Middle East Commercial Law Developments

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Some Middle East governments, in the face of slumping oil revenues and stagnant economies in recent years, may have been tempted to retreat from the rough-and-tumble vagaries of world trade. Much to their credit, however, most Middle East governments have maintained a strategy directed towards integration into the global economy. On the legal front, the year 1998 appears to have been a time for consolidating previous gains, rather than spectacular new advances. This assessment seems applicable both to Middle East oil-exporting states and to other states in the region, such as Israel.

In that context, a former high-ranking U.S. State Department official was prompted to observe:

> [E]conomic developments in the Middle East—particularly in the area of macro-economic policy reform—are producing a brighter and more positive picture. They are setting the stage for greater economic growth, greater private sector participation, greater regional integration, and greater interaction with the global economy in years ahead.[1]

In the following brief review, we summarize some of the more significant commercial law developments that occurred in the Middle East during 1998.

I. Investment/Privatization

The Egyptian government continues to encourage foreign investment as an engine for local economic growth. In the past year, the Egyptian government enacted a series of laws designed to facilitate foreign investment. For example, Egyptian Banking Law No. 155

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1. Robert Pelletreau, *The Improving Climate for Private Investment in the Middle East*, ABANA (newsletter of Arab Bankers of North America, New York, N.Y.), Dec. 1998, at 8.

(1998), permits foreign ownership of Egyptian banks up to a ten-percent cap on shares owned by any one party. The law also provides for the privatization of one of the public sector banks. Similarly, Law No. 156 (1998), amended the Egyptian Insurance Law (Law No. 91 (1995)), removing the forty-nine percent ceiling on foreign ownership, permitting privatization of national insurance companies, and abolishing the ban on foreign nationals serving as corporate officers. Law No. 1 (1998) amended the General Egyptian Maritime Organization Law No. 12 (1964), permitting the private sector, including foreign investors, to conduct most maritime transport activities, including loading, supplying and repairing ships. Law No. 18 (1998) authorized the sale of minority shareholdings of electricity distribution companies to private shareholders. Law No. 19 (1998) changed the status of the telecommunication authority, Telecom Egypt, to a shareholding company, with the government as majority shareholder.[2]

Over the past year in Saudi Arabia, various government ministries and the Consultative Council, the Majlis Al-Shoura, have actively considered amendments to the Foreign Capital Investment Code, intending "to create an atmosphere more attractive to the foreign investor, through reduction of a great deal of bureaucratic measures, to review existing incentives and to develop new ones."[3] Among the additional incentives under consideration: waiving the de facto twenty-five percent minimum Saudi ownership requirement for companies established to perform strategic or export-oriented projects, granting a supplemental five-year holiday from Saudi income taxes for projects in qualified areas, and the more controversial incentive of reducing Saudi income tax rates, which currently rise to forty-five percent of net taxable income.[4] In a related development, a Saudi Ministerial Resolution added advertising, publications and publicity services to the list of approved projects subject to the Saudi Foreign Capital Investment Code and benefitting from the special investment incentives in that code.[5]

Saudi Arabia made notable strides in 1998 toward privatization in the telecommunications and power sectors. Privatization of the telecommunications sector moved forward with the creation of the Saudi Telecommunications Company (STC). As an incorporated commercial entity, the STC will facilitate privatization in this important sector. Later in 1998, the Saudi Council of Ministers announced plans to restructure the power sector as well. The proposal adopted by the Saudi government will create a single unified electricity company for the Kingdom, called the Saudi Electricity Company, absorbing the four current regional Saudi power companies.[6]

Abu Dhabi Law No. 2 (1998), Concerning the Regulation of the Water and Electricity Sector, is among the most recent initiatives of the Abu Dhabi government in pursuit of its privatization program. That law creates the Abu Dhabi Water and Electricity Authority, designed to replace the Abu Dhabi Water and Electricity Department.[7] Pursuant to that

2. *See, e.g.*, U.S. DEP'T ST., COUNTRY COMMERCIAL GUIDE, FY 1999, EGYPT (1998), ch. VII, § 1 [hereinafter COUNTRY COMMERCIAL GUIDE].

3. *Saudi Economic Survey*, Dec. 30, 1998, at 7. Portions of this information were contributed by Maren Hanson, Law Offices of Dr. Mohamed H. Hoshan (Riyadh).

4. Christopher H. Johnson, *Foreign Investment*, 3 MIDEAST UPDATE no. 2 (newsletter of Williams, Mullen, Christian & Dobbins, Washington, D.C.), 1998, at 1.

