Middle East Commercial Law Developments

HOWARD L. STOVALL, EMAD TINAWI, YAEL KATZ, AND HAROLD ULLMAN*

The Middle East has been a region of contrasts in recent years—1997 was no exception. U.S. attention has focused on political issues, particularly the stalled Middle East peace process, as well as diplomatic measures against unfriendly states such as Iran, Iraq, Libya, Sudan, and Syria. In contrast, many Middle Eastern countries focused on economic issues this past year, enacting important initiatives in privatization, deregulation, trade liberalization, and financial sector restructuring. In that context, an International Monetary Fund official was prompted to observe: "Remarkable changes are taking place in economic attitudes and policies in many Middle Eastern . . . countries. These changes reflect a switch to a strategy that, instead of trying to protect economies from the rest of the world, seeks to take advantage of opportunities offered by participating in the global economy."[1] In the following brief review, we summarize the significant commercial law developments that took place in the Middle East during 1997.

I. Sanctions

A. U.S. SANCTIONS

President Clinton signed Executive Order 13059 on August 19, 1997, clarifying and tightening earlier executive orders imposing sanctions on trade with Iran. Among other things, Order 13059 confirms the application of sanctions on the supply to Iran of goods, technology, or services through third countries.[2] Later, on November 3, 1997, President Clinton signed Executive Order 13067, imposing a trade embargo against Sudan and a total asset freeze against the Sudanese government. According to this order's preamble, the sanctions were imposed

*Howard L. Stovall is an attorney in Chicago, Illinois and vice chair of the Middle Eastern Law Committee. Emad Tinawi is an attorney in Washington, D.C. and chair of the Middle Eastern Law Committee. Yael Katz is with Igal Brightman & Co., Tohmatsu, Deloitte Touche Tohmatsu, Jerusalem, Israel and Harold Ullman is with Deloitte & Touche LLP, Parsippany, New Jersey. Mr. Katz and Mr. Ullman authored the updates on Israeli law.

1. Stanley Fischer, *Economic Reform and Growth: Progress and Challenges In Middle East Countries*, 20 MIDDLE E. EXECUTIVE REP. 4, 9 (1997).

2. *See, e.g.*, U.S. Department of Treasury brochure, An overview of O.F.A.C. Regulations Involving Sanctions against Iran (1997).

because of Sudan's "continued support for international terrorism; ongoing efforts to destabilize neighboring governments; and the prevalence of human rights violations."[3]

On a brighter note, Secretary of State Madelaine Albright lifted the ban on travel to Lebanon by U.S. citizens. The ban had been imposed by the U.S. government in 1987, after Americans and other foreigners were kidnaped by radical groups. Although U.S. business groups had sought a lifting of the ban for a number of years, Secretary Albright cautioned U.S. citizens that travel to Lebanon remained dangerous.

B. Arab Boycott

Most Arab countries continue to enforce a *primary* boycott of Israel, *e.g.*, no goods of Israeli manufacture may be imported into those boycotting countries. A few years ago, however, a number of Arab Gulf countries suspended their *secondary* and *tertiary* boycott of Israel, following the peace accords between Israel, Jordan, and the Palestinian Authority. Nonetheless, some hard-line Arab countries (*e.g.*, Syria, Lebanon, and Iraq) continue to maintain a full—primary, secondary, and tertiary—boycott of Israel. Moreover, thanks to recent setbacks in the peace process between Israel and the Palestinian Authority, some Arab Gulf countries are considering a reinstatement of their secondary and tertiary boycott of Israel.

In any event, boycott-related documents, requests, and legal issues continue to emanate from the Middle East, and the U.S. Department of Commerce continues to enforce its antiboycott regulations. In 1997, antiboycott violations were not only leveled at private U.S. businesses, but also on departments of the U.S. government; the Department of Justice and the Air Force signed a settlement agreement with the Commerce Department to dispose of allegations that they (and three of their employees) had agreed to discriminate against Jewish Americans in staffing a project in the Middle East.[4]

