Middle Eastern Law*

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I. A Year of Painful Progress in the Middle East: 2002 Legal Year in Review**

The War on Terrorism, a looming war with Iraq, and the continued escalation of violence between Israelis and Palestinians dominated the political and economic climate of the Middle East in 2002, much as it had the previous year.

After the successful military campaign by the United States against the Taliban and al-Qaeda in Afghanistan, many members of the terrorist organization fled to and now operate in Pakistan. However, the United States and its allies in the war continued to have great success with tracking down members of the group and thwarting plans of additional terror. This success was capped with the capture of Khalid Sheikh Muhammad, the number three man in the network. Despite this success, al-Qaeda showed a willingness to continue its campaign of terror with soft targets, such as tourist locales in Kenya, Bali, Karachi, and Tunisia. As the U.S. Government has stated on many occasions, the War on Terrorism will continue for the foreseeable future.

The War on Terrorism, specifically the worldwide crackdown on al-Qaeda, continues to see more activity on the part of America's allies. On February 18, 2003, Saudi Interior Minister, Prince Nayef Bin Abdulaziz, announced that ninety Saudi nationals would stand trial, accused of membership in al-Qaeda. Prince Abdulaziz also said that 250 other nationals were being detained pending an investigation into their connections to Osama bin Laden. He gave no further details about the charges or the dates at which they would stand trial.

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The looming war with Iraq caused the markets, both in the United States and abroad, to be skittish throughout the year. President George W. Bush made it clear in the January 29 State of the Union address to Congress, that confronting Iraq on its continued violations of United Nations (U.N.) Security Council Resolutions and its programs of weapons of mass destruction (WMD) would be the next phase in the War on Terrorism. President Bush stated that, along with Iran and North Korea, "[s]tates like these, and their terrorist allies, constitute an axis of evil."[1] As early as February 6, 2003, Colin Powell said in testimony before the House of Representatives International Relations Committee that a "regime change [in Iraq] is something the U.S. might have to do alone."[2] Later, on October 7, 2002, Bush elaborated upon this concept in a speech, stating that regime-change also meant a change by the regime itself, not only a change in regime. The President also commented on Iraqi compliance with U.N. resolutions and disarmament, stating that "[t]hese steps would also change the nature of the Iraqi regime itself. America hopes the regime will make that choice."[3] On September 12, 2002, Bush threw down the gauntlet in a speech to the U.N. General Assembly stating that "[m]y nation will work with the U.N. Security Council to meet our common challenge."[4] He went on to say, "[i]f Iraq's regime defies us again, the world must move deliberately, decisively, to hold Iraq to account."[5] The challenge was laid before the U.N. either to enforce its decrees or to become irrelevant.

In response to the efforts of the United States, the Security Council passed Resolution 1441 on November 8, 2002, demanding that Iraq declare whatever weapons of mass destruction it might have in its possession and again open itself to inspections or face "serious consequences." On December 7, 2002, one day prior to the deadline set in Resolution 1441, Iraq produced its declaration denying it possessed any nuclear, chemical, or biological weapons. By December 11, 2002, seventy U.N. weapons inspectors, led by chief weapons inspector Han Blix from the United Nations Monitoring Verification and Inspection Commission (UNMOVIC), entered Iraq for the first time since 1998. They began by searching a site identified by the Iraqis in their dossier provided to the U.N. By the end of the month, there were about 100 inspectors present in the country inspecting sites associated with Iraq's nuclear and ballistic missile programs. On December 19, 2002, after the inspections proved fruitless, the United States declared Iraq to be in "material breach" of Security Council Resolution 1441.

In a somewhat related move, on December 11, 2002, the United States previewed its six-page National Strategy to Combat Weapons of Mass Destruction, the first update of the document since 1993, to the media just prior to its delivery to Congress. The document stated that "[t]he United States will continue to make clear that it reserves the right to respond with overwhelming force—including through resort to all our options."[6] It also stated that the threat of overwhelming force is an essential part of defense. The document

1. President George W. Bush, *The President's State of the Union Address* (Jan. 29, 2002), *available at* http://whitehouse.gov/news/releases/2002/01/print/20020129-11.html.

2. *The President's International Affairs Budget Request for FY 2003: Hearing Before the House Comm. On Int'l Relations*, 107th Cong. 46 (2002).

3. David E. Sanger, *Bush Declares U.S. is Using Diplomacy to Disarm Hussein*, N.Y. TIMES, Oct. 22, 2002, at A1.

4. *In Bush's Words: On Iraq, U.N. Must Face Up to Its Founding Purpose*, N.Y. TIMES, Sept. 13, 2002, at A10.

5. *Id.*

6. Press Release, *National Strategy to Combat Weapons of Mass Destruction* (Dec. 2002), *available at* http://whitehouse.gov/news/releases/2002/12/WMDstrategy.pdf.

included a commitment to boost programs aimed at containing the damage from any chemical, biological, radiological, or nuclear attack and made clear that some states supporting terrorists already have WMD as they seek to possess such weapons "as tools of coercion and intimidation."[7] While this document only restated existing policy, its release was interpreted as a direct warning to Saddam Hussein. In 1991, President George Bush similarly warned Iraq that it would face severe consequences if it resorted to the use of WMD against the coalition then assembled to remove Saddam's forces from Kuwait.