5. Saudi Ministerial Resolution No. 17/K/D (Nov. 9, 1998).

6. *See, e.g.*, *Saudi Privatization Begins with Telecom, Power*, U.S.-ARAB TRADELINE (U.S./Arab Chamber of Commerce), Jan. 8, 1999, at 3–4.

7. *See generally* Angus Hindley, *Abu Dhabi Lights a Beacon For Reforms*, 2 MIDDLE E. ECON. DIG. (Dec. 25, 1998).

law, the Authority will be responsible for organizing and developing government policy pertaining to the water and electricity sector, including matters relating to privatization.[8]

II. Companies Law

Early in 1998, the Egyptian Peoples Assembly approved Law No. 3 (1998), amending the Egyptian Companies Law. Under Law No. 3, the procedures for establishing an Egyptian company are streamlined, in a fresh effort to trim bureaucracy and stimulate investment,[9] permitting most companies to begin operating as soon as the requisite corporate documents are submitted to the Egyptian Ministry of Economy (Companies Department). Egyptian government authorities are given ten days in which to review the submitted documents and, if those government authorities do not object within that time, then the company is automatically registered without further proceedings. Law No. 3 also lowers the required subscription of paid- up capital from twenty-five percent to ten percent for the first three months on incorporation, after which such capital requirement is increased to twenty-five percent, grants companies more flexibility in dividend distribution, repurchase of shares, and employee profit-sharing plans; and exempts some companies from the requirement of maintaining Egyptian nationals on their boards of directors.[10]

Also in 1998, UAE Federal Law No. 15 (1998) amended the UAE Commercial Companies Law (CCL), stating that—with respect to companies established in UAE free zones, known as Free Zone Establishments (FZEs)—the UAE Free Zone Regulations will take precedence over conflicting provisions of the CCL. The CCL and the Free Zone Regulations contain conflicting provisions on several issues, one of the most prominent examples being reflected in article 22 of the CCL, which provides that at least fifty-one percent of UAE companies must be owned by UAE nationals; however, FZEs are allowed to be one-hundred percent non-UAE owned. Thus, UAE Federal Law No. 15 further legitimizes certain provisions of the Free Zone Regulations.[11]

The UAE government appears to be nearing completion of a law establishing a Federal Securities and Commodities Market as well as the Securities and Commodities Committee (SCC) responsible for regulating that market.[12] Under the proposed law, the SCC would

8. *Abu Dhabi Water and Electricity Authority Established*, MONTHLY NEWSL. (newsletter of Afridi & Angell, United Arab Emirates), July 1998. The Abu Dhabi law also (i) establishes the Abu Dhabi Power Corporation which will, among other things, be authorized to conclude agreements relating to the management of production, transmission, distribution and service companies owned fully by the government, and (ii) provides for the creation of the Bureau of Regulation and Supervision for the Abu Dhabi Water and Electricity Sector. *See id.*

9. *See In Brief*, MIDDLE E. ECON. DIG. (EMAP Business International Ltd., UAE), Feb. 6, 1998, at 16. Investors usually compare the relative procedural simplicity of establishing a company under the Egyptian Companies Law with the legislative incentives and guarantees offered to companies formed under the Egyptian Investment Law, Law No. 8 (1997). *See generally* Mahammad B. Talaat, *Egypt's New 1997 Investment Guarantees and Incentives Law*, 21 MIDDLE E. EXEC. REP. (Middle East Executive Reports Ltd.), Jan. 1998, at 9.

10. *See, e.g.*, Fouad John Matouk, *Egypt Amends Companies Law To Provide Expedited Approval Procedure for Incorporation*, 21 MIDDLE E. EXEC. REP. (Middle East Executive Reports, Ltd.), May 1998, at 8.; COUNTRY COMMERCIAL GUIDE, *supra* note 2, ch. VII, §2.

