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EMIRATES INTERNATIONAL LAW FIRM

JULY 2006

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New Laws in the UAE

COMMERCIAL AGENCY LAW AMENDED

President His Highness Shaikh Khalifa Bin Zayed Al Nahyan, on 17 June, 2006 issued a Federal Law amending some provisions of the Federal Law No. (18) of 1981 concerning Commercial Agencies. The new Law amended Articles (8), (9), and (23) of the Federal Law No. (18) of 1981.

According to the new amendments:

Article (8) will be replaced by a new text and shall read: *“A principal shall rescind an agency agreement only upon a justified reason. However, the principal shall not re-enter the agency in the Commercial Agent’s Register under another agent’s name unless its validity has expired without renewal on the consent of both parties or upon abrogation of the same by mutual agreement or in the wake of a final judgment by a competent court striking it off.”*

A commercial agency with a specified term shall be deemed as terminated on the date of its expiry unless otherwise extended by the mutual consent of the two parties one year prior to its expiration date.

Article (9) shall read: *“If the termination of the agency has caused damage to either party, the injured may claim compensation for losses incurred.”*

Article (23) shall read: *“No one is allowed to bring in goods, products, materials or other assets for trading via a channel other than the agent. Customs Departments are instructed by the law not to release these goods imported by a way other than the agent unless otherwise approved by the Ministry or the agent. The Customs Departments and the concerned authorities, each in its jurisdiction, upon the agent’s request, shall attach the seized imports and store the same in the ports or the importer’s warehouses”.*

The new Law stipulates the scrapping of Articles (27) and (28) of Federal Law No. 8 of 1981. It also abrogates any other provisions which may contradict its provisions, and is to be published in the Official Gazette.

The Cabinet has already approved the unconditional import of 15 basic foodstuffs into the local market. These items include children’s milk, frozen vegetables, chickens, edible oil, rice, fish products, tea, coffee, cheeses, and other basic commodities and products.

*Customs Dep’t
has been in-
structed not to
release goods
imported by
way other than
the Agent.*

ARTICLE (168) OF COMMERCIAL COMPANIES LAW AMENDED

President His Highness Shaikh Khalifa Bin Zayed Al-Nahyan issued on 11 June 2006 a Federal Law No. (18) of 2006 amending some Provisions of the Federal Law No.(8) of 1984 Concerning Commercial Companies. The said Law amended Article (168) of the Commercial Companies Law. Article (168) will be replaced by a new text and shall read:

“The Company shall not pledge its shares nor shall it purchase the same unless the purchase is for capital reduction or redemption of shares. Such shares shall have no vote in the General Assembly meetings nor shall they have a share in the profits”.

However, the company shall have the right to purchase a portion of its shares not exceeding (10%) of the same for the purpose of selling them as per the following regulations:

1. The company shall obtain the approval of the Securities & Commodities Authority (S.C.A.) prior to the purchase process as per the regulations prescribed by the (S.C.A.).
2. The company's Board of Directors shall carry out the purchase within a one-year-long period as from obtaining the approval of S.C.A.
3. The company shall have a cash surplus for purchase purposes without using the capital or the statutory reserve in the process.
4. Subject to the provisions of item (9) of this Article, the purchase process shall be published in two widespread newspapers, one of which shall be an Arabic paper. The company shall allow no less than two weeks following the publication date before the purchase is executed.
5. The company shall not sell shares during the declared purchase process. The purchased shares shall be sold within a period not exceeding two years from the last purchase. In the event that the shares are not sold within the prescribed period, the purchase process will be regarded as a capital reduction and therefore the purchased shares shall be disposed of.

“The Company shall not pledge its shares nor shall it purchase the same unless the purchase is for capital reduction or redemption of shares. Such shares shall have no vote in the General Assembly meetings nor shall they have a share in the profits”.