As war with Iraq loomed on the horizon, the anti-war movement became more and more vocal in the United States and abroad. Public figures such as Sean Penn and Susan Sarandon publicly expressed their dissatisfaction with the administration's policies. In his acceptance speech in Oslo for the Nobel Peace Prize, former President Jimmy Carter gave a critique of the situation at hand stating, "[f]or powerful countries to adopt a principle of preventive war may well set an example that can have catastrophic consequences."[8] In a follow-up interview with the BBC, Carter declined to criticize the Bush administration specifically. However, the Chairman of the Nobel Peace Prize Committee caused uproar when he emphatically stated that the granting of the award to President Carter should be interpreted as a criticism of Bush's Iraq policy.

Continued turmoil affected Israeli domestic politics leading Prime Minister Ariel Sharon to call for new elections to be held in February 2003, after the Labor Party objected to the proposed budget that included spending money on settlements in the West Bank and Gaza Strip. Prime Minister Sharon declined to build a government around small right-wing parties that would have subjected him to a constant threat of no confidence votes. His chief Likud rival, former Prime Minister Binyamin Netanyahu, was brought into the government as Foreign Minister (he is now the Finance Minister in the new government). The Israeli economy also continued to suffer the ill effects of the Palestinian *intifadah* and renewed terrorism on the part of radical Palestinian groups like Hamas and Islamic Jihad as tourism and foreign investment declined.

Throughout 2002, President Bush reiterated his commitment to the foundation of a Palestinian state in the West Bank and Gaza Strip. At the same time, Washington tried to write off Palestinian leader Yasser Arafat. President George W. Bush announced that Arafat was compromised by terror groups, and hoped that the Palestinians would consider a change in leadership. In a concession to the world community, Arafat pledged the appointment of a Prime Minister.

In another controversy affecting the Israeli-Palestinian impasse, on October 6, 2002, Yasser Arafat signed a two-year-old bill into law naming Jerusalem as the Palestinian capital. This was a mostly symbolic measure in response to a U.S. law signed by President Bush that moved the U.S. embassy from Tel Aviv to Jerusalem and recognized Jerusalem as the Israeli capital on all official documents. The overall policy of the United States has left the status of Jerusalem to be decided as part of a permanent solution to the Israeli-Palestinian conflict.

Despite the continuing crises in the Middle East, 2002 saw many countries in the region adopting measures to aid in the War on Terrorism and to liberalize their economies to encourage greater foreign investment. Some of these measures are outlined in the individual country reports below.

7. *Id.*
8. Frank Bruni, *Carter Accepts Nobel and Gives Message on Iraq*, N.Y. Times, Dec. 11, 2002, at A1.

II. Egypt*

Little development has taken place in the legislative arena in Egypt since the publication of the Egypt section in the 2001 Middle Eastern Commercial Law Year-in-Review report.

Egypt's legislature (the People's Assembly) continued to debate the new Labor Law, reaching article 60 of the estimated 270 articles. The new law aims at increasing private sector involvement in the labor market and at the same time achieving a balance between employees' and employers' rights. Among the most important issues to be addressed in the new law is increased freedom for the employer to dismiss employees, a right that has been eagerly anticipated by businesses as the national economic situation continued to decline.

The income tax law also remained under debate before the People's Assembly. The new law would introduce a unified tax system and decrease taxes, making it both easier and less expensive for taxpayers. At the same time, the decrease in tax is expected to be balanced by an increase in enforcement and a reduction in cases of tax evasion. While waiting for the law, the government has opted to deal with the large number of tax evasion and tax dispute cases by encouraging their settlement as an alternative to prosecution. This brought a sharp decrease in the number of prosecutions and closed a considerable number of cases, which somewhat relieved an already overburdened court system.

The draft anti-trust and competition law has still not reached the People's Assembly. The final draft was issued by the Ministry of Supply and is currently in the last process of review by a committee of the National Democratic Party (NDP).

The various ministries implicated by the passage of the new Intellectual Property Law issued in June of 2002 continued to wrangle over the form of the law's executive regulations, which were still not issued at the time of writing. There is concern that the new law does not bring Egypt into compliance with certain international agreements, such as its agreement with the European Union specifically, in the area of protection of plant varieties. It is expected that the executive regulations, when issued, will address some of these concerns.

In the meantime, the People's Assembly passed the Special Economic Zones Law on June 5, 2002 and the executive regulations were issued on September 21, 2002. The law is designed to boost manufacturing and export industries through tax and customs incentives. No special economic zones have been declared yet, but it is anticipated that the North-West Suez Gulf and East Port-Said areas will be declared as such shortly, due to their proximity to major ports, and their developed infrastructure.

In the same vein, the People's Assembly passed the Export Promotion Law on June 18, 2002, which seeks to improve the customs rebate system for exporters by establishing a central unit, under the joint supervision of the Ministries of Finance and Foreign Trade, to oversee the system. It also establishes an "export promotion fund" financed at least in part by fees imposed on imports.