11. *See UAE—Amendments to the Commercial Companies Law No. (8) of 1984*, GULF BUS. L. REV. (newsletter of Trowers & Hamlins), Jan. 1999, at 3. The 1998 amendment to the CCL is also relevant to the oil, gas and power sectors, as it states that the CCL shall not apply to a company engaged in oil exploration, drilling, marketing and transportation, electricity and gas production, water desalination, or a company granted a Council of Ministers' exemption, where the company's memorandum of association specifically provides otherwise. *See generally UAE: Company Law to Pave Way For Energy Utility Ventures*, MIDDLE E. ECON. DIG. (EMAP Business International Ltd., UAE), July 19, 1998, at 24.

have authority to prepare regulations and supervise the market. Although the draft UAE law focuses primarily on the establishment of the market and the SCC, there are also a few important substantive requirements addressed in that law—particularly directed toward disclosure, transparency and integrity of the market and transactions thereunder. For example, article 32 of the draft law requires companies with securities listed on the market to notify the SCC of any information that may affect the price of such securities, as soon as that information is available.

Market integrity also appears to underlie Omani Decree 80/98, regarding that country's securities market. The main structural reform contained in Decree 80/98 is the creation of the Capital Market Public Authority (CMPA), authorized to oversee and regulate the Omani Securities Market, which was previously the responsibility of the Muscat Securities Market itself. Decree 80/98 also imposes a wide range of new disclosure and reporting obligations on companies quoted on the Muscat Securities Market and those seeking to be listed in the future. Under the new decree, the CMPA is granted broad power to supervise and regulate market brokers and others providing financial market services in Oman.[13]

In Israel, reform of the Companies Ordinance has been much discussed in recent years, but no legislative action was taken in 1998. However, minor changes were enacted in other areas of Israeli corporate law. For example, regulatory amendments were adopted that facilitate a public, Tel Aviv Stock Exchange (TASE), company's approval of corporate transactions involving interested parties.[14]

III. Government Procurement

In May 1998, the Egyptian government enacted a new Tender Law, Law No. 89, with implementing regulations following in September. The Egyptian Tender Law governs government procurement of goods and services by all Egyptian "ministries, departments, local government units, and public and general organizations," unless otherwise excepted.[15] The Tender Law was enacted in an effort to improve transparency and predictability in the Egyptian government tender process. For example, the Tender Law requires government purchasers to explain why a bid was accepted or rejected, gives consideration to the technical and qualitative aspects of a tender, not merely lowest bids, and seeks to reduce delays in the return of bid bonds, which cannot exceed two percent of the estimated contract value, to unsuccessful tenderers or upon expiry of the bid. The Egyptian Tender Law expressly permits arbitration of disputes, provided that the necessary prior government approval has been obtained, as required by the Egyptian Arbitration Law. According to some Egyptian attorneys, that Tender Law provision should end the long debate on whether contracts with the Egyptian government may be subject to arbitration.[16]

12. *See, e.g.*, Monsour, Commentary on the Emirates Securities and Commodities Market and Committee, LAW UPDATE (newsletter of Al-Tamimi & Co.), Dec, 1998, at 4; *see also First Signs of a Formal Bourse*, MIDDLE E. ECON. DIG. (EMAP Business International Ltd., UAE), Dec. 4, 1998, at 34.

13. *See, e.g.*, Alastair Hirst, *New Capital Market Law Makes Important Changes*, MIDDLE E. EXEC. REP. (Middle East Executive Reports, Ltd.), Sept. 1998, at 9; MIDDLE E. ECON. DIG. (EMAP Business International Ltd., UAE), Dec. 11, 1998, at 16.

14. This information was contributed by Eric Sherby, Yigal Arnon & Co. (Tel Aviv).

15. Tender Law, Law No. 89 (1998) (Egypt).

16. *See, e.g.*, Azmi & Ibrahim, *Egypt's New Law on Public Tenders*, ARAB REGION NEWSL. (International Bar Association), Dec. 1998, at 4.

Meanwhile, the Contractors Committee of the Riyadh Chamber of Commerce and Industry prepared a study on problems arising under the Saudi Tender Law and its implementing regulations.[17] Over two thousand businessmen in the Saudi contracting sector provided input for the study. In many instances, problems that have arisen are attributed to conditions and circumstances that did not exist at the time the Tender Law was initially drafted over twenty years ago. The Saudi Ministry of Finance and National Economy has sought to solve these problems on a piecemeal basis, issuing numerous circulars and explanatory notes, gradually transforming the previously concise and accessible rules.