II. Trading/Distribution

A. Free Trade Zones

In recent years, the Middle East has not lacked free trade zone initiatives. For example, Lebanon has proposed seven new free zones, to be developed on a Build, Operate, and Transfer (BOT) basis, in addition to existing zones at Beirut and Tripoli ports.[5] This past summer, the Kuwaiti Council of Ministers approved the establishment of a free zone at Shuwaikh port, based upon Kuwaiti Law No. 26 (1995).[6] Furthermore, the United Arab Emirates (UAE) has plans to add to its existing free trade zones—the largest and most successful being the Jebel Ali Free Trade Zone in Dubai. Investors are anticipating the upcoming share offering in the Saadiyat Free Zone Authority, which was recently established to develop an island off Abu Dhabi in a free trade area and is expected to house a stock exchange and perhaps a futures and options exchange.[7]

Meanwhile, Yemen and Oman are each seeking to establish its own free trade zone as an entrepot center for the Near and Far East. Oman has plans to transform the village of Raysut

3. *See* U.S. Department of Treasury brochure, Sudan, An Overview of U.S. Sanctions (1997).

4. *See* Commerce settles charges alleging that Justice Dept. & Air Force violated law, *The Boycott Law Bulletin* (Feb. 28, 1997), at 1.

5. U.S. Commercial Service, *Country Commercial Guide: Lebanon 1998* (1997), at 16.

6. *See, e.g.*, Middle E. Econ. Dig., Aug. 1, 1997, at 21.

7. Townsend, *Capital markets in the UAE*, The United Arab Emirates Legal Y.B. 1998 9, 10 (White Page 1997).

near Salalah into a major container port, combining elements of both public and private finance. The Omani government signed a formal concession agreement with the founding shareholders of the local Salalah Port Services Company, which includes local investors and Sealand of the United States.[8] Yemen is moving forward with its own free zone plans in Aden, through the international private sector consortium, Yemen Investment and Development International ("Yeminvest"). Yeminvest is responsible for the development of the major transportation, distribution, and infrastructure projects within Aden, including a planned international container terminal and industrial/warehouse facilities.[9]

However, perhaps the most significant event in 1997 in the development of regional free trade areas is the Arab League's decision to proceed with the creation of the Pan Arab Free Trade Area (PAFTA). The origins of the PAFTA go back to February 27, 1981, when 18 members of the Arab League signed the Agreement Facilitating and Developing Trade and Exchange among Arab States (the Agreement). The members of the Agreement are Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Palestine, Qatar, The Republic of Yemen, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, and The United Arab Emirates.[10] The aim of this Agreement was to strengthen inter-regional trade and to move closer to "Arab Economic Unity," which the Arab League envisioned as some type of "Arab common market."

As World Trade Organization (WTO) accession for certain Arab countries approaches, the Arab League has sought to promote implementation of the Agreement so that it can be "grandfathered" in before the new WTO rules apply. Consequently, during meeting No. 1248-65D on September 19, 1995, and meeting No. 1271-57D on March 6, 1996, the Economic and Social Council of the Arab League (the Council) recommended that all member countries bring the Agreement into force by creating the PAFTA. During the Arab Summit held in Cairo during July 21-23, 1996, Arab leaders approved the Council's recommendations and authorized it to take the necessary steps to expedite the creation of the PAFTA.

On February 19, 1997, during meeting No. 1317, the Council adopted a nine-part Executive Program that established a plan and a schedule for the formation of the PAFTA. Under the plan, the PAFTA is to be implemented during a ten-year transitional period beginning January 1, 1998, and ending on December 31, 2007. During this ten-year period, each member country is obligated to reduce its tariffs on imports from other PAFTA member countries by ten percent annually. If the PAFTA is fully implemented, tariffs on all Arab goods will be zero by December 31, 2007.[11] For now, however, only certain goods are mandated to be included in the annual ten percent tariff reduction. The following categories of goods are specifically mentioned as subject to PAFTA and therefore are subject to the annual ten percent tariff reduction:[12]

1. Agricultural and animal products, either in their primary forms or after processing;
2. Mineral and non-mineral raw materials, either in their primary form or after processing; and
3. Selected goods that have been agreed to by the Council.

To date, the Council has not identified specific goods included within these groups.

8. *Government formalises Salalah port agreement*, MIDDLE E. ECON. DIG., Oct. 11, 1996, at 35.

9. *See, e.g., Aden Free Zone*, 19 MIDDLE E. EXECUTIVE REP. 2, 23 (1996).