6. The sale and purchase of shares shall be carried out through a licensed financial market in the Country.
7. The company shall not issue any new shares before the sale of the purchased shares is completed.
8. The company shall not purchase its shares (15) days before and (3) days after declaring its financial statements or any other information that may affect the share price up or down.
9. The company shall not request the approval of purchasing its shares for the purposes of selling the same before the elapse of no less than one year from the last selling of its purchased shares.
10. In the case of banking companies, the company shall have the approval of the Central Bank before the purchase, and shall undertake to finance the purchase process from the financing sources as per the rules to be set out by the Central Bank.
11. The members of the Board of Directors or the executive managers shall not be parties to the company's sale and purchase processes.
12. The company shall disclose its sale and purchase of shares in its quarterly report.
13. The shares purchased for the purpose of re-selling the same shall lose the right of gaining profits and voting in the General Assembly until after they are sold.

INSURANCE COMPANIES AND AGENTS LAW AMENDED

President His Highness Shaikh Khalifa Bin Zayed Al-Nahyan on 21 June 2006 issued Federal Law No. (19) of 2006 on Amending some provisions of the Federal Law No. (9) of 1984 Concerning Insurance Companies and Agents. The said Law amended Article (11) of the Federal Law No.(9) of 1984 Concerning Insurance Companies and Agents by new text and shall read: ***“Established insurance companies in the U.A.E or those which shall be incorporated must take the form of public joint stock companies and that their share value shall be nominal. At least 75 percent of the capital must be owned by natural persons or body corporate wholly owned by U.A.E citizens.”***

LIST OF SOME IMPORTANT RECENTLY PROMULGATED LAWS

FEDERAL LAWS

GAZETTE No.	TITLES
Issue No: 449 – 14 June 2006	Federal Law No. (13) of 2006 concerning amendment of some provisions of Federal Law No. (18) of 1981 as to Organization of Commercial Agencies.
Issue No: 449 – 14 June 2006	Federal Law No.(14) of 2006 concerning amendment of some provisions of Federal Law No.(8) of 1984 as to Commercial Companies.
Issue No. 450 – 28 June 2006	Federal Law No. (19) of 2006 on amendment of some provisions of Federal Law No. (9) of 1984 Concerning Insurance Companies and Agents.
Issue No. 450 – 28 June 2006	Federal Decree No. (43) of 2006 on U.A.E Accession to the New York Convention as to Recognition and Enforcement of Foreign Arbitration Awards.

MINISTERIAL DECISIONS

Issue No. 450 June 2006	Minister of Economy Decision No. (54) of 2006 Concerning amendment of some provisions of Ministerial Decision No. (69) of 1989 on Conditions and Procedures of Licensing for Foreign Companies to Operate in U.A.E.
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UAE COURT DECISION ON RITZ HOTEL TRADENAME

UNDER U.A.E LAWS, INTERNATIONALLY WELL KNOWN TRADE NAME CAN BE PROTECTED WHETHER IT IS REGISTERED OR NOT, PURSUANT TO THE PARIS CONVENTION OF 1883

In a case, before the UAE Court of Cassation (Case No. C27/26), the Plaintiffs represented by Emirates International Law Firm, established that the trade name "RITZ" which is owned and used by the Plaintiffs and in view of the fact that it is a worldwide reputable trade name in the field of luxury hotel services, distinctive and registered in the Commercial Register of the City of Paris, it is protected in the UAE pursuant to the Paris Convention of 1883 as the U.A.E is a signatory thereof.

The brief facts of this case are that the First Plaintiff owns and uses the trade name "RITZ" in its worldwide hotels' business and the second Plaintiff is also an international luxury hotel in Dubai and authorized to use the trade name owned by the First Plaintiff. The Defendant, who is also involved in the hotel business, was using a trade name and "RITZ" (trade name) was a part thereof (without permission of the "RITZ" First Plaintiff), for the hotel it manages in Fujairah, U.A.E. This trade name was registered by the Defendant at the U.A.E Ministry of Economy.