Recent amendments to the UAE Federal Tenders Regulations gave individual Federal ministries limited authority to make direct purchases, rather than effecting all purchases through the Federal Ministry of Finance and Economy. Contracts valued at UAE Dirhams 100,000 or less may be executed directly by the purchasing ministry, with the Federal Ministry of Finance and Industry retaining authority to supervise the documentation relating to such transactions. These amendments to the UAE Federal Tenders Regulations also create a register of approved suppliers and contractors, to be kept at the Federal Ministry of Finance and Industry.[18]

IV. Commercial Agency/Distributorship

A. Bahraini Amendments

Early in 1998, Bahrain enacted some substantial amendments to its commercial agency law.[19] These amendments liberalize a number of provisions of existing Bahraini law—including abolition of the statutory requirement of exclusivity for local commercial agents. The amendments which should have substantial effect on future Bahraini commercial agency arrangements and on the resolution of disputes arising from their termination or non-renewal, reflect the Bahraini Government's continuing efforts to allow for a more equitable relationship between principal and commercial agent,[20] and to open the market for competition among local traders and thus expand the consumer's options.[21]

Despite these significant changes to the literal provisions of the Bahraini commercial agency law, in practice the effect of the 1998 amendments might be less dramatic, particularly in the short term. For example, elimination of statutory deemed exclusivity is a significant liberalization in Bahraini commercial agency law, allowing principals to appoint multiple non-exclusive local commercial agents for the same products. However, that liberalization probably will not affect an existing commercial agency agreement, such as one in which the parties may have already contractually agreed to exclusivity. Moreover, in future negotiations, one would expect the larger Bahraini merchants to press hard for con-

17. Portions of this information were contributed by Maren Hanson, Law Offices of Dr. Mohamed H. Hoshan (Riyadh).

18. *See* Mimi Mann, *U.A.E.: Federal Tenders Regulations Amended*, 21 Middle E. Exec. Rep. (Middle East Executive Reports, Ltd.), Apr. 1998, at 6.

19. *See* E. Hugh Stokes & Howard L. Stovall, *Bahrain Liberalizes Commercial Agency Law*, 21 Middle E. Exec. Rep. (Middle East Executive Reports, Ltd.), Apr. 1998, at 9.

20. *See* Minister of Commerce & Agriculture Habib Ahmed Kassim, *Innovative Marketing Policies Pay Dividends*, Bahrain Country Report (1994), at 2.

21. *See* Comments of Bahraini Minister of Commerce Ali Saleh Abdullah Al-Saleh, *Bahrain: Amendment to Trading Law Proposed*, Middle E. Econ. Dig. (EMAP Business International Ltd., UAE), Mar. 27, 1998, at 18.

tractual exclusivity, particularly given the relatively small size of the Bahraini domestic market for some products. Importantly, Bahraini law continues to provide statutory support to a qualified commercial agent's claims for compensation in the face of a principal's unjustified termination or non-renewal. However, such compensation claims may now be complicated because a principal may appoint more than one Bahraini commercial agent for the same products.[22]

B. Saudi Circular

A few years ago, the Saudi Ministry of Commerce began seeking comment within the local business community on a draft commercial agency regulation.[23] The draft regulation, if enacted, would entitle a distributor to compensation, as determined by the competent Saudi court, the Board of Grievances, in the event the distribution agreement was terminated or not renewed, provided that the distributor had not breached the agreement or, in the event of a non-renewal, had been highly successful in creating demand for the products. Similarly, new commercial agency legislation has been under consideration by the Consultative Council (Majlis Al-Shoura), although it is difficult to speculate as to when, or whether, new regulations will be enacted, or what changes may be made to the text of the draft regulations previously developed by the Saudi Ministry of Commerce.

In October 1998, the Saudi Ministry of Commerce issued a circular commenting on a number of issues relating to commercial agencies and distributorships, including registration requirements.[24] The circular urges Saudi merchants acting as commercial agents and distributors for foreign firms to register their agreements with that Ministry. The circular also states that commercial agency agreements will not be accepted for registration unless they include provisions:

(a) obligating the principal and commercial agent to comply with any applicable standards set by the Saudi Arabian Standards Organization (SASO) and the supply of spare parts (with the additional requirement that the agent be obliged to provide spare parts and maintenance service in all regions of the Kingdom), throughout the term of the agency and for one year thereafter or until the appointment of a new agent;
(b) requiring the foreign supplier to provide a certificate of origin for the goods and products;
(c) requiring the parties to announce any defects in the products and to undertake to withdraw such defective products from the market for repair or replacement at the expense of the producer;
(d) calling for disputes involving the commercial agency relationship to be resolved by the competent authorities in Saudi Arabia (since 1988, the Ministry of Com-

22. Similar issues are raised by recent liberalization of the Omani commercial agency law, which now also permits multiple non-exclusive commercial agency appointments. *See* Richie Alder, *Oman Commercial Agency Law Amendments: Effects on Future Agreements, Dispute Resolution*, 20 Middle E. Exec. Rep. (Middle East Executive Reports Ltd.), Jan. 1997, at 8.

