

Saudisation: a look at recent developments impacting employers in KSA

Mohsin Khan - Partner - Employment and Incentives

mohsin.khan@tamimi.com - Jeddah

Zahir Qayum - Senior Counsel - Employment and Incentives

- Al Khobar

Introduction

In recent months, and notwithstanding the challenges presented to employers by the COVID-19 pandemic, the KSA Ministry of Human Resources and Social Development ('MHRSD') has continued to implement the government's Vision 2030 strategy to increase employment opportunities for Saudi nationals in the private sector by targeting certain roles, professions and sectors of the economy for nationalisation. Both foreign and local companies have had to adapt their workforces to the rapidly developing labour reforms in KSA, much of which have been focussed on the recruitment of Saudi nationals. In this article we will look at some of the recent developments in the area of "Saudisation" and the impact they have had on employers.

Background to Saudisation

The Saudi Labour Law issued by Royal Decree Number M/51 dated 23 Sha'ban 1426 (corresponding to 27 September 2005), (the 'Labour Law') gives the Minister of the MHRSD the power to take necessary actions to improve the conditions of the labour market. Through this statutory power, the MHRSD can review the condition of the labour market in light of the number of Saudi nationals available and qualified to perform certain roles or professions and, where appropriate, direct that certain roles will be either be restricted to Saudi nationals, or that a certain proportion of roles within a particular profession must be reserved for Saudi nationals.

This policy of Saudisation has been in force for decades and its current iteration, which is the Nitaqat system, has been in effect since 2011. The Nitaqat system sets quotas for private sector employers based on their size and the economic activity undertaken by them and rates their compliance by placing them in colour coded categories. Employers are placed in the Platinum and Green categories if they are compliant with their Saudisation requirements and are rewarded with various privileges in relation to visas and work permits. By contrast, employers who fail to meet their Saudisation quotas are placed in the Red category and are penalised by being denied access to visas, work permits and services provided by the MHRSD. The MHRSD can change the conditions and requirements of the Nitaqat system by, for example, increasing the Saudisation quota requirements; changing the rights and restrictions under each colour coded category; or the level of wages required for a Saudi national to be included in an employer's Saudisation calculation.

Recent developments

The recent measures taken by the MHRSD have sought to adjust the parameters of the Nitaqat system, and to extend nationalisation to certain professions and sectors identified as being areas which will attract Saudi nationals. These measures are considered in detail below.

Changes to the Nitaqat System

The MHRSD has made two key changes as follows:

a) Removal of the 'Yellow' Category

The MHRSD issued Ministerial Resolution number 63717 dated 29/03/1441H (corresponding to 27 November 2019) which abolished the Yellow category in the Nitaqat system with effect from 26 January 2020. This was a significant change to the Nitaqat system as it pressured employers to meet their Saudisation quotas to ensure they came within the Green category and thereby generally increased employment opportunities for Saudi nationals. Any employers that were previously in the Yellow category were automatically 'downgraded' to the Red category and were then prohibited from:

- applying for visas or work permits;
- renewing the work permits of existing expatriate employees;
- making any changes to the role or profession stipulated in the work permit issued to an expatriate employee; and
- recruiting an expatriate by a transfer of sponsorship from another employer in KSA.

b) Increase of the minimum wage for Saudisation

The MHRSD introduced Ministerial Resolution number 51848 dated 3/4/1442 (corresponding to 18 November 2020) which increased the minimum wage for a Saudi national to be considered in an employer's Saudisation figures under the Nitaqat system from SAR 3,000 to SAR 4,000.

Accordingly, a Saudi worker with a minimum monthly wage of SAR 4,000 will be calculated as one worker in the Nitaqat system. A Saudi worker whose monthly wage is more than SAR 3,000 but less than SAR 4,000 will be calculated as half a worker for Saudisation purposes.

Resolution 51848 will come into effect on 3/9/1442 (corresponding to 18 April 2021).

