitled to be named as the patentee if:

(i) An invention is made by employee(s) during the execution of an employment contract or a commitment for the execution of inventive efforts.

(ii) The employee does not develop the subject matter of the protection had he not used facilities, means data that were made available through his employment. The employee has the right to receive remuneration, which is to be agreed upon with the consent of both parties, for the subject matter of the protection. A patent application filed by an employee within one year from the date of termination of employment will be considered as having been submitted during the course of employment.

- The opposition period has been reduced from 6 months to 90 days from the date of publication of a patent application.
- Absolute (worldwide) novelty is required for an invention to be patentable.
- Patents are granted for a term of protection of 20 years from the filing date, rather than the 15 year term provided for under the previous law.
- A patent must work, and if the patent is not being fully exploited by the patentee within 4 years from the filing date or 3 years from the date of grant, it will be subject to compulsory licensing under the provisions of the Law.

2. Utility Models

- Conversion from and to a patent application is possible.
- The term of protection of a utility model is 7 years from the filing date.

3. Integrated Circuits

- Integrated circuits are defined as the design of the disposition of any interconnections and the elements for the making of an integrated circuit product, or the disposition of any elements and the interconnections for the making of a customization layer or layers to be added to an integrated circuit product in an intermediate form.
- Integrated circuits are protected for up to 10 years. The term of protection commences on either the year of the first commercial exploitation or the year of the filing date, whichever is earlier.
- For an integrated circuit to be registered, it has to be original.

4. Trade Secrets

- As long as the owner of the trade secret can prove that reasonable efforts have been made to keep the information confidential, the information remains a trade secret and remains legally protected.
- Information could be considered a trade secret if:

(i) Its confidentiality has commercial value.

(ii) It is not commonly known, easily accessible, or used by individuals that usually deal with such information.

(iii) It has been identified by the party in control of the information as a secret.

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Iran

International Sanctions as Instances of Force Majeure from Iranian Law Perspective

Guiding Principle

Iran is under several international sanctions over its refusal to suspend uranium enrichment. These sanctions have considerable influence on the Iranian business of those foreign establishments, which are registered in Iran and/or conduct financial transaction with the Iranian market. While these economic sanctions may be recognized as force majeure in general international commercial practice, they may not necessarily be treated as such under the Iranian law.

A. International Sanctions against Iran

Iran is under several international sanctions over its refusal to suspend uranium enrichment. The United States, Europe and Israel fear that Iran wants to use nuclear technology to build a bomb but Tehran insists that its program is a peaceful drive to produce civilian energy. Sanctions against Iran notably bar nuclear, missile and many military exports to Iran and target investments in oil, gas and petrochemicals, exports of

refined petroleum products, as well as the Iranian Republican Guard Corps, banks, insurance, financial transactions and shipping.

Sanctions against Iran have been imposed by the following bodies:

- **UN sanctions against Iran:** United Nations Security Council has passed four Resolutions against Iran for failing to stop its uranium enrichment program since December 2006.
- **Multinational sanctions against Iran:** European Union sanctions are the most important multinational sanctions against Iran. These sanctions have been strengthened lately on 27 October 2010 by the EU Council under Council Regulation (EU) No. 961 of 2010.
- **National sanctions against Iran:** One of the most important national sanctions against Iran include an embargo on dealings with Iran by the United States, and a ban on selling aircraft and repair parts to Iranian aviation companies. Since July 2010, Canada, Australia, South Korea and Japan have also set unilateral sanctions against Iran.

These sanctions have considerable influence on the Iranian business of those foreign establishments, which are registered in Iran and/or conduct financial transaction with the Iranian market. Many foreign establishments have suspended their transaction with Iran and some of them proceed to close down their legal companies, branch or rep. offices in Iran. While economic sanctions may be recognized as force majeure in general international commercial practice, they may not necessarily be treated as such under the Iranian law.