23. *See* Haberbeck & Ghazzawi, *Saudi Arabia's New Draft Agencies Regulation*, Middle E. Com. L. Rev. 114 (Nov.-Dec. 1995).

24. Portions of this information were contributed by George Sayen, Legal Advisors (Riyadh).

merce had accepted agreements for registration which provide for foreign dispute resolution); and

(e) requiring the agent to provide technical and managerial training to Saudis.

It will take some time to determine how strictly the Saudi Ministry of Commerce will apply these new requirements in practice.

C. Yemeni Law

In 1998, Yemeni businessmen and lawyers sought to address the implications of Yemen's new law on commercial agencies and branches of foreign companies, Law No. 23 (1997). Although Law No. 23 cancelled the prior Yemeni law regarding commercial agencies and branches, the applicable rules for branch offices were mostly unchanged. However, Law No. 23 did contain some changes to the substantive rules relating to commercial agencies.

Law No. 23, like the predecessor law, applies to a wide range of agents, defined to include buy-sell distributors (distribution agent for its own account). Law No. 23 adds a new category of agents not explicitly included in the prior law, maritime agents, defined as agents who seek to procure maritime contracts in the name and for the account of a foreign company in Yemen.

Law No. 23 also contains some dealer protections that were not expressly stated in the prior Yemeni legislation. For example, article 20 of Law No. 23 gives exclusive jurisdiction to the Yemeni courts to resolve all Yemeni commercial agency disputes. In addition, article 19 of the new law permits a terminated Yemeni commercial agent to block the registration of a foreign company's replacement commercial agent in Yemen, pending an amicable or judicial resolution of the terminated commercial agent's claims.

V. Licensing/Intellectual Property

Omani Decree 63/98 approved the accession of Oman to the Paris Convention for the Protection of Industrial Property and to the Berne Convention for Protection of Literary and Artistic Works.[25] Oman's accession to the Paris and Berne Conventions may be seen as part of that country's efforts towards membership in the World Trade Organization (WTO), and as a further legislative measure intended to encourage inward foreign investment and technology transfer. Decree 63/98 might also serve to defuse some criticism expressed by the U.S. Trade Representative (USTR) as to current intellectual property protection in Oman.[26]

Although many Middle East countries have enacted or supplemented their intellectual property laws in recent years, a number of Middle East countries seemed to stumble in 1998, according to the Special 301 annual review by the USTR.[27] For example, Kuwait and

25. *See* Hirst, *Oman to Join Paris and Berne Conventions*, Arab Region Newsl. (International Bar Association), Dec. 1998, at 13.

26. Similarly, Omani Ministerial Decision 43/98 was issued in 1998, providing for a special register at the Agencies and Trademark Department with the Directorate General of Commerce where details of the literary, artistic or scientific work to be protected will be recorded. *See Copyright*, Gulf Bus. L. Rev. (newsletter of Trowers & Hamlins), Aug. 1998, at 1.

27. *See* Mimi Mann, *Intellectual Property Protection: 1998 USTR Special 301 Decisions; Some Reactions from the Region, Software Study on Privacy*, 20 Middle E. Exec. Rep. (Middle East Executive Reports Ltd.), May 1998, at 17.

Israel joined Egypt on the USTR's 1998 priority watch list. Middle East countries on the USTR's watch list in 1998 were Bahrain, Jordan, Oman, Qatar, Saudi Arabia, and the UAE. The USTR also made special observations concerning inadequacies in intellectual property protection in Lebanon and Yemen.

In October 1998, Jordan enacted Law No. 14, amending its Copyright Law. However, observers continue to debate whether these amendments will adequately address the inadequacies in the Jordanian regulations and enforcement practices highlighted by the USTR.[28]

Under the auspices of the Gulf Cooperation Council (GCC) patent office, which officially opened in Riyadh in late 1998, patent holders are able to register their patent at one location to cover the six GCC countries—Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates. The unified GCC patent office is designed so that a patent owner, once registered with that office, is automatically afforded protection throughout the member GCC states.[29]

In Israel, some of the more significant intellectual property law developments of 1998 are contained in a statute and two Israeli Supreme Court decisions.[30]