However, perhaps the most significant change to affect Egypt's trading position was the floatation of the Egyptian pound and the abandonment of the pegged central rate against the U.S. dollar. The decision resulted in an almost immediate currency devaluation of 15 percent and ostensibly eliminated the thriving black market for foreign currency. In reality, however, the government, although allowing banks to set their own exchange rates for foreign currency, continues to restrict them in their sales of foreign currency to customers.

*The report on Egypt was prepared by Amr Abbas and Fatma Salah, Ibrachy & Dermarkar, Cairo, Egypt.

Banks have been turning away customers seeking to buy foreign currency on the pretext that they must have a "legitimate business reason" to purchase foreign currency, such as opening letters of credit. The situation remains somewhat volatile and speculation as to further devaluation continues.

III. Iraq*

During 2002, the crippling effect of comprehensive economic sanctions, imposed by the U.N. since 1990, was aggravated by the persistent threat of war against Iraq.

At the beginning of this year, the United States declared that Iraq, amongst other countries, formed an axis of evil allegedly considered a potential threat to international peace and security. This was followed by an escalation of military mobilization in neighboring countries for an offensive on Iraq with the expressed intention of disarming it of its weapons of mass destruction (WMD) and of regime change.

The threat of military action was coupled with extensive international diplomatic activity culminating in the U.N. Security Council adoption, in November, of a new Resolution 1441 described as Iraq's last chance to remove its WMD. This Resolution entrusted the Monitoring, Verification and Inspection Commission (UNMOVIC) and the International Atomic Energy Agency (IAEA) with this task. The Resolution further provided a warning that Iraq would face serious consequences as a result of its continued violations of its obligations.

Even though the UNMOVIC and the IAEA began their monitoring, verification, and inspection activities late in 2002 and reported their findings to the Security Council, the military build up was intensified. Consequently, the general view in Iraq that war was pre-eminent created an obvious atmosphere of anxiety and apprehension.

In spite of the expectations and preparations for war, life in Iraq generally continued in a fairly normal manner. The application of the Food for Oil Resolutions and the arrangements agreed upon with the U.N. in the Memorandum of Understanding continued to be applied. Trade with neighboring countries, directly and through the established free zones, also continued. However, the year did not see increased activity in the area of new legislation as would be expected under the prevailing critical circumstances.

IV. Libya**

Libya has joined the international effort to combat organized crime and terrorism by taking measures to prevent money laundering and illegal use of money transfers. A new Executive Regulation for Law No. 5 of 1997 for the Encouragement of Foreign Capital Investment addresses some of the shortcomings of the law and a new legal regime for conducting economic activities.

A. Anti-Money Laundering Measures

On May 28, 2002, the Governor of the Libyan Central Bank issued Decision No. 40 of 2002 (Decision) for the Establishment of a Financial Information Unit within The Central

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Bank of Libya. The objective of this unit is to monitor and follow up all transactions conducted by the banks that are suspected to be related to illegal money laundering operations or deposit or transfer of funds from unknown sources. Article 5 of the Decision dictates that all commercial banks should establish similar units to serve as liaisons with the new unit in the Central Bank. The Decision was followed by a Circular issued by the Governor on the same date containing detailed procedures for controlling money laundering operations. In the introduction, the Circular stated that the Central Bank "feels bound to adopt the measures necessary to protect our country from the money laundering phenomena and to extend a helping hand to the international entities entrusted with facing such phenomena on the international level."

B. New Executive Regulation for the Foreign Investment Law

Taking into consideration the critical remarks made by foreign and local business people, lawyers, and commentators, the executive branch (Council of Ministers) tried a short cut to address these criticisms. Instead of going the long route of changing Law No. 5 of 1997, a new Executive Regulation was issued by the General Peoples' Committee on March 3, 2002 to replace the previous regulation issued in 1998. The new regulation was aimed at solving some legal and procedural issues that arose from the provisions of the law and the previous regulation, the most important of which is to clarify and simplify the registration process and to ensure that the investment project enjoys full legal personality. Article 10 of the new regulation provides for the establishment of an Investment Register within the Investment Authority wherein all licensed projects have to be registered. Article 11 provides that "registration in the Investment Register shall have all effects resulting from registering in the Commercial Register, including the juridical personality." Article 2 made the evaluation of the contribution in kind much easier than in the previous regulation. Now, such evaluation is conducted by a specialized technical committee formed by the Secretary of the Investment Authority, among its members is a representative of the Investor. The new regulation simplified the procedures required for the transfer of the investor's profits and the repatriation of the capital in cases of liquidation, expiration of the project's term, or sale of all or part of the project.

C. New Legal Regime for Economic Activities

Law No. 21 of 2001Concerning Certain Provisions for Conducting Economic Activities was issued on December 28, 2001. The Executive Regulation for implementing this law was issued on July 1, 2002. According to this law, the instruments for conducting economic activities are limited to the following: individuals; family business; partnerships; joint stock companies; and state-owned companies and corporations. The minimum capital required to incorporate a joint stock company is one hundred thousand Libyan Dinars (LD 100,000), 30 percent of which should be paid upon incorporation. Nominal value of each share should not exceed LD 100. The Law puts a cap on the number of shares that can be owned by an individual shareholder and his family members. It is 8 percent for companies whose capital is LD 1 million or less, 4 percent for capital of LD 2 million or less, 2 percent for capital of LD 4 million LD, and 1 percent for a capital exceeding LD 4 million.