B. Force Majeure under Iranian Law

Force majeure is a common clause in contracts that essentially frees both parties from liability or obligation when an extraordinary event or circumstance beyond the control of the parties, such as a war, strike, riot, crime, or an event described by the legal term "act of God" (such as flooding, earthquake, or volcanic eruption), prevents one or both parties from fulfilling their obligations under the contract. Force majeure events normally suspend performance unless the event continues for a long period of time and/or is incapable of remedy by one of the parties in which case the contract comes to an end.

While the Civil Code of Iran does not expressly mention the doctrine of force majeure, it is considered as a valid claim in the Iranian Civil Code (abbrev. IR-CC). Art. 227 and Art. 229 IR-CC contain provisions embodying certain characteristics of force majeure doctrine.

Art. 227 IR-CC provides that a party in breach of a contractual obligation would only be required to pay compensation when it cannot be established that the non-performance was as a result of an external cause that cannot be attributed to the non-performing party.

Furthermore, Art. 229 IR-CC states that if a party becomes unable to carry out any duty or obligation due to an event that the affected party cannot avoid, then the party will not be held liable to pay

compensation to the other party for any loss or damages.

According to the Iranian doctrine, for an event to be considered as force majeure, the following elements shall be established:

(1) Externality: The event must be beyond the control of the defaulting party and shall not have been caused by its act or omission. In other words, the defaulting party must have nothing to do with the event's happening. Clearly, no private party can be expected to have controlled the imposition of sanctions against Iran. Therefore, this element is likely to be easily satisfied.

(2) Unpredictability: Predictability has been variously construed by different Iranian courts and jurists. According to the predominant view, a force majeure event is deemed unforeseeable when it can be shown that it was "unexpected" and "beyond reasonable foresight and skill". If the event could be foreseen, the defaulting party is obligated to have prepared for it. With regard to the unpredictability of sanctions, generally speaking, force majeure would be difficult to establish when a foreign company was warned by the government of their country of origin or the Iranian government of potential risks that exist in relation to investment in Iran but proceeded with the project nonetheless. This is particularly important considering that the first round of UN sanctions was imposed against on Iran in December 2006. Ever since, it has become a common practice by Iranian entities to warn foreign companies during negotiations that they would accept no liability for loss or damages that the foreign party may incur as a result of sanctions against Iran. Furthermore, some contracts go even further to expressly provide for warranties by the foreign party. In the event that the performance of contractual obligations becomes impossible due to sanctions or other forms of business restriction, the foreign party would have to compensate the Iranian party for any damages and loss that it might have suffered as a result of the non-performance of contractual obligations by the foreign party. Therefore, for those contracts which have been concluded after December 2006, it could be argued that the sanctions will not be attributed to force majeure and therefore the foreign party will not be excused from performance.

(3) Irresistibility: The consequences of the event must have been unpreventable. The Iranian jurists are of the opinion that the irresistibility should be absolute impossible, not relative or subjective. Therefore, if any country is able to prevent the consequence of sanctions, the other countries could not refer to the irresistibility element of sanction. For example, despite of the existing sanctions, a country like China, still fulfills its contractual commitments towards Iran, on the other hands, some European

countries, which are members of European Union, still perform their obligations through other channels (e.g. substitution of the work to the companies, located in countries which are not the party of EU). According to the above, the sanctions are less likely to satisfy this element.

C. Conclusion

International sanctions are not likely to be considered as a case of force majeure under the Iranian legal system. Even if the international contracts be concluded before imposing the first round of UN sanctions in December 2006 and therefore the foreign party refers that the sanctions was not predictable at the time of conclusion of the contract, the sanctions still cannot be regarded as a case of force majeure because of non-existence of the other element which is "irresistibility". The reasons are that the force majeure accident is defined as the inability to implement the commitment by everyone, not just because of lack of facilities and possibilities for a group of persons.

However, there are various approaches to the principle of foreseeability and irresistibility depending on the circumstances as well as on terms and conditions of the contract. This could provide the space to develop alternative arguments that are more favourable to foreign parties involved in such disputes. It is advisable when a foreign partner could not fulfil its commitment due to the consequences of the international sanctions, inform the Iranian partner instantly and both parties try to solve the problem through amicable negotiation and find other alternatives.

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