The Israeli Patents Law was changed in 1998 to redefine the term exploitation of an invention for patent purposes, as follows:

(a) In respect of a product invention: the production, use, offer for sale, sale, or import; and
(b) In respect of a process invention: the use of the process and, regarding the product directly derived from the process, the production, use, offer for sale, sale, or import, but excluding any of the following:
    (i) An act that is not on a commercial scale and is not commercial in character;
    (ii) An experimental act in connection with the invention, the object of which is to improve the invention or to develop another invention;
    (iii) An experimental act in order to obtain a license (Health Ministry Approval) to market the product after the patent has lapsed.[31]

Among the effects of this changed definition, while certain matters now are explicitly within the ambit of prohibited acts, experiments conducted on an invention protected by a patent are now allowed. This changed definition may be of assistance to, for example, manufacturers of generic pharmaceutical products.[32]

In addition, subject to certain legislative conditions, the Israeli Commissioner of Patents is now empowered, on request, to extend the duration of a medical product patent, normally twenty years, for a further term not exceeding five years. This provision seeks to redress a possible imbalance created by the redefinition of the term exploitation of an invention.

28. *See, e.g., Jordan's Amended Copyright Law: Major Changes and Commentary GGC First Copyright Forum in Bahrain*, 76 ABU-GHAZALEH INTELL. PROP. BUL. 5 (1999). An English translation of Law No. 14 (1998) is published in 74 ABU-GHAZALEH INTELL. PROP. BUL. 4–5 (1998).

29. *See* Ashour, *GCC Patent Office to Open in Nov. 1998*, LAW UPDATE (newsletter of Al- Tamimi & Co.), Nov. 1998, at 7.

30. This information was contributed by Michael Ophir, Sanford T. Colb & Co. (Rehovot).

31. Israeli Patents Law (Amendment No. 3), 5758–1998.

32. *See, e.g.*, the law suit initiated in Israel by Eli Lilly against Teva Pharmaceutical Industries, and reported by Whatstein, *Court Recognises Post-expiration Injunction and Post-expiration Damages*, INT'L BUS. LAW., Feb. 1999, at 84.

On another important Israeli intellectual property matter in 1998, the Supreme Court addressed the issue of whether a claim of unjust enrichment, under the Unjust Enrichment Law, ranks as an independent cause of action or whether it supplements legislation relating to intellectual property.[33] In other words, is it appropriate for a court to grant relief, by way of unjust enrichment, to a person who manufactures certain products, but does not register them as patents or designs, where another person makes unauthorized reproductions of those products and markets them? The Supreme Court's majority opinion answers that question with a firm and unambiguous legal ruling empowering the courts to extend, in principle, the law of unjust enrichment to the area of intellectual property—at least where Israeli intellectual property law itself, in certain circumstances, does not afford protection to an injured party.

In a second important 1998 Israeli judicial decision,[34] the Israeli Supreme Court upheld a ruling by the Commissioner of Trademarks, giving recognition to a well-known mark even where that mark had not been registered in Israel for the particular commodity in question, clothing in this case. Although neither the doctrine of international goodwill nor the doctrine of dilution was specifically referenced in section 11(6) of the Trade Marks Ordinance, the Israeli Supreme Court held that the ideas inherent in those doctrines could be combined under the concept of unfair trade competition.[35] The unjustified use, by a third party, of a name which had acquired international goodwill and repute, in order to promote its products, constitutes infringement of the lawful rights held by the proprietor of the well-known mark, its diminution and dilution, and unfair competition that require redress under the law.

VI. Environmental Regulations

Many Middle East countries have only recently enacted and begun implementing general environmental legislation. In some cases, those laws do not contain the detailed or specialized rules found in similar laws in the United States—for example, specific rules for solid waste, hazardous chemicals, marine pollution and the like. In other cases, however, local or municipal regulations will provide additional requirements to supplement a Middle East country's general environmental laws.

In addition, under general principles of law in the Middle East—whether Islamic law rules in countries like Saudi Arabia, or civil law rules adopted elsewhere in the region—a party causing environmental damage might be liable under either contract or tort for actions that cause injury to the physical or financial interests of another party. In extreme cases, general criminal law rules in a Middle East country might be relevant, as occurred a few years ago in Lebanon, where the import and dumping of toxic wastes was deemed a "violation of the domestic security of the country."[36]

The year 1998 was a milestone for Egypt's Environmental Law, because of Law No. 4 (1994). That law provides for the establishment of an Agency for Environmental Affairs, empowered to draw up general environmental protection policy, to prepare plans needed

33. *See* A.S.Y.R. Import Mfg. & Distrib. v. Forum Accessories & Prod. B.M., and two other appeals from a decision of the Israeli district court; *see also* Unjust Enrichment Law 5739–1979.