10. The four countries that are not members to the Agreement, Algeria, Comoros, Djibouti, and Mauritania, have already expressed their interest in signing the Agreement.

11. The Executive Program stipulates that along with the elimination of tariffs, non-tariff barriers will also be eliminated.

12. The Executive Program allows any two member countries to add any goods to this list and to accelerate tariff cuts beyond the ten percent annual reductions.

In December 1997, member countries took the first step towards implementing the Executive Program by agreeing to lower tariffs by ten percent effective January 1, 1998. Furthermore, according to a published statement by Mr. Muhammad Al-Arabi, Chairman of the Egyptian Council of Chambers of Trade and Industry, Egypt will unilaterally lift all of its tariffs on all Arab goods produced by PAFTA members by the year 2002—almost five years ahead of PAFTA schedule. In addition, Kuwait and Saudi Arabia have also announced that they will reduce their tariffs by ten percent as part of the implementation of the Executive Program.

Finally, and in a somewhat different free trade development, President Clinton signed a proclamation in late 1997 to modify the Harmonized Tariff Schedule in order to implement duty free treatment of all qualified products from the West Bank, Gaza Strip, and qualifying industrial zones.[13] The proclamation extending duty free status became effective November 13, 1996. It contains no time limits or renewal requirements and will remain in effect at the President's discretion.

B. Israel Signs New Treaties

During 1997, additional tax treaties and revisions to existing treaties were signed between Israel and the following countries:

- A new treaty, which replaces the prior treaty between France and Israel, has been signed. The treaty came into effect on January 1, 1997.
- A new treaty between Israel and Thailand has been ratified. The treaty came into effect on January 1, 1997.

The following is an updated withholding-at-source table in respect of new treaties and revisions to existing treaties (in percentages):

	Interest	Dividends	Royalties
China	10	10	10
France	10	15/5*	10
India	10	10	10
Ireland	10	10	10
Netherlands	15	15	5
Thailand	15	15/10*	15

*Dependent on the percentage of holdings of the foreign company in the Israeli entity.

C. Omani Commercial Agency

Many Middle East countries have enacted so-called "dealer protection" laws. These laws provide various extra-contractual rights in favor of qualified commercial agents and distributors. Under many such laws, for example, a commercial agent is deemed exclusive for the products and territory relating to the appointment. In addition, such laws entitle a commercial agent to compensation upon the foreign principal's termination or non-renewal of the relationship

13. *See, e.g.*, U.S. Commercial Service, Country Commercial Guide, West Bank and Gaza, Fiscal Year 1998 (1997).

without just cause. Terminated commercial agents may also be entitled, under some of these laws, to block the foreign principal's imports pending an amicable settlement or court judgment.

These Middle East dealer protection laws have come under increased scrutiny in recent years—particularly the requirement of exclusive commercial agency appointments—as Middle East countries liberalize their markets to comply with WTO rules, bilateral trade treaties or otherwise.[14] Perhaps in that context, and certainly as part of the Omani government's efforts to liberalize the local economy, Sultani Decree 73/96 amended the Omani Commercial Agency Law.[15] Most importantly, Sultani Decree 73/96 expressly permits the appointment of more than one commercial agent for the same product in the same territory. In addition, Sultani Decree 73/96 helps clarify a foreign principal's right to de-register the parties' agreement at the Ministry of Commerce and Industry upon expiration or cancellation of the commercial agency. Although these amendments are expected to have significant effect over time, other factors may temper their impact. For example, Sultani Decree 73/96 would neither appear to alter an Omani commercial agent's existing *contractual* rights (including exclusivity), nor its rights (unaffected under Omani law) to claim compensation from its foreign principal for unjustified cancellation or non-renewal of their relationship.

D. New Kuwaiti Ministry of Defense Circular

In December 1997, the Kuwaiti Ministry of Defense (KMOD) issued a new circular indicating the ministry's intent to reiterate its once-clear policy prohibiting the use of Kuwaiti agents and other intermediaries in military sales contracts. The KMOD circular provides that any future deals involving arms, ammunition and spare parts must be concluded directly between the KMOD and the foreign supplier "without the interference of any agent or intermediary." The country's political trends toward demanding greater government transparency and accountability in government contracting may serve to solidify this recent decision.