The Plaintiffs claimed that such use of the trade name 'RITZ' by the Defendant in its trade name "RITZ PLAZA HOTEL" causes confusion in the mind of the public who would think that the hotel owned by the Defendant is one of the hotels owned by the First Plaintiff. Such use would cause damage to the reputable name of the First Defendant and it is also an unfair competition for the Second Defendant who is licensed by the First Plaintiff to use the trade name in Dubai, U.A.E.

On 9th March, 2004 the Court of First Instance differentiated between the trade name and the trademark and found no similarity between the disputed trade names and dismissed the case on the ground that the Defendant owned the trade name and duly registered the same in the Commercial Register.

The Plaintiffs appealed the same on 4th June, 2004. On Appeal, the Appellant (Plaintiff), inter alia, stated that: "It is established that the provisions of Article (2) of the Federal Law No. (37) of 1992 regarding the trademarks provides that any form bearing distinctive shape such as names, words, signature, seals, images....shall be deemed a trademark".

As to the trade name and the trademark, ***the Paris Convention which the U.A.E joined on 18 March 1996, provides under Article (8) that "The trade name shall be protected in all the states of the Union irrespective of whether it is filed or registered, whether such trade name is, or not, part of industrial or trademark.*** The U.A.E is a signatory to this Convention and therefore, the trademark of the Appellant is the trademark which is protected, but not the trade name of the Respondent. As such, the pleading raised by the Respondent in this case is groundless by the fact and the Law.

On the above grounds, it was confirmed before the Court that the Respondent by using the word "RITZ" has infringed the right of the Appellant in its registered trade mark. Therefore, the Appellant could request the Respondent to desist from using the said word. The Appellate Court overruled the judgment of the lower court and ordered the Respondent to desist from using the word "RITZ" in its trade name.

The Defendant (Respondent in the Appellate Court) filed a Petition for Cassation challenging the judgment of the Appellate Court No. 8 of 2004. However, on 26 June 2006, the Court of Cassation dismissed its Petition.

PETITION FOR CASSATION NO. (566) SESSION 13 OF 1999**DOCTRINE OF RES JUDICATA MAY BE CHALLENGED**

The interpretation of Article (92) of the Civil Procedures Law and Article (49) of the Evidence Law and pursuant to the principle laid down by the UAE Court is that the doctrine of *res judicata* requires some conditions to be met before its application. These conditions include the unity of issues in the two causes of action. This unity requires the adjudicated issue to be essential and unchangeable. Moreover, the adjudicated issue shall form the basis of the second cause of action.

The criterion for characterizing a lawsuit is not what is claimed by the opponents. The criterion is what it sounds to the Court in light of the facts and application of the law thereto. It is established that the harm may be either stable or changeable in a manner that it will not be easy to absolutely determine the limits thereof in the event that it is aggravated or worsened.

It is acknowledged that the doctrine of *res judicata* prevents a litigant from claiming the same damages in court after the first lawsuit is concluded by giving a different reason than the one he gave in the first lawsuit for the recovery of damages against the same invasion of his right. That is to say a final judgment on the merits of the case bars further claims by the same parties based on the same cause of action.

However, in the case at bar, compensation was entered by the competent court for injury which was aggravated thereafter. The Court held that "if compensation is entered by the court for injury that aggravated thereafter, compensation may be claimed based on the aggravated harm. Therefore, the doctrine of *res judicata* shall not bar further claims by the same victim based on the same cause of action."

The said Doctrine is supported by other two petitions for cassation Nos. (804) and (846) of 2006, stating that: "A harmful act by a third party that causes the death of a victim, entitles the latter to claim compensation for the harm resulted thereby as well as compensation for any injury aggravating thereafter, even if such an act took place a moment before the victim's death. That is because the victim, during the period following the harmful act before his death, was able to gain his rights including the material compensation for the injuries he suffered before his death, the claim of which shall transfer to his heirs in addition to their right to claim compensation for his immediate death and loss of life.