34. *See* Yigal Bakardi v. Bacardi & Co. Ltd. (Israel).

35. *See* Trade Marks Ordinance (New Version), 5732–1972.

36. Mallat, Lebanon Country Survey, 1994 Y.B. OF ISLAMIC & MIDDLE E. L. 222.

to preserve and develop the environment, and to follow-up implementation in coordination with other competent government authorities. That law requires existing companies to comply with its provisions during a four-year grace period, expiring in February 1998. However, the Egyptian government informally extended the grace period until the end of 1998.[37]

In accordance with Federal Law No. 7 (1993), the UAE created a Federal Environmental Authority (FEA). The FEA's functions are to: draft laws, carry out studies, propose policy, con duct research, monitor the sea, land and air environment, and protect against hazards that may harm human health, crops, wildlife, other natural resources and the atmosphere. The FEA is authorized to monitor both the public and private sectors, and to have a licensing role over economic activities that might affect the environment. The FEA has been helping to prepare a supplemental environmental protection law, reportedly awaiting approval by the UAE President, and containing harsh sanctions on polluters.[38] In another recent initiative, UAE Council of Ministers Resolution No. 5 (1998) prohibits the use of marine tankers, barges and other vessels as floating warehouses for the storage or transport of oil or its derivatives. The storage and transport of contraband Iraqi oil became a serious environmental problem in the UAE in 1998, with leaking oils , which were caused by improper storage, rendering coastal water desalination facilities temporarily inoperable.[39]

VII. Tax/Currency Regulation

In January 1998, the Egyptian People's Assembly passed Income Tax Law No. 5, amending two articles of the Income Tax Code to eliminate the tax benefit accruing to banks that borrowed funds to acquire treasury bills, thereby receiving both tax relief for the interest on the loans as well as a tax exemption for the income from the treasury bills. Under Law No. 5, the amount of a bank's financing and administrative costs of acquiring treasury bills from borrowed funds now reduces the amount allowed as exempt treasury bill income.[40]

The Omani government, facing a substantial budget deficit in recent years, decided to implement a range of revenue-raising measures in 1998 and 1999, including customs duties on vehicles doubling to ten to fifteen percent, corporate rate tax rates rising to twelve percent, and the tax increasing on luxury goods.[41]

In Israel, there has been a significant restriction placed on the tax exemption for capital gains realized on the Tel Aviv Stock Exchange (TASE) or Israeli-approved stock traded on NASDAQ or NYSE. The Israeli Inflation Adjustment Law has been amended so companies previously exempt from Israeli capital gains tax are no longer exempt. As of January 1, 1999, certain companies are subject to Israeli capital gains tax on gains arising from the sale of shares traded on TASE, NASDAQ and the NYSE.[42]

37. *See, e.g.*, COUNTRY COMMERCIAL GUIDE, *supra* note 2, ch. V.

38. *See* Riddick, *Draft Environmental Law*, ARAB REGION NEWSL. (International Bar Association), Dec. 1998, at 17; *Emirates Start to Clean up Their Act*, MIDDLE E. ECON. DIG. (EMAP Business International Ltd., UAE), Dec. 4, 1998, at 42.

39. *See, e.g.*, Sabita Majid, *Gulf Maritime Legislation Badly Outdated, Say Lawyers*, GULF NEWS, Feb. 18, 1998, at 3.

40. *See, e.g.*, *International Bureau of Fiscal Documentation, Taxes and Investment in the Middle East*, Egypt, Jan. 1999, at 3; *Mostafa, Give me Shelter*, BUS. TODAY, Apr. 1998, at 48.

41. *See, e.g.*, *Budget Deficit Set to Double in 1999*, MIDDLE E. ECON. DIG. (EMAP Business International Ltd., UAE), Jan. 15, 1999, at 21.

42. 42. This information was contributed by Yael Katz, Deloitte and Touche LLP (New York).

In addition, on April 28, 1998, the Israeli Minister of Commerce introduced a number of amendments to the foreign currency control regime in Israel, relaxing the system of permits for control of currency transactions.