For the first time in the post-September 1 revolution era, the law envisaged the establishment of a stock market and authorized the Cabinet to organize it. The Executive Regulation identified the bodies that are eligible to establish and manage the stock market as those which are conducting financial, banking, or investment activities. The regulation envisages the possibility of foreign participation in running the stock market. No minimum or maximum limit is set for such foreign participation. The details of organizing a stock market will be embodied in a specific decision to be issued by the Cabinet authorizing and regulating the activities of such stock market.

V. Morocco*

A. Legislative Elections

Morocco held legislative elections on September 27, 2002, through a single-round list voting system that put forward candidates on regional and national lists. In what was considered the country's first free and fair elections, voters elected 295 new representatives to the *majlis al-nuwâb* (Assembly of Representatives) for a five-year term at the regional level, with thirty additional seats reserved for female candidates elected at the national level. Among the 22 parties entering the new Parliament, the five leading parties were: the Socialist Union of Popular Forces (social-democrat) with 50 seats, the Independence Party (national-democrat) with 48 seats, the Justice and Development Party (Islamist) with 42 seats, the National Rally of Independents (conservative) with 41 seats, and the Popular Movement (conservative) with 27 seats.[9] In the context of the ongoing electoral campaign, the Minister of *awqâf* (Endowments) and Islamic Affairs announced on June 13, 2002, that it would be illegal for "friday preachers to indulge in any partisan or electoral propaganda," adding that any infractions would be punished.[10] Following the elections, King Muhammad VI named acting Interior Minister Driss Jettou as Prime Minister on October 9, 2002, pursuant to article 24 of the constitution, replacing Abderrahmane Youssoufi.

B. Electoral Law

On May 6, 2002, the Assembly of Representatives unanimously adopted a new electoral law, which introduced a list voting system rather than a uninominal vote. On June 28, 2002, the *majlis ad-dustûri* (Constitutional Council) declared certain provisions of the electoral law unconstitutional and expressed reservations regarding further provisions, prompting the government to reexamine the law. The high court decision: (1) objected to the provision that prohibited members of the *majlis al-mustashârin* (Assembly of Councilors) from running for elections in the Assembly of Representatives—noting that members of the upper chamber may run for a seat in the lower chamber, but, if elected, must choose between the two seats afterwards; (2) objected to the provision that assimilated votes for a regional list as an implicit vote for the same national list—stipulating electors to vote with a single ballot paper for candidates on the regional list and national list; and (3) expressed reservations with respect to the provision that candidacy is conditioned on belonging to a political party—indicating that candidates who do not belong to a political party indeed have the right to participate in the elections. On July 2, 2002, the Council of Ministers adopted two

*Farhad Ghaussy prepared the report on Morocco.

9. *Pousée islamist à l'occasion des éléctions législatives au Maroc*, Le Monde, Sept. 30, 2002; *see also Opération éléctions propres*, L'Express, Sept. 26, 2002.

10. Agence France Presse, *Morocco bans 'partisan propaganda' in Mosques*, June 13, 2002.

amendments meant to adapt the electoral law to the Constitutional Council ruling; the Assembly of Councilors adopted the revised law on July 25, 2002.[11]

C. Finance Law

The Assembly of Representatives approved the 2003 finance law on December 25, 2002, by a majority of 108 votes (with 43 votes against). The law sets the overall state budget for 2003 at DH 139.51 billion, including DH 19.52 billion for investment expenses, representing a 2.05 percent decrease from the previous year. The finance law envisions raising DH 12.5 billion from the privatization of eight industries, including the *Regie des Tabacs* (the tobacco company), which has gone to tender and is expected to raise U.S.$800 in 2003.[12]

D. Press Code

On May 6, 2002, final approval was given to the new Press Code despite criticism from the Moroccan press union and international press associations regarding the coercive nature of the law. Although the new law reduces penalties and fines for offending journalists and creates easier procedures for launching a new publication, the law retains jail terms for defamation of the king and the royal family (punishable by three to five years in prison). In addition, article 77 of the law permits the Ministry of the Interior to seize publications that are deemed to disturb public order. Article 29 of the law also allows the government to ban Moroccan or foreign newspapers that are deemed to "undermine Islam, the monarchy, national territorial integrity or public order."[13]

VI. Oman*

The year 2002 started with the world still in a state of shock following the events of 9/11 and the continuing efforts to track down Osama bin Laden and other members of al-Qaeda. On the southern borders, there was increased security because of the perceived threat from the Yemen Arab Republic, but overall the Sultanate of Oman remained politically stable and unaffected by international terrorism. U.S.-led operations in Afghanistan initially resulted in some peaceful protests but they were short-lived. More fundamental was the public disapproval of the U.S.-stated intentions with regard to the removal of Saddam Hussain in Iraq, which many Omanis regard as a purely internal matter or one that should be resolved between Arab nations. One should not forget that Oman was the only Gulf Cooperation Council (GCC) state that maintained its embassy in Baghdad throughout the Gulf War and it is proud of its reputation as a conciliator. In recent times, it has successfully reached amicable settlements with the United Arab Emirates (UAE), Saudi Arabia, and Yemen with regard to border disputes and the only major outstanding land issues are with Iran in relation to the islands of Greater and Lesser Thumb.