If compensation is entered by the court for injury that aggravated thereafter, compensation may be claimed based on the aggravated harm. Therefore, the doctrine of res judicata shall not bar further claims by the same victim based on the same

CIVIL PROTECTION FOR TRADEMARKS UNDER U.A.E LAWS IS AVAILABLE UNDER UNFAIR COMPETITION CLAIM

The trademark owner has an exclusive right to use his trademark to distinguish his goods or services from those of the others. Therefore, whoever imitates, forges, or uses a trademark owned by a third party, is committing trademark infringement which might cause damage to the trademark owner. Such practices entitle the trademark owner to institute a law suit under unfair competition as per the provision of Article (282) of the U.A.E Federal Law No. (5) of 1985 as amended concerning Civil Transactions Code. The said provision states that: *“Any harmful act that causes damage to a third party requires the party who commits the harmful act to compensate the injured party even if he (the former) is a minor.”*

The above mentioned Article is confirmed by Article (66) of the U.A.E Federal Law No. (18) of 1993 concerning Commercial Transactions, which provides that: *“A trader shall not resort to fraud and cheating in selling the commodities nor shall he provide false statements in a manner that may cause harm to another competing trader. Otherwise, compensation shall be claimed.”*

Moreover, Article (40) of the U.A.E Federal Law No. (37) of 1992 as amended regarding Trademarks provides that: *“Whoever suffered damage or loss as a result of the actions stipulated in the two Articles (37) and (38) of this Law may file a case before the competent civil court to claim the payment of proper compensation from the party responsible for the action for the damage or loss he suffered”.*

Therefore, the civil protection for trademark under the U.A.E laws is available under the unfair competition claim.

A trader shall not resort to fraud and cheating in selling the commodities nor shall he provide false statements in a manner that may cause harm to another competing trader. Otherwise, compensation shall be claimed.”