Saudisation of professions and sectors

The MHRSD's focus has been on a number of professions, as listed below:

a) Dentistry roles

The MHRSD issued Ministerial Resolution number 61842 dated 27/3/1441H (corresponding to 25 November 2019) which nationalises certain roles within the dentistry profession. Under Resolution 61842, entities employing three or more dentists will be subject to the Saudisation requirements which are being introduced in two phases:

- phase 1 commenced on 1/8/1441H (corresponding to 26 March 2020) and required 25 per cent of the affected roles to be Saudised; and
- phase 2 commenced on 1/8/1442H (corresponding to 15 March 2021) and will required 30 per cent of the

affected roles to be Saudised.

The affected roles are: Dentist Consultant, General Dentist Consultant, General Dentist Physician, Dentist, Oral and Maxillofacial Surgery Consultant, Oral and Maxillofacial Surgeon, Orthodontist as well as all professions that are included in the field of dentistry.

b) Pharmacist roles

The MHRSD issued Ministerial Resolution number 109044 dated 08/06/1441H (corresponding to 2 February 2020) which nationalises pharmacist roles and certain pharmacy related specialisms in the private sector. Under Resolution 109044, entities employing five or more pharmacists will be subject to the Saudisation requirements which are being introduced in two phases:

- phase one commenced on 01/12/1441H corresponding to 22 July 2020 and required 20 per cent of the affected roles to be Saudised; and
- phase two will commence on 01/12/1442H corresponding to 11 July 2021 and will require 30 per cent of the affected roles to be Saudised

The affected roles are Pharmacist, Toxicologist, Chemical Medicaments Specialist, Natural Medicaments Specialist, Lab Sciences Trainer, Pharmacy Trainer, Drug Consultant, General Drugs Specialist, Serums Specialist, Bacteria and Drugs Specialist as well as all other professions that are included under the field of “pharmacy” as defined by the Saudi Commission for Health Specialities.

Under Resolution 109044, the Saudisation requirements will apply to the following entities:

- medical facilities: medical centres, clinics, medical companies, pharmacies and sales outlets; and
- companies: insurance companies, medical accessories companies, medicines companies, scientific offices, distribution companies, warehouses and sales outlets.

c) Engineering roles

The MHRSD issued Ministerial Resolution number 686 dated 01/01/1442H (corresponding to 20 August 2020) which will nationalise certain roles within the engineering profession. Resolution 686 came into effect on 17/06/1442 corresponding to 14 January 2021.

Entities employing five or more engineers will be required to ensure that 20 per cent of the affected roles will be Saudised. Resolution 686 is accompanied by a guide which describes the specific roles that will be Saudised and includes 117 roles relating to the engineering profession in total. The MHRSD has also set a minimum wage of SAR 7,000 for any Saudi nationals who are employed in the relevant engineering roles to meet the Saudisation quotas required by Resolution 686. Further, Saudi engineers are required to obtain professional accreditation from the Saudi Council of Engineers.

d) ICT roles

The MHRSD issued Ministerial Resolution number 28889 dated 18/2/1442H (corresponding to 5 October 2020) which will nationalise certain information and communication technology (‘ICT’) roles in the private sector. The Resolution will come into effect on 17/11/1442H corresponding to 27 June 2021.

Resolution 28889 applies to all employers with five or more workers and targets roles related to information technology engineering, communication engineering, application development, programming

and analysis, technical support as well as jobs related to the technical functions of communications. Under Resolution 28889, 25 per cent of targeted ICT roles will need to be Saudised by 27 June 2021. The Resolution is accompanied by a guide which describes the specific roles that will be Saudised. The MHRSD has also set a minimum wage of SAR 7,000 for specialised professions and SAR 5,000 for technical roles for any Saudi nationals who are employed to meet the Saudisation quotas required by the Resolution.

e) Accounting and finance roles

The MHRSD issued Ministerial Resolution number 86972 dated 8/5/1442 (corresponding to 23 December 2020) which will nationalise certain accounting and finance related roles within the private sector. Resolution 86972 came into effect on 1/11/1442 corresponding to 11 June 2021.