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11. BBC Monitoring International Reports, *Morocco: Government adopts amended laws on elections*, July 3, 2002.

12. MEED Quarterly Report, *Morocco: Upturn Greeted with Caution*, Dec. 18, 2002.

13. Agence France Presse, *Morocco Parliament approves controversial press code*, May 6, 2002; *see also Une réforme maintient les peines de prison pour les délits de presse au Maroc*, Le Monde, May 23, 2002.

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International perception of instability in the region had one major effect on Oman in 2002. This instability caused the withdrawal by Hillwood, controlled by Ross Perot Jr., from its proposed role as a founding shareholder in Salalah Free Zone Company and manager of this 6,000-acre development next to Salalah Port in the southern governorate of Dhofar. The Government remains committed to the project and discussions with other parties are under way concerning the construction, development, management, and marketing of the Free Zone, which is ideally located for manufacturing and warehousing facilities servicing East-West trade and also East and South Africa. Following completion of a new natural gas pipeline and the construction of a new gas-fired power station (expected in March 2003) there will be ample power resources. Dhofar is also an area that is rich in minerals and offers considerable tourism development potential.

On the other hand, apart from reduced occupancy in luxury hotels, other industrial and tourism projects were largely unaffected and one saw considerable progress with:

- The Oman—India Fertiliser project in Sur
- The Government Train Project in Sur (expansion of the Oman LNG plant)
- Various industrial projects in Sohar to the north of Muscat, following the completion of a new natural gas pipeline. These include:
  - An independent water and power project (IWPP)
  - A polypropylene plant
  - An oil refinery
  - An aluminium smelter
  - A fertiliser project

The following are currently in various stages of development and financing:

- The Joint Technical College for the Ministry of Defence
- Various private universities
- Various hotels and tourism resorts

Two well-publicized projects remain in limbo, the privatisation of the Oman Telecommunications Company and the Muscat Waste Water Treatment project, although in the latter case the Government is reported to have appointed a financial adviser and has awarded a survey contract to locate and map all existing underground pipes, drains, and cables in the Capital Area.

On the legal front, 2002 saw an amendment to the Law of Commercial Companies and the adoption of far stricter rules for good corporate governance of joint stock companies, both private (closed) and public. In this area, Oman leads the way among GCC countries, but as is always the case with this kind of regulatory framework, the problem will be finding adequate resources to enforce it. The country is still awaiting a major overhaul of the Labour Law and the Commercial Companies Law, which may see the complete abolition of limited liability companies (LLCs). In the meantime, however, the Government has bowed to pressure and may now, in certain circumstances, permit the formation of LLCs with a paid-up capital as low as RO 3,000 (U.S.$7,750), instead of RO 20,000 (U.S.$51,600) for wholly Omani owned companies. The minimum capital for partially foreign-owned LLCs remains RO 150,000 (U.S.$387,000), which in our view represents a major disincentive for inward investment.

Finally, on the economic front, the GCC states have agreed to adopt a common customs duty tariff (generally speaking 5 percent), which will remove some of the anomalies in the present system and reduce the risk of parallel imports, as well as boosting inter-GCC trade. Agreement has also been reached, in principle, to adopt a common currency in the GCC, following the example of the Euro, but much work remains to be done and full implementation will take several years.

VII. Pakistan*

In 2002, the Government of Pakistan continued its efforts to strengthen the corporate sector and develop a broad-based regulatory platform for economic growth. During the year, the geo-political situation in the region had a direct effect on Pakistan's economy, however, a number of important ordinances relating to the corporate sector were promulgated by the President of Pakistan with a view to encourage internal and external investment in the country. We are summarizing hereunder the significant corporate law developments in Pakistan in the year 2002.

A. Code of Corporate Governance

The Securities and Exchange Commission of Pakistan (SECP) has formulated the Code of Corporate Governance (Code). The Code has been issued by the SECP with an aim to establish a framework of good corporate governance whereby a listed company shall be managed in compliance with the corporate practices stipulated in the Code. The Karachi, Lahore, and Islamabad Stock Exchanges have amended their listing regulations to incorporate the provisions of the Code.

B. Companies (Amendment) Ordinance 2002 and Companies (Second Amendment) Ordinance 2002

These Ordinances were promulgated to amend the Companies Ordinance 1984 (Ordinance). Through the Companies (Amendment) Ordinance 2002, amendments have been made primarily in the provisions of the Ordinance relating to different modes of forming a company; the procedure involved in the transfer of shares of a company; general meetings of a company; minimum number of directors of a company; investment in associated companies, undertakings, accounts, and financial statements of a company; the role of auditors; the audit of a company; and the role of liquidators. The Companies (Second Amendment) Ordinance 2002 enhances the ambit of the Ordinance to include provisions relating to the establishment and regulation of non-banking finance companies. In a related development, the regulation of non-banking finance companies, earlier controlled by the State Bank of Pakistan, has now been placed under the authority of the SECP.