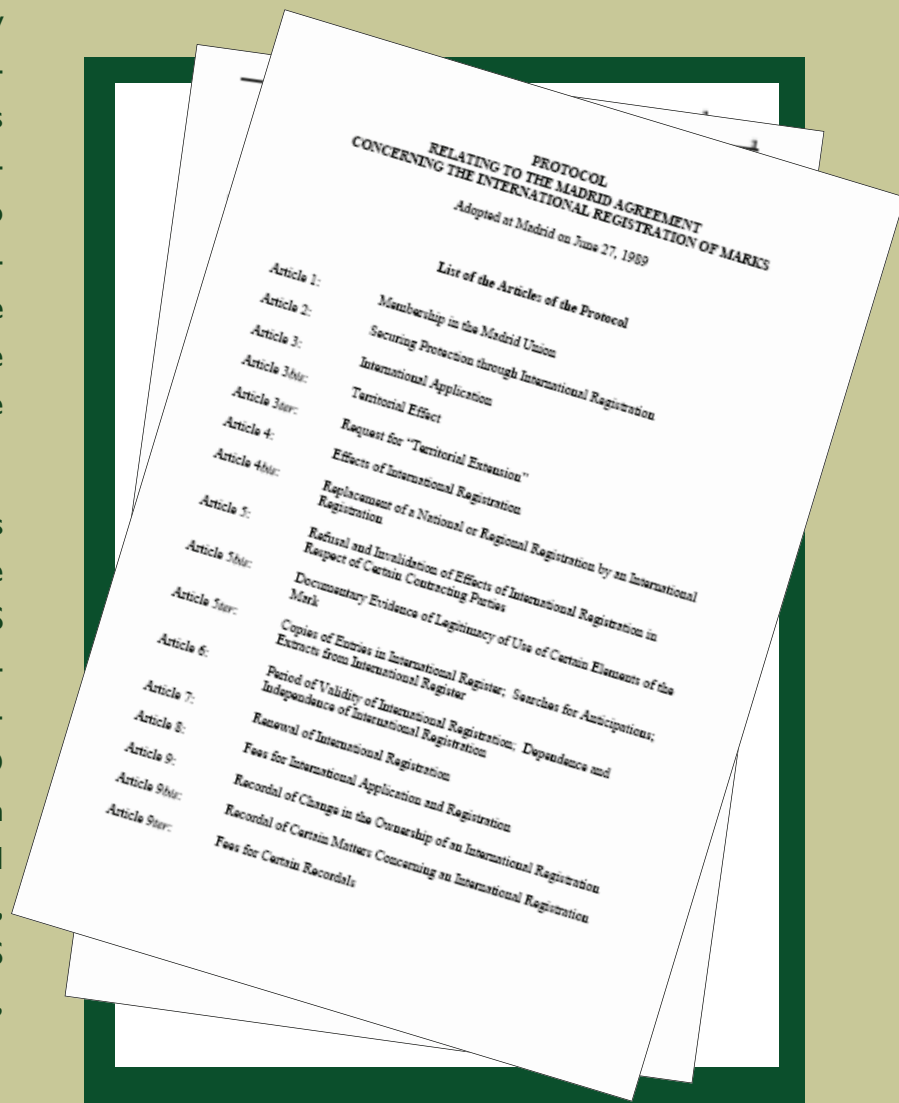
BAHRAIN: THE FIRST GULF STATE TO ADHERE TO MADRID PROTOCOL

On September 15, 2005, the Government of Bahrain deposited with the Director General of the World Intellectual Property Organization (WIPO) its instrument of accession to the Madrid Protocol Concerning the International Registration of Marks. The Madrid Protocol entered into force with respect to Bahrain on December 15, 2005.

The Madrid system for the International Registration of Marks (the Madrid system) is governed by two treaties: the Madrid Agreement Concerning the International Registration of Marks (Madrid Agreement) and the Protocol relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol).

The Madrid Agreement was concluded in 1891, and the Madrid Protocol was concluded in 1989 in order to introduce certain new features into the Madrid system. These features address the difficulties that prevent certain countries from adhering to the Madrid Agreement by rendering the system more flexible and more compatible with the domestic legislation of these countries.

It is to be noted that Bahrain is conducting progressive Free Trade Agreements with the U.S and is becoming an active member of major intellectual property treaties including WIPO Convention, Paris Convention for the Protection of Industrial Property, Rome Convention, Berne Convention, TRIPS Agreement, Madrid Protocol, PLT, WCT, and WPPT.



LIABILITY OF DESIGN AND SUPERVISION SERVICES CONSULTANTS IN CONSTRUCTION CASES

Generally, the Consultants which provide Design and Supervision Services in construction, attempt to limit their liability in the agreement, either by inserting an expressed provision or by limiting the claim against the professional indemnity insurance. Such attempts are prohibited by the UAE laws.

Under the UAE Federal Law No.5 of 1985 (“Civil Transactions Code”) the Consultant remains liable for any defects discovered during the defects liability period (ten (10) years from the date of the hand over of the works/construction). The Consultant is not permitted to limit its liability for less than ten (10) year period or reduce the quantum of damages, expressly or impliedly.

In this regard, Article 880 stipulates that:

1. *In case the subject of the contracting agreement is the construction of a building or other fixed establishment, the engineer shall draw up its design to be executed by the contractor under his supervision, they shall be guarantors in the compensation for owner of the work for what happens during the ten years of total or partial destruction in what is established of buildings or establishments and for any defect that threatens the safety of the building and its soundness if the contract does not include a longer period. All that shall be unless the two contracting parties have the will that this construction remain for a period less than ten years.*
2. *The obligation in the mentioned compensation shall remain even if the deterioration or destruction is resulting form a defect in the land itself or the owner of the work accepts to construct the buildings or the defaulted constructions.*
3. *The period of the ten years shall commence as from the time of the delivery of the work.*

Nevertheless, if any Consultant endeavors to reduce its liability by inserting a provision in the agreement, such provision shall be considered as null and void under Article 882 of the Civil Code.