E. Toys 'R' Us Arbitration

In light of the dealer protection laws mentioned above, some U.S. companies may assume that their disputes with Middle East commercial agents might best be resolved by U.S. courts or arbitral panels, applying U.S. (state) law. Such an assumption needs to be reconsidered in light of a recent American Arbitration Association (AAA) award, which was subsequently confirmed by the Second Circuit,[16] ordering Toys 'R' Us to pay $46 million in damages plus interest to a Kuwaiti trading company. The Kuwaiti company claimed that Toys 'R' Us had wrongly terminated a 1982 agreement entitling the Kuwaiti company to operate franchise stores in fourteen Middle Eastern countries.[17]

The arbitration proceedings took place in New York City and applied New York law in interpreting whether Toys 'R' Us had the right to terminate the agreement, as well as in assessing the measure of damages. The arbitral panel did not appear to consider the Kuwaiti dealer protection law in the dispute.

---

14. *See, e.g.*, Mallat, Book Review, *Commercial Agency and Distributorship in the Arab Middle East*, *in* 2 Y.B. of Islamic and Middle E. Law, 635-37 (1995).

15. *See* Richie Adler, *Oman Commercial Agencies Law Amendments: Effects on Future Agreements, Dispute Resolution*, 20 Middle E. Executive Rep. 1, 8 (1997).

16. *See* Yusuf Ahmed Alghanim & Sons, W.L.L. v. Toys 'R' Us, Inc., 126 F.3d 15 (2d Cir. 1997).

17. *See Mealey's International Arbitration Reports* (December 1996).

III. Investment And Privatization

A. Investment Law

Last May, President Hosni Mubarak signed Egypt's new Investment Incentives and Guarantees Law, Law No. 8 (1997), canceling most of the prior investment law, Law No. 230 (1989). The new law clarifies the guarantees and incentives for investment in Egypt, and simplifies the procedures for establishing new projects. Law No. 8 (1997) specifies sixteen sectors that automatically benefit from its guarantees and incentives. However, this Law was the subject of heated debate both before and after its enactment. For example, some local businesses complain that the new law fails to provide adequate tax and other incentives for newly-privatized companies or for expansion of existing projects. On the other hand, some opponents charge that the new law provides excessive benefits to private business interests, including foreign investors, at the expense of the Egyptian public.[18]

In Israel, the Law for the Encouragement of Capital Investments—1959 (the Investment Law) is an integral part of the government's program to increase, accelerate, and intensify investments in Israeli enterprises. The Investment Law offers various benefit options to investors in approved Israeli investments (government guarantee, tax holiday, and governmental loans). The incentives offered in the frame of the Investment Law vary in accordance with the location of the approved enterprise, which is determined by the categories "Development Zone A" or "Development Zone B." During 1997, the Investment Law was amended, affecting the grants, benefits, and tax holidays available. In 1997, changes regarding the areas included in "Development Zone A" and "Development Zone B" took place as well.

As a result of a significant reduction in the rates of grants issued over the past few years, and in order to encourage the establishment of profitable operations in "Development Zone A," the benefits granted under the Investment Law to approved enterprises in this area were expanded. Therefore, after January 1, 1997, approved enterprises in "Development Zone A" are completely exempt from tax on earnings derived from an approved facility for the first two years, and are entitled to the reduced tax rate for the remaining benefit period. The track available pursuant to the Investment Law, which enabled only government guarantees, has been canceled as of January 1, 1997. In addition, the option to choose a tax holiday for a four year period was canceled as of August 6, 1996.

Saudi Arabia also revised its foreign investment regulations in 1997, to explicitly allow foreign investment in electric power generation facilities to qualify as an "industrial development project." As a result, private power plants will be eligible for various incentives offered under Saudi Arabia investment law, including a ten-year holiday from Saudi Arabia income taxation.[19]

B. Privatization

Middle East governments used various methods to privatize existing government-owned companies in 1997, including the Kuwait Investment Authority's sale to local investors of

---

18. *See, e.g.*, Bridget McKinney and Engy Abdelkader, *Egypt's Investment Incentives Law Offers Advantages over Prior Law, but Draws Criticism and Concern*, 20 Middle E. Executive Rep. 6, 9 (1997); El-Din and El-Nakhas, *Businessmen against new regulations*, Al-Ahram Weekly, Sept. 4-10, 1997, at 8.