C. Listed Companies (Substantial Acquisition of Voting Shares and Take-overs) Ordinance 2002

This Ordinance was promulgated with an aim to provide for fair and equal treatment to all the investors, as well as to establish a transparent and efficient system for substantial

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acquisition of voting shares and take-overs of listed companies and matters ancillary thereto or connected therewith. There are different requirements that have been imposed on an acquirer of shares in a listed company relating to disclosure of information, additional acquisition of voting shares, consolidation of holdings, public announcements, and certain other general obligations. This ordinance also imposes certain general obligations on the target company's Board of Directors.

VIII. Palestine*

The Palestinian National Authority (PNA) called for national reform in May and June of 2002. The call for reform came at a time when the PNA had fallen short in various areas, including:

- providing for the rule of law;
- establishing a clear regulatory framework;
- promoting political accountability; and
- ensuring the efficient administration of public functions.

The executive, legislative, and judicial powers of the PNA needed to be separated. The PNA needed to promote a strong financial system, reduce anticompetitive practices, increase the accountability of the public sector, improve PNA revenue administration, and raise the efficiency of the public sector by allowing the private sector to compete in service delivery.

In response to the PNA's call for reform, the Palestinian Legislative Council (PLC) prepared a reform agenda that included:

- enacting the Basic Law and the Law on the Independence of the Judiciary;
- establishing a constitutional court and abolishing the security court;
- holding general elections (presidential, legislature, and local government);
- safeguarding public freedoms;
- restructuring the office of the Executive branch and the Cabinet;
- ensuring transparency on public expenditures and financials of the PNA;
- restructuring security forces and the public accountant's office;
- restructuring local government and municipalities;
- improving the performance of the civil service and reducing their numbers;
- improving the performance of the judicial and court system;
- maintaining separation of powers and the independence of the Judiciary; and
- creating a High Judicial Council.

On June 23, 2002, the PNA issued the *100 Days Plan of the Palestinian Government* (100 Days Plan). The 100 Days Plan describes how the PNA intends to become "more efficient and effective in the service of the national good."[14] The 100 Days Plan sets out an agenda covering five domains: (1) the general domain; (2) the public security domain; (3) the fiscal domain; (4) the judicial domain; and (5) other domains. The details of these domains are outlined below. Despite a continued economic downturn throughout 2002, the PNA re-

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14. 100 Days Plan of the Palestinian Government (June 23, 2002) (unofficial translation), *available at* http://www.ndi.org/worldwide/mena/gaza/100daysp.pdf.

mained committed to enacting legislation to support economic development and proceed with its reform program.

A. Banking Law and Monetary Authority Law

The Banking Law enacted in 2002 supplemented the Palestinian Monetary Authority Law of 1997 (PMA Law) and set clear guidelines for banking activities and transactions. The PMA Law set the standards for required capital, reserves, rules for mergers, and Islamic banking practices. The PMA Law contains extensive provisions for the licensing and supervision of banks by the PMA. The PMA Law also regulates and licenses all banks, local and foreign alike. Under the PMA Law, the Palestinian Monetary Authority supervises banking transactions and relations between banks, as well as regulates foreign currency exchange and sets financial and credit policies. A new banking law based on international standards is being adopted presently.

B. Leasing Law

A Leasing Law is to be enacted in 2003, pending the comprehensive review of the income tax law. Leasing will facilitate and expand lending. All leases of more than one year, or that extend more than one year will be subject to registration. Under the new law, the lessor and lessee have special obligations and warranties towards each other and the risk of loss remains with the lessor.

C. Company Law

A newly revised Company Law is expected to be enacted by the end of 2003. It is expected to eliminate existing requirements for par value of the share and stated capital and simplifies the incorporation procedures. The law includes special features, such as harmony between the registration and incorporation process and the application of uniform fees to both the West Bank and Gaza.

D. Basic Law

The promulgation of the Basic Law on May 29, 2002 gave the PNA a "constitutional" basis for its powers. The Basic Law went through various drafts over a period of years. The work was started in 1993 by the PLO's Executive Committee. The changes in the geopolitical conditions, the Oslo process, the first Palestinian elections in 1996, and the formation of the PLC impacted the shape of the present Basic Law and its operations.

Thus, the entry into force of the Basic Law was a turning point for the PNA on the internal level. The Basic Law provides for a parliamentary democracy based on the rule of law and separation of powers. It calls for a free market as the basis of the Palestinian economy. It calls for freedom of speech, guaranteed personal freedom, and freedom of religion. It upholds the independence of the Judiciary. It calls for the establishment of a constitutional court and provides for judicial review, in the meantime, the Supreme Court is empowered to assume this role. The Basic Law creates a system of checks and balances giving the PLC the power to hold the Executive accountable and the same is true of the Executive over the PLC. The Basic Law empowers the PLC to launch investigations concerning the conduct of members of the Executive.