Article 882 stipulates that *“It shall be null and void each condition meant to exempt the contractor or engineer from the guarantee or the limitation therefrom.”*

Furthermore, the Consultants also attempt to limit their liability by using the terminology “reasonable” for their skills and services in the Agreement, such terminologies should be avoided and discouraged.

However, the law distinguishes between two cases: if the Consultant is carrying out the designing services, he will be liable for any defects attributable to errors in design. On the other hand, if the Consultant designed and supervised the work then he will be jointly liable with the contractor for any errors or omissions that are not necessarily linked to the design.



Mr. Majed K. Zeineddine—Joins EILF

Mr. Zeineddine is an American educated lawyer with an LLM in Taxation from the prestigious Levin College of Law at the University of Florida and a Juris Doctor (J.D.) degree from Thomas M. Cooley Law School. Prior to completing his legal education, Mr. Zeineddine graduated from the American University of Beirut with a Bachelor degree in Science and a Masters degree in Petroleum Engineering from Imperial College, University of London.

Professionally, Mr. Zeineddine acted as a seasoned legal consultant to various private and public entities including Michigan Tax Tribunal, Chamberlain Tax Law Firm (Florida), and Shalakany Law Firm (Dubai).

Mr. Zeineddine has published various articles on corporate governance and taxation. Currently, his practice at EILF includes corporate and commercial matters with special focus on banking, project finance, and capital markets. Mr. Zeineddine is an active member of the Florida and American Bar Associations. Mr. Zeineddine speaks Arabic and English.

COMPARISON OF EXPENSES IN VARIOUS FREE ZONES OF THE UAE

Details	Jebel Ali Dubai	Dubai Airport	Saif Zone-SHJ	Hamriyah-SHJ	Fujairah	Ras Al Khaimah	Ajman	Dubai Media City	DUCAMZ Dubai	DMCC Dubai
License-Types										
Industrial	5500	10000	3500	2750	5000	5000	7000	20000 Publishing	-	8000
Commercial/Trading	5500	10000	3500	2750	5000	3000	3000	25000 Publishing	5500	15000
General Trading	30000	-	13500	12000	5000	15000	7000	15000	-	-
Service	8000	10000	3500	2750	2500	from7500	5000	-	-	15000
Registration Fees										
Free Zone Establishments	10,000	10,000	10,000	9,000	5,000	7,000	-	3,500	-	5,000
Free Zone Company	15,000	15,000	10,000	9,000	5,000	7,000	-	3,500	-	5,000
Branch	5,000	none	none	none	none	none	none	none	none	5,000
Rent										
Land	from20/sq.mt	from130/sq.mt	from10/sq.mt	from8sq/mt	from10sq./mt	from12sq/mt.	from10sq/mt.	Case-to-case	none	Case-to-case
Executive Offices	from60000	from10000 +7% Service Ch.	from27850	from18000	28000	from18000	from27500	350sq.ft	from24000	-
Warehouse	195000 (555sq.mt)	180000 (353sq.mt)	60000 (250sq.mt)	75000 (416sq.mt)	85000 (500sq.ft)	41000 (205sq.ft)	-	120sq.ft	35000	-
Warehouse (from)	-	-	110000 (602sq.mt)	-	-	-	-	-	50000	182000
Capital Requirements										
Free Zone Establishments	1,000,000	1,000,000	150,000	150,000	150,000	100,000	183,500	50,000	100,000	200,000
Free Zone Company/LLC	500,000	500,000	50,000	150,000	150,000	100,000	183,500	250,000 (Broadcasting)	100,000	200,000

Note: All the amounts mentioned above are in UAE Dirhams, *Source GN*

LAW FIRM for National and International LEGAL SOLUTIONS



- Corporate & Commercial Law
- Business Setup
- IPO
- Banking Law
- Financial Legal Services
- Intellectual Property Law
- Oil & Gas Law
- Real Estate & Construction
- Insurance & Reinsurance Law
- Constitutional Law
- Maritime Law
- Sports Law
- Arbitration
- Alternative Dispute Resolution
- Litigation