Prior to these amendments, control of the currency was subject to a system of permits, allowing only certain foreign currency transactions. The Israeli system of permits included a general permit, specific permits and personal permits, which resulted in many transactions being considered illegal since they did not come within the scope of any applicable permits. Additionally, many foreign currency transactions were required to be executed only through an authorized dealer.

A new general permit has been published by which all transactions in foreign currency with foreign residents are allowed, except for a limited list of transactions relating to certain investments of individuals and specific future transactions conducted with foreign residents. Additionally, the 1998 amendments cancel the requirement that every transaction be conducted through an authorized dealer.

The change in the Israeli currency control regime eliminates the prior obligation to present documentation as proof to the legality of the transaction. This pertains as long the transaction is not one of the transactions that have been specifically prohibited or restricted in the general permit. Nevertheless, the permit to conduct transactions in foreign currency with foreign residents is subject to a reporting duty and an obligation to disclose certain information.

With the cancellation of the requirement of conducting deals through an authorized dealer, various reporting obligations that were previously imposed on the authorized dealer are now imposed on the banking institutions or brokers involved in the transfer of currency. Also, a reporting requirement has been imposed on financial institutions.

Under the Israeli rules, provident funds are still limited to a ceiling of a five-percent asset value for investment in foreign currency, foreign stock and foreign future derivatives. Additionally, the fund is prohibited from purchasing or possessing direct holdings in assets of any kind in foreign countries including real property. Pension funds and insurance companies are prohibited from conducting certain transactions, such as the purchase of foreign currency for the sole purpose of holding it in an account, the receipt of foreign currency on behalf of an Israeli resident, and future transactions involving the payment or receipt of foreign currency.

Despite these amendments, an Israeli resident, including an Israeli bank, is still not allowed to conduct future transactions with a foreign banking entity, if the following applies: (a) one of the basic assets of the transaction is Israeli currency, and (b) payment is attached to foreign currency, unless the transaction is a forward transaction with a pre-determined price and for a period not exceeding thirty days. However, two other conditions are no longer in effect: the forward transaction need not be connected to an approved transaction, and the banking institution conducting the transaction with the foreign bank does not need to conduct an audit of the payments with the Bank of Israel.

VIII. Courts/Disputes

For many years, Omani law had not adequately addressed the recognition and enforcement of foreign arbitral awards before the Omani courts.[43] However, Omani Decree No.

43. *See, e.g.*, Hirst, *Court Decisions on Commercial Arbitration in the Sultanate of Oman*, MIDDLE E. COMM. L. REV., Mar.-Apr. 1995, at 77. *But see* Terence M. Lane & William S. Morton, *First Enforcement Of An ICC Arbitration Award In Oman*, 8 MIDDLE E. EXEC. REP. (Middle East Executive Reports Ltd.), Oct. 1985, at 9.

36/98 has now provided for Oman's accession to the 1958 United Nations Agreement on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention). Oman's accession to the New York Convention is consistent with that country's recent enactment of Decree 13/97, authorizing Oman's commercial courts to recognize and enforce qualifying foreign judgments and arbitration awards.[44]

Despite expectations that Israel's parliament, the Knesset, would take steps to implement a proposed structural reform of the country's court system, no such action was taken in 1998. However, two U.S.-inspired statutes were enacted in Israeli in 1998—the Freedom of Information Law and the Prevention of Sexual Harassment Law. Under the Freedom of Information Law, substantially all governmental agencies will be required, by May 1999, to establish procedures for Israeli citizens to apply to obtain information maintained by such agencies. Requests for information will not need to set forth reasons therefore, and governmental agencies will generally be required to respond to such requests within thirty days. Under the Prevention of Sexual Harassment Law, sexual harassment has been criminalized, with the maximum prison term being four years; statutory compensation of New Israeli Shekel (NIS) 50,000 may be awarded without proof of actual damage.[45]

In coming years, Middle East commercial laws are likely to strengthen the free trade trends suggested in this summary as countries in the region meet their commitments to WTO requirements and as the oil-exporting countries of the region continue to adjust to the reality of limited oil revenues.

44. Abdelrahman Mohamed Elnafie, *Oman Reforms Its Judicial System: New Commercial Court Law*, 20 MIDDLE E. EXEC. REP. (Middle East Executive Reports Ltd.), Mar. 1997, at 8; Trowers & Hamlins, *New Commercial Court*, ARAB REGION NEWSL. (International Bar Association), Nov. 1997, at 7.

45. This information was contributed by Eric Sherby, Yigal Arnon & Co. (Tel Aviv).