19. Steven Miles and Haitham Malaikah, *Saudi Regulation Change Allows Privately Owned Power Projects*, 20 Middle E. Executive Rep. 7, 9 (1997).

shares it held in various Kuwaiti companies.[20] In Jordan, privatization took a necessary step by the "corporatization" of existing state enterprises, with the intention of ultimately selling their shares.[21] The Jordan Electricity Authority was the first state enterprise to be corporatized and was re-named the National Electric Power Company. As of January 1, 1997, the Jordanian Telecommunications Corporation was also corporatized.

Similar corporatization was planned in Egypt for the GSM (global standard for mobiles) telephone system, currently operated by the state telephone agency, Arento.[22] Egypt has made more progress with privatization than seemed likely when the process began earlier this decade. However, Egypt's current privatization program might be viewed from one perspective as a re-privatization of companies nationalized following the 1952 revolution and the subsequent evolution of its socialist and statist policies. In their time, these policies sparked strong nationalism and unity among the Egyptian people, and are not too distant from the current Egyptian government's efforts on privatization.[23]

C. Stock Markets

Many Middle East governments in 1997 adopted more liberal rules permitting foreign investors to gain access to local stock markets. For example, Emirates Bank International launched the Emirates Equity Fund, allowing non-UAE nationals, for the first time, to invest indirectly in the local equities market. The UAE Central Bank initially permitted Emirates Bank to allocate twenty percent to non-nationals; due to strong interest, Emirates Bank was subsequently permitted to increase that level to forty-nine percent. Similarly, Saudi Arabian Bank launched a new equity fund, the Saudi Arabia Investment Fund, representing the first opportunity for overseas portfolio ("emerging market") investors to access securities quoted on the Saudi stock market.[24] And Solidere, the publicly-held Lebanese company rebuilding downtown Beirut, surprised some observers by revising ownership restrictions to permit foreign investors to invest in Solidere shares.[25] Finally, Egypt's privatization program gained additional momentum when the government began emphasizing privatization of public companies through offerings on the local stock exchange.[26]

Oman presents an interesting example of government policy from the development stage to implementation. In June 1995, Oman held a "brainstorming" conference attended by government ministers, senior officials, and foreign experts, in order to begin identifying ways to build on the progress of the Omani economy and to achieve sustainable development by the year

20. The divestiture program was implemented either by auctions through the Kuwait stock exchange, sales to strategic investors, or a combination of both methods. In some cases, the Kuwaiti government had originally purchased the shares in an effort to ameliorate the Souk Al-Manakh stock market collapse in the early 1980s. *See, e.g.*, U.S. Commercial Service, *Country Commercial Guide, Kuwait, Fiscal Year 1998* (1997), at 7.

21. *See* Sharif Ali Zu'bi, *Objectives of Privatization in Jordan: Pace of Program Picks Up As Framework Is Created*, 20 Middle E. Executive Rep. 2, 9 (1997).

22. *See* Arento, *Whatever It's Called, It's a Billion-Dollar Headache*, Business Monthly, Apr. 1997, at 46.

23. Bridget McKinney, *Privatisation: Oman and Egypt*, 25 Int'l Bus. Law 3, 26 (1997). Last September, Minister of Public Enterprise Dr. Atef Ebeid announced that by year-end 1997 approximately one-third of the 314 public sector companies will have been privatized. *See Privatization Drive*, Business Today, Sept. 1997, at 24.

24. *See*, respectively, Mimi Mann, *U.A.E.: First Mutual Fund to Allow Foreign Investment . . .*, 20 Middle E. Executive Rep. 5, 4 (1997); and Mimi Mann, *First Saudi Arabian Investment Fund*, 20 Middle E. Executive Rep. 5, 5 (1997). *See also* Kevin Taecker, *Economic Imperatives in the Kingdom And the Role of the Private Sector: Exploiting Comparative Advantages*, 20 Middle E. Executive Rep. 10, 9 & 27 (1997).

25. *Solidere Opens Up To Foreign Investment*, 20 Middle E. Executive Rep. 6, 18 (1997).

