

An Overview of Saudi Arabia's Foreign Investment and Employment Strategy

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In recent years businesses in Saudi Arabia, or those seeking to commence business operations, have dealt with a rapidly changing legislative landscape.

The introduction of Nitaqat (literally 'Zones'), which place employers in various colour-coded classifications based on the percentage of Saudis employed, heralded an increased focus on the hiring and retention of Saudi nationals. The Saudi Arabian General Investment Authority ('SAGIA') has instituted an overhaul of the foreign investment license application process which continues to be refined today. And finally, there was the widespread work visa checks conducted in late 2013 and 2014, which resulted in the deportation of nearly one million undocumented and other illegally resident expatriates. According to some sources, more than four million workers corrected their work permit status during this period which is an impressive feat by any measure.

In each case, businesses in Saudi Arabia were required to understand the new legislation, implement systems in order to comply with it and take steps to ensure that those systems were complied with by the local teams in Saudi Arabia. This was by definition a reactive process with many companies initially finding themselves in a lower tier than expected of Nitaqat, or with a rejected foreign investment license application, or in some cases even without workers.

These legislative changes do not occur in a vacuum, and for the leadership of businesses in Saudi Arabia, or businesses that conduct business with Saudi Arabia, it can be helpful to understand the underlying policy objectives behind these regimes. With an understanding of the policy objectives, companies doing business in Saudi can begin to proactively develop their operations in line with the objectives and in this way reduce the possibility of loss of competitiveness.

For example, a large and increasingly well-educated young Saudi national workforce looking for opportunities means that businesses must provide opportunities to allow Saudi nationals to train, develop and take on leadership opportunities as they arise. Similarly, the Kingdom's strategic plan to diversify away from a petroleum-based economy means that there are and will continue to be significant opportunities for businesses in sectors that build on other strengths of the Saudi economy (including its vast deposits of minerals and other natural resources). These and other policy considerations will continue to inform legislative changes in the future.

Examples of such legislative changes abound. For example, SAGIA continues to modify its policy with respect to the issuance of foreign investment licenses to fine-tune the balance between those applications that are successful and those that are rejected. In late 2014, SAGIA introduced a "fast track" application process. For those applicants that meet one of a number of criteria, a reduced set of documentation requirements and a promise of a quicker approval process awaits. The criteria makes clear the types of applicants that the Kingdom is seeking: for example, companies publicly listed in their home jurisdictions, or those seeking to establish regional hubs for their operations in Saudi Arabia. In the future, those companies that successfully bid on major infrastructure and other projects could avail themselves of the "fast track" mechanism in order to comply with any requirements to establish, for example, Saudi manufacturing facilities in order to supply those projects.

Saudi Arabia's Wage Protection System ('WPS') requires employers to provide salary payment data to the Ministry of Labour and for salaries to be paid via electronic funds transfer. In addition to ensuring that all employees are documented and all monthly salaries are paid to employees according to the terms of the relevant employment agreements, the WPS allows the Ministry of Labour to determine what percentage of payroll is being paid to Saudis vs. non-Saudis. In time, this insight will permit the Ministry of Labour to analyse the seniority of Saudi nationals in organisations and to develop policies to encourage Saudi nationals to take on senior leadership functions.

The previously described Nitaqat, the centrepiece of the Kingdom's Saudisation strategy, will also be developed further. The third phase of this program, which was due to be implemented on 20 April 2015 but has been delayed for an unspecified period, will in some cases (based on sector or industry) significantly increase the percentage of Saudis required to be employed by larger businesses. It will also more directly target small to medium enterprises.

The Nitaqat regime introduced for the first time the possibility of employees being able to take on new employment without obtaining consent from the previous employer in the form of a so-called "no objection" letter. For those companies finding themselves in the lower tiers of Nitaqat (namely yellow and red), the "poaching" of Saudi-based employees by local competitors in the higher tiers (premium and green) became a reality for the first time. This introduction of the concept of a workforce that is able to move freely between employers may be expanded in due course, and in the long term employers should prepare for a possible liberalisation (or possible end altogether) of the sponsorship system.

Finally, at the time of writing the Ministry of Labour has recently announced a number of amendments to the Labour Law, including increased requirements for employers to train Saudi nationals. The full impact of these additional amendments will become clearer in time.

There are three main points to be taken from the above:

- Recognise the shifting legal landscape. Those businesses that are ready for and can anticipate legislative changes will be best situated to respond quickly when change does occur.
- Stay apprised of new developments. Often proposed changes in legislation will be publicly debated at length before being implemented. For example, the introduction of an eight-year residency limit for expats has been discussed recently by the Ministry of Labour. While it does not appear this proposal will become law in the near future, knowledge of this proposal can be kept in mind when employers work through succession planning for expat employees.
- Show value to the Kingdom. While the legislative landscape will continue to change, the policy objectives will not. Those businesses that can objectively show a record of hiring and training Saudi nationals, building plants and infrastructure, and transferring technology onshore will continue to be valued and will be able react to new requirements in the most agile manner.

Recent developments indicate that the pace of legislative development (and business opportunity) in Saudi Arabia are set to continue to increase in the near term. For those businesses that are willing to invest in the Kingdom and partner with Saudi authorities, access to those business opportunities will also continue to grow. Jeddah, being a key commercial hub in Saudi Arabia as well as a major international seaport, will certainly be a central focus for such business opportunities.

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