Entities employing five or more accounting related professionals are required to ensure that 30 per cent of the affected roles will be Saudised. Resolution 686 is accompanied by a guide which describes the specific roles that will be Saudised and includes 19 different accounting related professions such as Accounts Manager, Manager of Zakat and Tax, Manager of Financial Reporting, Manager of General Auditing, Internal Auditor, Cost Accountant, Financial Controller and others. The MHRSD has also set a minimum wage of SAR 6,000 for holders of bachelor's degrees and SAR 4,500 for diploma holders for any Saudi nationals who are employed in the relevant accounting roles to meet the Saudisation quotas required by Resolution 86972. Further, Saudi accountants are required to obtain professional accreditation from the Saudi Organization for Certified Public Accountants.

f) Remote customer service roles

The MHRSD issued Ministerial Resolution number 112203 dated 18/06/1442 (corresponding to 1 February 2021) which will nationalise remote customer services roles in the private sector. Resolution 112203 will come into effect on 21/12/1442 corresponding to 31 July 2021.

The Resolution requires that remote customer services roles (including those providing customer services via phone calls, emails, online chats and social media interaction) should be based in Saudi Arabia and cannot be outsourced to other countries. Further, customer service roles will be Saudised. A "Customer Service Representative" is defined as a worker involved in "customer service and related professions".

g) Educational roles

The MHRSD issued Ministerial Resolution number 179141 dated 24/09/1442 (corresponding to 6 May 2021) which will nationalise a number of educational roles in private and international schools over a three year period. Resolution 179141 will come into effect on 21/01/1443 corresponding to 29 August 2021.

Resolution 179141 is accompanied by a guide which describes the specific educational roles that will be Saudised roles in both private and international schools. The MHRSD has also set a minimum wage of SAR 5,000 for holders of bachelor's degrees for any Saudi nationals who are employed in the relevant educational roles to meet the Saudisation quotas required by Resolution 179141.

Finally, the MHRSD has revisited Saudisation of the retail sector by issuing Ministerial Resolution number 134721 dated 10/7/1441H (corresponding to 5 March 2020) which restricts specific roles in retail activities to Saudi nationals. This builds on previous MHRSD decisions issued in recent years to restrict certain retail activities to Saudi nationals.

Resolution 134721 came into effect on 1/1/1442H (corresponding to 20/8/2020) and had the effect of Saudising wholesale and retail outlets in the following economic activities:

- selling books, stationery and student services;
- selling toys and bicycles;
- selling plastic materials, soaps and detergents;
- selling water and beverages;
- selling meat, poultry, fish, eggs and dairy;
- selling fruits, vegetables, dates, oils and vegetable oils;
- selling coffee, tea, honey, sugar and spices;
- selling grains, seeds, flowers, plants and agricultural materials; and
- selling gifts, perfumes, accessories, handicrafts, and antiques.

Retail outlets which undertake the above economic activities must ensure that a minimum of 70 per cent of their workers are Saudi nationals whilst ensuring they comply with previous decisions issued by the MHRSD regarding the Saudisation of retail activities.

In all of the above cases, the penalties for non-compliance with the Saudisation of the above professions and sectors, are a suspension of the MHRSD's services to the employer, which include issuing visas, transferring sponsorship and applying for a change of profession for expatriates. This is in addition to the imposition of a fine for not complying with the Saudisation requirements.

Conclusion

As the largely young Saudi population continues to gain educational qualifications and relevant work experience, the MHRSD has sought to "Saudise" a number of sectors and, increasingly over the last 12 to 18 months, professions which require higher levels of qualifications. This trend looks set to continue into an increasing range of professions and industries. Employers will be required to plan their future workforces factoring in the required number of roles which must be occupied by Saudi nationals. They will also need to strategically consider which of their foreign workers will be required to remain within the workforce to ensure continuity, and also to assist with training and passing experience to their Saudi national colleagues.

For further information, please contact [Mohsin Khan \(mohsin.khan@tamimi.com\)](mailto:mohsin.khan@tamimi.com) and [Zahir Qayum \(z.qayum@tamimi.com\)](mailto:z.qayum@tamimi.com).