26. *See, e.g.*, Hussein, *Foreign Direct Investment and Privatization*, Business Monthly, Nov. 1996, at 69.

2020.[27] One of the central themes of that conference, which has subsequently guided many of the Omani government's development plans and privatization initiatives, was involvement of the private sector and foreign investment as principal engines of economic growth.

Among the most important recent incentives for foreign investment, the Omani government revamped a number of commercial laws in order to: relieve many companies with foreign ownership of the higher tax rates to which they had previously been subjected; allow five year renewable tax exemptions to companies for a wider range of activities; and extend customs duties exemptions.[28] In an effort to further encourage foreign investment, in early 1997, the Omani Ministry of Commerce and Industry issued an internal directive requiring corporate articles of all new Omani public joint-stock companies to permit at least forty-nine percent non-Omani ownership.[29]

Jordan also took significant steps in 1997 to attract both local and foreign investors.[30] For example, the new Securities Law (1997) established a Securities Commission to license and monitor brokers, investors, issuers, and other market participants. Moreover, the new Companies Act (1997) was designed to simplify the process of establishing and registering companies in Jordan. Also strengthening investor confidence, the Jordanian Central Bank approved new foreign currency regulations in 1997 removing restrictions on the transfer of foreign and local currency in and out of Jordan.

Despite these salutary developments, some observers believe that transparency and integrity of Middle East stock markets have not kept pace with liberalizations. Traditionally, most Middle East businesses have disliked compulsory disclosure. Some of the leading businesses in the region are closely held and often family-run enterprises, and there is considerable reluctance to publicly disclose the type of financial and commercial information customarily required under U.S. securities laws.[31] Similarly, in some cases (as in Egypt) an established local stock market may have been relatively inactive for many years and therefore, the laws against insider trading have not been seriously tested until now.[32] In this context, provisions of the new Jordanian Securities Law are specifically designed to combat false or misleading statements in the offer/sale of securities, insider trading, and other harmful activities of market participants.

D. BOO, BOT, BOOT

Following Oman's enactment of Sultani Decree No. 42/96, "Ratifying Privatization Policies and Controls," a number of private infrastructure projects moved closer to reality in 1997. In addition to the up-and-running Manah power project, Oman has plans for a private power

27. *See, e.g.*, *Oman 2020*, LOWER GULF BUS. LAW REV. (newsletter of the law firm of Trowers & Hamlins) July 1995, at 4.

28. Sultani Decree Nos. 87/96, 89/96 and 90/96. *See also Special Report—MENA and the Qatar Conference*, MIDDLE E. ECON. DIG., Nov. 14, 1997, at 42. Sultani Decree No. 87/96 also introduced a withholding tax on some payments made by Omani businesses to foreign companies which lack a permanent establishment in Oman. In November 1997, Omani Ministerial Decision 70/97 implemented and elaborated on such withholding requirements. *See* David Wilson, *Implementing Regulations For Omani Withholding Tax*, 20 MIDDLE E. EXECUTIVE REP. 8, 8 (1997).

29. Mimi Mann, *Executive Briefing; Oman: New Rule on Foreign Ownership in Joint Stock Companies*, 20 MIDDLE E. EXECUTIVE REP. 3, 4 (1997).

30. Sharif Ali Zu'bi, *Jordan: Recent Developments*, ARAB REGION NEWSLETTER (Int'l Bar Assoc.) Nov. 1997, at 5.

31. Townsend, *supra* note 7, at 13.

32. *Coping with a successful bourse*, MIDDLE E. ECON. DIG., May 30, 1997, at 6.

project in Salalah, and wastewater projects in Muscat and Salalah were under serious consideration on a BOOT (Build, Own, Operate, and Transfer) basis.[33]

Jordan laid the groundwork for similar projects by recently enacting legislative amendments to license private investments in the telecommunications and electricity sectors.[34] Likewise, in May 1997, the Abu Dhabi government issued a decree establishing the permanent Committee for the Privatization of the Electricity and Water Sectors in Abu Dhabi.[35] The decree gave that committee broad responsibility for policies, planning and regulating both local and international private sectors investment in production and distribution of water and electricity in Abu Dhabi. Thereafter, the Abu Dhabi government quickly selected bidders for the Taweelah A2 power and desalination project. Also, the emirates of Ras al-Khaimah, Ajman, Sharjah, and Umm al-Qawain reportedly either have signed or are negotiating agreements with private firms for concessions in power, water, wastewater, and desalination projects.[36]