E. Law on the Independence of the Judiciary

After seven years of Palestinian self-rule, the PNA promulgated the Law on the Independence of the Judiciary (LIJ), which went into force on May 14, 2002. This step was important because LIJ confirmed the separation of powers issue articulated in the Basic Law and made the Judiciary independent. The LIJ created the independent High Judicial Council and empowered the Judiciary to maintain its independence from interferences by the Executive. The LIJ also specifies the types and jurisdiction of courts. There are religious courts for personal status matters, a constitutional court, a supreme court, and three levels of lower courts that have varied personal and subject matter jurisdiction. The appointment and promotion of judges is independent. The High Judicial Council recommends judges and the President confirms. Judges cannot be removed except for cause, as specified in LIJ, and the High Judicial Council is in charge of their promotion. The critical aspect of the Law is the creation of an independent judicial organ charged with the administration and training of judges. This is a major departure from the vacuum that existed prior to the promulgation of the Law and a shift in the concentration of powers in the hands of the Executive. The Executive is no longer in charge of the Judiciary, it has confirmation power only. Furthermore, the newly promulgated Basic Law and LIJ will help to clear the blurred lines between the Minister of Justice, the Chief Justice, and the Attorney General. Previously, the Minister of Justice and the Chief Justice believed that they held the same responsibilities, such as the appointment of judges, the composition of the High Judicial Council, and a number of administrative judicial issues; this is no longer the case.

IX. Qatar: Qatar Court Challenges Agency Law—Implications for Foreign Investors*

Under the leadership of the Amir, H.H. Shaykh Hamad bin Khalifa Al-Thani, Qatar saw many changes in 2002. In its military efforts, Qatar took unprecedented steps to expand its defense ties with the United States. The U.S. Central Command finally moved its command and control headquarters from Tampa, Florida to As-Sayliyah, Qatar, and realized its dream to establish an airbase in Al-Udeid, Qatar, to complement its existing naval base in Bahrain. The USCENTCOM will be there to stay long after the Iraq conflict is resolved.

On the political front, on July 3, 2002, the Amir began to review a draft of a permanent Constitution, and on November 12, he established the first ever National Human Rights Commission. Also, on March 26, H.H. Hamad, known as *L'Enfant Terrible du Gulf*, challenged the region's political *status quo* by organizing the historic conference titled "Democracy and Free Trade." The Amir used this conference to impress upon the Arab leaders the need to establish democratic institutions and promote free trade without the old social and economic barriers, such as the requirement that a local commercial agent be appointed in order for a foreign company to do business.

The Amir had in mind his own version of Law No. 13 in which he called for unencum-

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bered free trade.[15] Law No. 13 ends the monopoly of authorized local dealers of branded foreign goods. Law No. 13 also removes article 13 from Qatar Law No. 4 of 1986, which provided protection to local agents of foreign goods against the import of the brands by anyone except those given special permission from the Ministry of Finance, Economy, and Trade. Law No. 4 of 1986 originally dealt with commercial agents.

The intent of Law No. 13 is not only to encourage foreign companies to invest in Qatar, but to make the local market competitive and free. The move is also likely to bring prices of commodities down due to increased competition, which will benefit consumers at large. On the legal front, the courts in Qatar, taking their cues from the political climate and the new foreign investment law No. 13, challenged indirectly the old social and economic doctrine of the "local commercial agent" embedded in Law No. 4.

Law No. 4 was legislated in 1986. The law incorporated the cultural business mentality prevalent in Qatar and the Gulf Cooperation Council (GCC). The cultural business mentality of the GCC was that any business relationship between a local investor and a foreign company was a relationship of agent to principal, notwithstanding what the parties may have agreed. Moreover, the cultural business mentality insisted that the agent be treated as the "exclusive" representative of the foreign company, notwithstanding the language of the contract. This cultural business mentality of exclusivity was the basis for the immigration law requirement in Qatar, and the GCC requirement that any representative from a foreign company be sponsored by its commercial agent in order to receive an entry/exit visa.

Dr. Hassan Kamel, the late Legal Advisor to the former Amir Khalifa, and the author of Law No. 4, once explained that the legislative policies of Qatar and the other members of the GCC were to promote the commercial idea of agent, when dealing with international trade, franchises, and foreign investors. This policy was, however, challenged in a landmark case involving an automobile dealer franchise.

A. *Middle East Traders v. United Cars Almana*

Middle East Traders (MET) was the dealer of Chrysler and Dodge vehicles since 1962. United Cars Almana (UCA) has been the dealer of Jeep vehicles since 1990. On April 23, 1998, Chrysler terminated the dealership of MET, and shortly thereafter, in 1998, it transferred the franchise to UCA. The written termination reason given by Chrysler to MET stated that MET had not signed and returned the dealership agreement to Chrysler in July 1996. MET explained that it was an administrative oversight and that the business transactions between the parties continued during the period of time in question. MET noted that Chrysler never reminded MET to return the signed agreement, which had an end date of December 31, 1998.

On January 2, 1999, UCA applied for a permit to import the Chrysler, Dodge, and Jeep products. On February 2, 1999, the Director of Commercial Affairs in the Ministry of Finance, Economy and Trade, denied UCA the permit citing the commercial agency law, Law No. 4 of 1986, which authorized MET as the only commercial agent to import the Chrysler and Dodge products. That same day, UCA was also denied permission to enter the new dealership in the registry of commercial agents because MET was the sole registered commercial agent.

15. *See* Joseph Ghougassian, *Qatar's New Foreign Investment Law No. 13 of the Year 2000*, 36 Int'l Law. 933–35 (2002).