Recent Egyptian legislative reforms have also permitted private investors to pursue, build, and operate projects, most notably the Mersa Alam airport on the Red Sea, the Sidi Krier power plant west of Alexandria, and plans to allow private construction and operation of selected highways.[37]

E. Mergers and Acquisitions in Israel

Sections 104A and 104B of the Income Tax Ordinance (the Ordinance) stipulate deferral of tax imposed as a result of the transfer of assets in consideration of shares in a company. The deferral is granted if the conditions stipulated in the sections are met. One of these conditions is that during the period extending two years from the date of the transfer of shares, the holdings of the original shareholders of the company are not to be diluted under fifty-one percent of the company's rights.

The high risk in companies that are Research & Development (R&D) intensive causes a problem in receiving loans to finance the R&D activity. Therefore, many of the R&D intensive companies recruit funding by allocating shares of the company to investors who invest funds in the company. Therefore, the Income Tax Regulations (Change of Structure of R&D Intensive Companies)—1994 (the Regulations) grant relief concerning the issue of dilution of the original shareholders of the company and instead of the fifty-one percent shareholder limit, the Regulations provide that dilution of up to twenty-five percent of the original shareholders is possible.

"Research & Development" is defined by the regulations as "defined in the Law for Encouragement of Research and Development including the phase of transfer to the production and marketing phase by the company and regarding the product produced by the company, and only when the State or an entity or a representative of the State participate in the funding of the research in the form of grants as defined in section 20A to the Ordinance." As a result

33. *See Privatisation is ruled by pragmatism, Special Report on Oman*, Middle E. Econ. Dig., Nov. 14, 1997, at 17-18.

34. The Jordanian Telecommunications Law No. 13 of 1995 created a public Telecommunications Regulatory Commission, with the authority to license private sector projects. The Jordanian General Electricity Law No. 10 of 1996 permits the licensing of independent power producers and distributors.

35. Mimi Mann, *U.A.E.: Abu Dhabi to Privatize Power, Water Sectors*, 20 Middle E. Executive Rep. 5, 6 (1997).

36. *See* Roderick, *Project finance in the UAE*, The United Arab Emirates Legal Y.B 1998, 4 (White Page, 1997).

37. *See, e.g., Making Inroads*, Business Monthly, Sept. 1997, at 23.

of experience accumulated in operating the Regulations, they were amended during 1997 (the Amendment). The Amendment changed the definition of "R&D" and provided that R&D encompasses any project authorized by the chief scientist. State participation in funding is no longer required. This Amendment will enable companies that are entitled to State grants but are not actually interested in receiving them, to be considered R&D intensive companies for the purpose of the Regulations. Additionally, the Amendment provides relief to a condition that was in effect prior to the Amendments stipulated by the Regulations. Accordingly, the consideration received as a result of the issuance of shares to the investor had to be used for R&D only, in order to enable the company the benefit of the twenty-five percent dilution limit.

Because fast marketing is considered one of the conditions for the success of these companies, the Amendment provides that half the consideration received from the issuance may be used for marketing the products that have been developed by the company. The benefit incorporated in the Regulations, as amended by the Amendment, shall be granted only if the marketing profits accrued from the year of the share issuance and the subsequent years are invested in R&D prior to the third tax year from the date of issuance. In order to avoid evasion from the above-mentioned condition by the transfer of funds to the controllers of the company, the Amendment provides that controllers' income, whose source is the company, shall be included when determining the profit. The Amendment took effect as of January 12, 1997.

F. Other Israeli Law Developments

1. *Customs*

The Israeli Customs Ordinance was amended with respect to transfer pricing regimes for imported goods. The amendment sets out various methods to evaluate goods and introduces the comparable method, the arm's length method, and the cost plus method.

2. *Tax*

Amendments were made to the Value Added Tax (VAT) Law with respect to the treatment of services relating to Israeli securities. Prior to the amendment, services by Israeli residents to foreign residents concerning Israeli securities were subject to a zero percent tax rate. Under the amendment such services will be subject to the full seventeen percent VAT rate.