Armed with these two official rejection letters, on February 16, 1999, MET filed a complaint for damages against UCA and Chrysler (Case 127/99). On February 27, 1999, MET sought and was granted three separate injunctions against UCA (Case 51/99). The court enjoined Chrysler from transferring MET's franchise to UCA, prohibited the Qatar customs agency to give clearance to UCA's importation of Chrysler and Dodge vehicles, and directed UCA to remove the existing Chrysler and Dodge cars from its show rooms. These injunctions were to remain until the court decided the merits of lawsuit 127/99, filed by MET. On October 11, 1999, UCA succeeded in having another court lift the injunctions (Case 210/99).

On May 30, 2001, the court addressed the merits of MET's lawsuit No. 127/99. In its complaint, MET relied heavily on Commercial Agency Law No. 4 of 1986. MET argued that the law prohibited a franchisor from appointing more than one franchisee in the same geographical territory. MET claimed that it had been the sole registered agent for the Chrysler and Dodge products in Qatar since 1962. It introduced into evidence two certifications, issued in 2000 and 2001 by the Ministry, confirming MET's status as the commercial agent, along with the two letters from the Ministry that had denied UCA's requests to register its new dealership on the ground that it violated the Commercial Agency Law No. 4. Moreover, MET introduced two letters from Chrysler in 1985 and 1986, stating that MET had been the "sole authorized distributor" of its products since 1962. In addition, MET explained that notwithstanding the terms and conditions of the contract, it was an exclusive distributor because article 1 of Law No. 4 designates the Ministry as the competent authority to issue MET a commercial agent license and collect the appropriate fees. MET concluded that Chrysler was not the competent authority to license commercial agents.

The court rejected MET's arguments that Law No. 4 applied to its claims. Instead, the court examined the 1990 contract between MET and Chrysler and liberally applied the terms and conditions to the relationship. In reaching its conclusions, the court referenced the contract clauses, which stated that the distributorship agreement did not create an agency relationship. It held that MET was not an "exclusive" distributor; that Chrysler could appoint other distributors for the same products in the same area; that Chrysler could terminate the agreement with or without cause; and that Chrysler could sell directly to any other party. As for the two letters written by Chrysler in 1985 and 1986, clarifying that MET was the "sole authorized distributor," the court identified a section in the contract that stated that all prior agreements were superseded by the 1990 contract. The court did not consider the historical relationship of the parties, which dated back to 1962, or the historical basis behind Law No. 4. It was content in applying a literal analysis of the terms in the last contract executed in 1990.

Article 19 in Law No. 4, states that the Ministry of Finance, Economy and Trade "shall issue bills and decisions necessary for the implementation of this law." Yet, the court dismissed the opinion of the Ministry of Finance, Economy and Trade which asserted that MET was the lawful commercial agent and, therefore, Law No. 4 was to apply in this case. Furthermore, the court rejected the argument that the Ministry was the licensing authority in determining who is a commercial agent. The court concluded that the terms of the contract are the controlling forces in determining the relationship, rights, and obligations between the parties.

The court wrote: ". . . on understanding the terms of this agreement, we find that this agreement is clear and express and does not include any elements of a commercial agency. It is only a sale and purchase" of Chrysler's products.

1. *Implications for Foreign Investors*

The case *Middle East Traders v. United Cars Almana* (127/99) has significant implications for foreign investors, manufacturers, and franchisors seeking to do business in Qatar. The business implication of this ruling is that a foreign investor is no longer bound to appoint *one* local representative or distributor. The investor can have more than one local representative to promote its goods and services. Furthermore, the investor can avoid the legal traps of commercial agency and the financial liabilities outlined in Law No. 4 by drafting its agreement with terms that deny the agency relationship, territorial exclusivity, the Qatar choice of law, and the Qatar choice of forum, while reserving its rights to appoint other representatives, distributors, or franchisees, and to terminate the contract with or without cause.

The court, with its decision in *MET v. UCA*, has for all purposes and intentions weakened the commercial agent's historical importance and power has shifted to the local Ministries' legislative authority to regulate commerce, trade, and business relationships to the parties through "freedom of contract."[16]

This legal and business situation will continue until the Government of Qatar legislates its own franchise laws, similar to those found in each U.S. state, subordinating the parties' freedom of contract to the state and federal franchise laws.

16. On January 29, 2000, the Qatar Court of Appeals reversed a lower court's ruling in the case of *New Trade Engineering v. BMW, and Al Fardan Automobiles* (Case No. 154 & 165/99). BMW terminated the vehicle franchise of New Trade Engineering (NTE) and transferred it to Al Fardan Automobiles (AFA). The lower court, relying on the traditional business mentality of the market, called NTE an exclusive commercial agent, despite the terms of its contract, which clearly stated that NTE was neither an agent of BMW nor did it have exclusivity in selling BMW's products. The court applied the commercial agency Law No. 4 to force AFA to buyback NTE's cars and parts. On appeal, the higher court read literally the terms of NTE's contract and concluded that the agreement did not qualify NTE as an agent or exclusive distributor, but as an importer. Yet, Law No. 4 is about commercial agents. Furthermore, the court of appeal noted that NTE never registered its dealership with the Ministry of Finance as required by Law No. 4. The facts in this case are very different from *MET. MET v. UCA* remains the landmark ruling to be cited by foreign investors to avoid the application of the commercial agency Law No. 4.