IV. Intellectual Property

Many Middle East countries have enacted or supplemented their intellectual property laws in recent years. Nonetheless, a number of these countries continue to receive attention under Special 301 annual review by the Office of the U.S. Trade Representative (USTR).[38] For example, Egypt was included on the USTR's 1997 "priority watch list." The USTR acknowledged that Egypt had taken steps to improve its legal framework for protection of copyright works, but due to insufficient enforcement and inadequate penalties, there had not been a significant reduction in piracy, particularly with respect to video, books, and software. The USTR also expressed serious concern about ineffective patent protection in Egypt.

38. The text of the USTR Report on Special 301 Annual Review appears on the U.S. Information Agency's website, <http://*www.usia.gov*>, with materials concerning the United States and the WTO.

Middle East countries placed on the USTR's "watch list" included Bahrain, Israel, Jordan, Kuwait, Oman, Saudi Arabia, and the UAE. As in 1996, the USTR also made a special observation concerning copyright piracy in Lebanon. In most cases, the USTR noted that local authorities had made progress in improving intellectual property protection, but that additional measures—often more effective enforcement of existing laws—were required.

V. Dispute Resolution Issues

A. Regional Arbitration

Lebanese Law No. 629 (1997), issued in April 1997, authorized Lebanon to adhere to the 1958 (New York) Convention for the Recognition and Enforcement of Foreign Arbitral Awards. However, Lebanon failed to immediately notify the treaty departments at either the United Nations or U.S. Department of State, to confirm whether it had taken formal action to adhere to the New York Convention.

Over the past few years, many Middle East countries have established or strengthened local arbitral bodies to facilitate the resolution of disputes. In addition to the relatively well-known Cairo Regional Arbitral Center established twenty years ago, arbitral bodies and rules have been created in the past few years in Lebanon, Kuwait, and through the Abu Dhabi and Dubai Chambers of Commerce. The Gulf Cooperation Council (GCC) Commercial Arbitration Center, based in Bahrain, has also begun to receive some attention, following its establishment in 1993-94.

B. Omani Judicial System

The Omani judicial system underwent significant restructuring as a result of the Commercial Court Law, Sultani Decree No. 13/97, effective July 1, 1997.[39] Under Sultani Decree No. 13/97, the existing Authority for the Settlement of Commercial Disputes, under the Ministry of Commerce and Industry, is converted into a commercial court under the Ministry of Justice, Awqaf, and Islamic Affairs. Sultani Decree No. 13/97 also makes important changes to the court's composition and jurisdiction. For example, the commercial court is now granted jurisdiction over tax appeals, as well as cases involving Omani government entities in commercial disputes—with Omani government entities no longer having the option to accept or refuse jurisdiction. Equally significant, Sultani Decree No. 13/97 provides (for the first time in Oman) rules for the enforcement of foreign court judgments and arbitral awards.

Although not yet a signatory to the 1958 (New York) Convention for the Recognition and Enforcement of Foreign Arbitral Awards, the Omani government appears increasingly aware of the importance of international arbitration. For example, Oman enacted Sultani Decree No. 13/97 as discussed above, as well as Sultani Decree No. 48/97, the Law of Arbitration of Civil and Commercial Disputes. Sultani Decree No. 48/97 appears to have been inspired, in part, by the UNCITRAL Model Arbitration Law of 1985.[40] Sultani Decree No. 48/97 permits disputants to agree upon most of the rules and procedures for their arbitration. However, the

39. *See* Abdelrahman Mohamed Elnafie, *Oman Reforms Its Judicial System: New Commercial Court Law*, 20 Middle E. Executive Rep. 3, 8 (1997).

40. *See, e.g.*, *Emirates Law* (newsletter of the law firm of Fox & Gibbons) Oct. 1997, at 5.

Omani commercial court is given express authority to intervene in certain circumstances, *e.g.*, if a party refuses to elect its arbiter, or if temporary protective measures are necessary during the arbitral proceedings.

VI. Conclusion

For many years, international economists have wondered whether Middle East governments would make the changes necessary to integrate their economies into the global market. As this brief review has shown, commercial law developments in 1997 suggest that many Middle East countries may be moving in the right direction.[41]

41. Fischer, *supra* note 1, at 12.